Summit Vil. Dev. Lender 1, LLC v Summit Mtn. Holding Group, L.L.C.
2026 NY Slip Op 31701(U)
April 14, 2026
Supreme Court, New York County
Docket Number: Index No. 652132/2025
Judge: Nancy M. Bannon
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** **PART** **61M**

Justice

----------X

SUMMIT VILLAGE DEVELOPMENT LENDER 1, LLC

Plaintiff,

- v -

SUMMIT MOUNTAIN HOLDING GROUP, L.L.C,

Defendant.

----------X

INDEX NO. 652132/2025

MOTION DATE 06/18/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for DISMISS.

In this action seeking damages of $75.9 million for breach of a Recourse Indemnity Agreement, the defendant Summit Mountain Holding Group, LLC ("the grandparent company"), moves pre-answer to dismiss the plaintiff's complaint pursuant to CPLR 3211(a)(1) and (a)(7), or alternatively dismiss or stay this action pursuant to CPLR 3211(a)(4) in favor of an action pending in Utah involving similar claims and the same and additional parties. The plaintiff-lender Summit Village Development Lender 1, LLC opposes the motion. The motion is denied.

I. BACKGROUND

On June 28, 2016, the plaintiff-lender and nonparty Summit Mountain Holding Group Village Development LLC ("the borrower") executed a loan agreement to finance the development of a ski resort in Utah through the EB-5 Immigrant Investor Program. The loan agreement provided for a capital injection of $120 million sourced by foreign investors which would be disbursed in periodic installments. The defendant is the borrower's great grandparent entity. On June 28, 2016, the plaintiff and the defendant also executed the Recourse Indemnity Agreement, which provided that the borrower's obligations under the loan agreement would become fully recourse to the defendant under certain circumstances. Notably, Section 6.5 of the Loan Agreement, provides for restrictions on liens and transfers by the borrower, including sales or transfers of interest in borrower or any interest in the real property securing the loan.

Moreover, the Recourse Indemnity Agreement, Section 2(f), also provides that failure by the borrower to comply with the loan agreement would cause the loan obligations to be fully recourse to the defendant, unless such failure arises due to a transfer (a) of less than 10%, in the aggregate, of any direct interest in borrower, or, (b) that does not give any person not currently in control of borrower or indemnitor control of indemnitor or borrower.

The borrower has been in default on the loan since 2021 in the amount of $42 million in loan principal, plus interest and fees which have accrued to $75,901,287.32 as of February 2025. In 2021, after the plaintiff sought payment from the borrower, the defendant filed an action against the plaintiff in Utah federal court for declaratory judgment, fraud, and breach of the implied covenant of good faith and fair dealing, and the plaintiff counterclaimed for breach of a shortfall guaranty, a separate agreement between the plaintiff and the defendant. In that action, the Utah federal court granted this plaintiff's summary judgment motion to dismiss all of the defendant's claims except for the shortfall guaranty claim, which is currently pending scheduling for trial.

In the meantime, in 2023, William Reed Hastings acquired the ski resort development project by buying a majority share in the borrower. The plaintiff alleges that the Hastings' purchase triggered Section 2(f) of the Recourse Indemnity Agreement and rendered the loan fully recourse to the defendant. On March 3, 2025, the plaintiff sent notice of the recourse event to the parent company to make the required payment within 30 days. On March 27, 2025, the parent company filed a declaratory judgment claim against the lender in Utah, *SMHG Vill. Dev., LLC, et al v. Summit Vill. Dev. Lender 1, LLC et al.,* Case No. 250200017 (Utah Cnty. Ct.). The action seeks, *inter alia*, a declaration that the Loan Agreement was not breached, and the Recourse Indemnity Agreement was not triggered by the Hastings' acquisition.

On April 3, 2025, the plaintiff Summit Village Development Lender 1, LLC filed the instant action, asserting a single cause of action for breach of contract. This motion ensued.

II. DISCUSSION

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 151-52 (2002). To determine whether a claim adequately states a cause of action, the court must "liberally

construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference," and determine only whether the facts, as alleged, fit within any cognizable legal theory. Id. at 152; see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 (2013); Simkin v Blank, 19 NY3d 46 (2012); Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994). To sufficiently plead a cause of action for breach of contract, a plaintiff must allege the existence of a contract, the plaintiff's performance thereunder, the defendant's breach, and resulting damages. See Harris v Seward Park Hous. Corp., 79 AD3d 425 (1st Dept. 2010). Here, the plaintiff has sufficiently alleged that a valid Recourse Indemnity Agreement exists between the plaintiff and the defendant in connection with a valid loan agreement between the parties. The plaintiff has also alleged its performance of the obligations prescribed under the contract, as it provided financing of $42 million in total, at regular intervals, from July 2016 to February 2020, until the borrower defaulted on the loan. Third, the complaint sufficiently alleged that the defendant breached the contract by failing to indemnify the lender of the amounts owed by the borrower, pursuant to Section 2(f) of the Recourse Indemnity Agreement, when the borrower defaulted. Lastly, the plaintiff alleges damages of no less than $75,901,287.32, including interest and fees. In support of the complaint, the plaintiff proffered a copy of the Recourse Indemnity Agreement, a copy of the Loan Agreement and a notice of default and demand for payment addressed to the indemnitor. Therefore, the plaintiff's breach of contract claim is not subject to dismissal under CPLR 3211(a)(7).

Dismissal under CPLR 3211(a)(1) is warranted only when the documentary evidence submitted "resolves all factual issues as a matter of law and conclusively disposes of the plaintiff's claim." Fortis Financial Services, LLC v Fimat Futures USA, 290 AD2d 383, 383 (1st Dept. 2002); see Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc., 120 AD3d 431, 433 (1st Dept. 2014); Fontanetta v John Doe 1, 73 AD3d 78 (2nd Dept. 2010). A particular paper will qualify as "documentary evidence" only if it satisfies the following criteria: (1) it is "unambiguous"; (2) it is of "undisputed authenticity"; and (3) its contents are "essentially undeniable." See VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC, 171 AD3d 189 (1st Dept. 2019), quoting Fontanetta v John Doe 1, supra. Here, the plaintiff's claim is not subject to dismissal under CPLR 3211(a)(1) as the defendants fail to identify any such document.

The plaintiff's breach of contract claim is based on the acquisition by Netflix co-founder Reed Hastings, who purchased the controlling interest in the borrower, and on the assertion that this acquisition constituted a breach the Recourse Indemnity Agreement. In support of its

motion, the defendant Summit Mountain Holding Group, LLC argues that the borrower and the defendant were not involved in these acquisitions, which allegedly took place "several corporate rungs above both the defendant and the borrower." The borrower appears to be only a passive great-great-grandchild of the acquired entity and would have taken no affirmative action in that transaction. Thus, the defendant's contention is that the transaction could not have violated Section 6.5 of the Loan Agreement. Furthermore, the defendant laments a breach of the loan agreement on the plaintiff's side which failed to raise the agreed-upon sum of $120 million to fully fund the project and failed to notify the defendant. There are several disputed facts here and the documentary evidence proffered, including several unit purchase agreements by defendant's parent company, does not conclusively dispose of the breach of contract claim. Therefore, a pre-answer dismissal is not warranted under CPLR 3211(a)(1).

Lastly, the defendant seeks to dismiss this action under CPLR 3211(a)(4) or, alternatively, to stay this action based on a prior action pending. Under CPLR 3211(a)(4), "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that (…) there is another action pending between the same parties for the same cause of action in a court of any state or the United States." In a letter dated September 30, 2025, the parties provided the update that the Utah state court in the action *SMHG Vill. Dev., LLC, et al v. Summit Vill. Dev. Lender 1, LLC et al.,* Case No. 250200017 (Utah Cnty. Ct.) has stayed the defendant's declaratory judgment claim pending the outcome of this New York action, finding that the defendant's decision to file the Utah action was motivated by the illegitimate purpose of depriving the plaintiff of their chosen *forum*. The defendant here alleges that the plaintiff refused to accept service of the Utah action, causing the New York action to be served first, and the plaintiff alleges that the defendant preemptively filed the declaratory judgment claim in Utah during the mandatory 30-day demand period under the Recourse Indemnity Agreement in anticipation of the plaintiff filing this New York action. As the Utah court has stayed its action pending the outcome of this case, dismissal is inappropriate under CLPR 3211(a)(4). See White Light Prods., Inc. v On the Scene Prods., Inc., 231 AD2d 90 (1st Dept. 1997), finding that defendants should not be rewarded for their precipitous filing in another state, approximately a week after learning of the plaintiffs' intention to bring an action.

III. CONCLUSION

Accordingly, upon the foregoing papers, it is

ORDERED that the defendant's motion tis denied in its entirety; and it is further

ORDERED that the defendant shall serve and file an answer to the complaint within 30 days from the date of this decision, and it is further

ORDERED that counsel shall appear for a compliance conference on June 11, 2026, at 11:30 a.m., as previously scheduled.

This constitutes the Decision and Order of the court.

20260417210310NBANNONE23E64397C0B4DE1A7A0620910BE70555

4/14/2026
DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED	**X**	**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**