

Weinberg v Meridian Capital Group, LLC
2025 NY Slip Op 34213(U)
November 3, 2025
Supreme Court, New York County
Docket Number: Index No. 653283/2025
Judge: Joel M. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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 03M-----X
JEFFREY WEINBERG,

Plaintiff,

- v -

MERIDIAN CAPITAL GROUP, LLC, MCG EQUITY
PARTNERS LLCDefendants.
-----XINDEX NO. 653283/2025MOTION DATE 07/29/2025MOTION SEQ. NO. 002**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 13, 14, 15, 16, 17, 18, 19, 20, 38, 44, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to

DISMISS

Plaintiff Jeffrey Weinberg (“Plaintiff” or “Weinberg”) brings this action to enforce certain payment obligations allegedly owed by Defendants MCG Equity Partners (“MEP”) and Meridian Capital Group (“MCG,” and together with MEP, “Meridian” or “Defendants”) under a settlement agreement arising out of an April 2019 dispute concerning Weinberg’s membership and equity interests in MEP (NYSCEF 15 [“Letter Agreement”]). Plaintiff also seeks a declaratory judgment regarding the extent, if any, of additional payment obligations due under the Letter Agreement.

Defendants now move to dismiss Plaintiff’s First and Second Causes of Action seeking to enforce certain payment obligations. For the reasons set forth below, Defendants’ motion is denied.

BACKGROUND

According to the Complaint, on or about February 16, 2022, Weinberg, MCG, and MEP entered into the Letter Agreement, under which (i) MCG agreed to pay Weinberg an annual salary (the “Salary Provision”), (ii) MCG and MEP agreed to make certain additional fixed annual payments to Weinberg (the “Fixed Payments Provision”), and (iii) MEP agreed to pay Weinberg a predetermined amount in the event of a partial or total sale of MCG or MEP (the “Sale Provision”) (NYSCEF 2 [“Compl.”] ¶¶ 20-22).

In early 2024, Meridian purportedly cut Weinberg’s salary in half and failed to make one of the payments due under the Fixed Payments Provision (Compl. ¶ 24). Sympathetic to Meridian’s financial challenges, Weinberg hesitated to sue. Instead, he signed a term sheet with Meridian dated September 20, 2024, under which the parties agreed to use their best efforts to negotiate and execute a definitive agreement (NYSCEF 16 [“Term Sheet”]) (Compl. ¶¶ 31, 35). The Term Sheet expired in December 2024 without any agreement reached (Compl. ¶ 36).

On March 5, 2025, Weinberg commenced a summary judgment action in lieu of complaint to recover amounts owed under the Fixed Payments Provision (the “First Action”). On May 29, 2025—just over three months later—Weinberg initiated this action seeking a declaratory judgment regarding the amount, if any, due under the Sale Provision and to recover unpaid salary under the Salary Provision.

On September 9, 2025, after briefing in this action was complete but before oral argument, the Court issued its decision granting Weinberg’s motion for summary judgment in lieu of complaint in the First Action (*see Weinberg v MCG Equity Partners LLC*, NY Slip Op 33317(U) [Sup Ct, NY County 2025]).

DISCUSSION

I. Defense Founded Upon Documentary Evidence (CPLR 3211[a][1])

CPLR 3211(a)(1) authorizes dismissal where a defendant submits “unambiguous” documentary evidence “of undisputed authenticity” (*Bath & Twenty, LLC v Federal Sav. Bank*, 198 AD3d 855, 855-856 [2d Dept 2021]) that “utterly refutes plaintiff’s factual allegations” (*Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002]) and “conclusively establishes a defense [...] as a matter of law” (*Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267, 270-271 [1st Dept 2004]). “If the documentary proof disproves an essential allegation of the complaint, dismissal pursuant to CPLR 3211(a)(1) is warranted even if the allegations, standing alone, could withstand a motion to dismiss for failure to state a cause of action” (*Kolchins v Evolution Mkts., Inc.*, 128 AD3d 47, 58 [1st Dept 2015]; *Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 129 [1st Dept 2014]). Still, “unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, [...] dismissal should not eventuate” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]).

Defendants contend that the Term Sheet executed by Weinberg and Meridian unambiguously superseded the earlier Letter Agreement and therefore bars Weinberg’s claim asserting that Meridian breached the Letter Agreement (*see* NYSCEF 20 [“Memo in Support”] at 8). The argument is unavailing, at least for purposes of the present motion to dismiss. The Term Sheet (i) obligates MCG to pay Weinberg an initial sum upfront, (ii) requires Meridian to reimburse Weinberg’s attorneys’ fees, and (iii) directs Weinberg and Meridian to use best efforts to finalize a settlement agreement—while expressly providing that the remainder of the document is “non-binding” and that, “unless and until the parties enter into a definitive

Agreement, the Letter Agreement shall remain in full force and effect” (Term Sheet at 2).

Consequently, as this Court determined in the First Action, “the Letter Agreement was not superseded by the Term Sheet and does not create a disputed issue of fact as to Plaintiff’s entitlement to relief” (First Action at 3).

Defendants attempt to overcome this hurdle by invoking the part performance doctrine, pursuant to which, they contend, the Term Sheet became binding when Weinberg accepted the initial sum from MCG upon execution (Memo in Support at 9). The argument is also unavailing. The Term Sheet expressly identifies a limited set of provisions as binding—those addressing MCG’s salary obligations, attorneys’ fees, and best efforts to close. Defendants have not established that Weinberg’s enforcement of those provisions somehow transformed the entire document into a binding contract. To hold otherwise would render the ‘Binding Effect’ clause meaningless. Moreover, the authorities on which Defendants rely—*Bed Bath & Beyond Inc. v IBEX Constr., LLC* (52 AD3d 413 [1st Dept 2008]) and *Moshan v PBM, LLC* (141 AD3d 496 [1st Dept 2016])—are inapposite. In those cases, the First Department found that part performance could support an allegation of contract formation, not conclusively establish that one agreement superseded another. Because the Term Sheet does not “utterly refute” Weinberg’s claim, dismissal under CPLR 3211(a)(1) is denied.¹

¹ Defendants make an additional attempt to establish the primacy of the Term Sheet by arguing that Weinberg’s failure to use best efforts to negotiate a settlement crystallized the Term Sheet into a binding agreement (Memo in Support at 10). The argument fares no better. Whether Weinberg breached the best-efforts provision is a disputed issue of fact (*see* First Action at 3) and, even if it were not, Defendants cite no authority establishing that violation of a best-efforts clause within an agreement to agree automatically converts an otherwise nonbinding understanding into an enforceable contract.

II. Failure to State a Cause of Action (CPLR 3211[a][7])

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). “[I]f from [the] four corners [of the pleading] factual allegations are discerned which taken together manifest any cause of action cognizable at law[,] a motion for dismissal will fail” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). In other words, only if the plaintiff “fail[s] to assert a material allegation necessary to support the cause of action” is a defendant entitled to dismissal under CPLR 3211 (a)(7) (*Basis Yield Alpha Fund (Master) v Goldman Sachs Grp., Inc.*, 115 AD3d 128, 134 [1st Dept 2014]).

Defendants argue that Weinberg cannot recover under the Letter Agreement because he breached it, *inter alia*, through inadequate performance and by undermining company morale (*see* Memo in Support at 10-11). However, that contention raises factual disputes that are not amenable to resolution on a motion to dismiss. Here, Weinberg sufficiently alleges that Defendants breached the Letter Agreement, as well as N.Y. Labor Law 193 and 198, by failing to pay his agreed compensation. Those allegations, if true, state valid causes of action. Accordingly, the motion to dismiss pursuant to CPLR 3211(a)(7) is denied.

Whether Plaintiff can prove his allegations and overcome any applicable defenses are, of course, questions for another day.

III. Consolidation (CPLR 602)

Finally, Defendants’ motion under CPLR 602 to consolidate this action with the First Action is denied as moot. The Court has already granted summary judgment in lieu of complaint

against MEP in the First Action and dismissed the complaint against MCG. Because those proceedings have essentially concluded, there is no pending action with which to consolidate.

* * * *

Accordingly, it is:

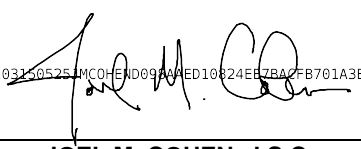
ORDERED that Defendants' motion to partially dismiss the Complaint is **DENIED**; it is further

ORDERED that Defendants file an answer to the Complaint within twenty-one (21) days of the date of this Order; it is further

ORDERED that the parties appear for a preliminary conference on **January 27, 2026, at 10:30am**, with the parties circulating dial-in information to chambers at [SFC-Part3@nycourts.gov](mailto:Part3@nycourts.gov) in advance of the conference;² and it is further

ORDERED that the parties upload a copy of the transcript of the proceedings to NYSCEF upon receipt.

This constitutes the Decision and Order of the Court.

11/3/2025		 <small>20251103150525 JMC0HEND009000ED10624EE7BA2FB701A3BBF20A</small>	
DATE		JOEL M. COHEN, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE
APPLICATION:			
CHECK IF APPROPRIATE:			

² If the parties agree on a proposed preliminary conference order in advance of the conference date (consistent with the guidelines in the Part 3 model preliminary conference order, available online at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/Part3-Preliminary-Conference-Order.pdf>), they may file the proposed order and email a courtesy copy to chambers with a request to so-order in lieu of holding the conference.