

LG Funding LLC v Hunt Communications LLC

2019 NY Slip Op 32331(U)

August 1, 2019

Supreme Court, Nassau County

Docket Number: 602493/19

Judge: Denise L. Sher

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This opinion is uncorrected and not selected for official publication.

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

LG FUNDING LLC,

Plaintiff,

- against -

HUNT COMMUNICATIONS LLC d/b/a HUNT
COMMUNICATIONS and MONIQUE HUNT a/k/a
MONIQUE RACHELLE HUNT,

Defendants.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 602493/19
Motion Seq. No.: 01
Motion Date: 05/29/19
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The following papers have been read on this motion:

	Papers Numbered
Notice of Motion, Affidavit, Affirmation and Exhibits and Memorandum of Law	1

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiff moves, pursuant to CPLR § 3212, for an order granting it summary judgment.

No opposition was submitted to the motion.

This breach of contract action was commenced with the filing and service of a Summons and Verified Complaint on or about February 21, 2019. *See* Plaintiff's Affirmation in Support Exhibit E. Issue was joined on or about May 13, 2019. *See* Plaintiff's Affirmation in Support Exhibit I.

Joseph Lerman ("Lerman"), the Managing Member of plaintiff corporation, submits, in pertinent part, that "LG and Hunt entered into a written Merchant Agreement, dated April 30, 2018, ..., whereby Hunt sold LG \$146,363.00 ('Purchased Amount') of Hunt's accounts, contract rights, and other obligations arising from or relating to the payment of monies from Hunt's customers and other third party payors ('Receivables') for the sum of \$100,940.00 ('Purchase Price'), to be paid to LG from 15% of Hunt's daily revenue, with the payments to LG to be capped at \$4,155.00 per week. Hunt agreed that in the event of its default under the contact, the full uncollected Purchased Amount plus all fees due under the Merchant Agreement would become immediately due and payable in full to LG. Monique executed a guarantee of performance of all the representations, warranties, and covenants made by Hunt in the Merchant Agreement.... On May 2, 2018, LG paid Hunt the Purchase Price.... \$940 in contractual fees were withheld from the Purchase Price, along with \$30,766 that Hunt agreed to be applied to the satisfaction of a prior agreement between the parties, dated October 27, 2017, ..., under which Hunt has sold \$126,966.00 of its Receivables to LG for \$90,690.00. Hunt breached the Merchant Agreement by defaulting on its representations and warranties to LG under the Merchant Agreement and by failing to direct Hunt's payments to LG, by blocking LG's access to a designated bank account ('Designated Account') from which Hunt agreed to permit LG to withdraw Receivables, by failing to deposit Receivables into the Designated Account, by disposing of Hunt's assets without LG's prior express written consent, and/or by depositing Receivables into a bank account other than the Designated Account. LG held Hunt in breach of the Merchant Agreement on August 30, 2018.... Hunt owes LG \$96,503.00 of the Purchased Amount. Hunt owes LG \$2,500 for a default fee. In Appendix A to the Merchant Agreement,

Hunt agreed to pay LG this amount if Hunt would default under the agreement.... Hunt owes LG \$250.00 for Not Sufficient Funds ('NSF') fees. In Appendix A to the Merchant Agreement, Hunt agreed to pay LG a \$50 NSF fee for each instance in which a withdrawal by LG from the Designated Account would be rejected.... Hunt owes LG \$195.00 for a UCC fee. In Appendix A to the Merchant Agreement, Hunt agreed to pay LG this fee if LG would file a UCC to secure its interest in the Receivables, which LG did on August 30, 2018.... In total, Hunt owes LG \$99,448.00 under the Merchant Agreement. LG requests \$24,862.00 for its reasonable attorney's fees. The Merchant Agreement contains a provision that I am advised requires Hunt to pay LG's reasonable attorney's fees if LG prevails in this action." See Plaintiff's Affidavit in Support Exhibits A-J.

As previously indicated, no opposition was submitted to the motion.

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. See *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant's favor. See *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney's affirmation. See CPLR § 3212 (b);

Olan v. Farrell Lines Inc., 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. See *Zuckerman v. City of New York*, *supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. See *Sillman v. Twentieth Century-Fox Film Corp.*, *supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. See *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S. 2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. See *Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989).

“The elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff’s performance under the contract, (3) the defendant’s breach of the contract, and (4) resulting damages.” *Kausal v. Educational Prods. Info.*, 105 A.D.3d 909, 964 N.Y.S.2d 550 (2d Dept. 2013); *Palmetto Partners, L.P. v. AJW Qualified Partners, LLC*, 83 A.D.3d 804, 921 N.Y.S.2d 260 (2d Dept. 2011); *JP Morgan Chase v. J.H. Elec. of N.Y., Inc.*, 69 A.D.3d 802, 893 N.Y.S.2d 237 (2d Dept. 2010); *Furia v. Furia*, 116 A.D.2d 694, 498 N.Y.S.2d 12 (2d Dept. 1986).

Based upon the evidence and legal arguments made in the papers before it, the Court finds that plaintiff has made a *prima facie* showing of entitlement to judgment as a matter of law

by providing sufficient evidence to demonstrate the absence of material issues of fact with respect to its claims.

Accordingly, plaintiff's motion, pursuant to CPLR § 3212, for an order granting it summary judgment, is hereby **GRANTED**. And it is further

ORDERED that plaintiff is directed to submit to the clerk a judgment against defendants, jointly and severally, in the sum of \$99,448.00, with interest thereon from August 30, 2018, reasonable attorney's fees in the sum of \$24,862.00, plus costs and disbursements of this action.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.
XXX

Dated: Mineola, New York
August 1, 2019

ENTERED
AUG 02 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE