

Copenhagen v DDC Enters. Ltd.
2026 NY Slip Op 31745(U)
April 20, 2026
Supreme Court, New York County
Docket Number: Index No. 653651/2025
Judge: Nicholas W. Moyne
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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LELAND COPENHAGEN,

Plaintiff,

- v -

DDC ENTERPRISE LIMITED, DDC US INCORPORATED

Defendant.

-----X

INDEX NO. 653651/2025

MOTION DATE 08/26/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19

were read on this motion to/for DISMISS

Upon the foregoing documents, it is

Before the Court is the motion of the defendants DDC Enterprise Limited and DDC US Inc. for an order pursuant to CPLR 3211(a)(1), (2), and (7) dismissing the complaint of plaintiff Leland Copenhagen, acting in his capacity as Stockholder Representative for the Participating Company Stockholders of Yai's Thai, Inc. ("Yai's Thai"). In the alternative, the defendants seek an order pursuant to CPLR 7503(a) staying the action and compelling arbitration. The plaintiff opposes the motion in its entirety.

For the reasons set forth below, the motion is denied.

I. BACKGROUND

This action arises out of a December 23, 2023 Agreement and Plan of Reorganization (the "Merger Agreement"), pursuant to which the defendants acquired Yai's Thai, a startup producer of Thai curries and sauces. Upon completion of the merger, the plaintiff, the founder of Yai's Thai, was appointed as the Stockholder Representative to act on behalf of the Participating Company Stockholders.

The complaint alleges two causes of action for breach of contract. In the first cause of action, the plaintiff alleges that the defendants breached the Merger Agreement by failing to release a portion of the merger consideration retained as an "Indemnity Holdback." The Indemnity Holdback consisted of \$196,995.40 in

cash to satisfy any potential indemnification claims of the defendants. Pursuant to Section 6.07 of the Merger Agreement, any amount not reserved to satisfy an indemnification claim was to be released to the stockholders "no later than ten (10) Business Days" after the twelve-month anniversary of the Closing Date, which calculated to January 25, 2025. The plaintiff alleges that no claims for indemnification were made prior to the deadline, yet the defendants have wrongfully retained the funds.

In the second cause of action, the plaintiff alleges that the defendants breached their obligations to properly fund Yai's Thai, preventing the stockholders from receiving lucrative "Earnout Payments." Under Section 5.07(a) of the Merger Agreement, the plaintiff was required to deliver quarterly forecasts of working capital requirements, which were to be reasonably acceptable to the defendants. The defendants were then obligated to provide a "Parent Loan" up to an aggregate amount of \$3,058,000 across 2024 and 2025. Furthermore, Section 5.07(d) contains an affirmative covenant that the defendants would "not take any action with the purpose of negatively affecting the ability of the Participating Company Stockholders to attain the maximum Earnout Payments". The plaintiff alleges that the defendants breached these provisions by making working capital payments that were weeks late, sporadic, or partial, and by ceasing payments entirely by approximately September 2024. This failure allegedly destroyed Yai's Thai's relationships with its primary manufacturer and major retailers, including Walmart, Target, Costco, and Kroger, making it impossible for the company to hit the revenue and EBITDA targets required for the \$4,221,330 Earnout Payments.

II. LEGAL STANDARD

On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a claim, the Court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Campaign for Fiscal Equity, Inc. v State of N.Y.*, 86 NY2d 307, 318 [1995]). However, "bare legal conclusions and factual claims, which are either inherently incredible or flatly contradicted by documentary evidence... are not presumed to be true." (*JFK Holding Co., LLC v. City of N.Y.*, 68 AD3d 477 [1st Dept 2009]). Under CPLR 3211(a)(1), dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (*see Fortis Fin. Servcs, LLC v Fimat Futures USA*, 290 AD3d 383, 383 [1st Dept 2022]).

Furthermore, Section 8.01 of the Merger Agreement contains a choice-of-law provision mandating that the agreement and all matters relating thereto shall be

governed by the laws of the State of Delaware. New York courts will enforce a contractual choice-of-law provision that bears a reasonable relationship to the parties, and therefore, Delaware law governs the substantive interpretation of the contract in this action (*see Welsbach Elec. Corp. v. MasTec N. Am., Inc.*, 7 NY3d 624, 629 [2006]).

III. DISCUSSION

A. Motion to Compel Arbitration / Lack of Subject Matter Jurisdiction

The defendants first argue that the second cause of action seeking Earnout Payments must be dismissed under CPLR 3211(a)(2) or stayed under CPLR 7503(a) because the parties agreed to a mandatory arbitration provision. The defendants rely on Section 2.18 of the Merger Agreement, titled "Dispute Resolution," which mandates that disputes be submitted to a "nationally or regionally recognized independent accounting firm."

Under Delaware law, the question of whether the parties agreed to arbitrate is generally one for the courts to decide (*see James & Jackson, LLC v. Willie Gary, LLC*, 906 A2d 76, 79 [Del. 2006]). In the absence of a clear expression of intent to arbitrate the merits of a dispute, a party may not be compelled to arbitrate (*see DMS Props.-First, Inc. v P.W. Scott Assocs., Inc.*, 748 A2d 389, 391 [Del. 2000]).

The plain text of Section 2.18 states that if the Stockholder Representative "disputes Parent's determination of 2023 Equity Value or an Earnout Payment," the dispute shall be submitted to an independent accounting firm, whose authority "shall be limited to determining... the amount of Earnout Payment, including the Company's Revenue and EBITDA applicable to such Earnout Payment, in accordance with the provisions of this Agreement". The plaintiff is not disputing the mathematical calculation of Yai's Thai's actual revenue or EBITDA under the contract. Instead, the complaint asserts a breach of contract claim based on the DDC Entities' alleged failure to adequately capitalize the business under Section 5.07(a) and their breach of the affirmative covenant under Section 5.07(d) not to take actions with the purpose of negatively affecting the ability to attain the Earnout Payments. A claim alleging that a party breached operational covenants and starved a business of capital is a substantive legal dispute, not an accounting dispute concerning the calculation of revenue. Because Section 2.18 expressly limits the arbitrator's authority to accounting determinations, the Court finds that the parties did not intend to arbitrate this breach of contract claim. Accordingly, the branch of the defendants' motion seeking to compel arbitration or dismiss for lack of subject matter jurisdiction is denied.

B. Motion to Dismiss the Second Cause of Action as Premature

The defendants next argue that the second cause of action must be dismissed because the time for the defendants to perform under the Merger Agreement has not expired. Specifically, the defendants argue that their obligation to fund the Parent Loan up to \$3,058,000 extended through "2024 and 2025" under Section 5.07(a), rendering this mid-2025 lawsuit premature.

Delaware is an occurrence rule jurisdiction for breach of contract claims, meaning the wrongful act occurs at the time a contract is breached (*see ISN Software Corp. v Richards, Layton & Finger, P.A.*, 226 A3d 727, 732 [Del 2020]). Accepting the allegations in the complaint as true, the plaintiff alleges that the defendants made sporadic, partial, and late payments throughout early 2024, and definitively ceased making any payments to or on behalf of Yai's Thai by approximately September 2024. These actions allegedly resulted in the immediate, permanent destruction of Yai's Thai's relationships with its manufacturer and major retail partners, making the earnout targets impossible to reach. Because the plaintiff's claim relies entirely on breaches that have already occurred and resulted in injury, their causes of action have accrued under Delaware law and their claims are ripe.

Even if Delaware were not an occurrence rule jurisdiction, the claim should not be dismissed. The complaint alleges that the calculation period for the 2024 Earnout Period was calendar year 2024, which has already passed. Accepting these allegations as true, there is no possibility of the defendants doing anything at this juncture that would impact the 2024 Earnout Payment. In any event, Delaware is an occurrence rule jurisdiction, and while the defendants may view the plaintiff's assertion of damages as speculative, such an argument is properly directed to the merits of the claims, not to ripeness. As alleged, Plaintiff suffered an injury at latest in September of 2024. The claim accrued at that point; therefore, it is not premature.

In their reply, the defendants further attempt to rely on an affidavit from DDC CEO Norma Chu, and accompanying bank records, to argue that DDC actually paid well over \$2 million in working capital in 2024, which they claim satisfied their obligation to fulfill reasonably acceptable requests. It was improper for the defendants to submit such arguments in their reply after not even referencing them in their original motion papers. Regardless, whether the monies provided were sufficient or whether the plaintiff's requests were reasonably acceptable under the contract are factual issues that cannot be resolved on a CPLR 3211 motion to dismiss.

C. Motion to Dismiss the First Cause of Action (Indemnity Holdback)

Finally, the defendants argue that the first cause of action must be dismissed because the plaintiff's claim to the \$196,995.40 Indemnity Holdback is premature. The defendants assert that they possess affirmative claims against the stockholders, including claims that the plaintiff made material misstatements concerning Yai's Thai's projected revenues and existing liabilities, which entitles the defendants to withhold the funds. Section 6.07 of the Merger Agreement dictates that the Indemnity Holdback must be released no later than January 25, 2025, less any amounts reserved to satisfy unresolved, unsatisfied, or disputed indemnification claims. The complaint explicitly alleges that between the Closing Date and January 11, 2025, no claims for indemnification were made against the Company Stockholders. On a motion to dismiss, the Court must accept this allegation as true. The defendants' assertion in their briefing that they may have or do possess viable yet unasserted claims for indemnification raises a factual dispute outside the four corners of the complaint. Therefore, the plaintiff has adequately stated a claim for breach of contract regarding the failure to release the Indemnity Holdback.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED that the defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(1), (2), and (7), or in the alternative, to stay the action and compel arbitration pursuant to CPLR 7503(a), is denied in its entirety; and it is further

ORDERED that the defendants shall serve and file an answer to the complaint within twenty (20) days of the date of this order.



4/20/2026
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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