

Principis Capital LLC v Team Van Eyk, Inc.
2021 NY Slip Op 30664(U)
February 23, 2021
Supreme Court, New York County
Docket Number: 653596/2018
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM

Justice

-----X

PRINCIPIS CAPITAL LLC,

Plaintiff,

INDEX NO. 653596/2018

MOTION DATE 11/13/2018

MOTION SEQ. NO. 001

- v -

TEAM VAN EYK, INC., LAURA HEATHER VAN
EYK a/k/a LAURA HEATHER VANEYK and
LAUREN GOODWIN a/k/a LAUREN JEAN
GOODWIN a/k/a LAUREN GOODVIN a/k/a
LAUREN JEAN GOODVIN a/k/a LAURA
GOODWIN a/k/a LAURA JEAN GOODWIN a/k/a
LAURA GOODVIN a/k/a LAURA JEAN GOODVIN,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, the motion of plaintiff for summary judgment against defendants is granted, in accord with the following memorandum decision.

Background

In this action, plaintiff seeks judgment for damages incurred as the result of a breach of an agreement between plaintiff and defendant Team Van Eyk, Inc., for the purchase of future receivables (the "Agreement"), as guaranteed by the individual defendants. The complaint interposes causes of action for breach of contract, account stated, unjust enrichment, and breach of guaranty. Defendants answered the complaint, asserting three affirmative defenses that (1) "Plaintiff alleges a loan disguised as a factoring agreement that is criminally usurious, bearing an interest rate exceeding 40% per annum, and unenforceable against even a business entity defendant," (2) "[u]pon information and belief, the defendants have repaid more than the

principal of the underlying usurious loan and are entitled to an offset of the entire amount demanded by the plaintiff in this action,” and (3) “[t]he underlying contract is void as against public policy” (Amended Answer ¶¶ 4-6 [NYSCEF Doc. No. 26]). Plaintiff now moves for summary judgment in its favor, seeking judgment in the amount of \$90,204.34, with interest from the date of default. Plaintiff also seeks an award of attorneys’ fees and costs incurred in enforcing the terms of the Agreement.

On a motion summary judgment, the moving party must tender sufficient evidence to demonstrate the absence of any material issue of fact and entitlement to judgment in its favor as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once the movant has made a *prima facie* showing, the burden shifts to the opposing party to “present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact” (*Casper v Cushman & Wakefield*, 74 AD3d 669, 669 [1st Dept 2010], *lv dismissed* 16 NY3d 766 [2011] [internal quotation marks and citation omitted]). If an issue of fact exists, summary judgment should be denied (*Stone v Goodson*, 8 NY2d 8, 12, *rearg denied* 8 NY3d 934 [1960]).

Here, plaintiff has met its *prima facie* burden by submitting the affidavit of Robert Knox, Director of Asset Management for plaintiff, and attachments thereto. Annexed to the affidavit, Knox provides business records to demonstrate that Team Van Eyk entered into the Agreement with plaintiff, whereby plaintiff agreed to buy all rights to Team Van Eyk’s future receivables. The face value of the Agreement was \$127,463.00, with a purchase price of \$91,700.00. The individual defendants signed the Agreement as personal guarantors of performance. As further set forth in the Knox affidavit, Team Van Eyk breached the Agreement by failing to make the payment due on April 27, 2018, and payments due thereafter. Plaintiff also demonstrates, by an affirmation of its counsel, that defendants were served with process and were served with copies

of the instant motion. Plaintiff has, therefore, satisfied its *prima facie* burden with respect to the claims for breach of contract and enforcement of the guaranties. Plaintiff has also demonstrated its entitlement to an award of reasonable attorneys' fees and costs incurred in enforcing the terms of the Agreement, which is provided for in the Agreement. However, plaintiff's claim for unjust enrichment stems from the same transactions as its claims for breach of contract and seeks the same monetary damages. Because there is no dispute that a valid contract exists that governs the agreement between the parties, plaintiff's claim for unjust enrichment is duplicative, and plaintiff's motion is denied as to this cause of action (*Corsello v Verizon N.Y., Inc.*, 18 NY3d 777, 790, *rearg denied* 19 NY3d 937 [2012]).

In opposition to the motion, defendants do not deny the facts underlying the motion or the amount due, but assert instead that the Agreement is not an agreement for the purchase of future receivables; but is instead, a criminally usurious loan, and is therefore void as a matter of public policy. Defendants cross-move to dismiss the complaint on this basis and also for leave to amend and serve an amended answer, *nunc pro tunc*, to correct a scrivener's error in their initial answer whereby it failed to include all the named defendants. Plaintiff consents to the cross-motion to the extent of the requested amendment.

In New York, there is a presumption that a transaction is not usurious (*Giventer v Arnow*, 37 NY2d 305, 309 [1975]). Therefore, the usury defense must be established by clear and convincing evidence (*id.*). The Appellate Division, First Department, in *Champion Auto Sales, LLC v Pearl Beta Funding, LLC* (159 AD3d 507, 507 [1st Dept], *lv denied* 31 NY3d 910 [2018]) has considered this issue, involving a merchant agreement substantially similar to the agreement in this matter, and has held that the type of agreement involved in this case is a factoring agreement rather than a usurious loan. This court is bound to follow *Champion* and, therefore,

finds that the Agreement is a factoring agreement and not, as defendants assert, a usurious loan. There are, therefore, no genuine triable issues of fact, and plaintiff is entitled to summary judgment on its complaint.

Accordingly, it is

ORDERED that the cross-motion of defendants is granted only to the extent that the amended answer, filed herein as NYSCEF Doc. No. 26, is deemed properly and timely filed and served *nunc pro tunc*, and the cross-motion is denied insofar as it seeks dismissal of the complaint; and it is further

ORDERED that plaintiff's motion for summary judgment in its favor is granted as to the first and second causes of action for breach of contract and account stated, and denied as to the third cause of action for unjust enrichment; and it is, accordingly, further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Principis Capital LLC and against defendants Team Van Eyk, Inc., Laura Heather Van Eyk a/k/a Laura Heather Vaneyk, and Lauren Goodwin a/k/a Lauren Jean Goodwin a/k/a Lauren Goodvin a/k/a Lauren Jean Goodvin a/k/a Laura Goodwin a/k/a Laura Jean Goodwin a/k/a Laura Goodvin a/k/a Laura Jean Goodvin, jointly and severally, in the principal sum of \$90,204.34, with interest accrued thereon at the statutory rate from April 27, 2018, as calculated by the Clerk, until the date of satisfaction of judgment, together with costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the sum of reasonable attorneys' fees, costs and other amounts expended by plaintiff for enforcement of the Agreement shall be set down for an inquest to be held via Microsoft Teams videoconference on March 31, 2021, at 11:00 a.m., to determine the appropriate amount due.

Louis L. Nock

<u>2/23/2021</u> DATE		<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE