

Torreya Partners LLC v Sandoz Inc

2025 NY Slip Op 34505(U)

November 25, 2025

Supreme Court, New York County

Docket Number: Index No. 653040/2025

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53-----X
TORREYA PARTNERS LLC,INDEX NO. 653040/2025

Plaintiff,

MOTION DATE 06/18/2025

- v -

SANDOZ INC,

Defendant.

DECISION + ORDER ON
MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons discussed on record (tr. 11.25.25), the motion to dismiss is GRANTED solely to the extent that the cause of action for quantum meruit is dismissed (*Sheiffer v Shenkman Capital Mgt.*, Inc., 291 AD2d 295, 295 [1st Dept 2002]).

Sandoz is not entitled to the dismissal of the breach of contract claim based on their argument that the well-pled complaint does not properly allege breach of the Agreement (as amended) based on their refusal to pay Contingent Transaction Success Fees.

The term “Transaction” means:

a potential sale or partnership transaction for a group of generic products (the “**Products**”) that have been approved in the United States or have the potential to be approved under an Abbreviated New Drug Application (or similar or successor applications or procedures) filed with the United States Food and Drug Administration, or any successor agency thereto (the “**FDA**”, which products are listed on Exhibit A hereto, and Service Provider agreed to be so engaged and provide the applicable Services (as defined below)

(NYSCEF Doc. No. 3 at 1). Pursuant to the terms of the Agreement, the parties agreed that Torreya is entitled to both Initial Transaction Success Fee and Contingent Transaction Success Fee based on its agreement to be engaged and to provide applicable Services.

Services means:

I. Services

1.1 Service Provider will provide the following “**Services**” to Sandoz and such other services as may be mutually agreed upon in writing from time to time by the parties hereto (in each case, such Services shall be performed by Service Provider in accordance with the terms and conditions of this Agreement, including with respect to confidentiality and nondisclosure):

- (i) prepare descriptive materials to be used in sale or partnership discussions for any potential Transaction;
- (ii) assist Sandoz in identifying and screening interested prospective partners and purchasers for any potential Transaction;
- (iii) assist Sandoz in the preparation and implementation of a plan to have discussions with prospective partners or purchasers for a prospective Transaction;
- (iv) assist Sandoz with purchaser and partner diligence and discussions;
- (v) assist with partners and purchasers that are already in discussions on diligence, process and other elements of a potential Transaction;
- (vi) assist Sandoz in bringing new potential partners and purchasers into discussions (via identifying potential partners or purchasers, distribution of materials, explaining the opportunity and setting up meetings with management);
- (vii) assist Sandoz with valuation advice as discussions progress; and
- (viii) assist Sandoz in negotiating the financial aspects of any prospective Transaction.

(*id.* at § 1.1)

Thus, the Agreement itself is not a brokerage agreement requiring the Services to be provided by Torreya to be the procuring cause of a partnership arrangement or a sale. The Agreement does not say that or anything like that. Instead, the parties agreed that Torreya is a service provider who, as discussed above, agreed instead of receiving a lump sum payment for the provision of the Services to accept as compensation a percentage of Payments.

“Payments” as defined by the parties is a broad term:

3.2 For purposes of this Agreement “**Payments**” shall mean the total consideration received or receivable (e.g., cash, property, stock, options, warrants or other securities, earnouts, excluded assets that are intended as purchase consideration including deferred or escrowed consideration) to Sandoz and/or its shareholders. Such payments may come in many forms including upfront payments, milestone payments, or royalty payments.

Such payments may come in many forms, including upfront payments, milestone payments, or royalty payments. Notwithstanding anything herein to the contrary, ‘Payments’ shall not include any consideration received or receivable by Sandoz and/or its shareholders for any: (i) services provided by Sandoz, or any of its affiliates, in connection with a Transaction, e.g., technology transfer services and (ii) interim supply agreement entered into by Sandoz, or any of its affiliates, in connection with a Transaction for the supply of product (whether it be drug substance or finished dosage form) after the closing of the applicable Transaction.

(NYSCEF Doc. No. 38 at 1-2).

It does not even indicate that the Payments are net of expenses.

As such, at best, the Defendant’s argument amounts to there is an ambiguity not properly resolved at this stage of the litigation (although the Defendant argues that the Agreement is not ambiguous).

The Agreement does not however appear to be ambiguous and it does not support the Defendant's argument without the addition of additional language. That said, were the Court to consider extrinsic evidence, the extrinsic evidence does not appear to support the Defendant's position either in that the pro forma spread appears to indicate that the parties understood that Torreya would receive 5% of the Net Present Value of the 10 year projection (NYSCEF Doc. No. 5). The Court notes further that it additionally appears that as Exhibit A (the list of potential drugs covered by the agreement) was amended and expanded, there came points in time when the parties negotiated the percentage due to Torreya to be different than the 5% that is currently provided for in the Agreement (*compare* NYSCEF Doc. No. 38 with NYSCEF Doc. No. 3).

Lastly, the Court notes that what the April 20, 2017 Amendment makes clear is that when the parties wanted to carve-out certain conduct from the definitions of when fees would be due and owing, they appear to have done that (NYSCEF Doc. No. 38). Thus, the Defendant's motion to dismiss the breach of contract claim is DENIED.

Accordingly, it is hereby ORDERED that Sandoz's motion to dismiss is GRANTED to the extent set forth above; and it is further

ORDERED that Sandoz shall order a copy of today's transcript (*tr. 11.25.25*) and upload it to NYSCEF; and it is further

ORDERED that Sandoz shall file its answer on or before January 8, 2026.



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11/25/2025

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

 DENIED

X

NON-FINAL DISPOSITION

 OTHER

APPLICATION:

GRANTED

GRANTED IN PART

CHECK IF APPROPRIATE:

SETTLE ORDER

SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

 REFERENCE