

Parry v Retail Capital LLC
2017 NY Slip Op 30082(U)
January 12, 2017
Supreme Court, New York County
Docket Number: 652227/2016
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Index Number : 652227/2016

PART 37

~~PERRY, JEFFERY~~ JEFFREY PARRY, JEFFREY (A)

INDEX NO. 652227/10

MOTION DATE 7/19/10

MOTION SEQ. NO. 001

vs
RETAIL CAPITAL LLC D/B/A

Sequence Number : 001

DISMISS

The following papers, numbered 1 to 2, were read on this motion to/for Dismiss

Notice of Motion/Order to Show Cause — Affidavits — Exhibits	No(s). <u>1</u>
Answering Affidavits — Exhibits	No(s). <u>2</u>
Replying Affidavits	No(s). _____

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

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.**

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

Dated: 1/12/2017

(A), J.S.C.
HON. ARTHUR F. ENGORON

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 37

-----X

PARRY, JEFFREY,

Plaintiff,

- against -

RETAIL CAPITAL LLC d/b/a CREDIBLY LLC , et al.,

Defendants.

-----X

Arthur F. Engoron, Justice

Index Number: 652227/2016

Sequence Number: 001

Decision and Order:

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 and 2, were used on this motion by defendants to dismiss this action pursuant to CPLR 3211(a)(1) and/or (7):

Papers Numbered:

Moving Papers	1
Cross-Moving Papers	2
Reply Papers	none

Upon the foregoing papers, the motion is granted. Plaintiff owns a small business and turned to defendants for financing. They gave the business money; and he gave them certain rights to the business's receivables; a promise to repay the money, with interest; and a personal guaranty. Whether this arrangement was a business loan, a consumer loan, an asset sale, or something altogether different is a matter of dispute (the operative document is self-styled a "Business Loan-Agreement), but one that need not be resolved in order to decide the instant motion. Plaintiff commenced this action seeking, essentially, to void the agreement on the ground of usury (at least to the extent that there is a recognizable legal theory). Defendants now move, essentially, to dismiss the action on the ground that pursuant to the agreement's choice-of-law provision, the law of Utah, which is, so-to-speak, a "usury-friendly state," or at least one under which the subject agreement is not illegal or otherwise voidable, governs this case. Plaintiff's opposition, spread out over several papers and many pages (collectively numbered 2), does not address the choice of law issue at all. Rather, plaintiff claims that he was generally misled; but he fails to point to any particular statement that this Court finds misleading. Hornbook law holds that Courts must enforce choice-of-law provisions, at least if there is a reasonable connection between the law chosen and one of the parties. Here, defendants, one of which is located in Utah, and the transaction, which defendants claim, without contradiction, was "made" in Utah, obviously have a strong connection to Utah. Thus, the choice-of-law provision is enforceable, and the agreement is not void based on New York's usury law. The Court has considered plaintiff's other arguments and statements (some of which are completely irrelevant to this case) and finds them to be unavailing. Thus the motion must be, and hereby is, granted; and the clerk is hereby directed to enter judgment dismissing this action with prejudice. However, this Decision and Order shall not preclude plaintiff from defending against any case defendants may bring against him to try to enforce the subject agreement, other than as naturally follows from what is written herein pursuant to the rules of collateral estoppel or otherwise.

Dated: ¹² January, 2017



 Arthur F. Engoron, J.S.C.