

Credit League, LLC v Cella Bella's Hospice Corp.

2026 NY Slip Op 31905(U)

April 30, 2026

Supreme Court, Kings County

Docket Number: Index No. 502044/2025

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 30th day of April 2026.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

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CREDIT LEAGUE, LLC D/B/A FUNDED EASY,

Plaintiff,

Index No. 502044/2025

-against-

Cal. No. 7 MS 3

CELLA BELLA'S HOSPICE CORP., and CELLA
BELLA'S SENIOR SERVICES CORP.,

Decision and Order

Defendant.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 3

49-56, 60-69

Defendants' motion to dismiss the instant action, vacate the Decision and Order dated November 19, 2025, vacate the proposed judgment, and for attorneys' fees is decided as follows:

This action arises out of defendants' alleged breach of two February 8, 2023 Agreements for Employee Retention Tax Credit Services. A detailed summary of the background of this action is set forth in the Court's Decision and Order dated April 24, 2025, by which the Court granted plaintiff's motion dismissing defendants' counterclaims.

Defendants now move by order to show cause to dismiss the complaint and vacate the Court's November 19, 2025 Decision and Order granting plaintiff summary judgment, as well as any proposed, prior, or subsequent judgments and orders. Defendants argue that plaintiff lacked

capacity to commence or maintain this action because it allegedly failed to comply with the publication requirements of Limited Liability Company Law § 206, rendering the action and resulting orders a nullity. In opposition, plaintiff asserts that any § 206 defect is not jurisdictional and is waived, and in any event cured by its April 2, 2026 filing of a certificate of publication, which may be applied nunc pro tunc. In reply, defendants argue that the defect is not waivable and cannot be retroactively cured by post-commencement compliance, and that plaintiff's failure to oppose their fee request constitutes a concession.

"Limited Liability Company Law § 206 requires limited liability companies to publish their articles of organization or comparable specified information for six successive weeks in two local newspapers designated by the clerk of the county where the limited liability company has its principal office, followed by the filing of an affidavit with the Department of State, stating that such publication has been completed" (*Small Step Day Care, LLC v Broadway Bushwick Builders, L.P.*, 137 AD3d 1102, 1103 [2d Dept 2016] [citation omitted]; *see also*, Limited Liability Company Law § 206 [a]). "Failure to comply with these requirements precludes a limited liability company from maintaining any action or special proceeding in New York" (*id.*).

Here, it is undisputed that plaintiff was not in compliance with Limited Liability Company Law § 206 at the time this action was commenced. It is undisputed that plaintiff did not file the required affidavit of publication with the Department of State until April 2, 2026, fifteenth months after it commenced the instant action and two months after the defendant's filing of the instant motion.

When courts have been presented with the issue of whether a plaintiff's undisputed failure to comply with Limited Liability Company Law § 206(a) warrants dismissal, or whether such a defect is curable and may be overlooked, courts in both the First and Second Departments have consistently held in recent years that noncompliance is fatal and cannot be cured after the fact (*see*

Small Step Day Care, LLC v Broadway Bushwick Builders, L.P., supra, at 1103 [2d Dept 2016]; *Hull Unique Equities LLC v Boone*, 83 Misc 3d 1297(A) [Civ Ct 2024]; *One Stone Lending LLC v Alta Operations, LLC*, 2020 N.Y. Slip Op. 30722[U], 4 [N.Y. Sup Ct, New York County 2020]).

As emphasized in *One Stone Lending*:

“The fact is that plaintiff started a case when it did not have the capacity to do so. It does not matter that plaintiff later may have rectified this error. Simply put, what would be the purpose of the legislature creating strict statutory requirements for LLCs to publish only for the courts to give a plaintiff a chance to comply if and when a defendant raises it as a defense? This court cannot condone the LLC’s practice of ignoring the statute, unless and until it is caught, and then pretending it shouldn’t make a difference.”

The Appellate Division expressly affirmed dismissal of an action based on the plaintiff’s failure to comply with the publication requirements of LLC Law § 206(a) in the binding Second Department decision in *Small Step Day Care, LLC*. Accordingly, because the undisputed facts establish that plaintiff was not in compliance with New York Limited Liability Company Law § 206(a) at the time it commenced this action, and because such noncompliance is not a curable defect under binding Second Department precedent, plaintiff is statutorily precluded from commencing or maintaining the instant action.

As to defendant’s request for attorneys’ fees, “[i]t is well settled in New York that a prevailing party may not recover attorneys’ fees from the losing party except where authorized by statute, agreement or court rule” (*Great Neck Terrace Owners Corp. v McCabe*, 101 AD3d 944, 946 [2d Dept 2012] [citations omitted]). Here, defendant fails to identify any contractual provision or statutory basis entitling it to such relief. Accordingly, that branch of defendant’s motion is denied.

Based on the foregoing, defendant’s motion is granted to the extent that the Decision and Order dated November 19, 2025, and the judgment entered thereon, are vacated, and the instant action is dismissed without prejudice. The remainder of defendants’ motion is denied. Any

arguments not expressly addressed herein was considered and deemed without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.