

**Happy Rock Merchant Solutions, LLC v In Advance  
Capital, LLC**

2019 NY Slip Op 30478(U)

February 26, 2019

Supreme Court, New York County

Docket Number: 655781/2018

Judge: Barry Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

INDEX NO. 655781/2018
MOTION DATE 02/21/2019
MOTION SEQ. NO. 002

HAPPY ROCK MERCHANT SOLUTIONS, LLC and RL INDUSTRIES, LLC,

Plaintiffs,

- v -

IN ADVANCE CAPITAL, LLC, GTR SOURCE, LLC, MZEED, INC., RICHMOND CAPITAL GROUP, LLC, EIN CAP, INC., ML FACTORS FUNDING, LLC, QUEEN FUNDING, LLC, WORLD GLOBAL CAPITAL, LLC, HOP CAPITAL LIMITED LIABILITY COMPANY, EMPIRE FUNDING, and NEW YORK CITY MARSHAL STEPHEN W. BIEGEL,

Defendants.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70

were read on this motion to/for JUDGMENT - DEFAULT

BARRY R. OSTRAGER, J.S.C.:

Upon the foregoing documents, plaintiffs' motion for a default judgment against various defendants is granted in part and denied in part for the reasons stated below.

The facts are set forth in the January 2, 2019 decision and order of this Court determining a prior motion (NYSCEF Doc. No. 49). Briefly stated, plaintiffs Happy Rock Merchant Solutions, LLC, and RL Industries, LLC provide commercial financing products to businesses. In or about 2015 plaintiffs established a financing relationship with non-party Kangaroo Manufacturing, Inc., a company that sells various products to third parties and generates substantial accounts receivable (NYSCEF Doc. No. 1). In connection with that financing, plaintiffs and Kangaroo are parties to numerous security agreements wherein Kangaroo pledged as collateral its assets, including its Accounts Receivables. Plaintiffs perfected those security interests by filing UCC-1 Financing Statements (NYSCEF Doc. No. 2).

Plaintiffs allege that the ten named corporate defendants are Junior Creditors who have attempted to purchase the Receivables, despite that those Receivables have already been pledged to and purchased by plaintiffs. The individual defendant New York City Marshal Stephen W. Biegel allegedly assisted, or has been asked to assist, some or all of the corporate defendants in those efforts. Accordingly, plaintiffs commenced this action for declaratory and injunctive relief and money damages for conversion and tortious interference to confirm their status as Senior Creditors, to recover from defendants any Receivables wrongfully collected in violation of plaintiffs' security interest, and to enjoin any further wrongful collections by defendants.

Marshal Biegel stipulated with plaintiffs to extend his time to answer (NYSCEF Doc. No. 29). Plaintiffs filed Stipulations of Settlement with several defendants; namely, World Global Capital, LLC d/b/a Fast Cash Funding, GTR Source, LLC, EIN Cap, Inc., MZEED, Inc., Richmond Capital Group, LLC, and Hop Capital Limited Liability Company (NYSCEF Doc. Nos. 28, 33, 41, 42, 43, 50 and 53). Recently, upon receipt of a cross-motion from defendant Queen Funding, LLC, plaintiff also resolved the action with that defendant, thereby rendering the cross-motion moot (NYSCEF Doc. No. 72). The remaining three defendants In Advance Capital, LLC, ML Factors Funding, LLC, and Empire Funding were all served but failed to appear or answer, and plaintiffs seek relief against those three parties here.

First, plaintiffs seek a judgment in their favor against defendant In Advance Capital, LLC on the first cause of action for conversion in the sum of \$18,392.00. It appears plaintiffs are relying on the Affidavit of Gabriel Don offered in support of the motion as part of Exhibit F. However, neither the Affidavit nor the balance of the moving papers establish as a matter of law plaintiffs' right to a judgment in the amount stated based on conversion. Therefore, that request for relief is denied without prejudice to a proof at trial. The second request for relief, seeking a

judgment against Queen Funding based on conversion, is denied as moot. The third request for relief asking the Court to direct an inquest on its remaining claims against the remaining defendants for conversion and tortious interference with contract is denied without prejudice to proof at a trial, as plaintiffs have not presented sufficient affidavits on personal knowledge or documentation to meet the evidentiary proof required by CPLR 3215 for a default judgment.

Plaintiffs final request for relief seeks a declaratory judgment that plaintiffs are the senior secured party on all accounts receivable due and owing to Kangaroo Manufacturing, Inc. and a permanent injunction against the three defaulting defendants In Advance Capital, LLC, ML Factors Funding, LLC, and Empire Funding barring them from collecting and/or attempting to collect any accounts receivable due and owing to Kangaroo, Inc. The documentation provided, such as the UCC Financing Statements, establish these claims.

Accordingly, it is hereby

ORDERED that the motion is denied insofar as it requests a money judgment or related relief on the claims for conversion and tortious interference; and it is further

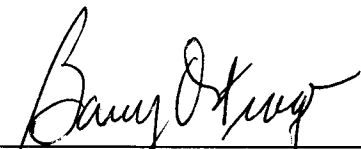
ORDERED that the motion and cross-motion related to Queen Funding, LLC are denied as moot; and it is further

ADJUDGED and DECLARED that plaintiffs Happy Rock Merchant Solutions, LLC and RL Industries, LLC are the senior secured parties on all accounts receivable due and owing to Kangaroo Manufacturing, Inc. as against the three defaulting defendants In Advance Capital, LLC, ML Factors Funding, LLC, and Empire Funding; and it is further

ORDERED that the motion is granted to the extent that the three defaulting defendants In Advance Capital, LLC, ML Factors Funding, LLC, and Empire Funding are barred from

collecting and/or attempting to collect any accounts receivable due and owing to Kangaroo, Inc. until and unless the security interests filed by plaintiffs and asserted herein (NYSCEF Doc. No. 2) are satisfied in full.

2/26/2019  
DATE

  
BARRY R. OSTRAGER, J.S.C.  
**BARRY R. OSTRAGER**  
JSC

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE