

Sasson v Bridger Consulting Group, Inc.

2026 NY Slip Op 31831(U)

April 28, 2026

Supreme Court, New York County

Docket Number: Index No. 654872/2024

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M

Justice

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JACK SASSON,

Plaintiff,

- v -

BRIDGER CONSULTING GROUP, INC.,

Defendant.

INDEX NO. 654872/2024
MOTION DATE 03/11/2026
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for PRECLUDE

Upon the foregoing documents, it is

The court set a discovery schedule for this case in the preliminary conference order (Doc 34 [4/8/25 PCO]). On 10/16/25, at the compliance conference, the parties "informed the court that they have complied with the court's [document] discovery deadlines" (Doc 43 [10/21/25 CCO]). As discussed in the court's 12/15/25 status conference order (Doc 44 [SCO]),

"On 12/11/25, plaintiff's counsel emailed the court to raise a Rule 14 issue concerning defendant's inadequate production. Plaintiff said that "counsel engaged in letter writing, on December 4th, [2025]" and then met and conferred about 'open discovery issues' (12/11/25 email). 12/4/25 is 3 1/2 months after the party production deadline passed, and only 2 weeks before the parties' NOI deadline.

As stated in the PC Order, "If any dispute over discovery arises, the parties must promptly meet and confer in good faith to resolve the issues. If the parties cannot compromise and resolve the issues, they must immediately contact the court . . . to request a conference, otherwise the issues will be waived" (Doc 34, para 4; see also CC Order at 1-2 [stating the same]).

Thus, plaintiff waived [his] Rule 14 issues relating to defendant's production because these issues were not raised with the court promptly. Further, defendant waived documents that it did not produce by the court's 8/22/25 deadline. As discussed at the status conference, plaintiff may request a pre-

motion conference with the court by sending an email to sfc-part60@nycourts.gov, cc'ing all sides, if plaintiff needs to move for an order precluding defendant from using documents that it did not produce, or for an order imposing an adverse inference”

(*id.* at 1 [emphasis in original]; *see also id.* at 2 [ordering that “All party document discovery that was not completed by the court’s 8/22/25 is waived,” however “The parties may agree to exchange documents on consent, without the court’s involvement. The parties are reminded that documents that are not produced during discovery will not be permitted at trial or summary judgment”]).

Plaintiff filed the NOI on 12/17/25.

DEFENDANT’S THIRD AFFIRMATIVE DEFENSE

Defendant’s third defense states: “There is a failure of a condition precedent for defendant to owe any funds to plaintiff under the terms of the ‘Note’, namely, that defendant is in an event of default with a senior creditor under the terms of the ‘Note’ ” (Doc 39 at 7, para 3). Essentially, defendant claims that it does not owe plaintiff the outstanding amounts owed under the Note because defendant was already in default with a purported “senior creditor” (within the meaning of the Note), nonparty RS Bridge Capital LLC (“RS Bridge”). The Note’s provision concerning “Priority” states:

“This Note is subordinated in right of payment to all current and future indebtedness of the Company for borrowed money (whether or not such indebtedness is secured) to banks, commercial finance lenders or other institutions regularly engaged in the business of lending money (excluding venture capital, investment banking or similar institutions and their affiliates, which sometimes engage in lending activities but which are primarily engaged in investments in equity securities) (the "Senior Debt"). The Company hereby agrees, and by accepting this Note, the Holder hereby acknowledges and agrees, that so long as any Senior Debt is outstanding, upon notice from the holders of such Senior Debt (the "Senior Creditors") to the Company that an event of default, or any event which the giving of notice or the passage of time or both would constitute an event of default, has occurred under the terms of the Senior Debt (a "Default

Notice"), the Company will not make, and the Holder will not receive or retain, any payment under this Note"

(Doc 31, para 3).

In response to plaintiff's demand for documents relating to the affirmative defense and to RS Bridge, defendant produced only "the RS Bridge Capital LLC Promissory Note, the related default notice, and the UCC-1 financing statement." Defendant had already filed most of these documents in the NYSCEF docket when it opposed plaintiff's CPLR 3213 motion (Docs 17-18). The docket also contains RS Bridge's LLC agreement (Doc 93).

Now, in Motion 004, plaintiff moves for a preclusion order and asks the court to issue an adverse inference. Defendant opposes the motion.

DISCUSSION

Plaintiff asks the court to issue an order precluding defendant from using documents, testimony, or other evidence in support of the third defense, and imposing an adverse inference at trial that the unproduced documents would have disfavored defendant (Doc 66 at 13-14 [pl mem] [specifically asking for an instruction that "the documents Defendant failed to produce would have been unfavorable to Defendant, including that RS Bridge Capital LLC does not qualify as a Senior Creditor under the Note and/or that no triggering Default Notice was issued to Plaintiff"]). Plaintiff also seeks attorneys' fees (*id.* at 14 [seeking costs and fees but not explaining what costs or fees are requested]).

The court rejects defendant's misplaced procedural arguments (*see* Doc 70 at 1-3 [def aff opp]). Defendant waived documents that it did not produce during discovery, as set forth in the court's orders, and plaintiff has made an appropriate follow-up motion seeking preclusion and adverse inferences as a remedy for defendant's discovery failures. However, defendant points out that it "offered to engage in a further exchange of documents without waiver of objections,"

but “Plaintiff expressly rejected that offer, stating that any additional documents would not be accepted or considered” (*id.* at 3; *see also* Doc 73 [email rejecting offer]).

In any event, the court grants plaintiff’s motion in part. Defendant is precluded from offering documents or other evidence that were not produced during discovery. The court will not, however, “preclude” or strike the third affirmative defense at this time, as this motion is not an appropriate vehicle for that relief. This denial is without prejudice to plaintiff seeking to dismiss the defense in a summary judgment motion, or to limit the proof concerning the defense in a motion in limine.

The court denies plaintiff’s motion to the extent that plaintiff seeks an adverse inference. In his reply memorandum, plaintiff asserts that that nonparty RS Bridge served a [late] production in response to plaintiff’s subpoena (Doc 74 at 7 [pl’s mem rep]). Plaintiff claims that “the RS Bridge production affirmatively proves that the documents existed and were within Defendant’s possession all along” (*id.*). However, the RS Bridge production documents were not filed in support of this motion.

Somewhat relatedly, defendant asks the court for permission to use documents that RS Bridge produced in response to plaintiff’s subpoena (Doc 70 at 4 [“It is respectfully submitted that Defendant should not be precluded from relying on nonparty documents obtained by Plaintiff through subpoena.”]). To the extent the RS Bridge documents were in defendant’s possession or should have been, defendant is precluded from using them at trial. For example, defendant will not be permitted to use emails between itself and RS Bridge that defendant failed to produce during party discovery.

Finally, the court denies plaintiff’s motion to the extent that plaintiff seeks attorneys’ fees and costs. Plaintiff does not explain in his memoranda what costs and fees he seeks, and there is


no evidence in the record for this motion demonstrating that these fees or costs would be reasonable.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that plaintiff's motion [MS 04] is granted in part and denied in part, as set forth in the decision above; and it is further

ORDERED that there shall be no further motion practice without a prior conference with the court.

4/28/2026		
DATE		HON. MELISSA CRANE, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE