

| |
|--|
| Libertas Funding LLC v JM3 Constr. LLC |
| 2022 NY Slip Op 31609(U) |
| May 16, 2022 |
| Supreme Court, Kings County |
| Docket Number: Index No. 525485/2021 |
| Judge: Leon Ruchelsman |
| 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. |

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

-----x
LIBERTAS FUNDING LLC,

Plaintiff,

Decision and order

- against -

Index No. 525485/2021

JM3 CONSTRUCTION LLC and JOSEPH REVELLO,
LAWRENCE WILLIAM WECKER,

Defendants,

May 16, 2022

-----x
PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking summary judgement pursuant to CPLR §3212 arguing there are no questions of fact the defendants owe the money sought. The defendants oppose the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

On April 1, 2021 the plaintiff a merchant cash advance funding provider entered into a contract with defendants located in New Jersey. Pursuant to the agreement the plaintiff purchased \$1,310,000 of defendant's future receivable for \$1,000,000. The parties further agreed that the plaintiff would be able to obtain certain daily amounts until the amount of \$1,310,000 was fully paid. Moreover, the defendants executed a guaranty and a security agreement. The defendants stopped remittances in September 2021 and still owed \$900,888.76. This action was commenced and now the plaintiff seeks summary judgement arguing there can be no questions of fact the defendants owe the amount

outstanding and judgement should be granted in their favor. The defendants oppose the motion.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

The defendant Lawrence Wecker has submitted an affidavit wherein he asserts that he did not sign the merchant agreement and did not sign the two addendums. Thus, there can be no summary determination he has guaranteed any payments. That denial compels the only other reasonable conclusion that can be drawn, namely that his signatures have been forged. This is true because beneath the signature which Mr. Wecker denies is his are the printed words "Larry Wecker" and underneath that is another notation that states "Name: Lawrence William Wecker" (see, Agreement of Sale of Future Receipts, page 12). Likewise, the two addendums, also contain printed language that states "Larry Wecker" and "Owner: Lawrence William Wecker" (see, Addendums,

pages 13 and 14). Thus, essentially, Wecker is asserting that despite the printed notations indicating his name, he never signed the documents.

However, it is well settled that the bare self-serving claim that a document was forged is insufficient to raise any questions of fact (Brown Park I, LP v. Imperial Development and Construction Corp., 65 AD3d 510, 882 NYS2d 919 [2d Dept., 2009]). As the Court of Appeals stated in Banco Popular North America v. Victory Taxi Management Inc., 1 NY3d 381, 774 NYS2d 480 [2004] "something more than a bald assertion of forgery is required to create an issue of fact contesting the authenticity of a signature. Here, there is an absence of factual assertions supporting a claim of forgery..." (id). Of course, where a party presents more than conclusory evidence that the signature is a forgery then questions of fact have been raised and there can be no summary determination of the lawsuit (see, Diplacidi v. Gruder, 135 AD2d 395, 522 NYS2d 1 [1st Dept., 1987]).

In this case, Mr. Wecker has provided sufficient evidence raising questions whether the digital signatures of Mr. Wecker were authorized by him. There is no dispute the digital signatures of Wecker and Rovello were produced within moments of each other from the same computer at the defendant's office. While Mr. Wecker did not categorically deny he was not present at the office that day he did assert he was "almost always" not in


the office (see, Affidavit of Lawrence Wecker, ¶4). Furthermore, the proximity of time between all the digital signatures from the same computer and Mr. Wecker's denial that he ever authorized his digital signature raise questions of fact whether he can be bound by the guarantees digitally signed. However, no questions of fact are raised whether the signature of Mr. Revello, now deceased, guarantees the debt since there have been no legitimate questions raised whether he in fact did not sign the above noted documents.

Therefore, legitimate questions of fact have been raised concerning defendant Wecker and consequently the motion seeking summary judgement as to him is denied.

So ordered.

ENTER:

DATED: May 16, 2022
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC