

Strategic Funding Source, Inc. v Steenbok, Inc.

2021 NY Slip Op 30455(U)

February 17, 2021

Supreme Court, New York County

Docket Number: 652710/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 652710/2019

STRATEGIC FUNDING SOURCE, INC.,dba KAPITUS,
KAPITUS SERVICING, INC.fka COLONIAL FUNDING
NETWORK, INC. as servicing provider for MONEY WORKS
DIRECT,

MOTION DATE 02/11/2021

MOTION SEQ. NO. 004

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

STEENBOK, INC.,WILEY DAVID JONES,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99 were read on this motion to/for JUDGMENT - SUMMARY.

The motion by defendants for summary judgment is denied.

Background

Plaintiffs contend that they paid defendant Steenbok \$445,000 in exchange for credit card receivables related to four restaurants operated by defendants in Texas. Defendant Jones is principal for Steenbok. The parties' arrangement was memorialized in eight separate receivables contracts. Plaintiffs argue that Steenbok diverted its receivables to a non-designated and unauthorized credit card processor in violation of the parties' receivables agreements.

Defendants move for summary judgment and claim that it was plaintiffs who breached the terms of the agreements. They claim that they authorized their credit card processor (HPS) to deposit defendants' credit card receipts into bank accounts opened up specifically to be controlled by plaintiffs. Defendants argue that plaintiff stopped collecting the receipts from HPS

in December 2015 and then began to debit defendants' business accounts for what defendants characterize as "arbitrary amounts of money." Defendants claim they have no idea why the receipts from HPS were initially deposited into accounts controlled by plaintiffs and then were suddenly deposited into accounts held by defendants.

In opposition, plaintiffs claim that this motion is premature because defendants have failed to provide any discovery. Plaintiffs offer a different version of the events at issue here. They claim that defendant Steenbok failed to make the payments to plaintiffs in accordance with the eight agreements starting in November 2015 and that statements from the credit card processor (HPS) shows that it was working during this time. Plaintiffs infer that defendants diverted money away from the account in order to circumvent their obligation to pay receivables to plaintiffs. Plaintiffs claim that they have no record of defendants complaining about the amounts taken by plaintiffs during the agreement and stress that defendants made "virtually no payments at all between November 25, 2015 and January 26, 2016."

Plaintiffs assert that in February 2016 they agreed to let defendants pay by ACH debit from Steenbok's business account for certain contracts but defendants soon placed several stop payments on the ACH debit payments. They claim that they have not been able to collect any of the daily percentage of receivables since May 2016 and over \$300,000 is now due.

In reply, defendants assert that plaintiffs cannot show that they fully performed under the contract and cannot show that Steenbok diverted its receipts to a non-designated and unauthorized credit card processor.

Discussion

To be entitled to the remedy of summary judgment, the moving party "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 from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d’Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

The Court denies the motion. The fact is that the parties offer two differing versions of what happened. Plaintiffs claim that defendants stopped making the required payments and changed the way in which plaintiffs recovered the money from the receivables. At this stage of the litigation, the Court cannot simply side with defendants’ view of the events. In fact, defendant Jones’ affidavit states that “I don’t know why this happened” (NYSCEF Doc. No. 67, ¶ 6) in reference to why its credit card processor (HPS) changed from depositing receipts into accounts controlled by plaintiffs to accounts controlled by defendant Steenbok. This presents a very good reason for discovery – perhaps document production, from the parties and from third

parties, will reveal why HPS changed where it deposited the money. It also presents an excellent reason why summary judgment is premature.

And plaintiffs clearly raised issues of fact through the affidavit of Mr. Wolfson (a VP for plaintiffs), who noted that defendants made no payments between November 25, 2015 and January 26, 2016 (NYSCEF Doc. No. 86). He also maintains that plaintiffs have not collected any receivables since May 2016. Defendants' attempt to blame plaintiffs for seeking too much money or on third parties for the issues may turn out to be a successful defense. But the Court cannot grant the motion based solely on defendant Jones' affidavit.

The Court rejects defendants' motion to the extent they claimed the loans were usurious—this was a receivables contract contingent on the amount of revenue defendants generated. Defendants did not cite sufficient evidence to support the assertion that the loans were illegal.

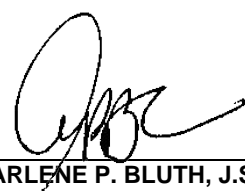
Accordingly, it is hereby

ORDERED that the motion by defendants for summary judgment is denied.

Remote Conference: February 25, 2021 at 11:30 a.m.

2/17/2021

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: