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| Flash Funding LLC v Ironclad Mech. Corp. |
| 2026 NY Slip Op 31092(U) |
| March 19, 2026 |
| Supreme Court, Kings County |
| Docket Number: Index No. 537517/2025 |
| 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 19th day of March 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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FLASH FUNDING LLC,

Plaintiff,

Index No. 537517/2025

-against-

Cal. No. 8 MS 1

IRONCLAD MECHANICAL CORPORATION, et al.,

Defendants.

Decision and Order

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 1

12-25, 35-39, 46-48, 50

Plaintiff's motion for summary judgment is decided as follows:

Background

This action arises out of a Future Receivables Sale and Purchase Agreement (the "Agreement") dated June 6, 2025, under which plaintiff purchased 23% of defendant Ironclad Mechanical Corporation's future receivables up to \$295,450 in exchange for \$190,000, with the individual defendants executing a personal guarantee of performance. Plaintiff alleges that it performed by funding \$180,500.00, that defendants initially remitted payments, but that after multiple ACH returns for insufficient funds an event of default occurred on September 10, 2025, leaving an unpaid balance of \$211,739.13 plus a \$2,500 default fee, for a total of \$214,389.13. Plaintiff now moves for summary judgment on its breach of contract claims and to strike

defendants' affirmative defenses, arguing it has made a prima facie showing of the Agreement, its performance, defendants' breach, and damages. Plaintiff further argues that defendants' usury defense fails because the agreement is not a loan under New York law, and that the remaining affirmative defenses are conclusory and insufficient to raise a triable issue.

In opposition, defendants argue that triable issues of fact exist as to whether the agreement was, in practice, a loan rather than a true purchase of future receivables. Defendants assert that plaintiff enforced fixed automatic ACH withdrawals that did not meaningfully adjust to actual revenue, failed to provide a real reconciliation process, continued debit attempts despite insufficient funds, and thus treated repayment as absolute rather than contingent, making the reconciliation provision illusory and the transaction potentially criminally usurious and void. Defendants also argue that service was defective, personal jurisdiction is lacking or at least requires a traverse hearing, the guaranty and waiver provisions are disputed as to certain defendants, and the motion was premature because it was filed before joinder of issue.

In reply, plaintiff argues that defendants fail to raise any triable issue of fact and merely offer conclusory assertions without rebutting plaintiff's prima facie showing. Plaintiff reasserts that the Agreement is a valid merchant cash advance, not a loan. Plaintiff contends that defendants' claims of "fixed payments" are misplaced since any fixed amounts were only estimates subject to adjustment upon request, which defendants never made. Plaintiff further asserts that service was proper because defendants contractually waived personal service through the executed addendum, and that any argument that the motion is premature is meritless because the timing issue was inadvertent and cured by stipulation.

Discussion

It is well established that summary judgment is warranted when "the proponent makes a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence

to demonstrate the absence of any material issues of fact, and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]). Once the proponent has made a prima facie showing, the burden then shifts to the motion’s opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court’s function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). “It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012] [citation omitted]).

“The rudimentary element of usury is the existence of a loan or forbearance of money, and where there is no loan, there can be no usury, however unconscionable the contract may be” (*Principis Capital, LLC v I Do, Inc.*, 201 AD3d 752, 754 [2d Dept 2022] [citation omitted]). “To determine whether a transaction constitutes a usurious loan: [t]he court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances” (*id.* [internal quotation marks omitted]). “Unless a principal sum advanced is repayable absolutely, the transaction is not a loan” (*id.*). “Usually, courts weigh three factors when determining whether repayment is absolute or contingent: (1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the merchant declare bankruptcy” (*id.*).

Here, plaintiff established with documentary evidence, prima facie, that the Agreement concerns the purchase and sale of future receivables, not a loan subject to usury statutes, as (i) repayment was contingent on defendants’ generation of future receivables, (ii) the Agreement

contains a mandatory reconciliation provision, (iii) the Agreement lacks a finite term, and (iv) the Agreement expressly provides that bankruptcy does not constitute a default event. Plaintiff has also shown that the personal guaranty renders the guarantor jointly and severally liable for the merchant's default.

Notwithstanding the foregoing, defendants, in opposition, raise triable issues of fact as to whether the reconciliation provision contained in the Agreement provides a genuine and enforceable right of reconciliation or is illusory in nature. “[W]hile the presence of a purported reconciliation provision is an indication of whether an agreement constitutes a loan and regardless of the inclusion of the buzz words purporting to confer such protection, the court must assess whether the agreement at issue before it make[s] clear on its face whether it conferred that right” (*Royal Bus. Group, LLC v Sky Airparts Intern. Inc.*, 2025 N.Y. Slip Op. 30508[U], 4-5 [N.Y. Sup Ct, Monroe County 2025] [citation and internal quotation marks omitted]). “If there is no true obligation to reconcile, despite the inclusion of a purported reconciliation provision, the true nature of the agreement will be called into question” (*id.*).

Here, plaintiff's own submissions are internally inconsistent. In its initial motion papers, plaintiff asserts that it “conducted a reconciliation or ‘true up’ ... at the request of the Defendants,” resulting in multiple adjustments to the remittance amounts (NYSCEF Doc No. 13 at 5). However, in reply, plaintiff contends that defendants “never exercised their contractual right to reconciliation” (NYSCEF Doc No. 50 at 4). These contradictory positions, coupled with the absence of any documentary evidence supporting either assertion, such as emails or communications between the parties regarding reconciliation requests, raise a triable issue of material fact as to whether reconciliation was ever requested or conducted. This is particularly so in light of defendants' sworn affirmations stating that no meaningful reconciliation was ever offered or implemented (*see* NYSCEF Doc No. 36-37).

Conclusion

Based on the foregoing, plaintiff's motion for summary judgment is denied. Any argument not explicitly addressed herein was considered and deemed to be 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.**