

**Principis Capital LLC v WTC Victor, LLC**

2019 NY Slip Op 31728(U)

June 20, 2019

Supreme Court, New York County

Docket Number: 150521/2018

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

PRINCIPIS CAPITAL LLC, Plaintiff, INDEX NO. 150521/2018 MOTION SEQ. NO. 001

- v -

WTC VICTOR, LLC d/b/a WTC VICTOR LLC d/b/a WAXING THE CITY and MICHAEL CLARK, Defendants.

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 20, 22 were read on this motion for SUMMARY JUDGMENT

Upon the foregoing documents, it is ordered that the motion is granted.

In this action for breach of contract, plaintiff Principis Capital LLC ("Principis") moves, pursuant to CPLR 3212, for summary judgment against defendants WTC Victor, LLC d/b/a WTC Victor LLC d/b/a Waxing the City ("WTC Victor") and Michael Clark ("Clark"). Plaintiff further moves, pursuant to CPLR 3211(a)(1) and (7), to dismiss defendants' counterclaim and, pursuant to CPLR 3211(b), to strike defendants' affirmative defense. Defendants oppose the motion. After oral argument, and after reviewing the parties' papers and the relevant statutes and caselaw, it is ordered that the motion is granted:

On October 25, 2017, plaintiff and defendants entered into an agreement for the purchase and sale of future receivables. (Doc. 6 at 2.) Pursuant to the agreement, Principis purchased from defendant WTC Victor \$78,600.00 of future receivables generated during the course of its business. (Id.) Principis paid \$60,000.00 to defendants for the future receivables (id. at 3), which Principis would collect through daily authorized debit withdrawals from a financial account owned

by defendants (*id.*). The amount of daily withdrawals that Principis would withdraw from the account varied by month. (*See id.*) For example, as set forth in Clark's affidavit in opposition to the instant motion, the agreement allowed Principis to make daily withdrawals of \$264.16 from the account in January of 2018, but increased the amount of daily withdrawals that Principis was allowed to take from the account to \$301.40 in August of 2018. (Docs. 15 at 6; 22 at 1.) Defendant Clark guaranteed WTC Victor's performance under the agreement. (Docs. 10 at 2; 22 at 2-4.) A copy of the agreement and guaranty has been submitted as Document 22.

On December 14, 2017, defendants stopped making payments toward the \$78,600.00 in future receivables bought by Principis. (Doc. 10 at 2.) Principis alleges that defendants have only delivered \$6,207.78 (Doc. 6 at 3), leaving a balance of \$72,392.22 due and owing (*id.*). Principis thereafter commenced the instant action on January 10, 2018, by filing a summons and complaint. (Doc. 7.) In the complaint, plaintiff alleged four causes of action: (1) breach of contract (*id.* at 8-9); (2) a cause of action for an account stated (*id.* at 9); (3) unjust enrichment (*id.* at 9-10); and (4) breach of guaranty (*id.* at 10).

Defendants answered the complaint on February 13, 2018. (Doc. 8.) In their answer, defendants asserted usury both as a counterclaim and as a defense to plaintiff's action. (*Id.* at 5-12.) That same day, Principis denied the allegations in the counterclaim. (Doc. 9.)

Principis now moves, pursuant to CPLR 3212, for summary judgment against defendants. (Doc. 4.) It further moves, pursuant to CPLR 3211(a)(1) and (7), to dismiss defendants' counterclaim of usury and, pursuant to CPLR 3211(b), to strike defendants' affirmative defense of usury. (*Id.*)

This Court determines that the motion must be granted as to defendant WTC Victor. The elements of a breach of contract claim are: (1) the existence of a valid contract; (2) the plaintiff's

performance thereunder; (3) the defendant's breach of the contract; and (4) resulting damages. (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010].) Plaintiff has established these elements by submitting an affidavit by Principis' vice president (Doc. 6), who avers that defendants have stopped making payments toward the \$78,600.00 of future receivables that Principis purchased.

In opposition, defendants failed to raise a triable issue of fact. They do not contest that they owe money to plaintiff pursuant to the agreement. Their only legal stance in opposition to the motion is that the contract is usurious. (See Docs. 15–16.) However, a “corporation . . . is prohibited from asserting the defense of usury.” (*Schneider v Phelps*, 41 NY2d 238, 242 [1977].) “Likewise, an individual guarantor of a corporate obligation is also precluded from asserting such a defense.” (*Id.*) Defendants' defense of usury must therefore be stricken pursuant to CPLR 3211(b) (dismissing a defense where it has no merit). Likewise, their counterclaim for usury must be dismissed. (See *Intima-Eighteen, Inc. v A.H. Schreiber Co., Inc.*, 172 AD2d 456, 457 [1st Dept 1991] (“[I]t is well established that [General Obligations Law § 5–521(1)] proscribes a corporation from using the usury laws either as a defense to payment of an obligation or, *affirmatively, to set aside an agreement and recover the usurious premium.*”) (emphasis added).)

Summary judgment must also be granted as against defendant Clark. He is liable to Principis pursuant to the personal guaranty. Importantly, Clark executed the guaranty in writing (*Paribas Properties, Inc. v Benson*, 146 AD2d 522, 525 [1st Dept 1989] (“To be enforceable, a special promise to answer for the debt or default of another must be in writing and subscribed to by the party against whom enforcement is sought.”)), and the guaranty references the agreement (Doc. 22 at 2). Furthermore, the guaranty clearly obligates Clark to ensure satisfaction of WTC Victor's responsibilities under the agreement, and no condition limiting his liability appears in the

guaranty. In pertinent part, the guaranty states that “[Clark] hereby unconditionally and jointly and severally guarantees Seller’s [WTC Victor’s] performance and satisfaction of all the covenants, representations and warranties set forth in . . . the Agreement.” (*Id.*) “[W]here a guaranty is clear and unambiguous on its face and, by its language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement.” (*Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd.*, 97 AD3d 444, 446–47 [1st Dept 2012].) Thus, the guaranty, in conjunction with the agreement, establishes that Clark is also liable for WTC Victor’s contractual obligations.

In accordance with the foregoing, it is hereby:

**ORDERED** that plaintiff Principis Capital LLC’s motion for summary judgment is granted as against defendant WTC Victor, LLC d/b/a WTC Victor LLC d/b/a Waxing the City; and it is further

**ORDERED** that plaintiff’s motion for summary judgment is granted as against defendant Michael Clark; and it is further

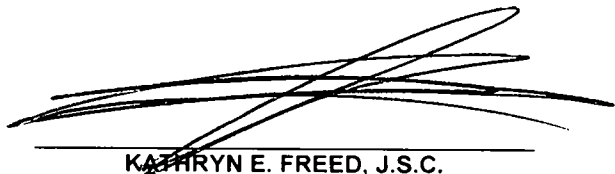
**ORDERED** that the branch of plaintiff's motion to dismiss defendants' counterclaim and to strike defendants' defense is granted; and it is further

**ORDERED** that plaintiff is directed to serve a copy of this order with notice of entry upon all parties and upon the Clerk of the Court at 60 Centre Street, Room 119, who is directed to enter judgment against defendants WTC Victor, LLC d/b/a WTC Victor LLC d/b/a Waxing the City and Michael Clark in the amount of \$72,392.22; and it is further

**ORDERED** that this constitutes the decision and order of the court.

6/20/2019

DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: