

Mumford v Open Sky 26 LLC
2026 NY Slip Op 31883(U)
April 29, 2026
Supreme Court, New York County
Docket Number: Index No. 655124/2025
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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TERRENCE MUMFORD,

Plaintiff,

- v -

OPEN SKY 26 LLC, WOODS, OVIATT, GILMAN LLP,
WILLIAM F. SAVINO, BERNARD SCHENKLER, ALAF
EQUITY PLLC, SALAR RIVANI, OFFICE OF CANNABIS
MANAGEMENT (OCM), NYS CANNABIS CONTROL
BOARD (CCB)

Defendant.

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INDEX NO. 655124/2025
MOTION DATE 12/07/2025
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 94, 95, 96, 97, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 120, 121, 122, 123, 124, 125 were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is granted.

Background

This motion for summary judgment dismissing the complaint arises out of a dispute over ownership of a cannabis company. Plaintiff is the founding member of Sonz of Cannabis LLC (“Sonz”). According to the original complaint, in 2022, he signed agreements with the now-deceased Mr. Shem Hodge reflecting ownership at 49% and 51%, respectively. In other documents submitted to the Court, including Plaintiff’s affidavit on this motion, it was Plaintiff’s membership interest that was 49% and Mr. Hodge’s membership interest was 51%. Plaintiff alleges that a petition that was filed in Albany Supreme Court on behalf of Sonz without his permission. He commenced this proceeding in August of 2025, originally seeking declaratory and injunctive relief related to the Albany proceeding and a membership interest purchase

agreement made between Mr. Hodge and one Open Sky 26 LLC (“Open Sky”) purporting to transfer 21% of Mr. Hodge’s membership interest.

In the amended complaint, Plaintiff is seeking: 1) a declaration that all action taken by Open Sky and its attorneys purportedly on behalf of Sonz are invalid and that Open Sky has no membership interest in Sonz; 2) a declaration that Open Sky nevertheless somehow owed Plaintiff a fiduciary duty as a member of Sonz and breached that duty; 3) a declaration that Plaintiff is the controlling member of Sonz; 4) a declaration stating that the Albany proceeding is “void”; and 5) injunctive relief preventing Open Sky and the other defendants from taking any further action on behalf of Sonz. Plaintiff also seeks money damages. Open Sky and their attorneys Alaf Equity PLLC and Salar Rivani, Esq. (collectively, the “Defendants”) timely answered the amended complaint, and now move for summary judgment dismissing the complaint.

The Disputed Membership Transfer

There are multiple areas of fact that the parties dispute. Relevant for this motion, one such area involves a membership assignment and sale entered into between Plaintiff and Open Sky. According to Defendants, In December of 2023 Plaintiff assigned his entire interest in Sonz to Open Sky. They have provided a set of documents to that effect, including a bill of sale, a membership purchase agreement, and an assignment of membership interest, a corporate resolution signed by Mr. Hodge authorizing the transfer of membership interest, and an operating agreement for Sonz listing only Open Sky and Mr. Hodge as members. According to Plaintiff, who does not dispute that a sale of his interest to Open Sky took place, the original shareholder agreement between himself and Mr. Hodge that was submitted by Defendants is likely a forgery. He also argues that he did not sign the assignment agreement and bill of sale submitted by

Defendants, and that it is his belief that the signature of Mr. Hodge attached to the corporate resolution memorializing the sale to Open Sky is a forgery. The parties dispute to what extent Open Sky has paid Plaintiff the amount owed in exchange for his interest in Sonz.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

This case presents a morass of conflicting accounts and disputed areas of fact, compounded by the passing of a key player in the saga. The main issue here, however, is whether any of the aforementioned disputed areas of fact are material. *See, e.g., PJSC Natl. Bank Trust v. Pirogova*, 216 A.D.3d 476, 477 [1st Dept. 2023] (granting summary judgment when a defendant failed to raise a material issue of fact in opposition). Defendants are moving for summary judgment dismissing the complaint on the grounds that Plaintiff lacks standing due to his transfer of membership interest. Plaintiff opposes the motion, arguing in part that he has not been fully paid for his membership interest, that several of Defendants’ exhibits are likely forgeries, and that discovery from Defendants is needed to determine what documents Plaintiff signed.

Defendants counter by arguing that regardless of whether Plaintiff's allegations are true, his membership interest in Sonz ceased when he assigned said interest to Open Sky and therefore he lacks standing to bring the present action.

Under New York Limited Liability Law § 603(4), an LLC member “ceases to be member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her membership interest.” While Plaintiff alleges that various forgeries and misdeeds were committed by parties ostensibly acting on behalf of Sonz, these all post-date the purported assignment of Plaintiff's interest in Sonz. Plaintiff also does not allege that the sale itself never occurred, only that he was never paid the full amount and that certain documents memorializing the sale may have had provisions removed. As Plaintiff's entire complaint is based on the proposition that he is a controlling member of Sonz, if he no longer had an interest in Sonz at the time of the events complained about, he would lack the standing to bring this action. Therefore, despite the haze of disputed facts surrounding this matter, the dispositive issue before the Court on this motion is whether or not a failure to fully pay for a membership assignment is sufficient to nullify the assignment and restore Plaintiff to his membership in Sonz.

At the outset, the Court notes that Defendants have submitted a notarized letter that Plaintiff sent to the New York Office of Cannabis Management stating that he was relinquishing his “entire ownership interest and any associated rights” in Sonz, and Plaintiff has not alleged that this document was forged or in any way altered. Furthermore, the Court of Appeals has held that “[s]omething more than a bald assertion of forgery is required to create an issue of fact contesting the authenticity of a signature.” *Banco Popular N. Am. V. Victory Taxi Mgmt.*, 1 N.Y.3d 381, 384 [2004]; *see also PJS Natl. Bank*, at 476 (granting summary judgment when a defendant only offered “conclusory allegations” that certain documents were fabricated). But

even if Plaintiff had more to offer than the self-serving assertion of forgery in opposition to this motion, the crucial fact that he does not dispute the original assignment of his entire membership interest to Open Sky is fatal to his standing in this action, for the reasons explained below.

As stated above, the parties dispute the amount that Plaintiff has been paid towards the purchase price of his membership interest. While this dispute would be relevant for a breach of contract action based on the sale agreement, this proceeding does not contain such a claim. Defendants have established a prima facie entitlement to summary judgment based on Plaintiff's transfer of his membership interest in Sonz before the events took place that form the basis for his claims in the amended complaint. In opposition, Plaintiff has provided no support for the proposition that payment of the full purchase price was a condition precedent to the assignment of his interest. While appellate case law on NYLLC § 603(4) is slim, the case *Verderber* is instructive. There, the First Department held that an LLC member's interest was terminated at the date of assignment. *Verderber v. Commander Enters. Centereach, LLC*, 85 A.D.3d 771, 772 [1st Dept. 2011]. The court there cited to NYLLC § 603(4) as the authority, and then went on to note that this conclusion was bolstered by the fact that the assignment was properly deemed an offer which was accepted. *Id.*

Here, Plaintiff has cited to no support for the nullification or rescission of the agreement to transfer his membership interest but has only alleged facts that would go towards supporting a claim for breach of contract. And finally, while Plaintiff alleges that discovery is needed to determine what amount Defendants have paid on the transfer agreement and what documents Plaintiff signed, such discovery is either immaterial to the issue of his standing here (as explained above) or information that would clearly be in Plaintiff's control. Accordingly, it is hereby

ORDERED and ADJUDGED that the motion is granted and the amended complaint is dismissed.

4/29/2026

DATE

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LYLE E. FRANK, 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