

<b>Cash 4 Cases, Inc. v Krawitz</b>
2014 NY Slip Op 31722(U)
July 1, 2014
Supreme Court, New York County
Docket Number: 650491/2014
Judge: Eileen A. Rakower
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
PRESENT: Hon. EILEEN A. RAKOWER PART 5

Justice

CASH 4 CASES, INC.  
a/k/a C4C, INC.,

Plaintiff,

- v -

STEPHEN R. KRAWITZ, ESQ. and  
STEPHEN R. KRAWITZ, LLC,

Defendant.

INDEX NO. 650491/2014

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1,2

Answer — Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

**Cross-Motion:**  Yes  No

Plaintiff, Cash 4 Cases, Inc. a/k/a C4C, Inc. (“Plaintiff”) moves, pursuant to CPLR § 3213, for summary judgment in lieu of complaint against defendants Stephen R. Krawitz, Esq. and Stephen R. Krawitz, LLC (collectively, “Defendants”). Plaintiff is in the business of advancing money to attorneys involved in litigation, and claims to have advanced \$32,500.00 to Defendants pursuant to a “contingent asset purchase agreement”, dated March 1, 2012, (the “Agreement” or “Contract”), in exchange for an assignment of the contingency fees that Defendants stood to recover from two cases, *Ashkay Anand v. Iris Mehl*, (the “Anand Case”) and *Patricia Denning v. Paradigm Health Center* (the “Denning Case”), which Defendants were then litigating. Plaintiff claims that the Anand and Denning Cases settled, that Defendants failed to pay Plaintiff as required, and that the parties entered into two addenda to the Agreement, dated January 4, 2013, (the “Anand Addendum”) and July 2, 2013 (the “Denning Addendum”) (collectively, the “Addenda”), respectively, to resolve Defendants’ outstanding payment obligations. Plaintiff claims that Defendants failed to comply with the Agreement and the Addenda, and seeks to recover money allegedly owed thereunder.

Plaintiff submits the affirmation of Jaeson Birnbaum, Esq. (“Birnbaum”), Plaintiff’s president and chief executive officer, a copy of the Agreement, and copies of the Addenda.

No opposition is submitted.

CPLR § 3213 provides, in relevant part, “When an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.”

“[A] document comes within CPLR § 3213 ‘if a prima facie case would be made out by the instrument and a failure to make the payments called for by its terms.’ The instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document.” (*Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 444 [1996] [citations omitted]).

The test “‘is not what the instrument may be reduced to by part performance or by elision of a portion of it ... but rather how the instrument read in the first instance’” (*Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 445 [1996][citation omitted]).

The Agreement provides, “Stephen Krawitz will sell, transfer, convey and assign to CASH4CASES, INC. interest (the “interest” or “Cash4Cases, Inc. Interest”) in the Fees in the amount of Thirty seven thousand thee (sic) hundred dollars (\$37,000). In exchange Cash4Cases will advance Stephen Krawitz Thirty two thousand five hundred dollars (\$32,500) (the Purchase Price).”

The Anand Addendum, dated January 4, 2013, provides “pursuant to the Contract, KRAWITZ was required to pay C4C upon receipt of the settlement proceeds from the case captioned *Askay Anand v. Iris Mehl* . . . [and] Krawitz received the settlement proceeds from the Anand Case in or about November 2012 but failed and refused to pay C4C.”

The Anand Addendum states that “pursuant to the Contract, the amount due C4C if paid on or before January 29, 2013, is \$41,397.00; and . . . the additional attorneys fees and costs and lost profit as a result of Krawitz’s failure to pay C4C pursuant to the Contract was, and is \$9,000.00” and that, “Krawitz agrees that the amount due C4C continues to accrue at the interest rate of 1.3% per month, simple

interest.” The Anand Addendum further provides, “this Addendum does not void the contract but only supplements it” and obligates Defendants to make payments:

- 1) . . . in accordance with the following schedule:
- 2) SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00) on or before January 9, 2013;
- 3) ELEVEN POST DATED CHECKS IN THE AMOUNT OF FOUR THOUSAND HUNDRED (sic) DOLLARS (\$4,000.00) with each check consecutively dated for the next eleven (11) months following the first payment, beginning on February 9, 2013.

The Denning Addendum, dated July 2, 2013, provides “pursuant to the Contract, KRAWITZ was required to pay C4C upon receipt of the settlement proceeds from the case captioned *Patricia Denning v. Paradigm (sic) Health Center* . . . [and] Krawitz has represented to C4C that the Denning Case has settled; and . . . that he is unable to disburse ANY funds, including his attorneys fees and/or costs, because Krawitz is in the process of resolving the Medicare/Medicaid Lien related to the Denning Case.”

The July 2, 2013, Addendum states that “pursuant to the Contract, the amount due C4C if paid on or before June 19, 2013, was \$24,635.16; and . . . the additional attorneys fees and costs and lost profit as a result of Krawitz’s failure to pay C4C pursuant to the Contract was, and is \$6,500.00” and that, “Krawitz agrees that the amount due C4C continues to accrue at the interest rate of 1.3% per month, simple interest.” The Denning Addendum further provides, “this Addendum does not void the contract but only supplements it” and obligates Defendants to make payments:

- 1) . . . in accordance with the following schedule:
- 2) SEVEN THOUSAND ONE HUNDRED THIRTY FIVE DOLLARS AND SIXTEEN CENTS (\$7,135.16) on or before July 12, 2013;
- 3) TWELVE POST DATED CHECKS IN THE AMOUNT OF TWO THOUSAND EIGHTY THREE DOLLARS (\$2,083.00) with each check consecutively dated for the next twelve (12) months beginning on August 12, 2013.

Additionally, the Denning Addendum provides that Plaintiff “shall be permitted to file a Motion for Summary Judgment in Lieu of Complaint confirming the amount already received, that KRAWITZ has defaulted in payment and that a judgment shall be entered against KRAWITZ for the amount due, plus interest of 1.3%, plus additional attorney fees minus any payments that have been received.”

Birnbaum avers that Krawitz has breached the Agreement and the Addenda thereto. Birnbaum avers that, pursuant to the Anand Addendum, Defendants made the initial payment of \$7,500.00. Birnbaum further avers, that Defendants “made nine payments of \$4,000.00 each, from February 2013 through October 2013. However, several of these checks were returned for insufficient funds.” Birnbaum avers that Defendants failed to make \$4,000.00 payments for November 2013 and December 2013.

Birnbaum avers that, pursuant to the Denning Addendum, Defendants paid \$7,135.16 in July 2013, and three payments of \$2,083.00 each, in November 2013, December 2013, and January 2014. Birnbaum further avers that Defendants “failed to comply with the Denning Addendum by failing to make the payments for August, 2013, September 2013 and October, and several of these checks were returned for insufficient funds.”

Birnbaum avers that, including missed payments but not including interest and additional attorneys fees and costs, Defendants continue to owe \$15,135.16 under the Anand Addendum and \$24,996.00 under the Denning Addendum, totaling \$40,136.16.

Wherefore, it is hereby

ORDERED that Plaintiff’s motion for summary judgment in lieu of complaint is granted without opposition; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendants in the amount of \$40,136.16 plus interest from the date of entry of judgment until the date the judgment is paid, plus costs and disbursements, as calculated by the Clerk; and it is further

ORDERED that the amount of reasonable attorneys' fees and costs under the Agreement and the Addenda thereto is referred to a Special Referee to hear and report with recommendations; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119A) to arrange for a date for the reference to a Special Referee and the Clerk shall notify all parties, including defendants, of the date of the hearing.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: July 1, 2014

  
\_\_\_\_\_  
HON. EILEEN A. RAKOVER S.C.

Check one: FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE