

RDM Capital Funding LLC v JJA Imports/ Exports LLC
2020 NY Slip Op 34218(U)
December 14, 2020
Supreme Court, New York County
Docket Number: 656300/2019
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART

IAS MOTION 59EFM

Justice

-----X
RDM CAPITAL FUNDING LLC,

Plaintiff,

- v -

JJA IMPORTS/ EXPORTS LLC and JOSE GUTIERREZ,

Defendants.
-----X

INDEX NO. 656300/2019

MOTION DATE 03/16/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for

JUDGMENT - MONEY

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the plaintiff's motion for summary judgment on the first and second causes of action of the complaint herein is granted, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants in the sum of \$27,550.00, plus the default fee of \$1,378.00, plus the Not Sufficient Funds Fee of \$50, totaling \$ _____, with interest at the statutory rate from the date of October 22, 2019, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk, in the amount of \$ _____, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs.

ORDERED that plaintiff RDM Capital Funding LLC's motion for summary judgment against defendants is granted with respect to the breach of contract and guarantee claims; and it is further

DECISION

In this action, plaintiff seeks damages arising from claims for breach of contract, unjust enrichment and enforcement of a personal guarantee. The complaint alleges that on May 28, 2019, RDM and JJA entered into a "Purchase and Sale of Future Receivables Agreement" (Agreement) whereby RDM agreed to buy all rights of JJA's future receivables. RDM funded the Agreement having a face value of \$73,500. The purchase amount for the Receivables was \$50,000. JJA authorized RDM to debit 4% of its daily revenue from its approved bank account until the \$73,500 was paid in full. Gutierrez, the owner of JJA, agreed to be the guarantor of the Agreement, and signed a Personal Guaranty of Performance.

On May 30, 2019, RDM paid JJA \$50,000 minus an agreed upon origination fee, thus fulfilling its contractual obligation. On October 22, 2019, JJA breached the Agreement by defaulting on its representations to RDM, failing to direct its receivables to RDM, blocking RDM's access to the subject bank account, failing to deposit receivables into said account and/ or depositing receivables into a different account. RDM received only \$45,940

from JJA. According to RDM, JJA owes the balance, \$27,560, and \$1,378 for a default fee pursuant to the Agreement, plus \$50 for a Not Sufficient Funds fee.

RDM is suing JJA for breach of contract and unjust enrichment, and Gutierrez on his guarantee.

Now, RDM moves for summary judgment on the ground that there is no issue of fact as to its entitlement to its relief. RDM submits copies of the Agreement and the guarantee, as well as an affidavit from Manny Yosipov, the owner of RDM, who asserts that JJA breached the Agreement and owes RDM the balance of the funds. RDM argues that the Agreement remained in effect at the time of the breach/default and that RDM fulfilled its contractual obligations. RDM states that it will waive attorney's fees in this case.

In their opposition to the motion, defendants argue that RDM has not proven its entitlement to summary judgment, and has only provided the purported agreement as evidence.

"It is axiomatic that summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of factual issues" (Birnbaum v Hyman, 43 AD3d 374, 375 [1st Dept 2007]). "The substantive law governing a case dictates what facts are material, and '[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment [citation

omitted]'" (People v Grasso, 50 AD3d 535, 545 [1st Dept 2008]).

On a motion for summary judgment, the movant must "make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact" (Richardson v County of Nassau, 156 AD3d 924, 925 [2d Dept 2017]). Only if the movant succeeds in meeting its burden will the burden shift to the opponent to demonstrate through legally sufficient evidence that there exist triable issues of fact (id.).

RDM submitted with its motion papers a copy of the Agreement and the guarantee. The terms of these documents reflect the allegations made in the complaint and the affidavit. The affidavit lays out the default and the contract violations.

In opposition, defendants make a very conclusory denial. They do not specifically dispute the validity of the Agreement, nor do they deny the breach nor provide any defense for the breach. Thus, the opposition fails to raise any issues of fact in response to plaintiff's motion.

The court shall grant summary judgment with respect to the breach of contract and guarantee claims.

The court shall deny summary judgment on the unjust enrichment claim. The theory of unjust enrichment lies in a quasi-contract claim and contemplates an obligation implied by equity to prevent injustice in the absence of an actual

agreement between parties (see Georgia Malone & Co., Inc. v Rieder, 19 NY3d 511, 516 [2012]). Since there exists an express agreement, the unjust enrichment claim is not viable.

<u>12/14/2020</u>		<u>DEBRA A. JAMES, J.S.C.</u>	
DATE			
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE