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UNITED STATES BANKRUPTCY COURT

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CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

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In re:

17 Better 4 You Breakfast, Inc.,

18 Debtor.

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Better 4 You Breakfast, Inc.,

20 Debtor,

21 v.

Intrepid Investment Bankers LLC,

22 Defendant.

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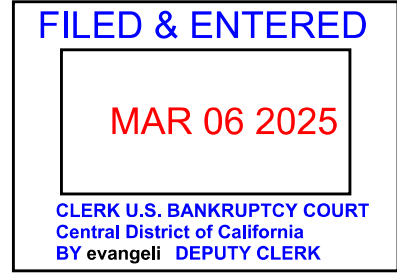
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CHANGES MADE BY COURT

Case No.: 2:22-bk-10994-BB

Chapter 11 case

Adv. No.: 2:23-ap-01301-BB

Hon. Sheri Bluebond

**FINDINGS OF FACTS AND
CONCLUSIONS OF LAW IN SUPPORT
OF INTREPID INVESTMENT BANKERS
LLC'S MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION AGAINST PLAINTIFF
BETTER 4 YOU BREAKFAST, INC.**

Hearing:

Date: February 27, 2025

Time: 10:30 a.m.

Place: Courtroom 1539

255 E. Temple Street

Los Angeles, CA 90012

1 The Court hereby makes the following findings of fact and conclusions of law in connection
2 with its *Order Granting Defendant’s Intrepid Investment Bankers LLC’s Motion For Summary*
3 *Judgment Or, In The Alternative, Summary Adjudication Against Plaintiff Better 4 You Breakfast,*
4 *Inc.*, entered concurrently herewith:

5 **A. FINDINGS OF FACT**

UNCONTROVERTED FACT	SUPPORTING EVIDENCE
7 1. Debtor is Better 4 You Breakfast, Inc. (“B4YB”), 8 debtor and debtor in possession in a chapter 11 9 bankruptcy case, case number 2:22-bk-10994-BB, 10 pending in the United States Bankruptcy Court, 11 Central District of California, Los Angeles 12 Division.	ECF No. 1 – B4YB’s Voluntary Petition.
13 2. Defendant is Intrepid Investment Bankers LLC, 14 (“Intrepid”), a limited liability company formed in 15 the State of Delaware, but authorized to do business 16 and doing business in the State of California. 17 Intrepid is an investment banking firm in the Los 18 Angeles area.	SAC at ¶ 6.
19 3. Intrepid and B4YB entered into a valid and 20 enforceable Engagement Agreement dated 21 November 22, 2019 (the “ Engagement 22 Agreement ”).	App. Exh. 1 - Engagement Agreement.
23 4. The Engagement Agreement included a non- 24 refundable fee payable upon the execution of 25 Engagement Agreement equal to \$75,000 which 26 fee to be fully credited against any Transaction Fee.	App. Exh. 1 - Engagement Agreement at § B(1)(a).

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UNCONTROVERTED FACT	SUPPORTING EVIDENCE
<p>5. Under the Engagement Agreement, Intrepid was entitled to a percentage of B4YB’s sale proceeds:</p> <p>(i) during the Engagement Agreement’s term; and</p> <p>(ii) within a 12-month period after the term of the Engagement Agreement (the “Tail Period”).</p>	<p>App. Exh. 1 - Engagement Agreement at §§ B(1)(b) and B(2).</p>
<p>6. Intrepid was entitled to be reimbursed for all reasonable out-of-pocket expenses up to \$25,000 under the Engagement Agreement irrespective of whether a Transaction is completed (the “Expense Reimbursement Claim”).</p>	<p>App. Exh. 1 – Engagement Agreement at § 3.</p>
<p>7. Intrepid was retained as the exclusive investment banker for B4YB under an Engagement Agreement, dated November 22, 2019, between B4YB and Intrepid.</p>	<p>App. Exh. 1 - Engagement Agreement.</p>
<p>8. On October 27, 2021, SFE sent a non-binding Letter of Intent (“First LOI”) to B4YB, and B4YB forwarded the First LOI to Intrepid on November 3, 2021.</p>	<p>App. Exh. 58 - First LOI. App. Exh. 59 - November 3, 2021 email.</p>
<p>9. On November 5, 2021, Intrepid discussed the First LOI with Doug Spiro, and Intrepid had an introductory call with SFE and Poplin Consulting on November 12, 2021.</p>	<p>App. Exh. 60 - November 12, 2021 emails with SFE. App. Exh. 61 - November 12, 2021 Microsoft Teams meeting invite.</p>
<p>10. On December 3, 2021, SFE sent an updated Letter of Intent to B4YB (the “Second LOI”) addressed to Fernando Castillo, President of B4YB, that required a 90-day diligence period.</p>	<p>App. Exh. 70 - Second LOI at p. 2.</p>

UNCONTROVERTED FACT	SUPPORTING EVIDENCE
<p>11. There is no evidence that either Intrepid or anyone at Intrepid, including Eduard Bagdasarian, ever received a copy of the Second LOI.</p>	<p>ECF No. 145-4 – B4YB’s Separate Statement of Genuine Disputes In Opposition to Intrepid’s MSJ at p. 24:3-p. 25:5.</p> <p>Lobel Decl. Exh. 4 – Charles Mothershead’s Deposition Transcript at p. 32:10 – p. 34:23.</p>
<p>12. Charles Mothershead’s only substantive conversation with Intrepid occurred in November 2021.</p>	<p>Lobel Decl. Exh. 4 – Charles Mothershead’s Deposition Transcript at p. 28:1-:25, p. 32:10-25, and p. 34:20-23.</p>
<p>13. The evidence shows that Charles Mothershead had a conversation with Fernando Castillo, of B4YB, and not Mr. Bagdasarian or anyone else at Intrepid, regarding B4YB’s unwillingness to agree on exclusivity after the Second LOI.</p>	<p>Lobel Decl. Exh. 4 – Charles Mothershead’s Deposition Transcript at p. 34.</p>
<p>14. SFE’s interest in B4YB waned due to B4YB’s bankruptcy filing.</p>	<p>Lobel Decl. Exh. 4 – Charles Mothershead’s Deposition Transcript at p. 28:48-49 and p. 34:24-35:16.</p>
<p>15. B4YB filed for bankruptcy, less than 90 days after the date of the Second LOI.</p>	<p>SAC, ¶ 67.</p>
<p>16. On June 27, 2022, the Bankruptcy Court entered an order approving the sale of substantially all of B4YB’s assets to RevFoods for \$45 million.</p>	<p>ECF No. 399 - Order Approving Motion for APA Sale.</p>

UNCONTROVERTED FACT	SUPPORTING EVIDENCE
<p>17. The sale to RevFoods closed on July 20, 2022, which is within the Tail Period under the Engagement Agreement.</p>	<p>ECF No. 598 - Amended Disclosure Statement <i>Dated October 17, 2022</i>, “Part 3. Other Information A. Background/Risk Factors”.</p>
<p>18. The sale of B4YB’s assets triggered Intrepid’s entitlement to a \$1,000,000 minimum Transaction Fee under the Engagement Agreement.</p>	<p>App. Exh. 1 - Engagement Agreement at § B(2).</p>
<p>19. The Engagement Agreement was rejected under 11 U.S.C. § 365(g) as an executory contract upon the confirmation of B4YB’s Chapter 11 Plan on January 30, 2023.</p>	<p>ECF No.737 - Order Confirming Debtor’s Plan of Reorganization</p>
<p>20. Intrepid timely filed its proof of claim, Claim No. 82-1, on June 14, 2022, as a general unsecured claim, stating it would be entitled to a Transaction Fee if B4YB consummated a sale, along with the other fees and costs it was entitled to under the Engagement Agreement.</p>	<p>App. Exh. 87 - Claim No. 82-1 at Addendum ¶ 5.</p>
<p>21. Intrepid amended its proof of claim, Claim No. 82-2, on July 22, 2022 (the “Amended Claim”), to include payments owed for the non-refundable fee, the \$1,000,000 Transaction Fee, and attorney’s fees. The “Transaction Fee” sought by the Amended Claim was “payable, irrespective of any services rendered or not rendered by Intrepid, with respect to any Transaction that is completed during (i) the term of this Agreement, or (ii) the 12 month</p>	<p>App. Exh. 88 - Claim No. 82-2 at Addendum §4 & §7.</p>

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UNCONTROVERTED FACT	SUPPORTING EVIDENCE
<p>period (the ‘Tail Period’) following the term of this Agreement with a prospect”</p>	
<p>22. B4YB has failed to present evidence negating any essential element of Intrepid’s claim.</p>	<p>B4YB’s Motion for Summary Judgment and related documents and discovery.</p>
<p>23. There is no evidence that Eduard Bagdasarian told SFE that B4YB would not enter into an exclusive agreement after SFE provided its Second LOI in December 2021.</p>	<p>B4YB’s Motion for Summary Judgment and related documents and discovery. ECF No. 145-4 – B4YB’s Separate Statement of Genuine Disputes In Opposition to Intrepid’s MSJ at p. 25:6-19. Lobel Decl. Exh. 4 – Charles Mothershead’s Deposition Transcript at p. 32:10 – p. 34:23.</p>
<p>24. Even if it is true that Doug Spiro instructed Mr. Bagdasarian to communicate to SFE that B4YB would enter into an exclusive agreement, there is no evidence that Mr. Bagdasarian’s failure to communicate this information to SFE was the proximate cause of any damage to B4YB.</p>	<p>B4YB’s Motion for Summary Judgment and related documents and discovery. Lobel Decl. Exh. 4 – Charles Mothershead’s Deposition Transcript at pp.46:5 – p.49:1.</p>
<p>25. The only evidence as to why SFE did not want to move forward with the sale reflects that it was the bankruptcy filing that led SFE to lose interest, not any refusal of SFE to agree to exclusivity.</p>	<p>Lobel Decl. Exh. 4 – Charles Mothershead’s Deposition Transcript at pp.46-49.</p>
<p>26. There is no admissible evidence that any action, or inaction, by Mr. Bagdasarian or Intrepid to led SFE</p>	<p>B4YB’s Motion for Summary Judgment and related documents and discovery.</p>

UNCONTROVERTED FACT	SUPPORTING EVIDENCE
to decide not to move forward with the purchase of B4YB.	Lobel Decl. Exh. 4 – Charles Mothershead’s Deposition Transcript at pp.46:5 – p.49:1.
27. There is no evidence that Intrepid breached the Engagement Agreement.	B4YB’s Motion for Summary Judgment and related documents and discovery.
28. B4YB has no responsive documents to show any meeting, in person or telephonically, between B4YB and RevFoods from December 2021 to January 2022.	Lobel Decl. Exh. 3 - B4YB’s Supplemental Response to Intrepid’s Request for Production No. 18 at p. 9:9-19.
29. The record contains no documentation of B4YB’s providing Intrepid a copy of the December 3, 2021 Second LOI.	B4YB’s Motion for Summary Judgment and related documents and discovery.
30. The record contains no documentation of instructions from B4YB to Intrepid to enter into an exclusivity deal with SFE.	B4YB’s Motion for Summary Judgment and related documents and discovery.

If any finding of fact is determined to be a conclusion of law, it shall be deemed as such.

B. CONCLUSIONS OF LAW

Standard for Summary Judgment

1. Summary judgment is proper where “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of a genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). “[T]he burden on the moving party may be discharged by ‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325; *see also, e.g., Musick v. Burke*, 913 F.2d 1390, 1394 (9th Cir. 1990).

1 2. The moving party must affirmatively show the absence of such evidence in the
2 record, either by deposition testimony, the inadequacy of documentary evidence, or by any other
3 form of admissible evidence. *Celotex Corp.*, 477 U.S. at 322 (1986). The moving party has no
4 burden to negate or disprove matters on which the opponent will have the burden of proof at trial.
5 *Id.* at 325. Although facts should be construed “in the light most favorable to the party opposing
6 the motion,” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986)
7 (citing *U.S. v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)), the nonmoving party’s allegation that
8 factual disputes persist between the parties does not automatically defeat an otherwise properly
9 supported motion for summary judgment. See Fed. R. Civ. P. 56(e)(2) (nonmoving party may not
10 rest merely on allegations or denials in its own pleading; rather, its response must—by affidavits
11 or as otherwise provided in this rule—set out specific facts showing a genuine issue for trial). A
12 “mere ‘scintilla’ of evidence will be insufficient to defeat a properly supported motion for
13 summary judgment; instead, the nonmoving party must introduce some ‘significant probative
14 evidence tending to support the complaint.’” *Fazio v. City & Cnty. of San Francisco*, 125 F.3d
15 1328, 1331 (9th Cir.1997) (quoting *Anderson*, 477 U.S. at 249 (1986)). Otherwise, summary
16 judgment shall be entered.

17 3. Defendant Intrepid has demonstrated that no genuine issues of material fact exist
18 regarding its entitlement to judgment as a matter of law under Rule 56 of the Federal Rules of
19 Civil Procedure, made applicable by Rule 7056 of the Federal Rules of Bankruptcy Procedure.

20 4. Intrepid is entitled to damages based on the tail provision of the Engagement
21 Agreement, which remains enforceable under California law. The rejection of the Engagement
22 Agreement pursuant to the Chapter 11 Plan constitutes a breach, entitling Intrepid to damages
23 calculated under the Agreement’s terms. Damages include the Retainer, the Transaction Fee,
24 Expense Reimbursement and Attorney Fees.

25 **Jurisdiction and Venue**

26 5. The Court has jurisdiction over this MSJ pursuant to 28 U.S.C. §§ 157 and 1334.

27 6. This matter is not a core proceeding, and therefore, the court lacks the authority to
28 enter a final judgment.

1 7. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409(a).

2 **B4YB Failed To Overcome The Presumption That Intrepid's Claim Is Valid**

3 8. Under 11 U.S.C. § 502(a) and Federal Rule of Bankruptcy Procedure 3001(f), a
4 properly filed proof of claim constitutes prima facie evidence of the validity and amount of the
5 claim. *In re Garner*, 246 B.R. 617, 620 (9th Cir. B.A.P. 2000); *Lundell v. Anchor Constr.*
6 *Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000).

7 9. Once a creditor files a proof of claim, the burden shifts to the objecting party to
8 produce sufficient evidence to negate at least one essential element of the claim. If the objector
9 meets this burden, the ultimate burden of persuasion shifts back to the claimant to prove the
10 validity of the claim by a preponderance of the evidence. *In re G.I. Indus., Inc.*, 204 F.3d 1276,
11 1280 (9th Cir. 2000).

12 10. Intrepid filed a proof of claim, Claim No. 82-1, for \$962,500 (as later corrected) in
13 rejection damages under the tail provision of the Engagement Agreement. This claim is based on
14 the undisputed facts that:

15 a. The Engagement Agreement was valid and enforceable.

16 b. The Engagement Agreement was rejected under 11 U.S.C. § 365(g), creating a claim
17 for breach damages.

18 c. B4YB's assets sale occurred during the 12-month tail period, triggering Intrepid's
19 entitlement to the Transaction Fee as outlined in the Engagement Agreement.

20 d. B4YB has failed to provide evidence of probative force to refute the essential
21 elements of Intrepid's claim.

22 e. Specifically:

23 i. B4YB has not contested the validity or enforceability of the
24 Engagement Agreement or the tail provision.

25 ii. B4YB has not provided evidence that negates Intrepid's entitlement
26 to the Transaction Fee under the terms of the Agreement.

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1 11. B4YB's objections and allegations, including claims of breach of contract, breach
2 of fiduciary duty, and failure to perform, fail to overcome the presumption of validity because they
3 are unsupported by evidence and irrelevant to the calculation of rejection damages.

4 12. Courts have routinely upheld the enforceability of tail provisions in engagement
5 agreements for investment banking services. These provisions entitle the investment banker to its
6 fee upon the occurrence of a qualifying transaction within the tail period, regardless of additional
7 services rendered. *Moelis & Co. LLC v. Ocwen Fin. Corp.*, 203 A.D.3d 469, 470 (2022); *In re*
8 *National Energy & Gas Transmission, Inc.*, 2006 WL 4595947 (Bankr. D. Md. 2006).

9 13. B4YB has failed to satisfy its burden of production to negate the validity of
10 Intrepid's claim. Consequently, the presumption of validity afforded to Intrepid's proof of claim
11 under Rule 3001(f) remains intact.

12 14. Based on the undisputed evidence, Intrepid has established by a preponderance of
13 the evidence that its claim for \$962,500, plus interest, attorneys' fees, and cost in rejection
14 damages under the Engagement Agreement is valid and enforceable.

15 15. Accordingly, the Court concludes that B4YB has failed to overcome the burden of
16 proof, and Intrepid is entitled to summary judgment on its claim.

17 **Intrepid Is Not Liable For Breach Of Contract**

18 16. Under California law, a breach of contract claim requires proof of (1) a valid
19 contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4)
20 damages caused by the breach.

21 17. The Engagement Agreement between Intrepid and B4YB was valid and
22 enforceable.

23 18. There is no evidence that Intrepid failed to fulfill contractual obligations.

24 19. B4YB has failed to provide any evidence of a breach by Intrepid or resulting
25 damages.

26 20. The Engagement Agreement was rejected pursuant to 11 U.S.C. 365(g).

27 21. Intrepid is entitled to treat the Engagement Agreement as breached by B4YB
28 pursuant to 11 U.S.C. 365(g).

1 22. B4YB did not suffer any damages as a result of the Intrepid's actions. Any alleged
2 damages are speculative and not supported by the evidence.

3 23. Intrepid is entitled to summary judgment on the breach of contract claim.

4 **Intrepid Is Not Liable For Breach Of The Implied Covenant Of Good Faith And Fair**
5 **Dealing**

6 25. Every contract under California law contains an implied covenant of good faith and
7 fair dealing, which prevents a contracting party from unfairly frustrating the other party's rights to
8 receive the benefits of the contract.

9 26. There is no evidence that Intrepid breached the Engagement Agreement.

10 27. There is no evidence that Intrepid failed to act in good faith or failed to fulfill its
11 obligations to the extent possible.

12 28. B4YB has failed to present any evidence that Intrepid acted in bad faith or
13 frustrated B4YB's rights under the contract.

14 29. As a result, Intrepid is entitled to summary judgment on the claim for breach of the
15 implied covenant of good faith and fair dealing.

16 **Intrepid Is Not Liable For Violation Of Business And Professions Code § 17200, Et**
17 **Seq.**

18 30. California's Unfair Competition Law ("UCL") prohibits unlawful, unfair, or
19 fraudulent business practices.

20 31. B4YB has failed to present any evidence demonstrating that Intrepid engaged in
21 unlawful, unfair, or fraudulent conduct.

22 32. The UCL claim is derivative of B4YB's breach of contract and fiduciary duty
23 claims, which are unsupported by evidence. Without a predicate violation, there is no basis for
24 liability under the UCL.

25 33. Intrepid is entitled to summary judgment on the UCL claim.

26 **There Is No Controversy And Therefore, B4YB Is Not Entitled To Declaratory Relief**

27 34. Declaratory relief is appropriate where an actual controversy exists regarding the
28 rights and obligations of the parties under a contract.

1 35. B4YB’s request for declaratory relief is duplicative of its other claims and fails for
2 the same reasons, including the absence of any evidence disputing the validity or enforceability of
3 the Engagement Agreement or tail provision.

4 36. As no genuine controversy remains, Intrepid is entitled to summary judgment on
5 the declaratory relief claim.

6 **Intrepid Is Not Liable For Breach Of Fiduciary Duty**

7 37. To establish a breach of fiduciary duty under California law, a plaintiff must prove
8 (1) the existence of a fiduciary relationship, (2) a breach of that relationship, and (3) damages
9 caused by the breach.


10 38. Even if a fiduciary duty existed, B4YB has failed to provide evidence of any breach
11 of fiduciary duty by Intrepid.

12 39. Intrepid is entitled to summary judgment on the breach of fiduciary duty claim.

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14 If any conclusion of law is determined to be a finding of fact, it shall be deemed as such.

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24 Date: March 6, 2025


Sheri Bluebond
United States Bankruptcy Judge