

Ace Funding Source, LLC. v Secure Channels Inc.

2019 NY Slip Op 31828(U)

June 4, 2019

Supreme Court, Kings County

Docket Number: 507504/19

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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ACE FUNDING SOURCE, LLC.,
Plaintiff, Decision and order

- against - Index No. 507504/19

SECURE CHANNELS INCORPORATED, DBA SECURE
CHANNELS & RICHARD JONATHAN BLECH,
Defendants, *ms # 2*
June 4, 2019

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved seeking to vacate confessions of judgement filed. The plaintiff opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On March 6, 2019 the plaintiff a merchant cash advance funding provider entered into a contract with defendants. Pursuant to the agreement the plaintiff purchased \$37,475 of defendant's future receivable for \$25,000. The parties further agreed that the plaintiff would be able to obtain a daily amount of \$1,250 until the amount of \$37,475 was fully paid. Moreover, the defendants executed confessions of judgement which the plaintiff was permitted to file if certain conditions enumerated in the agreement were met. Indeed, on April 4, 2019 the plaintiff filed a confession of judgement against the defendants. The defendants have now moved seeking to vacate the confession of judgement. The defendants argue

the confession of judgement was filed in an improper manner, without sufficient basis and furthermore seeks excessive legal fees.

Conclusions of Law

It is well settled that to vacate a judgement based upon a confession of judgement a plenary action must generally be commenced (Morocho v. Monterroza, 170 AD3d 710, 93 NYS2d 574 [2d Dept., 2019]). Moreover, there has been no evidence presented the confession of judgement violates the due process rights of the defendant that the court should dispense with a plenary action (cf., Funding Metrics, LLC v. D and V Hospitality Inc., 91 Misc3d 678, 2019 WL 138614 [Supreme Court Westchester County 2019]). Thus, a motion to vacate the confession of judgement is improper.

Even if the court were to consider the merits of the motion the court would not vacate the confession of judgement. The defendants have presented essentially three reasons why the confession of judgement is improper.

First, they argue the judgement failed to account for a payment of \$1,250 made on or before April 4, 2019. The plaintiff has conceded that additional payment was received and was not included within the judgement and that failure

will be reconciled and the amount of \$1,250 will be reduced from any judgement sought.

Second, the defendants argue the plaintiff seeks excessive legal fees. However, the affidavit of confession of judgement signed by defendant Richard Blech individually and on behalf of the corporate defendant states that if judgement may be entered the sum shall include "legal fees to Plaintiff calculated at 33% of the total of all of the aforesaid sums" (see, Affidavit of Confession of Judgement). Thus, that is not a basis upon which to vacate the confession of judgement.

Lastly, there is no language in the agreement foreclosing the filing of a confession of judgement. It is true that the term 'confession of judgement' does not appear in the agreement, however, the agreement does provide that "all rights, powers and remedies of Buyer in connection with this Agreement may be exercised at any time by Buyer after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity" (see, Agreement dated March 6, 2019, §16.8). The defendants have not argued that an event of default did not occur, thus there is no reason why a confession of judgement is improper. There is no


inconsistent language or contradictory language minimizing the availability of the confession of judgement.

Therefore, based on the foregoing the motion seeking to dismiss the confession of judgement is denied.

So ordered.

ENTER:

DATED: June 4, 2019
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC

KINGS COUNTY CLERK
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