

Reynaga Trucking v Funding Metrics, LLC
2020 NY Slip Op 34675(U)
September 1, 2020
Supreme Court, Westchester County
Docket Number: Index No. 52831/2019
Judge: Charles D. Wood
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

-----X
REYNAGA TRUCKING, INC. D/b/a BOX IN MOTION

Plaintiff,

-against-

**FUNDING METRICS, LLC d/b/a LENDINI and
ERIC SOLOMON,**

Defendants.

-----X
WOOD, J.

**DECISION & ORDER
Index No. 52831/2019
Sequence Nos. 2&3**

New York State Courts Electronic Filing ("NYSCEF") Document Numbers 48-132, were read in connection with plaintiff's motion for summary judgment (Seq 2), and defendants' cross-motion for summary judgment (Seq 3).

Based upon the foregoing, the motions are decided as follows¹:

On or about March 5, 2018, L&E Trucking, LLC ("L&E Trucking") and Edgar Reynaga

¹As to plaintiff's objection to the timeliness of defendants' cross- motion for summary judgment that was to be made by March 16, 2020, defendants argue that because of the fluid impact of the Coronavirus pandemic it was very difficult for defendants to communicate in the weeks and days prior to March 16, 2020. Therefore, defendants were not able to effectively coordinate and communicate with each another regarding the drafting and filing of a cross-motion for summary judgment motion and responding to plaintiff's summary judgment motion. Shortly thereafter, the Court did not permit any additional electronic filings on non-essential matters. Furthermore, all statute of limitations for all non-essential legal matters were suspended by the State of New York. Defendants contend that it did not gain an unfair or improper advantage, nor was plaintiff placed in an inequitable or prejudicial position, as a result of defendants filing their Cross-Motion for Summary Judgment on May 14, 2020. March 16, 2020, was the last day that the court's doors were open, before the COVID moratorium, and in due consideration of the parties' arguments, the court, in its discretion will consider the summary judgment motions.

entered into a written Merchant Agreement with defendant Funding Metrics, LLC d/b/a Lendini ("Funding Metrics"), whereby L&E Trucking agreed to sell its future receivables to Funding Metrics, and Funding Metrics agreed to purchase said receivables from L&E Trucking ("Merchant Agreement"). Edgar Reynaga was the guarantor of the Merchant Agreement. On or about March 5, 2018, L&E Trucking and Edgar Reynaga, individually, executed an Affidavit of Confession of Judgment pursuant to the Merchant Agreement.

Allegedly, on or about April 23, 2018, Edgar Reynaga contacted Funding Metrics and informed Funding Metrics that he had changed the name of the company from L&E Trucking, LLC to Reynaga Trucking, Inc.

On or about April 25, 2018, Edgar Reynaga sent Funding Metrics an e-mail with an attachment titled, Bank Authorization, which was signed by Edgar Reynaga on behalf of L&E Trucking and Reynaga Trucking, and pursuant to the Merchant Agreement specifically authorized and directed Funding Metrics to take automated clearinghouse payments from the Chase Bank Account ("Bank Authorization").

"BANK AUTHORIZATION

I EDGAR REYNAGA am the owner of L&E Trucking, LLC located at 16325 Sugargrove Drive, Whittier, CA 90604. On or about March 5, 2018 I entered into a Purchase Agreement with Funding Metrics, LLC dba Lendini. Payments were to be tendered via ACH debit from my business checking account ending in 6389 located at US Bank. Due to unforeseen circumstances payments can no longer be debited from this account.

I EDGAR REYNAGA am also the owner of Reynaga Trucking, Inc. located at 16325 Sugargrove Drive, Whittier, CA 90604. This business checking account ending in 5313 is located at Chase Bank.

I hereby authorized Funding Metrics, LLC to ACH debit my Reynaga Trucking, Inc. account in the amount of \$162.50, each and every day business day, Monday through Friday until the balance owed to Funding Metrics, LLC by L&E Trucking, LLC has been paid in full.

I hereby certify that I am authorized to execute this document on behalf of L&E Trucking, LLC and on behalf of Reynaga Trucking, Inc." (NYSCEF Doc No. 86)

On October 23, 2018, a Judgment by Confession in Nassau County Supreme Court was issued in the total amount of \$14,046.61, under Index Number 614308/2018, in favor of Funding Metric against defendants L&E Trucking, LLC and Edgar Reynaga (NYSCEF Doc No. 51).

On October 25, 2018, an Information Subpoena with Restraining Notice was served on Chase Bank as against plaintiffs, as Judgment Debtors, resulting in a bank hold on November 2, 2018.

On or about November 6, 2018, Edgar Reynaga, on behalf of L&E Trucking and himself individually entered into the Payment Agreement with Funding Metrics. Pursuant to the Payment Agreement, Edgar Reynaga signed the Authorization Agreement for Automated Clearinghouse Payments from the Chase Bank Account - Payment Agreement, L&E Trucking and Edgar Reynaga made payments totaling \$3,000 to Funding Metrics before defaulting on the Payment Agreement. An outstanding balance in the amount of \$9,000 is still due and owing on the Payment Agreement.

It is well settled that “a proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (Alvarez v Prospect Hosp. 68 NY2d 320, 324 [1986]; see Orange County-Poughkeepsie Ltd. Partnership v Bonte 37 AD3d 684, 686-687 [2d Dept 2007]; see also Rea v Gallagher 31 AD3d 731 [2d Dept 2007]). Once the movant has met this threshold burden, the opposing party must present the existence of triable issues of fact (see Zuckerman v New York 49 NY2d 557, 562 [1980]; see also Khan v Nelson, 68 AD3d 1062 [2d Dept 2009]). Conclusory, unsubstantiated assertions will not suffice to defeat a motion for summary judgment (Barclays Bank of New York, N.A. v Sokol 128 AD2d 492 [2d Dept 1987]). A party opposing a motion for summary judgment may do so on the basis of deposition testimony as well as other admissible forms

of evidence, including an expert's affidavit, and eyewitness testimony (Marconi v Reilly 254 AD2d 463 [2d Dept 1998]). In deciding a motion for summary judgment, the court is required to view the evidence presented "in the light most favorable to the party opposing the motion and to draw every reasonable inference from the pleadings and the proof submitted by the parties in favor of the opponent to the motion" (Yelder v Walters 64 AD3d 762, 767 [2d Dept 2009]; see Nicklas v Tedlen Realty Corp. 305 AD2d 385, 386 [2d Dept 2003]). The court must accept as true the evidence presented by the nonmoving party and must deny the motion if there is "even arguably any doubt as to the existence of a triable issue" (Kolivas v Kirchoff 14 AD3d 493 [2d Dept 2005]); Baker v Briarcliff School Dist. 205 AD2d 652,661-662 [2d Dept 1994]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to existence of a triable issue (Alvarez v Prospect Hospital 68 NY2d 320,324 [1986]).

After a judgment is entered, a judgment creditor may pursue payment to satisfy the judgment from a third-party garnishee "in possession or custody of money or other personal property in which the judgment debtor has an interest." (see CPLR 5225[b]; Bingham v Zolt, 231 AD2d 479 [1st Dept 1996]). The restraining notice serves as an injunction prohibiting the transfer of the judgment debtor's property (Distressed Holdings, LLC v Ehrler, 113 AD3d 111, 116 [2d Dept 2013]).

CPLR 5222(b) provides in relevant part, that a third-person in possession of the judgment debtor's property "is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff, except upon direction of the sheriff or pursuant to an order of the Court, until the expiration of one year after the notice is served upon him, or until the judgment is satisfied or vacated, whichever event first occurs."

In support of its motion, plaintiff Reynaga Trucking contends that Funding Metric did not have the legal authority to restrain the Chase Bank Account in execution on the Judgment in that L&E Trucking did not have an interest in the Chase Bank Account. The court disagrees. According to the deposition testimony of Edgar Reynaga, L&E Trucking and Reynaga Trucking are both owned by Edgar Reynaga(Reynaga Deposition, NYSCEF Doc No. 109, pg 7). Also, based upon the record, including the deposition testimonies of the parties, Funding Metrics demonstrated that the judgment debtor (L&E Trucking) did have an interest in the Chase Bank Account. Reynaga Trucking and Edgar Reynaga pledged that Reynaga Trucking would be responsible to pay the obligations of L&E Trucking under the Merchant Agreement and Payment Agreement from the Chase Bank Account, and specifically authorized Funding Metrics to satisfy those obligations from the Chase Bank Account. Funding Metrics had the legal authority under CPLR 5222(b) to issue the Information Subpoena and Restraining Order on the Chase Bank Account and acted in accordance with CPLR 5222(b).

Plaintiff's other contentions regarding the cause of action for prima facie tort has not been demonstrated as well as plaintiff has not provided any evidence that the alleged damages were the result of the Chase Bank Account being restrained. Plaintiff has also not provided any evidence to warrant the imposition of sanctions in the form of attorneys' fees and expenses against Funding Metrics pursuant to 22 NYCRR §130-1.1.

As for plaintiff's cause of action for a permanent injunction "[a] permanent injunction is a drastic remedy which may be granted only where the plaintiff demonstrates that it will suffer irreparable harm absent the injunction" Irreparable injury, for purposes of equity, has been held to

mean any injury for which money damages are insufficient” ([internal quotation marks omitted]).
(L & M 353 Franklyn Ave., LLC v S. Land Dev., LLC, 98 AD3d 721, [2d Dept 2012]).

Here, plaintiff failed to demonstrate that it would suffer irreparable injury in the absence of injunctive relief.

Turning next to Funding Metrics’ counterclaims, it has failed to establish a breach of contract action as against plaintiff in that there is a triable issue of fact as to the existence of a contract between the parties, performance by the plaintiff, breach by the defendant and damages resulting from the breach (JP Morgan Chase v J.H. Elec. of New York, Inc., 69 AD3d 802, 803 [2d Dept 2010]). Specifically, plaintiff is not a party named in the Payment Agreement (NYSCEF Doc No. 92), and there is a question whether Reynaga Trucking is legally responsible to satisfy the monetary obligations due and owing from L&E Trucking to Funding Metrics. For the same reasons, Funding Metrics’ unjust enrichment counterclaim cannot be decided on this cross-motion, as the elements of an unjust enrichment claim have not been shown, which are "that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (Mandarin Trading Ltd. v. Wildenstein, 16 NY3d 173, 182 [2011]).

All matters not specifically addressed are herewith denied.

This constitutes the decision and order of the court.

In light of the foregoing, it is

ORDERED, that plaintiff’s motion for summary judgment is denied; and it is further

ORDERED, that Funding Metric’s Cross-Motion for Summary Judgment (Seq 3) is granted to the extent that: plaintiff first cause of action-violation of CPLR 5222, second cause of action in

prima facie tort, third cause of action breach of 22 NYCRR 130-1.1. fourth cause of action- permanent injunction, fifth cause of action- attorney fees are all dismissed ; and Funding Metrics' summary judgment motion on its causes of action for breach of contract and unjust enrichment are denied; and it is further

ORDERED, that the parties are directed to appear at the Settlement Conference Part, at the Westchester County Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York, on a date and time to be set by the Settlement Part.

Dated: September 1, 2020
White Plains, New York



HON. CHARLES D. WOOD
Justice of the Supreme Court

TO: All Parties By NYSCEF