

Protalus USA LLC v Shine Capital Group LLC

2026 NY Slip Op 31165(U)

March 20, 2026

Supreme Court, Kings County

Docket Number: Index No. 542543/2025

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 20th day of March 2026.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

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PROTALUS USA LLC, HENRIK NORREMARK, and
CHRISTOPHER BUCK,

Index No. 542543/2025

Plaintiffs,

Cal. No. 14-18, 25 MS 1-6

-against-

SHINE CAPITAL GROUP LLC, MINT FUNDING
INC., and SWIFT FUNDING SOURCE INC.,

Decision and Order

Defendants.

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The following e-filed papers read herein:

- MS 1
- MS 2

- MS 3
- MS 4
- MS 5
- MS 6

NYSCEF Doc Nos.

- 35-42; 58-59; 117
- 45-59; 69-71; 98-113; 131-136
- 60-68; 114-116; 118
- 72-97; 119-120
- 121-127
- 128-130

Upon the foregoing papers and after oral argument, motion sequences one through six are decided as follows:

Plaintiff, Protalus USA LLC, (“Protalus”), which is owned by its members, Henrik Norremark and Christopher Buck, designs and sells biomechanical orthotic insoles throughout the world. Protalus represents that it began to experience significant financial challenges in early 2025. As such, plaintiffs entered into a series of four merchant cash advance funding agreements

("MCA agreements") with three different defendants, Shine Capital Group LLC ("Shine"), Mint Funding Inc. ("Mint"), and Swift Funding Source Inc. ("Swift") in early to mid-2025.

On December 5, 2025, plaintiffs commenced the instant action alleging that defendants engaged in predatory lending practices by drafting, operating and treating criminally usurious loan transactions as self-labeled Merchant Cash Advances. Plaintiffs also allege that defendants improperly included "non-revenue-based deposits" when determining the extent of funds to advance to plaintiffs and the terms that such advances would have to be repaid. According to plaintiffs, such failure coupled with a refusal to recognize the reductions in available revenue for each successive defendant to apply its purchased percentage of future receivables resulted in substantial overcharges and breaches of contract. Moreover, because there was no triggering breach of contract on the part of plaintiffs, plaintiffs contend that the resort to enforcement tactics by Swift and Shine, including their issuance of UCC Lien Notices and commencement of litigation, has defamed and caused severe harm to plaintiffs' business operations and reputation.

Each defendant has filed a pre-answer motion to dismiss the complaint. Plaintiffs have filed a motion seeking injunctive relief against all defendants and a separate motion for a default judgment against Swift. Swift has cross-moved to extend its time to answer.

Under motion sequence two, plaintiffs seek a preliminary injunction pursuant to CPLR 6301 and 6311 enjoining all defendants from collecting upon debts pursuant to the relevant MCA agreements and from commencing and/or continuing any and all contract enforcement remedies, including but not limited to issuing and serving UCC Lien Notices to all of plaintiffs' potential "account debtors," as such term is used and defined under UCC §9-406. Without regard to any opposition filed by defendants, plaintiffs' motion is denied. Plaintiffs fail to demonstrate entitlement to injunctive relief. Although plaintiffs assert that Protalus faces imminent business collapse unless all UCC Liens, Rights and Notices are terminated, plaintiffs' proffer of proof

regarding such “collapse” is insufficient. Besides the self-serving affidavit of one of its principals, Henrik Norremark, the only evidence of business interruption to Protalus is an email from one client, Lam Research, stating that it would not permit billing to go through until the dispute regarding, presumably, the UCC Liens is resolved. The foregoing fails to demonstrate the existence of exigent circumstances. Moreover, given that each party’s claim against the other ultimately concerns the recovery of a monetary judgment, plaintiffs fail to demonstrate the irreparable harm necessary to obtain injunctive relief (*see Recine v Recine*, 201 AD3d 827, 828-829 [2d Dept 2022]). Plaintiffs also fail to demonstrate a likelihood of success on the merits.

Under motion sequence five, plaintiffs seek a default judgment against Swift due to Swift’s failure to timely answer or file its pre-answer motion to dismiss. By cross-motion (MS 6), Swift seeks to vacate its default in appearing. Under CPLR 3012 (d), the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay or default. Here, Swift provided a reasonable excuse for its minimal delay in filing its pre-answer motion to dismiss. As such, Swift’s motion is granted and, accordingly, its motion to dismiss is deemed timely filed *nunc pro tunc*. Consequently, plaintiffs’ motion seeking a default judgment against Swift is denied.

Under motion sequences three and four, Shine and Swift move, respectively, to dismiss plaintiffs’ complaint pursuant to CPLR 3211(a)(4) and (7), among other things. Both Shine and Swift commenced actions against plaintiffs regarding their respective MCA agreements prior to plaintiffs commencing the instant action. Shine commenced its action on September 19, 2025 in Kings County Supreme Court. The matter is currently assigned to the undersigned under Index Number 533519/2025. On October 6, 2025, Swift commenced an action against plaintiffs in Washington County Supreme Court (Index No.: EC2025-40662). Notably, both Shine and Swift contend that each of the defendants is an independent company unaffiliated with one another that

separately purchased future receipts from Protalus pursuant to separate agreements and after conducting their own underwriting. Thus, they argue there is no basis for joining Shine, Mint and Swift as defendants. In the event plaintiffs' complaint is not dismissed, Shine seeks severance of the claims against it on the ground that it has been mis-joined with co-defendants.

Under CPLR 3211(a)(4), the court may dismiss "one or more causes of action" on the ground that there is "another action pending between the same parties for the same cause of action in a court of any state or the United States." Here, the court grants dismissal of plaintiffs' complaint against Swift on such grounds. It is undisputed that the Washington County action concerns the same parties and the same agreement that is the subject of this action. Moreover, there is no reason why Swift must be joined with Mint and Shine as defendants. Thus, plaintiffs' complaint is dismissed as against Swift pursuant to CPLR 3211(a)(4). As for Shine, plaintiffs assert that its contracts with Shine contain a provision which forbids plaintiffs from filing any counterclaims to any form of litigation instituted by Shine. Shine fails to dispute that plaintiffs are barred from asserting any counterclaims in the previous action. As such, the court declines to grant that part of Shine's motion seeking dismissal under CPLR 3211(a)(4).

Turning to Shine's arguments under CPLR 3211(a)(1) and (7), dismissal is granted as to plaintiffs' first cause of action seeking to void all four relevant MCA agreements as usurious loans in violation of NY Penal Law 190.40. Under New York law, usury cannot stand as an independent cause of action; it is generally recognized as an affirmative defense rather than a claim upon which relief can be granted (see 44B Am. Jur. 2d Interest and Usury § 173; *see also Intima-Eighteen, Inc. v A.H. Schreiber Co., Inc.*, 172 AD2d 456, 457 [1st Dept 1991]). Dismissal is also granted as to plaintiffs' second cause of action asserting fraud in the inducement as such claim is duplicative of their breach of contract claim. In addition, dismissal is granted as to plaintiffs' fifth cause of action asserting unjust enrichment since it is undisputed that a contract governs the parties' dispute.

Plaintiffs' sixth cause of action asserting a claim for defamation, slander per se, and libel per se and seventh cause of action asserting tortious interference with contracts and business relationships are dismissed for failure to state a claim. Finally, plaintiffs' eighth cause of action seeking "a declaratory judgment finding that Plaintiffs are entitled to receive a Preliminary Injunction against all of the above-named MCA Defendants invalidating any UCC Lien Notices issued..." is also dismissed. A preliminary injunction is a provisional remedy under the CPLR and does not constitute a cause of action. Couching the claim as one for "declaratory judgment" is unavailing. Shine's motion to dismiss is otherwise denied.

Under motion sequence one, Mint moves to dismiss plaintiffs' complaint pursuant to CPLR 3211(a)(1), (a)(7), and 1002 (improper joinder). Mint's motion is granted to the extent Shine's motion is granted above and otherwise denied. Regarding Mint's misjoinder argument, at this juncture, the court declines to sever plaintiffs' claims against Mint from their claims against Shine. However, under CPLR 1002(c), the court "may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and, who asserts no claim against him, and may order separate trials or make other orders to prevent prejudice" and will do so upon such a showing.

In conclusion, motion sequences one and three are granted as indicated herein but otherwise denied. Motion sequences two and five are denied in their entirety. Motion sequence four is granted and the complaint is hereby dismissed as against Swift. Motion sequence six is granted and Swift's motion to dismiss is deemed timely filed *nunc pro tunc*. Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.