

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
FIRST DEPARTMENT

JAK Advisors, LLC and Jason Kesselman v. Jason Bauer et al. and  
Bauer Holdings LLC

JAK Advisors, 2026 NY Slip Op 00055 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Index No. 151067/24; Appeal Nos. 5526-5527; Case Nos. 2024-07540, 2025-04363 ·  
Decided January 8, 2026

SUMMARY

The Appellate Division, First Department affirmed dismissal of claims for breach of contract, breach of fiduciary duty, unjust enrichment, and misrepresentation based on documentary evidence, including electronic communications showing a settlement agreement and payment. The court also held that the remaining unfair competition and trade-name claims failed to state a cause of action. The appeal from the earlier order was dismissed as subsumed in the appeal from the amended order and judgment.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Moulton, J.P.; González, J.; Mendez, J.; Rodriguez, J.; Pitt-Burke, J.                                                                                                                                                                                                                         |
| JURISDICTION          | New York Appellate Division, First Department                                                                                                                                                                                                                                                  |
| DECIDED               | January 8, 2026                                                                                                                                                                                                                                                                                |
| DOCKET                | Index No. 151067/24; Appeal Nos. 5526-5527; Case Nos. 2024-07540, 2025-04363                                                                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Plaintiff appealed from an order and judgment granting defendants' motion to dismiss the amended complaint. Plaintiff also appealed from an earlier order granting the same motion.                                                                                                            |
| STANDARD OF REVIEW    | On a motion to dismiss under CPLR 3211(a)(1), dismissal is proper where documentary evidence utterly refutes the plaintiff's factual allegations and conclusively establishes a defense. Under CPLR 3211(a)(7), the court determines whether the pleading states a cause of action for relief. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                                                      |

## PARTIES

JAK Advisors, LLC, Jason Kesselman v. Jason Bauer et al., Bauer Holdings LLC

## TOPICS

motions to dismiss

civil procedure

breach of contract

unjust enrichment

trademark law

## PRACTICE AREAS

civil procedure

appellate procedure

contracts

commercial litigation

intellectual property

## QUESTIONS PRESENTED

1. Whether documentary evidence conclusively established an accord and satisfaction or otherwise utterly refuted plaintiff's claims for breach of contract, breach of fiduciary duty, and unjust enrichment.
2. Whether documentary evidence established the absence of detrimental reliance supporting dismissal of the misrepresentation claim.
3. Whether the amended complaint stated causes of action for unfair competition based on alleged misappropriation of a trade name and for the statutory trade-name claim.

## HOLDINGS

1. The claims were properly dismissed under CPLR 3211(a)(1) because the parties' communications, corroborated by plaintiff's in-court admission, utterly refuted the claims by establishing an agreement ending the business relationship and defendant's performance through payment.
2. The misrepresentation claim was properly dismissed because the parties' communications demonstrated the absence of detrimental reliance.
3. Emails, text messages, and WhatsApp messages may qualify as documentary evidence under CPLR 3211(a)(1) when they conclusively establish the asserted defense.
4. The remaining claims were properly dismissed under CPLR 3211(a)(7). The unfair-competition allegations were speculative and conclusory, and the statutory claim alleged neither actual or threatened adoption of the trade name nor sought the exclusive statutory remedy of injunctive relief.

## KEY QUOTATIONS

*"Where a principal and fiduciary are sophisticated parties engaged in negotiations to terminate their relationship . . . the principal cannot blindly trust the fiduciary's assertions"* ([\*1])

## FACTUAL BACKGROUND

The parties were ending a business relationship. Their communications reflected an agreement to a new 63/37 division of profits, an additional payment of \$826,000, and wire-transfer instructions, and defendants wired the money. The communications and plaintiff's in-court admission also showed that the settlement amount was less than the amount plaintiff believed was owed and that plaintiff accepted the offer through messages sent from an account identified as his own.

## PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on or about November 1, 2024, granting defendants' motion to dismiss the amended complaint. The court later entered an order and judgment on or about June 17, 2025, amending the prior order and again granting dismissal. The Appellate Division affirmed the order and judgment and dismissed the appeal from the earlier order as subsumed in the appeal from the judgment.

## DISPOSITION

affirmed

## CASES CITED

- Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 (2002)
- Denburg v Parker Chapin Flattau & Klimpl, 82 NY2d 375, 383 (1993)
- Rosenthal v Quadriga Art, Inc., 105 AD3d 507, 508 (1st Dept 2013)
- Complete Messenger & Trucking Corp. v Merrill Lynch Money Mkts., 169 AD2d 609, 610-611 (1st Dept 1991)
- Manse v Hossington, 205 NY 33, 36 (1912)
- J.A.O. Acquisition Corp. v Stavitsky, 18 AD3d 389, 390 (1st Dept 2005)
- Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V., 17 NY3d 269, 279 (2011)
- 4720 Third Ave. Hous. LLC v CA Ventures LLC, 211 AD3d 417, 418 (1st Dept 2022)
- Langer v Dadabhoy, 44 AD3d 425, 426 (1st Dept 2007), lv denied 10 NY3d 712 (2008)
- Popescu v Austin, 2022 NY Slip Op 31275(U), \*3 (Sup Ct, New York County 2022)
- Matter of Philadelphia Ins. Indem. Co. v Kendall, 197 AD3d 75, 79-80 (1st Dept 2021)
- 31 Cornelia Props. Corp. v Lemma, 136 AD3d 584, 585 (1st Dept 2016)
- ITC Ltd. v Punchgini, Inc., 9 NY3d 467, 477-479 (2007)
- Fusha Japanese Rest., Inc. v Fusha, 17 AD3d 226, 227 (1st Dept 2005)
- Eilat Limousine Serv. for All v Eilat Car & Limousine Serv., 221 AD2d 272, 273 (1st Dept 1995)

## OPINION

### PER CURIAM.

JAK Advisors, LLC v Bauer ( 2026 NY Slip Op 00055 ) JAK Advisors, LLC v Bauer 2026 NY Slip Op 00055 Decided on January 08, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 08, 2026 Before: Moulton, J.P., González, Mendez, Rodriguez, Pitt-Burke, JJ. Index No. 151067/24|Appeal No. 5526-5527|Case No. 2024-07540, 2025-04363| [\*1]JAK Advisors, LLC, Plaintiff, Jason Kesselman, Plaintiff-Appellant, v Jason Bauer et al., Defendants-Respondents, Bauer Holdings LLC, Defendant.

Wilk Auslander LLP, New York (Scott J. Watnik of counsel), for appellant. Law Office of Daniel S. Steinberg P.C., New York (Daniel S. Steinberg of counsel), for respondents. Order and judgment (one paper), Supreme Court, New York County (Gerald Lebovits, J.), entered on or about June 17, 2025, which to the extent appealed from as limited by the briefs, amended a prior order, entered on about November 1, 2024, by striking and replacing the first sentence of that order, and granted defendants' motion to dismiss the amended complaint, unanimously affirmed, with costs.

Appeal from order, same court and Justice, entered on or about November 1, 2024, which granted defendants' motion to dismiss the amended complaint, unanimously dismissed, without costs, as subsumed in the appeal from the order and judgment. Supreme Court properly dismissed plaintiff's claims for breach of contract, breach of fiduciary duty, and unjust enrichment as utterly refuted by documentary evidence (CPLR 3211[a][1]; see *Goshen v Mutual Life Ins.*

*Co. of N.Y.*, 98 NY2d 314, 326 [2002]). The communications between the parties demonstrate that plaintiff and the individual defendant mutually reached an accord regarding the end of their business relationship, including plaintiff agreeing to a new 63/37 percentage split of the profits, accepting an offer of an additional \$826,000 payment, and providing wire transfer instructions ( see *Denburg v Parker Chapin Flattau & Klimpl*, 82 NY2d 375, 383 [1993]; *Rosenthal v Quadriga Art, Inc.*, 105 AD3d 507, 508 [1st Dept 2013]).

These communications, corroborated by plaintiff's in-court admission, also demonstrate that defendant executed the agreement by wiring the money satisfaction ( see *Denburg*, 82 NY2d at 383 ). They further demonstrate that the agreed-upon amount was less than plaintiff believed he was owed, thus satisfying the requirement that there be a bona fide dispute as to the amount due ( see *Complete Messenger & Trucking Corp. v Merrill Lynch Money Mkts.*, 169 AD2d 609, 610-611 [1st Dept 1991]; see also *Manse v Hossington*, 205 NY 33, 36 [1912]).

Supreme Court also properly dismissed the misrepresentation claim, as the communications demonstrate the absence of detrimental reliance (CPLR 3211[a][1]; see *J.A.O. Acquisition Corp. v Stavitsky*, 18 AD3d 389, 390 [1st Dept 2005]). "Where a principal and fiduciary are sophisticated parties engaged in negotiations to terminate their relationship... the principal cannot blindly trust the fiduciary's assertions" ( *Centro Empresarial Cempresa S.A. v AmÉrica Móvil, S.A.B. de C.V.*, 17 NY3d 269, 279 [2011]).

Documentary evidence may include electronic communications such as emails, text messages, and, as here, WhatsApp messages, where they conclusively establish the asserted defense ( see *4720 Third Ave. Hous. LLC v CA Ventures LLC*, 211 AD3d 417, 418 [1st Dept 2022]; *Langer v Dadabhoy*, 44 AD3d 425, 426 [1st Dept 2007], lv denied 10 NY3d 712 [2008]; see also *Popescu v Austin*, 2022 NY Slip Op 31275[U], \*3 [Sup Ct, New York County 2022]).

Plaintiff sent the messages from an account identified as his own, whereby he accepted the offer of settlement ( see Matter of Philadelphia Ins. Indem. Co. v Kendall, 197 AD3d 75, 79-80 [1st Dept 2021]). The remaining claims fail to state a cause of action for relief (CPLR 3211[a][7]). Specifically, the allegations supporting plaintiff's unfair competition due to the misappropriation of his entity's trade name are "speculative and conclusory" ( 31 Cornelia Props.

Corp. v Lemma, 136 AD3d 584, 585 [1st Dept 2016]; see generally ITC Ltd. v Punchgini, Inc., 9 NY3d 467, 477-479 [2007]). Similarly, the statutory claim alleges no "actual or threatened" adoption of his entity's trade name and fails to seek "to enjoin and restrain such actual or threatened violation," the exclusive remedy under the statute (General Business Law § 133; see Fusha Japanese Rest., Inc. v Fusha, 17 AD3d 226, 227 [1st Dept 2005]; Eilat Limousine Serv. for All v Eilat Car & Limousine Serv., 221 AD2d 272, 273 [1st Dept 1995]).

We have considered plaintiff's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 8, 2026

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