

Pinnacle Bus. Funding, LLC v Aaron Carter Elec. Inc.
2026 NY Slip Op 31131(U)
March 23, 2026
Supreme Court, New York County
Docket Number: Index No. 653806/2024
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 653806/2024

PINNACLE BUSINESS FUNDING, LLC,

MOTION DATE 04/11/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

AARON CARTER ELECTRIC INC, AARON LEE
MCALEXANDER

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, Plaintiff's motion for summary judgment seeking dismissal of Defendants' affirmative defenses and summary judgment on its causes of action for breach of contract and breach of guaranty is granted in part and denied in part.

On April 10, 2024, Plaintiff and Defendant Aaron Carter Electric Inc. ("Electric") entered a cash advance agreement (the "Agreement") whereby Plaintiff purchased 1% of Electric's of future receipts up to the sum of \$175,000 in exchange for an advance of \$125,000. The agreement was guaranteed by Defendant Aaron Lee McAlexander ("Guarantor"). Under the Agreement, Electric would deliver a weekly remittance of \$6,250, which was estimated to be 1% of Electric's average weekly receipts. Defendants allegedly defaulted on July 17, 2024 by failing to make the required weekly remittance.

Plaintiff now sues Defendants to recoup the balance of the receivables purchased and seeking contractual fees, including a 25% default fee. Plaintiff moves for summary judgment on its causes of action for breach of contract and breach of guaranty and seeks dismissal of

Defendants' affirmative defenses. Defendants oppose and argue the motion is premature, and that there are issues of fact as to whether the Agreement is a usurious loan in disguise. They also argue the default fee is unconscionable.

The branch of the motion seeking summary judgment for breach of contract and breach of guarantee are denied. On a motion for summary judgment, the movant must make a *prima facie* showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial" (*Nellenback v Madison County*, 44 NY3d 329, 334 [2025] [internal quotations and citations omitted]). The movant's burden is heavy, and the facts must be viewed in the light most favorable to the non-movant (*Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]). "If the moving party fails to meet this initial burden, summary judgment must be denied 'regardless of the sufficiency of the opposing papers'" (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014] quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). "It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact" but rather the Court's function is to identify material triable issue of fact or point to the lack thereof (*Vega, supra* at 505 [2012]).

To make out a *prima facie* breach of contract claim, a movant must demonstrate the absence of material issues of fact with respect to (a) the existence of an enforceable contract; (b) the movant's performance; (c) the non-movant's breach, and (d) the movant's damages (*see Markov v Katt*, 176 AD3d 401 [1st Dept 2019]). Plaintiff's motion fails to demonstrate, *prima facie*, that the Agreement is not an unenforceable usurious loan in disguise (*see People v Richmond Capital Group LLC*, --- N.Y.S.3d ----, 2026 N.Y. Slip Op. 00990 at *1-2 [1st Dept 2026] citing *LG Funding, LLC v United Senior Properties of Olathe, LLC*, 181 AD3d 664 [2d Dept 2020]).

The Agreement at issue contains an unconditional guaranty and granted a security interest in all of Electric's personal property which was referred to as "Collateral," which are hallmarks of a loan (*see Kapitus Servicing, Inc. v Ragtime Gourmet Corp./Joe-Le Holding Corp.*, 242 AD3d 638, 638-639 [1st Dept 2025]). Moreover, while the Agreement contains a right to reconciliation, there is no evidence that any reconciliation took place here (*see, e.g. People v Richmond Capital Group LLC, supra* at *1 ["Although the MCAs have mandatory reconciliation provisions, no reconciliation was performed in practice"]). While Plaintiff hangs its hat on the fact that Electric never requested a reconciliation, this ignores the fact that per the Agreement, Plaintiff "may also conduct a reconciliation on its own at any time by reviewing Merchant(s)'s Receivables covering the period from the date of this Agreement until the date of initiation of the reconciliation" (*see* NYSCEF Doc. 2 at ¶ 4). Rather than conduct a reconciliation, Plaintiff decided to sue on the remainder of the balance, plus a 25% default fee and other contractual fees – in essence seeking to recoup the balance of the principal loaned, plus interest.

Further, the Agreement states Plaintiff "is entering this Agreement knowing the risks that each Merchant's business may decline or fail, resulting in [Plaintiff] not receiving the Receivables Purchased Amount" and that "Merchant going bankrupt or going out of business or experiencing a slowdown in in business or a delay in collecting Receivables will not on its own without anything more be considered a breach of this Agreement" (NYSCEF Doc. 2 at ¶ 15). Despite this understanding, Plaintiff is suing here for full damages as if it did not accept the risk of Defendants going out of business (*see also Crystal Springs Capital, Inc. v Big Thicket Coin, LLC*, 220 AD3d 745 [2d Dept 2023] [failure to reconcile and entitlement to collect full uncollected purchase amount plus all fees due constituted usurious loan as opposed to merchant cash agreement]).

Simply put, Plaintiff failed to eliminate numerous issues of fact and therefore failed to meet its *prima facie* burden (*see also Kapitus Servicing Inc. v Point Blank Construction, Inc.*, 221 AD3d 532, 533-534 [1st Dept 2023] [record presented issues of fact as to whether transaction was a loan or a sale and purchase of receivables]). Therefore, the Court denies the motion for summary judgment on the breach of contract and breach of guaranty claims regardless of the sufficiency of the opposing papers.

However, Defendants have not opposed dismissal of their numerous boilerplate, conclusory, and at times wholly inapplicable affirmative defenses. Therefore, the motion is granted to the extent that Defendants' affirmative defenses are dismissed.¹

Accordingly, it is hereby,

ORDERED that Plaintiffs' motion is granted solely to the extent that Defendants' affirmative defenses are dismissed, and the remainder of Plaintiffs' motion is denied; and it is further

ORDERED that the parties shall meet and confer and submit a proposed compliance conference order to the Court via e-mail, but in no event shall the proposed compliance conference order be submitted any later than April 28, 2026; and it is further

ORDERD that if the parties elect to explore resolution through the Court's sponsored ADR program as opposed to through discovery, they shall notify the Court accordingly; and it is further

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¹ Although Defendants argued unconscionability and adhesion in opposition to the motion, these are not pled as affirmative defenses in Defendants' Answer.

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

3/23/24
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE