

**Feenix Venture Partners Opportunity Fund, LP v
Hurpsons Assoc., LLC**

2022 NY Slip Op 32093(U)

June 30, 2022

Supreme Court, New York County

Docket Number: Index No. 654067/2021

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57TR

Justice

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FEENIX VENTURE PARTNERS OPPORTUNITY FUND,
LP,

Plaintiff,

INDEX NO. 654067/2021

MOTION DATE 06/21/2022

MOTION SEQ. NO. 001

- v -

HURPSONS ASSOCIATES, LLC,HEMLATA JARIWALA,
RAJ JARIWALA, URJITA BHOOLA, PRAKASH BHOOLA,
TEJASH BHOOLA

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

BACKGROUND

This action arises out of a loan agreement entered into between Hurpsons Associates LLC (Hurpsons) and Plaintiff. Hemlata R. Jariwala, Raj Jariwala, Urjita P. Bhoola, Prakash Bhoola, and Tejash Bhoola (collectively, the "Guarantors"), each agreed to guaranty the obligations owing from Hurpsons to Plaintiff under the Loan Agreement.

Plaintiff alleges both Hurpsons and the Guarantors failed to make the required monthly payments. In addition, Plaintiff alleges that Hurpsons agreed to use Plaintiff as its exclusive merchant service provider, however they failed to do so.

The summons and complaint were filed on June 28, 2021..

On or about September 19, 2021, defendants appeared by counsel and filed an answer asserting a general denial and twenty-nine (29) affirmative defenses.

PENDING MOTION

On February 16, 2022, Plaintiff moved, (motion sequence 001) pursuant to CPLR §3212 as against defendants Hurpsons Associates, LLC, Hemlata R. Jariwala, Raj Jariwala, Urjita P. Bhoola, Prakash Bhoola, and Tejash Bhoola and awarding Plaintiff judgment in the amount of \$777,482.56 with interest accruing at 20% per annum from January 11, 2022 and permitting Plaintiff to foreclose on its security interest in Shree Punit, LLC and C Kop Hurlp, LLC; and (ii) dismissal of affirmative defenses asserted by defendants and for such other and further relief as to this Court may deem just and proper.

On March 17, 2022, counsel for Defendants moved by Order to Show Cause (motion sequence 002) seeking to be relieved as counsel for Defendants, based upon their refusal to cooperate with counsel. Plaintiff did not oppose the motion and Defendants failed to appear or submit opposition, and on April 18, 2022, this court granted the motion to withdraw (002) and stayed the action for forty (40) days from the date of service on Defendants of the court's decision and order.

On April 28, 2022, former counsel for Defendants filed an affirmation of service on all Defendants the clerk of the court, a copy of the decision and order with Notice of Entry to Appoint New Counsel.

Defendants have failed to appear with new counsel or submit opposition to Plaintiff's motion for summary judgment (001), and on June 21, 2022, the motion (001) was submitted to the court for determination.

DISCUSSION

In order to prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a *prima facie* showing, the motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Plaintiff submits in support of the motion for summary judgment the following statement of facts: Hurpsons entered into a Loan Agreement with Plaintiff. Hurpsons executed and delivered to Feenix a Term Loan Note (Note), pursuant to which it promised to pay to Plaintiff the principal amount of \$1,000,000.00 together with interest. Hurpsons executed and delivered to Plaintiff a Delayed Draw Note (Draw Note and collectively with the Note, the Loan) pursuant to which it promised to pay to Plaintiff the principal amount of \$250,000.00 together with interest. Hurpsons agreed to repay the Loan as indicated on the Amortization Schedule attached as "Schedule A" to the Loan Agreement. Hurpsons has failed to make the monthly installments which have come due from and including June 15, 2021. Hurpsons has failed to make delivery of its quarterly financial statements for the fiscal quarter ending December 31, 2020 and for each quarter thereafter. The Guarantors, each agreed to guaranty the obligations owing from Hurpsons to Plaintiff under the Loan Agreement. The Guarantors have failed to make payment of the monies owing by Hurpsons to Plaintiff pursuant to the terms of their guarantees. The Guarantors have failed to deliver their personal financial statements and annual tax returns. Hurpsons and Feenix Payment Systems, LLC (Feenix Payment Systems), an affiliate of Plaintiff, entered into that certain Exclusivity Agreement (Exclusivity Agreement). Hurpsons agreed to use Feenix

Payment Systems as its exclusive merchant service provider for all its Merchant Companies (as defined in the Exclusivity Agreement). Hurpsons failed to use Feenix Payment Systems as its exclusive merchant service provider for all Merchant Companies. Defendants Hemlata R. Jariwala, Urjita P. Boola and Tejash Bhoola, each executed a "Pledge and Security Agreement" pursuant to which they pledged to Plaintiff a security interest in the legal and beneficial interest in Shree Punit, LLC and C Kop Hurr, LLC (the Pledged Equity). As a result of the loan defaults, Plaintiff is entitled to foreclose on the Pledged Equity. As a result of the defaults, Plaintiff has elected to declare the Obligations (as defined in the Loan Agreement) and all other amounts due and to become due under the Loan Agreement immediately due and payable.

In support of these facts, Plaintiff submits the affirmation of Matthew F. Kye (NYSCEF doc 14); affidavit of Keith Lee, managing partner for Plaintiff (NYSCEF doc 15); a copy of the loan agreement (NYSCEF doc 16); copy of the Note (NYSCEF doc 17); schedule A to the agreement (NYSCEF doc 18); Exclusivity Agreement (NYSCEF doc 19); Guaranty (NYSCEF Doc 20); and a copy of the Pledge Agreement (NYSCEF doc 21).

As Defendants have failed to submit opposition or offer rebuttal to Plaintiff's statement of facts, the motion is granted.

CONCLUSION

Wherefore, it is

ORDERED that plaintiff Feenix Venture Partners Opportunity Fund, LP's motion for summary judgment is hereby granted; and it is further

ORDERED that plaintiff Feenix Venture Partners Opportunity Fund, LP is hereby awarded a monetary judgment against defendants Hurpsons Associates, LLC, Hemlata R. Jariwala, Raj Jariwala, Urjita P. Bhoola, Prakash Bhoola, and Tejash Bhoola, jointly and

severally, in the sum of Seven Hundred Seventy-Seven Thousand Four Hundred Eighty-Two and 56/100 US Dollars (\$777,482.56) plus interest accruing at 20% per annum from January 11, 2022 through the date of entry of judgment, plus statutory costs; and it is further

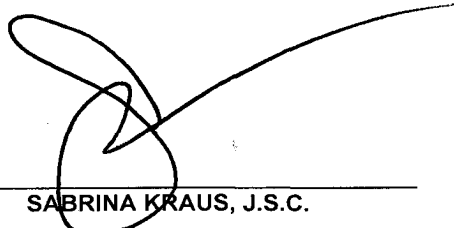
ORDERED that Feenix Venture Partners Opportunity Fund, LP shall be permitted to foreclose its security interests in limited liability companies Shree Punit, LLC and C Kop Hurp LLC pursuant to Article 9 of the Uniform Commercial Code; and it is further

ORDERED that Hemlata R. Jariwala, Urjita P. Bhoola and Tejash Bhoola are directed to cooperate and to take such steps as are reasonably required by Feenix Venture Partners Opportunity Fund, LP to transfer the legal and beneficial ownership of Shree Punit, LLC and C Kop Hurp LLC, including providing the financial and tax records of said companies from 2020 to the present so that Feenix Venture Partners Opportunity Fund, LP may sell the companies at a public or private sale and apply the proceeds of sale to its monetary judgment; and it is further

ORDERED that, within 20 days from entry of this order, movant shall serve a copy of this order with notice of entry on all parties and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the 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); and it is further

This constitutes the decision and order of the court.



6/30/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE