

Quick Funding Group v Mile High Healthcare Educ.
2023 NY Slip Op 30073(U)
January 4, 2023
Supreme Court, Kings County
Docket Number: Index No. 517652/2022
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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QUICK FUNDING GROUP,

Plaintiff,

Decision and order

- against -

Index No. 517652/2022

MILE HIGH HEALTHCARE EDUCATION; CORTEX
ANALYTICS, INC.; MILE HIGH HEALTHCARE
ANALYTICS LLC, and TRACY LEE LIEBERMAN,

Defendants,

January 4, 2023

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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 have cross-moved seeking summary judgement essentially dismissing the lawsuit. The motions have been opposed respectively and arguments were held. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

On May 16, 2022, the plaintiff a merchant cash advance funding provider entered into a contract with defendants who reside in Colorado. Pursuant to the agreement the plaintiff purchased \$210,000 of defendant's future receivable for \$150,000. The defendant Tracy Lee Lieberman guaranteed the agreement. The contract required the defendant to permit daily remittances to the plaintiff. The plaintiff asserts the defendants stopped remittances in May of 2022. 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 and cross-move seeking to dismiss the action on the grounds the plaintiff has no standing to commence the action and that the agreement was void since it was really a usurious loan.

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]).

First, the Verified Complaint asserts that the plaintiff "is a New York limited liability company engaged in the receivable financing business" (see, Verified Complaint, ¶ 1 [NYSCEF Doc. No. 1]). However, the defendants have produced evidence that the plaintiff entity Quick Funding Group LLC was formed in Connecticut on May 2, 2022 (see, NYSCEF Doc. No. 44). While that document also indicates the company was formed in New York on that date a review of the records produced by the

Department of State Division of Corporations does not reveal the plaintiff entity being formed on that date (see, NYSCEF Doc. No. 45). In Reply, the plaintiff merely asserts in conclusory fashion that "in fact, Plaintiff is a New York entity" (see, Plaintiff's Reply Memorandum, page 5 [NYSCEF Doc. No. 51]). Article 4.5 of the Merchant Agreement states that the plaintiff may select New York or Connecticut in which to commence any lawsuit (NYSCEF Doc. No. 2). However, pursuant to BCL §1314(b) (1) a nonresident may not maintain an action against a foreign corporation. The statute does enumerate five exceptions, namely (1) the action is brought to recover damages arising from the breach of a contract made or to be performed in New York; (2) the subject matter of the litigation is within New York; (3) the cause of action arose within New York; (4) the non-domiciliary would be subject to personal jurisdiction under CPLR §302; and (5) the defendant is a foreign entity doing business or authorized to do business in New York. Thus, notwithstanding the forum selection clause none of those exceptions permit the plaintiff to file suit in New York. Thus, there are questions of fact, which cannot be decided in summary fashion, whether the plaintiff maintains standing to pursue this lawsuit.


Therefore, the motion seeking summary judgement is denied. The parties are now directed to engage in discovery. Further, turning to some of the substantive issues raised in the motions,

discovery may also include whether the payment structure indicated a definitive term and whether the plaintiff was absolutely entitled to repayment in all circumstances.

So ordered.

ENTER:

DATED: January 4, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC