

Signature Bank v Sathasivam
2022 NY Slip Op 32032(U)
June 28, 2022
Supreme Court, New York County
Docket Number: Index No. 655278/2019
Judge: Kathy J. King
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHY KING PART 06

Justice

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SIGNATURE BANK,

Plaintiff,

- v -

KALAYINI SATHASIVAM, THARMALINGAM
SATKUNARAJAH, FUTURE BUSINESS INNOVATIONS
INC.,GLOBAL RESOURCES MANAGEMENT
CONSULTANCY INC.,MERIDIAN USA INC.,MERIDIAN
AUTONOMOUS INC.,GRMC ENTREPRENEURS
INC.,VIAMETRIS GLOBAL INC.

Defendant.

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INDEX NO. 655278/2019
MOTION DATE 07/10/2021
MOTION SEQ. NO. 001

**AMENDED
DECISION + ORDER**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 91, 92

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, plaintiff Signature Bank seeks an order, pursuant to CPLR 3212, granting summary judgment against the named defendants herein. Plaintiff also moves to strike the affirmative defenses in the defendants’ answer pursuant to CPLR 3211(b).

The defendants herein, include individual defendants, Kalayani Sathasivam (“Sathasivam”), Tharmalingam Satkunarajah (“Satkunarajah”), and businesses that have been incorporated by said defendants which include Future Business Innovations Inc. (FBI), Global Resources Management Consultancy Inc. (Global Resources), Meridian USA Inc., Meridian Autonomous Inc., GRMC Entrepreneurs Inc., and Viametris Global Inc. (collectively “defendants”).

Defendants oppose the requested relief and cross-move for an order granting leave to file an amended answer including counterclaims.

BACKGROUND

Defendants Sathavisam and Satkunarajah opened a joint personal checking account and individual insured money market account in their respective names at Signature Bank. Sathasivam also opened a personal checking account in her name at Signature Bank in October 2015. Additionally, the corporate defendants FBI, Global Resources, Meridian USA Inc., Meridian Autonomous Inc., GRMC Entrepreneurs Inc., and Viametris Global Inc. have separate checking accounts at Signature Bank, wherein Sathavisam and Satkunarajah executed a 2010 Business Bank Account Agreement (“the Agreement”), on their behalf. The overdraft billing provision of said agreement states in relevant part the following:

“Overdraft Billing: When a Check drawn on your Signature Checking Account for Business or your Monogram Business Checking account is presented to Bank for payment and there is insufficient or unavailable funds in such Bank Deposit Account, you authorize the Bank to advance funds to you in the amount by which the Check exceeds the Available Balance in such Bank Deposit Account. Such advance is referred to as an Overdraft. ... [Y]ou agree that Bank may charge and you agree to pay interest on the amount of the Overdraft until sufficient funds in the Bank Deposit Account become available to cover the payment of the Check. ...

“Interest will be charged on the amount of the Overdraft at a fluctuating rate per annum equal to a certain percentage per annum above the Reference Rate (as defined below), which rate will change, without notice to you, from time to time with each change in the Reference Rate.

“‘Reference Rate’ means the rate established by the Bank, from time to time, at its principal office as its reference-lending rate for U.S. Commercial loans... The rate will be stated on your Bank Deposit Account Statement.”

Plaintiff alleges that, between December 2018 and January 2019, defendants submitted 13 checks for payment out of the various checking accounts. However, the accounts did not have sufficient funds to cover payments for the checks. Plaintiff claims that it advanced funds to said accounts to cover the payments of the checks, resulting in a total of \$818,641.17 in overdrafts.

Plaintiff also alleges that it sent demand letters for defendants to pay the overdrafts for the various accounts, however defendants failed to do so. Thereafter, plaintiff commenced the instant action against defendants asserting twenty-four causes of action in the complaint arising from Article 4 of the Uniform Commercial Code (UCC), unjust enrichment, account stated and breach of contract. For each defendant, plaintiff alleged that, in accordance with the Agreement, it advanced funds to cover the checks issued by that defendant, thereby creating an overdraft amount. Plaintiff alleges that it provided account statements with the overdraft amounts and that the defendants never objected to any items on the statement.

Defendants answered the complaint and asserted the following affirmative defenses: failure to set forth a cause of action, statute of limitations, waiver, estoppel, doctrine of unclean hands, doctrine of laches, failure to mitigate, failure to sustain damages, statute of frauds and documentary evidence.¹ Defendants argue that plaintiff waived its rights to enforce the overdraft agreement by allowing the overdrafts to occur every month for multiple years without asking for these loans to be repaid. Lastly, defendants argue that plaintiff should be equitably estopped from enforcing the overdraft agreement because plaintiff allegedly made representations that they were able to make loans to a new business through the vehicle of overdraft, and that they trusted plaintiff and relied on plaintiff to grow its businesses.

Plaintiff now moves for summary judgment and moves to strike the affirmative defenses in defendants' answer.

¹ Statute of frauds is mislabeled as the twelfth affirmative defense and documentary evidence is also mislabeled as the ninth, instead of tenth, affirmative defense.

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” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp*, 68 NY2d 320 [1986]; see also *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ Med Ctr*, 64 NY2d 851, 853 [1985]; *Sillman v Twentieth Century-Fox Film Corp*, 3 NY2d 395, 404 [1957]). Upon proffer of evidence establishing a prima facie case by the movant, “the party opposing a motion for summary judgment bears the burden of produc[ing] evidentiary proof in admissible form sufficient to require a trial of material questions of fact” (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008] [internal quotation marks and citation omitted]). The motion should be granted only when it is clear that no material and triable issue of fact is presented (see *Di Mena & Sons v City of New York*, 301 NY 118 [1950]). Upon review of the moving papers, the Court finds plaintiff has made a prima facie showing for summary judgment on its causes of action for account governed under UCC 4-401.

Plaintiff moves for summary judgment under UCC § 4-401 (1) which states the following: “[a]s against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.” In addition, “[t]he common-law rule, more fully explained, is that the payment of an overdraft constitutes a loan by the bank to the drawer of the overdraft, a loan for which the drawer is liable” (*United States Trust Co. v McSweeney*, 91 AD2d 7, 9 [1st Dept 1982] [citation omitted]).

In support of its motion, plaintiff submits the affidavit of William Zatwarnicki (“Zatwarnicki”), plaintiff’s small business collection specialist. The affidavit of Zatwarnicki annexes a check ledger for the accounts of all defendants and established that Check No. 10726

and 268 were issued to cover checks overdrafted from defendants Sathasivam and Satkunarajah (“S & S”) accounts. The ledger establishes that Check no. 10726 was paid by plaintiff despite the lack of funds in the account causing the Sathasivam Checking account to be overdrawn in the amount of \$74,807.09. Further, the ledger also establishes that plaintiff advanced funds to the S&S checking account to cover the payment of Check No. 268, causing the S&S checking account to be overdrawn in the amount of \$73,735.17. Based on payment of these overdraft amounts, plaintiff has established entitlement to summary judgment in the amount of \$148,119.95 , plus pre-judgment interest, costs, disbursements, attorneys’ fees and applicable finance and service charges.

In opposition, defendants submit an unsworn affidavit of Satkunarajah, which the Court finds is not proof in admissible form to raise a triable issue of fact in order to defeat a motion for summary judgment (see *Currie v Wilhouski*, 93 AD3d 816, 817 [2d Dept 2012]; see also *Seidman v Indus. Recycling Properties, Inc.*, 52 AD3d 678, 680 [2d Dept 2008]). Similarly, the affirmation by counsel is without evidentiary value (*Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]; see also CPLR 2106).

Accordingly, plaintiff’s motion for summary judgment pursuant to UCC 4-401 against defendants Sathasivam and Satkunarajah regarding its first and fourth causes of action is granted.

Plaintiff also moves for summary judgment on its cause of action for unjust enrichment. Unjust enrichment is classified as a “quasi-contract claim” and invokes “an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties” (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012] [internal quotation marks and citations omitted]).

A review of the complaint² herein states plaintiff has alleged that it is entitled to damages due to the contracts “govern[ing] the subject matter” of the overdraft billing. It is well settled that “a party may not recover in . . . unjust enrichment where the parties have entered into a contract that governs the subject matter” (*Pappas v Tzolis*, 20 NY3d 228, 234 [2012] [internal quotation marks and citation omitted]). It is well settled that “[a]n unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim” (*Corsello v Verizon N.Y., Inc.*, 18 NY3d 777, 790 [2012]). Accordingly, plaintiff’s motion for summary judgment on its unjust enrichment claim within the second, fifth, eighth, eleventh, fourteenth, seventeenth, twentieth, twenty-third causes of action against defendants is denied.

Finally, the Court finds that plaintiff has failed to establish summary judgment on its cause of action for account stated and breach of contract since the moving papers show that plaintiff did not meet its burden to “[tender] sufficient evidence to demonstrate the absence of any material issues of fact.”³ As a result, plaintiff’s motion for summary judgment on its claims for account stated and breach of contract within the third, sixth, seventh, ninth, tenth, twelfth, thirteenth, fifteenth, sixteenth, eighteenth, nineteenth, twenty-first, twenty-second and twenty-fourth causes of action against defendants is denied.

Motion to Strike Affirmative Defenses

Plaintiff moves to strike the defendants’ affirmative defenses within its answer. “A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit” (CPLR 3211 (b)). On a motion to dismiss an affirmative defense pursuant to CPLR 3211 (b), “the defendant is entitled to the benefit of every reasonable inference of the

² Causes of action numbered 2, 5, 8, 11, 14, 17, 20 and 23 are grounded in unjust enrichment as against each of the defendants.

³ Causes of action numbered 3, 6, 8, 2, 15, 18, 21 and 24 are for account stated while numbers 7, 10, 13, 16, 19 and 22 allege a breach of contract claim.

pleading, which is to be liberally construed”. “A defense should not be stricken where there are questions of fact requiring trial” (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 AD3d 541, 542 [1st Dept 2011] [citations omitted]).

Based on the foregoing, plaintiff’s motion to strike defendants’ affirmative defenses is granted, since said defenses were unsupported by evidence in admissible form.

CROSS-MOTION FOR LEAVE TO AMEND

Defendants seek leave to amend their answer to include counterclaims grounded in breach of fiduciary duty, fraud, failure to supervise, and negligence. “While leave to amend should be freely granted under CPLR 3025 (b), where the proposed amendment is devoid of merit, leave should be denied” (*Reyes v BSP Realty Corp.*, 171 AD3d 504, 504 [1st Dept 2019][internal citations omitted]). An amendment is devoid of merit where the allegations are legally insufficient” (*Id.* at 504). “The party opposing a motion to amend a pleading must overcome a presumption of validity in the moving party’s favor and demonstrate that the facts alleged and relied upon in the moving papers are obviously unreliable or insufficient to support the amendment” (*Peach Parking Corp. v 346 W. 40th St., LLC*, 42 AD3d 82, 86 [1st Dept 2007]). “The parties to a contract may agree to limit the period of time within which an action must be commenced to a period shorter than that provided by the applicable statute of limitations” (*Jamaica Hosp. Med. Ctr. v Carrier Corp.*, 5 AD3d 442, 443 [2d Dept 2004]).

Pursuant to the banking agreements, in order for the Court to grant leave to amend, the counterclaims must be filed within a year of February 2019. Here, Defendants did not submit the proposed counterclaims disputing the overdraft transactions until August 2020, well over a year later. Defendants submitted no opposition to plaintiff’s submissions indicating that the “instant action was not commenced within the applicable limitations period as set forth in the parties’

agreements” (*Id.*). Accordingly, the Court also finds defendants’ proposed counterclaims on the matter are now time barred.

Based on the foregoing, it is hereby,

ORDERED that the branch of plaintiff’s motion for summary judgment against defendant Sathasivam as to its first cause of action as to its UCC 4-401 claim in the amount of \$74,907.09, and defendants Sathasivam and Satkunarajah, jointly and severally as to its fourth causes of action as to its claims UCC 4-401 claims within in the amount of \$148,119.95 is granted in its entirety plus pre-judgment interest, costs, disbursements, attorneys’ fees and applicable finance and service charges; and it is further,

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to determine the issue of the costs, disbursements, applicable finance and service charges, and attorneys’ fees related to the UCC 4-401 claims against defendants Sathasivam and Satkunarajah within the first and fourth causes of action; and it is further,

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/suptctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further,

ORDERED that counsel shall immediately consult one another and counsel for defendants shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter,

the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part.

ORDERED that the branch of plaintiff’s motion for summary judgment on its unjust enrichment claim within second, fifth, eighth, eleventh, fourteenth, seventeenth, twentieth, twenty-third causes of action against defendants is denied; and it is further,

ORDERED that the branch of plaintiff’s motion for summary judgment on its claims for account stated and breach of contract within the third, sixth, seventh, ninth, tenth, twelfth, thirteenth, fifteenth, sixteenth, eighteenth, nineteenth, twenty-first, twenty-second and twenty-fourth causes of action against defendants is denied; and it is further,

ORDERED that the branch of plaintiff’s motion to strike defendants’ affirmative defenses is granted; and it is further,

ORDERED that defendants’ cross motion seeking leave to amend the answer, is denied in its entirety; and it is further,

ORDERED that such service upon the County Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the Decision and Order of the court.

<p><u>6/28/2022</u> DATE</p>	<p style="text-align: center;">/s/ <i>Kathy J King</i> KATHY KING, J.S.C.</p>	
<p>CHECK ONE:</p>	<p><input type="checkbox"/> CASE DISPOSED</p> <p><input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED</p>	<p><input checked="" type="checkbox"/> NON-FINAL DISPOSITION</p> <p><input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER</p>
<p>APPLICATION:</p>	<p><input type="checkbox"/> SETTLE ORDER</p>	<p><input type="checkbox"/> SUBMIT ORDER</p>
<p>CHECK IF APPROPRIATE:</p>	<p><input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</p>	<p><input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE</p>