SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

----------X

WHITE OAK COMMERCIAL FINANCE, LLC,

Plaintiff,

- v -

RUNE NYC, LLC, JOHN SANTAMORE, EMILY SANTAMORE,

Defendants.

----------X

INDEX NO. 653190/2021

MOTION DATE 07/26/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, and for the reasons stated hereinbelow, the motion of plaintiff, pursuant to CPLR 3212, for summary judgment is granted.

Background

On December 14, 2015, plaintiff, White Oak Commercial finance, LLC ("White Oak") f/k/a Capital Business Credit LLC, entered into a "Factoring Agreement" ("Agreement") with defendant, Rune NYC, LLC ("Rune"). NYSCEF Doc. Nos. 2 and 29. Pursuant to the Agreement, Rune sold and assigned all of its accounts receivable to plaintiff, and, in exchange, White Oak made advances against the purchase orders of Rune's customers.

Section 2 of the Agreement deals with which party would assume the risk for any advances, stating in pertinent parts:

> You [White Oak] will assume the credit risk only on Receivables for which you have given credit approval in writing ("Credit Approvals"). In the absence of such written Credit Approval from you, the Receivable is at our [Rune's] risk. … If a customer, after receiving and accepting delivery of goods or services (subject to all warranties herein) for which you have given written Credit Approval, fails to pay a Receivable when due, solely due to financial inability to pay, you shall bear any loss thereon. *If nonpayment is due to any other reason, however, you shall not be responsible.* Specifically, you shall not be responsible for any nonpayment of a Receivable: (a) because of the assertion of any claim or dispute by a customer for any reason whatsoever, including, without limitation, disputes as to price, terms of sale, delivery, quantity, quality, or other, or the exercise of

> any counterclaim or offset (whether or not such claim, counterclaim or offset relates to the specific Receivable); (b) where nonpayment is a consequence of enemy attack, civil commotion, strikes, lockouts, the act or restraint of public authorities, acts of God or force majeure; or (c) if any representation or warranty made by us to you in respect of such Receivable has been breached. *The assertion of a dispute by a customer shall have the effect of negating any Credit Approval on the affected Receivable(s) and such Receivable(s) shall be at our risk until paid or otherwise cleared from your books.*

NYSCEF Doc. No. 2 (emphasis added).

Also on December 14, 2015, defendants John Santamore ("JS") and Emily Santamore ("ES") signed individual guarantees ("JS Guaranty" and "ES Guaranty," collectively the "Guarantees") of the Agreement. NYSCEF Doc. Nos. 25 and 26.

The Guarantees allow that each "embodies the whole agreement of the parties and may not be modified except in writing, and no course of dealing between you and any of the undersigned shall be effective to change or modify this Guaranty." NYSCEF Doc. Nos. 25 and 26.

On March 29, 2019, a customer of Rune's, non-party Stich Fix, paid White Oak $20,976.80. NYSCEF Doc. No. 53. White Oak then applied that payment to Rune's balance. NYSCEF Doc. No. 54.

On April 22, 2019, White Oak received a "charge back" from Stitch Fix in the amount of $20,976.80. NYSCEF Doc. No. 56. White Oak then reapplied that amount to Rune's balance. NYSCEF Doc. No. 54.

On April 29, 2019, non-party Ethan Rosenblum ("Rosenblum"), White Oak's Senior Vice President of Originations, emailed ES and non-party Angelo Tullo ("Tullo"), whose firm, non-party Belmont Acquisitions Corp., had taken a "major interest in Rune," to report that Stitch Fix had "recalled the $20k wire that we had credited your account. Could you please send me the invoice copies / back up for the deposits so we can properly adjust?" NYSCEF Doc. Nos. 55 and 58.

On May 17, 2019, Rosenblum emailed again seeking the same invoice information. NYSCEF Doc. No. 55. Later that day Tullo wrote back that "we will work on that over the weekend." Id.

On June 3, 2019, Rosenblum emailed again for an update and was told by Tullo that he would "do that today." NYSCEF Doc. No. 55.

According to Rosenblum, "Rune never provided any of the requested information." NYSCEF Doc. No. 51 ¶ 21.

In a letter dated June 8, 2020, White Oak informed Rune that it was in default of the Agreement in the amount of $17,323.29 ("Letter of Default"). NYSCEF Doc. No. 27.

Procedural Background

On May 14, 2021, plaintiff commenced the instant action with a verified summons and complaint asserting six causes of action: (1) breach of contract as against Rune; (2) breach of the covenant of good faith and fair dealing as against Rune; (3) book account as against Rune; (4) unjust enrichment as against Rune; (5) quantum meruit as against Rune; and (6) breach of guaranty as against JS and ES. NYSCEF Doc. No. 1.

On September 28, 2021, JS answered pro se with six affirmative defenses and two counter claims against White Oak for breach of contract and a declaratory judgment that he has no obligations under the JS Guaranty or the Agreement. NYSCEF Doc. No. 8. Specifically, JS alleges that on March 15, 2019, he had "relinquished any and all ownership rights, any and all liability of any future dealings" when he entered into an exchange of equity agreement with various parties. Id. JS's answer also included two cross-claims and a third-party complaint, which he discontinued, with prejudice, on September 22, 2022. NYSCEF Doc. No. 36.

On December 4, 2021, ES and Rune answered and asserted 19 affirmative defenses. NYSCEF Doc. No. 9.

On December 23, 2021, White Oak answered JS's counter claim with 18 affirmative defenses. NYSCEF Doc. No. 10.

On July 15, 2022, plaintiff moved, pursuant to CPLR 3212, for summary judgment granting its causes of action and striking and dismissing the answers and claims of defendants. NYSCEF Doc. No. 12.

In its initial moving papers plaintiff argues, inter alia, that this was a simple breach of contract and submits the Summons and Complaint, affidavits of service, the defendants' answers, and an affidavit of Rosenblum introducing the Agreement, the Letter of Default, White Oak's ledger, and a certificate of name change for White Oak. NYSCEF Doc. No. 14. Plaintiff's counsel spends most of his affirmation dissecting defendants' various boilerplate affirmative defenses and noting that JS offered no written evidence to show he had been relieved from the JS Guaranty. Id.

In opposition, defendants collectively argue that documentary evidence shows that Rune was not in debt to White Oak and submit various automatically generated "Factoring Status" balances sent to Rune by White Oak between May 26 and September 21, 2022, which show opening and closing balances of ".00." NYSCEF Doc. Nos. 40 and 44. Defendants also submit affidavits asserting that it would be impossible for them to owe White Oak because, as a matter of practice, "Rune never, at any time, sold product pursuant to this arrangement absent credit approval of the customer by White Oak." Id. And, according to the defendants, pursuant to the Agreement, with credit approval "the risk of loss is borne by White Oak, not Rune." Id. Defendants also argue the motion is premature as there has been no discovery. Id.

In reply, White Oak offers another Rosenblum affidavit, explaining that the ".00" balances on the automatically generated reports are a result of an internal computer "charge off" status, and note that each balance sheet used by defendant lists a balance of ".00" but also on the upper right

corner shows a "Last Adv" of "29,288.31" as of "01/11/2022." Further, White Oak provides the automatically generated report from January 10, 2022, which shows a balance of $29,288.31. NYSCEF Doc. No. 52. In addition, plaintiff submits various bank statements, ledgers, and emails relating to the outstanding balance. Finally, plaintiff disputes that it is the owner of the debt in question, pointing the Court to the full text of the Agreement, and noting that this situation is not one in which a credit approved customer did not have the financial ability to pay their debts (in which case White Oak would be responsible) because the customer, Stitch Fix, in fact *made payment* on March 29, 2019, before it took it back on April 22, 2019. NYSCEF Doc. No. 50.

Plaintiff also argues that by not providing any documentation JS had abandoned his argument that he had been relieved of the JS Guaranty. Id.

Discussion

In order to obtain summary judgment, the "movant must establish its defense or cause of action sufficiently to warrant a court's directing judgment in its favor as a matter of law. The party opposing the motion, on the other hand, must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests' [M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient' for this purpose." Gilbert Frank Corp. v Fed. Ins. Co., 70 NY2d 966, 967 (1988) (internal citations omitted).

Here, plaintiff has made its prima facie cases for breach of contract as against Rune and breach of guaranty as against JS and ES. Although Stich Fix was a credit-approved customer, and Rune was careful as a matter of practice to request only advances from credit-approved customer sales, the debt in question arose when a credit-approved customer, who had the means to pay, did not. Further, neither JS nor ES have provided any documentation that they were ever relieved from the Guarantees.

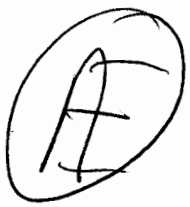
This Court has considered defendants' other arguments and finds them to be unavailing and/or non-dispositive. Further, as to the affirmative defenses, defendants' have failed to support them with facts; this Court finds them unavailing for that and other reasons.

Conclusion

Thus, the motion of plaintiff, White Oak Commercial Finance, LLC, for summary judgment, pursuant to CPLR 3212, against defendants, Rune NYC LLC, John Santamore and Emily Santamore, is hereby granted and the Clerk is directed to enter judgment in the amount of $24,127.60, plus interest, jointly and severally.

It is further ordered that plaintiff's for attorneys' fees is hereby severed, and plaintiff may obtain an inquest into said fees by presenting the Clerk with a Note of Issue with Notice of Inquest, a copy of this Decision and Order, and any necessary fees. Plaintiff must file such Note of Issue within 30 days from the date of this Decision and Order, and plaintiff's failure to do so timely

shall result in automatic disposal of this action. Plaintiff is further directed, within 15 days of filing the Note of Issue, to contact chambers to schedule the inquest date.



3/23/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE