

Corporate Collections LLC v ACI Fed., Inc.

2026 NY Slip Op 31774(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 650023/2024

Judge: Gerald Lebovits

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

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INDEX NO. 650023/2024

CORPORATE COLLECTIONS LLC,

MOTION SEQ. NO. 002

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

ACI FEDERAL, INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 were read on this motion for SUMMARY JUDGMENT.

Law Offices of Donald Watnick, New York, NY (Donald E. Watnick of counsel), for plaintiff.
Jason R. Mischel, Esq., New York, NY, for defendant.

Gerald Lebovits, J.:

Plaintiff, Corporate Collections LLC, brings this action against defendant, ACI Federal, Inc., as the assignee of TransPerfect International LLC, and TransPerfect Document Management, Inc. (the assignors). The assignors contracted with defendant to provide it e-discovery and data-room services; and later assigned to plaintiff their right to amounts due under those contracts. Plaintiff’s complaint alleges that defendant failed to pay amounts invoiced by the assignors for their contractual services. Plaintiff asserts claims for breach of contract, an account stated, and attorney fees.

Plaintiff now moves for summary judgment in its favor on its complaint. Plaintiff seeks \$65,092.06 in damages (plus interest), along with attorney fees in an amount to be determined by the court. Defendant opposes the motion and cross-moves for leave to amend its answer to add counterclaims and more affirmative defenses.

Defendant’s cross-motion is denied. Plaintiff’s motion is granted.

DISCUSSION

I. Defendant’s Cross-Motion for Leave to Amend

This court addresses defendant’s cross-motion first, because the resolution of that motion may affect the appropriate disposition of plaintiff’s summary-judgment motion. Under CPLR 3025 (b), the court shall freely grant a party leave to amend a pleading—but only absent surprise

or unfair prejudice. (*See Wells Fargo Bank, N.A. v Fanto*, 146 AD3d 1012, 1012 [2d Dept 2017].) Here, defendant's delay in amending its answer would, if amendment were permitted, cause unfair prejudice to plaintiff.

Defendant filed its original answer on July 26, 2024. (NYSCEF No. 51 at 4 [mem. of law in opp.].) All paper discovery was completed by May 2025; and the note of issue was to be filed by August 31, 2025. (*See* NYSCEF No. 31 at 1 [compliance-conference order].) Yet defendant did not seek leave until July 2025—*after* plaintiff moved for summary judgment. (*See* NYSCEF No. 32 [plaintiff's notice of motion]; NYSCEF No. 50 [defendant's notice of cross-motion].) The timing of defendant's proposed amendment would thus prejudice plaintiff by preventing it from having a meaningful opportunity to obtain discovery with respect to defendant's new counterclaims and affirmative defenses before moving for summary judgment. (*See Hanford v Plaza Packaging Corp.*, 284 AD2d 179, 180 [1st Dept 2001] [holding that the motion court properly denied a motion for leave to amend that was made on the eve of summary judgment].)

Additionally, the proposed answer is solely predicated on facts available to defendant when the original answer was filed. With respect to defendant's affirmative defenses, the new allegations that defendant seeks to add in those defenses all pertain to conduct that occurred during the term of the service agreements—between August 2022 and January 2023. (*See* NYSCEF No. 53 at 7-14 [proposed amended answer].) Defendant's initial answer was filed in July 2024, 18 months later. Defendant does not explain why it nonetheless was unable to include the proposed new allegations in that initial answer.

Defendant's proposed counterclaims fare no better. In its counterclaim for breach of contract, defendant realleges the same events that it seeks to add to its first seven affirmative defenses. (NYSCEF No. 53 at 15-16.) In its counterclaim for rescission, defendant seeks to rescind the service agreements because of its allegation that TransPerfect failed to use "commercially reasonable efforts" to remedy service concerns. (*Id.* at 16.) As with defendant's proposed affirmative-defense amendments, none of the events forming the basis of defendant's proposed counterclaims were unknown to defendant at the time the original answer was filed.

That defendant waited a year to seek leave to amend, proposes new defenses and counterclaims based on facts that it knew at the time of the original answer, and has not explained its delay in alleging those new facts, further supports denial of leave to amend. (*See Oil Heat Inst. of Long Is. Ins. Trust v RMTS Assoc.*, 4 AD3d 290, 294 [1st Dept 2004]; *Birdsall v City of New York*, 60 AD2d 522, 522 [1st Dept 1977].)

The cross-motion is denied.

II. Plaintiff's Motion for Summary Judgment

A. Plaintiff's Breach-of-Contract Claim

To make out a breach-of-contract claim, plaintiff must establish (1) the existence of a contract; (2) its performance under the contract; (3) defendant's breach' and (4) damages. (*Markov v Katt*, 176 AD3d 401, 401-02 [1st Dept 2019].)

It is undisputed that the parties entered into the March 2 and March 16, 2022, service agreements. Plaintiff submits an affidavit from a regional director for TransPerfect, representing that TransPerfect provided services to defendant and that defendant acknowledged receipt of the services. (*See* NYSCEF No. 39 at ¶¶ 1, 9-10.) And this affidavit further represents that defendant breached the contracts by failing to pay invoices that were submitted (*see id.* ¶¶ 11-15), injuring plaintiff.

This evidence satisfies plaintiff's prima facie burden at summary judgment with respect to its breach-of-contract claim. In opposition, defendant does not provide evidence that might create a material dispute of fact on that claim.

Defendant argues that the "general course of conduct" between it and TransPerfect permitted it to orally raise disputes with TransPerfect over TransPerfect's performance under the agreement. (*See* NYSCEF No. 51 at 6-7, 9.) This argument is without merit. The March 16, 2022, agreement between the parties contains a requirement that concerns about performance be expressed in writing—and that failure to comply with this written-notice requirement "waives all rights and claims arising out of such performance." (NYSCEF No. 41 at 16 ¶ 5.) A written-notice requirement in a contract that specifies that the consequence of noncompliance is waiver must be strictly complied with, and cannot be modified through a course of conduct. (*See Promo-Pro Ltd. v Lehrer McGovern Bovis*, 306 AD2d 221, 222 [1st Dept 2003]; *Morelli Masons, Inc. v Peter Scalandre & Sons*, 294 AD2d 113, 113 [1st Dept 2002].)

B. Plaintiff's Account-Stated Claim

On plaintiff's account-stated claim, the affidavit of TransPerfect's regional director represents that TransPerfect sent defendant 13 invoices for services rendered; that defendant did not dispute or object to the invoices, notwithstanding repeated requests for payment; and that none of the invoices has been paid. (*See* NYSCEF No. 39 at ¶¶ 11-17.) And the affidavit attaches copies of each invoice, along with a series of communications from TransPerfect to defendant, demanding payment. (*See* NYSCEF No. 42 [invoices]; NYSCEF Nos. 43, 44 [communications].)

In opposition, defendant contends that its former president orally disputed some of the invoices. (*See* NYSCEF No. 51 at 7-8.) But the sole evidence defendant offers on this issue is an affidavit submitted by *someone else* (namely defendant's current general counsel) that contains a conclusory statement attesting to those oral communications. (*See* NYSCEF No. 54 at ¶ 5.) This evidence, offered to prove the truth of the matter asserted—*i.e.*, that defendant disputed the underlying invoices—is hearsay. And a party may not oppose summary judgment solely through inadmissible evidence, such as hearsay. (*Gonzalez v 1225 Ogden Deli Grocery Corp.*, 158 AD3d 582, 584 [1st Dept 2018].)

C. Plaintiff's Attorney-Fee Request

In addition to the amount of the unpaid invoices and contractual interest, plaintiff seeks an award of attorney fees. Plaintiff has shown that the underlying contracts between TransPerfect and defendant, and the assignment agreement between TransPerfect and plaintiff, entitle plaintiff

to collect from defendant the reasonable attorney fees incurred by plaintiff in this action. (See NYSCEF No. 41 at ¶ 4, 16 ¶ 3 [underlying contracts]; NYSCEF No. 45 at ¶ 2 [assigning right to recovery of attorney fees].)

Accordingly, it is

ORDERED that defendant’s cross-motion for leave to amend is denied; and it is further

ORDERED that plaintiff’s motion for summary judgment is granted, and plaintiff is awarded a judgment against defendant for \$65,092.06, with interest on that sum running at the contractual default rate of 18% annually, running from January 31, 2023 (the date of the last invoice); plus costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that plaintiff may enter a supplemental judgment for its reasonable attorney fees incurred in this action, with the amount of those fees to be determined by motion on notice made within 30 days of entry of this order; and it is further

ORDERED that plaintiff serve a copy of this order with notice of its entry on defendant; and on the office of the County Clerk (using the NYSCEF document type “Notice to the County Clerk - CPLR § 8019 (c)”), which shall enter judgment accordingly.

4/21/2026

DATE


HON. GERALD LEBOVITZ
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE