

**TD Auto Fin. LLC v Haynes**

2021 NY Slip Op 30558(U)

February 16, 2021

Supreme Court, Kings County

Docket Number: 513958/2018

Judge: Lara J. Genovesi

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At an IAS Term, Part 34 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 16<sup>th</sup> day of February 2021.

P R E S E N T:

HON. LARA J. GENOVESI,  
J.S.C.

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TD AUTO FINANCE LLC,

Plaintiff,

Index No.: 513958/2018

DECISION & ORDER

-against-

JAHQUEENA HAYNES A/K/A HAYNES  
JAHQUEENA,

Defendant.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>NYSCEF Doc. No.:</u>
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed _____	_____ 60-73
Opposing Affidavits (Affirmations) _____	_____ 78-95
Reply Affidavits (Affirmations) _____	_____ 99

**Introduction**

Defendant moves by notice of motion, sequence number two, pursuant to CPLR § 3212 for summary judgment. Plaintiff opposes this application and in opposition seeks “reverse summary judgment”.

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### ***Background***

Plaintiff commenced this action for breach of contract and reimbursements of costs and disbursements on July 9, 2018. Defendant entered into a contract on May 17, 2017, with Premier Ford NY Inc., for the financed purchase of a 2017 Ford Escape. This contract was executed electronically. Plaintiff maintains that this contract was assigned from Premier Ford NY Inc. to plaintiff TD Auto Finance on May 23, 2017. According to plaintiff, “[s]ubsequent to and contemporaneous with the assignment, beginning on May 17, 2017, [plaintiff] TDAF funded the loan and provided financing for the loan in the amount of \$33,393.25” (see NYSCEF Doc. 79). Two payments were made to plaintiff in connection with the vehicle and returned. Past due notices were sent to defendant in July and August 2017. In August 2017, the vehicle was repossessed by TDAF (*see id.*). Between January and May of 2018, seven \$50 payments were made towards satisfying the deficiency on the account (*see id.*).

### ***Discussion***

“[T]he 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” (*Stonehill Capital Mgmt., LLC v. Bank of the W.*, 28 N.Y.3d 439, 68 N.E.3d 683 [2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572 [1986]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see*

*Chiara v. Town of New Castle*, 126 A.D.3d 111, 2 N.Y.S.3d 132 [2 Dept., 2015], citing *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 965 N.E.2d 240 [2012]; see also *Lee v. Nassau Health Care Corp.*, 162 A.D.3d 628, 78 N.Y.S.3d 239 [2 Dept., 2018]). Once a moving party has made a prima facie showing of its entitlement to summary judgment, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (see *Fairlane Fin. Corp. v. Longspaugh*, 144 A.D.3d 858, 41 N.Y.S.3d 284 [2 Dept., 2016], citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, *supra*; see also *Hoover v. New Holland N. Am., Inc.*, 23 N.Y.3d 41, 11 N.E.3d 693 [2014]).

Defendant moves herein for summary judgment on the basis that plaintiff lacks standing. The main thrust of defendant's argument is that "[d]espite having nearly two years to establish that they have the right to prosecute this action against Ms. Haynes, Plaintiff has failed to produce any contract assigning the Retail Installment Contract to TD Auto Finance" (NYSCEF Doc. # 61 at p 6).<sup>1</sup> It is uncontroverted in the Second Department, that "[w]here, as here, the plaintiff's standing is placed in issue by the defendant's answer, a plaintiff must prove its standing as part of its prima facie showing on a motion for summary judgment" (*Citimortgage, Inc. v. Laupot*, -- A.D.3d --, 135 N.Y.S.3d 889, [2 Dept., 2021]). However, "[o]n a defendant's motion for summary judgment, the burden is on the moving defendant to establish, prima facie, the plaintiff's

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<sup>1</sup> This Court notes that the issue of standing was raised as defendant's third affirmative defense (see NYSCEF Doc. # 65, Answer at ¶ 40).

lack of standing as a matter of law” (*Wilson v. Inc. Vill. of Hempstead*, 173 A.D.3d 1050, 100 N.Y.S.3d 565 [2 Dept., 2019], *lv. denied*, 34 N.Y.3d 905, 137 N.E.3d 1107 [2019]), “rather than on the plaintiff to affirmatively establish its standing in order for the motion to be denied” (*HSBC Bank USA, Nat'l Ass'n v. Bermudez*, 175 A.D.3d 667, 107 N.Y.S.3d 138 [2 Dept, 2019]).

To make a prima facie showing, the moving party must “demonstrate its entitlement to summary judgment by submission of proof in admissible form” (*Viviane Etienne Med. Care, P.C. v. Country-Wide Ins. Co.*, 25 N.Y.3d 498, 507, 14 N.Y.S.3d 283, 35 N.E.3d 451; *see Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595, 404 N.E.2d 718). Admissible evidence may include “affidavits by persons having knowledge of the facts [and] reciting the material facts” (*GTF Mktg. v. Colonial Aluminum Sales*, 66 N.Y.2d 965, 967, 498 N.Y.S.2d 786, 489 N.E.2d 755; *see CPLR 3212[b]*;

(*Bank of New York Mellon v. Gordon*, 171 A.D.3d 197, 97 N.Y.S.3d 286 [2 Dept., 2019]).

In the instant case, defendant failed to meet her burden and establish entitlement to summary judgment as a matter of law. Defendant failed to provide any admissible evidence which would establish plaintiff’s lack of standing. The “statement of facts” contained in the memorandum of law in support heavily focuses on the procedural history of the case; namely, the default judgment against defendant which was granted and vacated by the previously assigned justice and the discovery conducted in this case.

There is no affidavit or testimony from defendant. In fact, a clear recitation of the facts was only presented by plaintiff in opposition.<sup>2</sup>

As defendant failed to meet her burden, this Court need not examine the sufficiency of plaintiff's opposition papers (*see Scurry v. New York City Hous. Auth.*, -- A.D.3d --, 2021 N.Y. Slip Op. 00447 [2 Dept., 2021]). Even assuming arguendo that defendant met her burden, plaintiff raised a triable issue of fact by providing the affidavit of Jason Brennan, who states that there is no signed assignment for plaintiffs to produce. The documents provided in opposition, which were kept in the regular course of business, demonstrate the virtual assignment of the loan from Premier Ford NY Inc., to TD Auto Finance (*see* NYSCEF Doc. # 79). Further, this Court declines to search the record and entertain plaintiff's application for "reverse" summary judgment (*see generally Princes Point LLC v. Muss Development LLC*, 30 N.Y.3d 121, 65 N.Y.S.3d 89 [2017]).

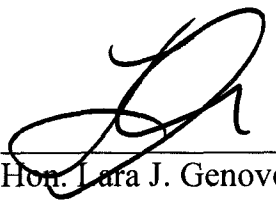
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<sup>2</sup> This Court notes that in reply, defendant never challenged plaintiff's recitation of the facts, which state demonstrate defendant's knowledge of the assignment, as defendant purportedly defendant made two timely car payments to plaintiff before subsequently defaulting.

*Conclusion*

Accordingly, the defendant's motion for summary judgment is denied as defendant failed to meet her burden. The foregoing constitutes the decision and order of this Court.

ENTER:

  
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Hon. Lara J. Genovesi  
J.S.C.

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