

Principis Capital LLC v Andreacchio

2015 NY Slip Op 30537(U)

April 10, 2015

Supreme Court, New York County

Docket Number: 65006/2015

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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PRINCIPIS CAPITAL LLC,

Plaintiff,

Index No. 65006/2015

-against-

DECISION/ORDER

JOSEPH ANDREACCHIO d/b/a RYDAL FUEL
COMPANY,

Defendant.

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HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross-Motion and Affidavits Annexed	<u> </u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>

This is an action to collect on a contract for future receivables. Plaintiff now moves for summary judgment on its first and second causes of action and to sever its third cause of action for attorney’s fees to be determined upon an inquest. For the reasons set forth below, plaintiff’s motion is granted.

The relevant facts are as follows. Plaintiff is a company engaged in the receivable financing business. On or about April 29, 2014, the parties entered into an agreement wherein plaintiff purchased from defendant \$108,800.00 of its future credit card receivables generated in the course of its business (the “Agreement”). The Agreement provided for plaintiff to collect the

future receivables it purchased by debiting defendant's designated bank account (via ACH), on a daily basis for the fixed amounts set forth on the face of the Agreement for each calendar month. Additionally, defendant agreed to not revoke plaintiff's access to its designated bank account or otherwise take any measure to interfere with plaintiff's ability to collect the amount owed to it. Furthermore, defendant agreed to furnish plaintiff with its bank statements for the designated account within seven days notice of plaintiff's demand.

Plaintiff now brings the instant action alleging that defendant has breached the Agreement and asserting a claim for breach of contract and breach of the accompanying guaranty. Additionally, plaintiff seeks an award of attorney's fees.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). However, "mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat summary judgment. *Id.*

In the instant action, plaintiff has made a *prima facie* showing of its right to summary judgment on its breach of contract and breach of the accompanying guaranty claims as it has established that defendant breached the Agreement by locking plaintiff out of its designated bank account and failing to provide plaintiff with its bank statements. In support of its motion, plaintiff presents the court with the Agreement and accompanying guaranty signed by defendant

Joseph Andreacchio (“Andreacchio”) as well as the affidavit of its Vice President of Asset Management Christopher Nassauer (“Nassauer”). The Agreement makes clear that defendant agreed to not revoke plaintiff’s access to its designated bank account. Additionally, pursuant to the guaranty, Andreacchio personally guaranteed full payment of any obligations arising under the Agreement. Nonetheless, Nassauer attests that “on January 8, 2015 and on at least six (6) occasions thereafter, defendant flagrantly breached [this] provision by placing a stop payment on [plaintiff’s] debits to Defendant’s account.” Additionally, Nassauer attests that “Defendant also breached Section 2.2(g) of the [Agreement] which provides that Defendant shall furnish [plaintiff] with its bank statements for the [designated bank account] within seven (7) days notice of [plaintiff’s] demand.” According to Nassauer, by letter dated December 29, 2014, which he annexes to his affidavit, plaintiff made such demand but defendant has refused to provide plaintiff with the requested statements.

In opposition, defendant, pro se, has failed to raise an issue of fact. Andreacchio attests in his affidavit in opposition that “[t]he statements by Chirsotper Nassauer are false,” that plaintiff “charged my bank account amounts of money I did not agree to” and that he “never stopped payment of the new payment amount [plaintiff] agreed to.” However, these mere conclusions are insufficient to raise an issue of fact. Indeed, defendant fails to present any evidence to support these assertions or to demonstrate that he did not interfere with plaintiff’s access to his designated bank account or provided defendant with the requested bank statements. Thus, as defendant has failed to raise an issue of fact, plaintiff is entitled to summary judgment.

Accordingly, plaintiff’s motion for summary judgment is granted. It is hereby

ORDERED that the Clerk is to enter judgment in favor of plaintiff and against defendant

in the amount of \$59,181.68, with interest thereon at the statutory rate from January 8, 2015, together with costs and disbursements; and it is further

ORDERED the portion of plaintiff's action that seeks the recovery of attorney's fees is severed and the issue of the amount of reasonable attorney's fees plaintiff may recover against the defendant is referred to a Special Referee to hear and report. Within thirty (30) days from the date of this order, counsel for plaintiff shall serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date. This constitutes the decision and order of the court.

Dated: 4/10/15

Enter: CR

J.S.C.
CYNTHIA S. KERN
J.S.C.