

Datalot, Inc. v Winum Enters., LLC
2013 NY Slip Op 32291(U)
September 20, 2013
Sup Ct, NY County
Docket Number: 158869/2012
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD
Justice

PART 35

Datalot

-v-

Winum

INDEX NO. 158869/12
MOTION DATE 7/16/13
MOTION SEQ. NO. 003

The following papers, numbered 1 to , were read on this motion to/for
Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by defendant Winum Enterprises, LLC d/b/a Leads 2 Profits for partial summary judgment on its breach of contract counterclaim against plaintiff Datalot, Inc., and costs and attorneys' fees, is granted solely to extent that partial summary judgment on its breach of contract counterclaim against plaintiff Datalot, Inc. is granted on the issue of liability; and it further

ORDERED that the cross-motion by plaintiff for summary judgment dismissing defendant's breach of contract claim, and for sanctions against defendant is denied; and it is further

ORDERED that the parties shall appear in Part 35 on November 12, 2013 to address outstanding discovery on the issue of damages; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon defendant within 20 days of entry; and it is further

This constitutes the decision and order of the Court.

Dated: 9/20/13

[Signature] J.S.C.
HON. CAROL EDMEAD

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
DATALOT, INC.,

Index No.: 158869/2012

Plaintiff,

Motion # 003

-against-

WINUM ENTERPRISES, LLC
D/B/A LEADS 2 PROFITS,

Defendants.

-----X
HON. CAROL EDMEAD, J.S.C.

MEMORANDUM DECISION

The motion by defendant Winum Enterprises, LLC d/b/a Leads 2 Profits (“defendant”) for partial summary judgment on its breach of contract counterclaim against plaintiff Datalot, Inc. (“plaintiff”), and costs and attorneys’ fees, is granted, in part. The cross-motion by plaintiff for summary judgment dismissing defendant’s breach of contract claim, and for sanctions against defendant is denied.

Factual Background

This action arises out of an agreement dated August 8, 2012 between plaintiff, an internet advertising company, and defendant, entitled “Datalot Lead Sales Agreement” (the “Agreement”), and a “Datalot Insertion Order” (“IO”), also dated August 8, 2012. The Agreement provided that:

“ . . . This Lead Sales Agreement shall incorporate the Datalot Insertion Order . . . and any subsequent and prior insertion orders entered into between the parties *Where there is a conflict between this Lead Sales Agreement and the IO, the IO shall govern in all respects.*” (Emphasis added)

1. Lead Generation Services. “Datalot [plaintiff] shall generate and collect self-reported data records (each individual data record a “Lead”) [and] shall transfer Leads that match

[defendant's] criteria to [defendant].

2. Payment. [Defendant] will pay Datalot the amount set forth in the applicable IO for all Valid Leads within fifteen (15) days from the date of each invoice (*unless a different payment schedule is designated in the applicable IO*). A "Valid Lead" means an individual person that: . . . (b) has submitted information that meets all of Purchaser's criteria as set forth in the IO.
(Emphasis added)

* * * * *

10. Warranty/Limitation of Liability. THE SERVICES AND LEADS PROVIDED BY DATALOT UNDER THIS AGREEMENT ARE SUPPLIED ON AN "AS IS" AND "AS AVAILABLE" BASIS . . . IN NO EVENT SHALL DATALOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST REVENUE OR PROFITS
.....

Under the IO, "Payment terms" was stated as "Monthly net 30 days after month's end."

Plaintiff provided leads until invoices were not paid by defendant as demanded, and commenced this action for, *inter alia*, breach of contract and account stated. In response, defendant counterclaimed for breach of contract for damages resulting from the loss of defendant's customers when plaintiff ceased providing leads.¹

Now, in support of its motion, defendant submits numerous emails between the parties to argue that plaintiff breached the Agreement, and that in so doing, relieved defendant of its payment obligations under the Agreement. Defendant argues that although the Agreement requires payment within 30 days "after month's end," plaintiff demanded payment of its November 1, 2012 invoice for leads sent to defendant in October 1, 2012 (the "October leads"), *prior to* 30 days "after month's end" in violation of the Agreement. Plaintiff then breached the

¹ By order dated May 8, 2013, the Court previously denied plaintiff's CPLR 3211 motion to dismiss this counterclaim, but granted dismissal of defendant's counterclaims for fraud and violation of New York Deceptive Sales Practices Act (NY General Business Law ("GBL") §349 and granted plaintiff's motion for summary judgment for account stated.

Agreement when it stopped sending leads on November 5, 2012 and thereafter unless defendant paid for the leads prior to the date the payment was due. Plaintiff's refusal to provide the leads clearly defeated the sole object of the Agreement, and as a result, defendant was unable to find any alternative source from which to purchase leads for resale to defendant's customers, became unable to perform approximately nine contracts with its clients, lost all re-sale revenues from the leads, and went out of business on January 31, 2013. Plaintiff was at all times in control of how many leads it sold to defendant, and refrained from selling more leads during October 2012 when defendant refused to depart from the agreed payment terms. Thus, partial summary judgment against plaintiff is warranted, and the Court should set the matter down for a trial on damages.

In response and in support of its cross-motion, plaintiff argues that defendant's breach of contract counterclaim should be dismissed, as plaintiff did not stop sending leads over a payment dispute. Instead, three separate issues prevented plaintiff from providing defendant with leads that matched its criteria. First, plaintiff ceased sending leads on November 5th due to the high rejection rate of plaintiff's leads and defendants' complaints as to the quality of those leads. On October 4, 2012, defendant requested that plaintiff add "code" to its lead generation website that would implement use of a "Trusted Certification Form" ("TCF"), which allows purchasers of plaintiff's leads to trace the source of such lead. While plaintiff's decision on the use of TCF was pending, on October 23, 2012, defendant requested that plaintiff stop sending "renter" leads because defendants' clients (*i.e.*, ADT) only sold to homeowners, and later requested a reduction in the price of the leads because the leads provided could not be resold to ADT. Plaintiff ceded to defendant's request, reducing the price of the leads to \$38.00 per lead, and warned that use of the TCF software could effect the volume of the leads that would meet defendant's criteria.

Second, Hurricane Sandy occurred and its aftermath affected the ability of defendant to send leads to defendant. Plaintiff contends that the Agreement contained a “Force Majeure” clause, which relieved it from liability resulting from any breach due to causes or conditions beyond plaintiff’s control. Notwithstanding the effects of the Sandy Storm, defendant insisted that the TCF software be installed, even though plaintiff had yet to agree to install same. For days thereafter in the aftermath of the storm, defendant continued to demand more leads and complain about the decrease in the number of leads plaintiff sent, despite plaintiff’s inability to fully operate its offices.

Third, plaintiff had technical problems with TCF. After much hesitation, on November 12, 2012, plaintiff agreed to implement the TCF software, but its installation was not as simple as expected, and technical issues arose. As problems with integrating TCF continued, plaintiff became concerned with defendant’s ability to pay the invoices. As such, plaintiff demanded payment of defendant’s outstanding balance.

Defendant complained about the leads on in the first few days of November 2012, and began rejecting many of them, and it was only after the third complaint and rejection of the leads that plaintiff suggested to stop sending them in order to “figure out” why defendant rejected so many of them. On November 4th, defendant advised that it “[u]nderstood.” Defendant even acknowledged that its other two sources were providing less leads that matched its criteria. Plaintiff contends that sending defendant a low amount of leads at a significantly reduced cost, of which 90% were rejected by defendant, is the reason defendant agreed to allow plaintiff to turn off the leads. Therefore, an issue of fact exists as to defendant’s contention that plaintiff stopped sending leads due to a payment issue, warranting denial of the motion. And, defendant’s

acknowledgment that it was proper for plaintiff to stop sending leads in order to address defendant's quality complaints, warrants dismissal of defendant's breach of contract counterclaim.

Further, this Court's previous decision granting plaintiff summary judgment on its account stated claim for the November invoice is law of the case. Thus, since defendant's liability for the November invoice has already been established, defendant's motion should be denied.

And, plaintiff should be awarded sanctions based on defendant's frivolous motion. In connection with plaintiff's previous motion for partial summary judgment on its account stated claim and for dismissal of defendant's counterclaims, the parties submitted almost the identical exhibits, issues and arguments as those submitted and raised in defendant's instant motion. No discovery has been held since the Court's previous order, and no new facts are raised in the instant motion. Defendant forced plaintiff to incur costs and expenses in responding to factual evidence and arguments previously rejected by this Court. Thus, sanctions should be imposed against defendant for filing another motion for the same relief and based on the same proof.

In opposition to the cross-motion, defendant points out three emails that show when the controversy over defendant's payment began (October 18, 2012), when the controversy intensified (November 2, 2012), and when plaintiff declared that the leads would resume once defendant's payment was received (November 16, 2012). Defendant contends that none of these emails indicates issues regarding TCF or defendant's increased rejection of the leads; plaintiff's leads were conditioned on defendant's payment prior to the due date.

When ADT began requiring the use of TCF, defendant was unable to resell its leads to

ADT. However, defendant continued to re-sell leads purchased from plaintiff to eight other clients. Defendant remained willing to purchase leads from plaintiff without the TCF. And, since plaintiff marketed leads directly to ADT, plaintiff would have had to install TCF into its own servers, regardless of whether defendant was doing business with plaintiff or not. Defendant's rejection rate also had nothing to do with plaintiff's decision to stop sending leads; defendant accepted almost 75% of the leads sent in October, 2012, and accepted five of the 20 leads plaintiff sent on November 3 and 4, 2012. Nor was plaintiff prevented from sending leads due to Hurricane Sandy. The three purported issues raised by plaintiff are not material in light of plaintiff's decision to cut off leads until payment by defendant was made.

In reply, plaintiff points out that defendant did not oppose plaintiff's request for sanctions.

Discussion

Since each side seeks summary judgment, each side bears the burden of making a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 [1985]). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Santiago v Filstein*, 35 AD3d 184 [1st Dept 2006]).

Breach of Contract

To prevail on a breach of contract claim the claimant must establish (1) the existence of a contract, (2) its due performance of the contract by claimant, (3) breach of the contract by the

other party, and (4) damages resulting from the breach (*Harris v Seward Park Housing Corp.* 79 AD3d 425, 426, 913 NYS2d 161 [1st Dept 2010]; *Morris v 702 East Fifth Street HDFC*, 46 AD3d 478, 850 NYS2d 6 [1st Dept 2007]; *Renaissance Equity Holding, LLC v Al-An Elevator Maintenance Corp.*, 36 Misc 3d 1209(A), 954 NYS2d 761 (Table) [Supreme Court, New York County 2012] citing *Elisa Dreier Reporting Corp. v Global Naps Networks, Inc.*, 84 AD3d 122, 127 [2d Dept 2011] and *JP Morgan Chase v J.H. Elec. of NY, Inc.*, 69 AD3d 802 [2010]).

It is undisputed, that the parties entered into the Agreement, wherein plaintiff agreed to send defendant “leads” that matched defendant’s criteria in various “Insertion Orders” and that defendant agreed to pay plaintiff per “Valid Lead.” It is also undisputed that the IO required defendant to pay plaintiff “30 days after month’s end.” And, all parties agree that the emails submitted to court reflect the circumstances as they unfolded during the parties’ relationship under the Agreement.

The record reflects that on October 4th, defendant requested plaintiff to “consider” adding the TCF software in order to permit defendant to resell plaintiff’s leads to ADT.

However, almost two weeks later, in an unrelated email referenced as “Payment Terms,” plaintiff raised the issue of defendant reaching “the credit limit” for October leads (See October 16th email). This was followed by another email to defendant with the subject line entitled “Leads2Profits- Remain Oct. Credit.” advising that due to defendant’s “current credit limit,” plaintiff’s accounting team requested to “pause” further leads until defendant’s “working credit down to something more manageable” as “we have no credit history together.” (See October 18th email). Defendant then reminded plaintiff of the IO’s payment terms of “Net 30 days after month’s end” and that there was no “Lead Cap/Period or Maximum Scrub Rate” and no credit

approval or credit limit mentioned in the Agreement.

Then, on October 23rd, defendant requested that plaintiff stop sending renter leads, since defendant's clients only used leads for homeowners. Plaintiff suggested a method to eliminate such leads by carving out leads with apartment numbers, and advised that defendant's TCF software request was still pending review.²

Almost one week later, and a day after Hurricane Sandy struck New York, defendant twice inquired as to whether the TCF software request was approved (by the CEO), as defendant wanted to send leads to ADT. Defendant was advised that the CEO's "apt is underwater" and attending to "some other pressing matters." Defendant responded "Okay . . ." (see October 30, 2012 emails). Two days later, November 1, 2012, defendant complained that the volume and quality of plaintiff's leads was "going down," and plaintiff inquired as to the reasons for defendant's rejections of the leads (based on quality issues). When defendant insisted on an answer regarding the TCF and number of "Renter leads plaintiff could provide," plaintiff informed defendant that it was dealing with damages to its infrastructure due to the Sandy storm.

Defendant then gave plaintiff six days to provide answers regarding the TCF software installation, and the Renter leads fee issue. In response, plaintiff advised defendant that it could not run reports until its employees returned to the office. Plaintiff then requested to "now" communicate with the CEO, and "a firm date as to when the data people will be back in the office. . . ." (See November 1, 2012 emails). Defendant then advised plaintiff that defendant

² Defendant complained that it was "losing money on every Datalot lead that" could not be sent to ADT pending the review, and asked for reduction in the price for leads to \$38.00 until plaintiff "embeds" the TCF, at which time "we can increase the pay-out back to \$50.00 each (see Emails dated October 24, 2012). Plaintiff then replied "to clarify" that "it will simply hurt the volume" of the leads plaintiff sent, and the price was reduced to \$38.00 per lead.

“just lost money on both these DataLot Security leads below . . . because I am not able to send them to ADT Corp.” due to the outstanding TCF issue.

The following day (November 2nd), plaintiff advised, in an unrelated email entitled “October #’s,” that he “just finished up monthly billing” and he made “mistake” “by extending credit to a new partner [such as defendant].” However, plaintiff “intend[ed] to honor” the Agreement, and that it “would help tremendously . . . if we could expedite the payment.” Plaintiff added that the TCF issue was “on [the CEO’s] list of things to take a look at.” (Emails dated November 2, 2012). It is uncontested that plaintiff then sent an invoice (previously dated November 1, 2012) for \$18,126 for the October leads, and requested “Payment within Terms.”³

Days later, on November 4, 2012, defendant advised plaintiff that defendant rejected approximately 90% of the leads sent on November 3 and November 4. Plaintiff then replied that it “may have to temporarily shut off, until we figure out the posting issue and why your reject rate is so high. I can’t maintain a profitable business a rejection rate of 90%.” Defendant replied “Understood; both of us have to make money” (November 4, 2012 emails).⁴

On November 6th, plaintiff advised defendant that it should “start to see it come back on later today.”

Over the next four days, defendant continued to inquire as to when it could expect to receive leads, until November 12th when plaintiff advised that the TCF form would be

³ Defendant’s November 12th email to plaintiff indicated that it will “make the full payment for the October 2012 leads on the due date” in accordance with the parties’ email acknowledgments “honor the terms of the IO that we both signed.” Thus, plaintiff was granted partial summary judgment on the theory of account stated for this invoice/October 2012 leads.

⁴ Defendant then followed up in an email confirming, “you’re not alone . . . because 2 of my other Lead Providers . . . is 0 for 9 . . . [and] 0 for 8”; maybe its just a “Bad” day.”

operational that day, the quality of the leads should be “good to go shortly,” and it did not want to turn the leads back on until plaintiff had “confidence in it’s [sic] quality.” (November 12 email). Plaintiff also added as the “most important point” that it had “gone above and beyond in extending credit” to defendant and that a payment towards the October’s invoice “would go a long way.” Defendant responded [again] that it would make payment on the due date pursuant to the terms of the IO, to which plaintiff ultimately replied, “Ok.” (November 12th email).

The following day on November 13th, defendant asked whether a \$5000 payment would help, but reiterated that they needed “to stick to the Net 30 days payment after months end.”

The next day, on November 14th, defendant inquired as to when the leads would be turned back on, and plaintiff advised that it did not think the \$5000 “will do much” and that the “trusted cert integration is not working properly so we need to get that fixed first and foremost.” (November 15th emails). However, the “problem” with the integration was discovered later that day, prompting plaintiff to let “defendant know as soon as you [plaintiff] have word when your leads will resume for us” (November 15 email).

On Friday, November 16th, plaintiff advised “As soon as we get the invoice paid out we can resume sending leads.” Defendant agreed to provide his credit card to “pre-pay \$5000.00 for leads to be turned back on today 11-16-12.” (See emails dated November 16). Later that day, the parties exchanged emails regarding test leads to ensure that the TCF software was running properly.⁵ However, plaintiff then followed up about defendant’s payment, indicating that, “that would still leave a balance of over \$13k from October” and that the Finance team could explain

⁵ Plaintiff “wanted to make sure the test leads showed up properly prior to setting live.” (November 16, 2012 email, 2:50 p.m.).

the situation. However, as the Finance team was unavailable, plaintiff then advised defendant “*If we see a payment come in then I can turn it back on. . . .*” When defendant insisted that plaintiff honor the 30 day payment term of the Agreement, plaintiff responded, “*we have a credit limit and you have exceeded it.*” (Emphasis added).

Based on the record, defendant established, as a matter of law, that plaintiff’s refusal to resume sending leads until a complete payment by defendant for October leads was made on November 16th, constituted a breach of the Agreement’s payment terms.

Plaintiff and defendant agreed on November 4, 2012 for plaintiff to stop sending leads when defendant complained about having to reject many of plaintiff’s leads, and to permit plaintiff to investigate a way in which to reduce the number of defendant’s rejections to plaintiff’s leads. Indeed, the Agreement permitted plaintiff 10 days to investigate such issues. And, it is noted that Hurricane Sandy, an event covered by the “Force Majeure” clause of the Agreement, also rendered plaintiff unable to investigate these issues in a timely manner. Thus, plaintiff stopped sending leads on November 5th as agreed to by the parties.

However, plaintiff’s claim that it ceased providing leads because they did not “match” defendant’s criteria and/or because of the Sandy Storm, is unavailing to defeat plaintiff’s claim that plaintiff breached the Agreement by *failing to resume its services* on or after November 16th. As stated by defendant in its Answer (¶¶25-26), and in support of its motion (p. 17), defendant tried to persuade plaintiff to cure its breach *and resume sending leads*, but plaintiff “failed to do so.” Indeed, plaintiff’s argument that no breach occurred on November 5th when it stopped sending leads essentially ignores plaintiff’s claim that plaintiff failed to resume sending leads thereafter, and ignores the impact of the emails exchanged in the days following November 5,

2012.

As of Thursday, November 15th, the integration of the TCF software was near completion. However, by the end of the day on Friday, November 16th, plaintiff required defendant to complete payment for the October leads before it “resume[d] sending leads.” There is no subsequent email by plaintiff modifying this condition, explaining any further delay with the TCF integration, or mentioning the Sandy storm. Thus, regardless of the plethora of previous emails reflecting the need to “tinker” with the TCF software, the *sole* condition to resuming plaintiff’s leads at the end of the day on November 16th was defendant’s complete payment of the October’s leads, which in fact, was not due until November 30th. It is noted that plaintiff agreed to provide leads on an “AS IS” and “AS AVAILABLE” BASIS”; there is no language in the Agreement conditioning plaintiff’s provision of leads upon defendant’s payment as prematurely demanded by plaintiff. In other words, plaintiff’s demand for payment as a condition of continuing to provide leads to defendant, in and of itself, conflicted with the express terms of the parties’ Agreement.

Therefore, as plaintiff failed to raise an issue of fact as to its failure to resume sending leads to plaintiff on November 16th, defendant is entitled to partial summary judgment on the issue of liability for breach of contract. Defendant may establish that plaintiff’s failure to resume leads was the proximate cause of defendant’s damages and the amount of the damages at a trial.⁶ Consequently, plaintiff’s cross-motion to dismiss the counterclaim is denied.

However, plaintiff’s breach does not obviate defendant’s obligation to pay for October’s leads. As pointed out by defendant, while plaintiff’s breach excuses defendant from performing

⁶ Defendant did not submit any arguments in support of its request for costs and attorneys’ fees.

further obligations under the contract and entitles defendant to terminate the agreement (*Waterways at Bay Pointe Homeowners Ass'n, Inc. v Waterways Development Corp.*, 38 Misc 3d 1225(A), 969 N.Y.S.2d 807 (Table) [Sup. Ct., Nassau County 2013]), the October leads were provided *prior* plaintiff's November breach and this Court previously granted partial summary judgment against defendant on the account stated cause of action based on the invoice sent for October's leads.

Sanctions

As to plaintiff's cross-motion for sanctions, 22 NYCRR § 130-1.1 gives the Court, in its discretion, authority to award costs "in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees" and/or the imposition of financial sanctions upon a party or attorney who engages in frivolous conduct." 22 NYCRR § 130-1.1 (c) states that conduct is frivolous if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

First, defendant prevailed on its motion and thus, it cannot be said its motion is frivolous.

Furthermore, plaintiff's previous motion, brought pursuant to CPLR 3211, sought dismissal of defendant's counterclaim based on the failure to state a cause of action and documentary evidence. Such pre-answer motion to dismiss requires the Court to accept, as true, the allegations of the complaint, and assess whether the documentary evidence provided by the movant disposes of the allegations as a matter of law. As such, plaintiff's pre-answer motion implicated a different standard of review than one brought pursuant to CPLR 3212 for summary judgment, where the court reviews the evidence, in a light favorable to the non-movant, to determine whether a purported claim is established as a matter of law due to the absence of any issue of material fact. Although defendant failed to expressly oppose plaintiff's cross-motion for sanctions, defendant reiterated its arguments for summary judgment on its breach of contract counterclaim. As plaintiff points out, where "motions are redundant to matters already decided on the merits . . . , constituting a lengthy barrage of litigation to relitigate those already-decided matters, but that protracted litigation continues, with rulings ignored, despite the court's warnings to cease delaying . . . , sanctions are appropriate to punish frivolous litigation" (*Levy v Carol Mgt. Corp.*, 260 AD2d 27 [1st Dept 1999]). However, defendant's conduct herein is factually distinguishable from the conduct of the party in *Levy (supra)*. Thus, plaintiff's request for sanctions lacks merit.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion by defendant Winum Enterprises, LLC d/b/a Leads 2 Profits for partial summary judgment on its breach of contract counterclaim against plaintiff Datalot, Inc., and costs and attorneys' fees, is granted solely to extent that partial summary judgment on

its breach of contract counterclaim against plaintiff Datalot, Inc. is granted on the issue of liability; and it further

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This constitutes the decision and order of the Court.

Dated: September 20, 2013



Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD