

**DMF NYC LLC v All in One Mgt. LLC**

2022 NY Slip Op 32323(U)

July 15, 2022

Supreme Court, New York County

Docket Number: Index No. 654058/2021

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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DMF NYC LLC,

Plaintiff,

- v -

ALL IN ONE MANAGEMENT LLC, BRYAN SMITH, TINA TRINIDAD

Defendant.

-----X

INDEX NO. 654058/2021

MOTION DATE 07/15/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

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

Plaintiff, DMF NYC LLC ("DMF"), commenced this action to recover from an alleged breach of contract and breach of the personal guaranty against defendants ALL IN ONE MANAGEMENT LLC DBA ALL IN ONE MANAGEMENT (hereinafter sometimes referred to as the "Company Defendant"), BRYANT SMITH, and TINA TRINIDAD (Company Defendant, Smith and Trinidad collectively referred to as "Defendants"). Defendants interposed an answer on or about August 23, 2021. Plaintiff now moves for summary judgment against all defendants. Defendants have not opposed Plaintiff's motion. For the reasons set forth below, Plaintiff's motion is granted and judgment is ordered accordingly.

Facts

DMF entered into a written agreement dated March 25, 2021 by and between DMF and ALL IN ONE for the purchase and sale of \$22,050.00 in future accounts receivables. DMF and ALL IN ONE entered into an agreement for the purchase and sale of \$18,850.00 in future accounts

1 The Court would like to thank Olivia McCann for her assistance in this matter.

receivable with respect to the May 6, 2021 advance. BRANT SMITH and TINA TRININDAD provided DMF with a personal guarantee of ALL IN ONE performance under the agreements. DMF has performed by paying the agreed-upon purchase prices to ALL IN ONE.

ALL IN ONE is alleged to have defaulted in delivering the receivables due to DMF under both agreements. SMITH and TRINIDAD have failed to perform under the personal guarantee of performance.

### Legal Analysis

A party is entitled to summary judgment when there are no genuine issues of material fact to be resolved at trial. *See* CPLR §3212. The movant has the burden of making a *prima facie* showing that it is entitled to summary judgment as a matter of law. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980).

Plaintiff moves for summary judgment on the grounds that it is entitled to judgment as a matter of law. To establish a cause of action for breach of contract, a plaintiff must demonstrate that there was a contract, that the plaintiff performed his or her duties under the contract, that the defendant breached the contract, and that the plaintiff has suffered harm. *Merchant Cash & Capital, LLC v. South Jersey Speed LLC*, 2018 WL 1364258, 2018 N.Y. Slip Op. 30395(U) (Sup. Ct. Nassau Co. January 31, 2018). Furthermore, when a merchant breaches an agreement for the purchase and sale of future accounts receivable by defaulting in payment, the purchaser of accounts receivable is entitled to judgment as a matter of law. *NY Capital Asset Corp. v. F&B Fuel Oil Co., Inc.*, 58 Misc.3d 1229(A) (Sup Ct. Westchester Co. 2018); *see also Merchant Cash & Capital, LLC v. Sogomonyan*, 2017 WL 2296316 (Sup. Ct. Nassau Co. 2017); *South Jersey Speed, supra*; *Merchant Cash & Capital, LLC v. Yehowa Medical Services, Inc.*, 2017 WL 1233895, 2017 NY Slip Op. 30577(U).

It is clear to the court that there was a contract between Plaintiff and the Defendant ALL IN ONE and that Plaintiff performed under the contract. ALL IN ONE breached the contract by interfering with payments to Plaintiff for accounts-receivable and diverting funds from the business bank account(s). Plaintiff has sufficiently shown that it has suffered from the outstanding unpaid receivables. Therefore, the Court finds that Plaintiff has sufficiently made out its *prima facie* case for breach of contract. Since there is no objection filed, the Court grants summary judgment in favor of the plaintiff on this cause of action.

To establish a cause of action for breach of the guaranty, a plaintiff must establish the existence of a guaranty and the guarantor's failure to make payment according to the guaranty. *Hyman v. Golio*, 134 A.D.3d 992, 992 (2d Dep't 2015); *see also Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d 485, 492. Where a purchaser of accounts receivable is entitled to summary judgment for breach of the underlying receivables purchase agreement, it will be entitled to summary judgment on its claim for breach of a guaranty of performance. *Sogomonya, supra*; *see also Merchant Cash and Capital, LLC v. M.B. Auto Body, Inc.*, 2016 WL 4778388, 2016 NY Slip Op. 31685(U) (Sup. Ct. Nassau Co. 2016); *NY Capital Asset Corp, supra*; *see also LG Funding, LLC v. Grace Plastics, Inc.*, 2017 N.Y. Slip Op. 32750(U) (Sup. Ct. Nassau Co. 2017).

Plaintiff has satisfied its burden in showing that Defendants SMITH and TRINIDAD executed a guaranty and have failed to perform by making the necessary payment. The Court finds that the plaintiff is entitled to summary judgment on its cause of action for breach of the guarantee.

A cause of action for unjust enrichment will lie, where: (1) the defendant was enriched, (2) the enrichment was at the expense of the plaintiff, and (3) it is against equity and good

conscience to permit the defendant to retain what is sought to be recovered. *Paramount Film Distrib. Corp v. State of New York*, 30 N.Y.2d 415 (1972); *Merrill Lynch v. Chipetine*, 221 A.D.2d 284, 286 (1st Dep't 1995); *Manufacturers Hanover Trust Co. v. Chemical Bank*, 160 A.D.2d 113, 117-118 (1st Dep't 1990); *Lake Minnewaska Mountain Houses, Inc. v. Rekis*, 259 A.D.2d 797, 798 (3d Dep't 1999).

It is clear to the Court that defendant ALL IN ONE has been unjustly enriched to the detriment of the plaintiff. ALL IN ONE has been enriched by the generation and collection of receivables, while the plaintiff has not been able to collect its specified percentages of the account receivable nor has been remitted the receivables purchased from ALL IN ONE. Therefore, the Court finds that the plaintiff is entitled to summary judgment on its cause of action for unjust enrichment.

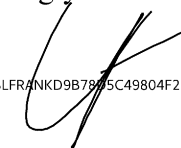
Affirmative defenses that contain “[b]ald conclusory assertions, even if believable, are not enough to defeat summary judgment.” *S.J. Capelin Associates, Inc. v. Globe Manufacturing Corp.*, 34 N.Y.2d 338, 342 (1974); *Hatzis v. Belliard*, 13 A.D.3d 106, 106 (1st Dep't 2004); *Haig v. Channing Co., Inc.*, 54 A.D.2d 992, 992 (3d Dep't 1976); *see also P.S. Griswold Co. v. Cortland Glass CO.*, 138 A.D.2d 869, 871; *Central State Bank v. Kilroy and Ostrer*, 57 A.D.2d 940, 940 (2d Dep't 1977). It is clear to the Court that the affirmative defenses are not enough to defeat summary judgment as they do not contain any supporting facts, contain no factual basis for a claim of relief, or are insufficiently pleaded as a matter of law. The Court finds that such affirmative defenses must be stricken as a matter of law and summary judgment granted accordingly.

As Defendant has failed to oppose the Plaintiff's motion for summary judgment and Plaintiff has sufficiently shown its entitlement to judgment as a matter of law, there are no issues of fact to be resolved at trial. Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted; and it is further

ORDERED that as to the assessment of damages, the court finds, that the total amount of damages proved on plaintiff's paper is \$41,774.26, plus interest from June 16, 2021, the date of default, at the statutory rate of 9%; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

  
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LYLE E. FRANK, J.S.C.

7/15/2022  
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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