

**Strategic Funding Source, Inc. v Bari Concrete Constr.
Corp.**

2023 NY Slip Op 32878(U)

August 18, 2023

Supreme Court, New York County

Docket Number: Index No. 653999/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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STRATEGIC FUNDING SOURCE, INC.
Plaintiff,
- v -
BARI CONCRETE CONSTRUCTION CORP.,

INDEX NO. 653999/2021
MOTION DATE N/A
MOTION SEQ. NO. 003

Defendant.

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126

were read on this motion to/for JUDGMENT - SUMMARY

Strategic Funding Source, Inc.'s (Strategic) motion for summary judgment must be granted.

There are no issues of fact that Bari Concrete Construction Corp. (Bari) is a mere continuation of Greenville Concrete LLC's (Greenville) business (Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]). Louis Delloso is the sole shareholder of Bari (NYSCEF Doc. No. 117, ¶ 3 [Joint Statement of Material Facts]). He was the sole member of Greenville after he bought out his two partners (id., ¶¶ 5-7). Both companies specialize in the concrete business (id., ¶¶4, 6). Strategic entered into three Merchant Agreement for the Purchase and Sale of Future Receivables dated July 13, 2011, August 22, 2011 and December 5, 2011 for \$909,775 of receivables (id., ¶¶ 8, 10). Mr. Delloso was one of the guarantors of those agreements (id., ¶ 9). The deal was that Strategic was to collect 20% of the daily batch of receipts collected by Greenville until the balance was paid (id., ¶ 11). Pursuant to Section 4.5 of the agreements, Greenville's obligations are binding on successors (id., ¶ 12). Pursuant to Section 3.3 of the agreements, Greenville was obligated to

pay reasonable costs associated with a breach of the agreements and enforcement of remedies, including but not limited to attorneys' fees (*id.*, ¶ 13).

On March 6, 2013, Greenville failed to deposit receipts into Strategic's account (NYSCEF Doc. No. 117, ¶ 16). Strategic sent a notice of default to Greenville on April 10, 2013, notifying Greenville that it would exercise its rights under the agreements if the even to of default was not cured within 30 days (*id.*, ¶ 17). On June 4, 2013, Greenville filed a voluntary certificate of cancellation (*id.*, ¶ 18). The very next day, on June 5, 2013, Mr. Delloso created Bari (*id.*, ¶ 24). At the time Bari was created, its address was the same as Greenville's address at the time of its dissolution (*id.*, ¶¶ 20, 25). Three of Bari's four employees, including Mr. Delloso, were employed by Greenville until its dissolution (*id.*, ¶¶ 21-22, 26-28).

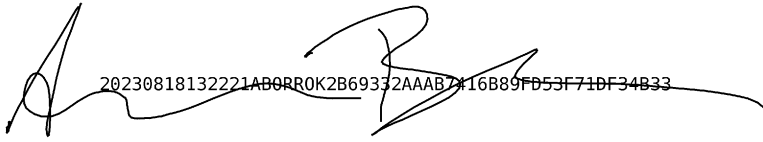
Strategic sued Greenville in 2013 for breach of the agreements, and Mr. Delloso on behalf of Greenville and individually as a guarantor entered into a stipulation of settlement with Strategic on October 4, 2013 (*id.*, ¶¶ 29-30). Pursuant to the settlement, Greenville and Delloso were to make weekly payments of at least \$295.14 until the settlement amount of \$85,000 was paid (*id.*, ¶ 31). They also consented to jurisdiction in this Court and agreed to waive all jurisdictional defenses (*id.*, ¶ 32). If Mr. Delloso and Greenville defaulted under the settlement, Strategic was authorized to enter judgment against them for \$652,877.24, plus all costs, including attorneys' fees (*id.*, ¶ 33). On November 16, 2014 (the Joint Statement incorrectly states November 16, 2020), Mr. Delloso and Greenville defaulted, and on June 30, 2015, Strategic obtained a judgment against Mr. Delloso and Greenville for \$776,600.25, with interest (*id.*, ¶ 34). Mr. Delloso filed for bankruptcy and was granted a no-asset discharge on July 6, 2016 (*id.*, ¶ 35). In

late 2019 or early 2020, Mr. Dellosio shredded all physical records regarding Greenville and disposed of the computers which housed all of Greenville's ESI (*id.*, ¶¶ 41-42). Bari did not maintain income statements, balance sheets, aging accounts receivable reports, equipment/asset listings with depreciation schedules, or accounts payable records for 2013, nor did it file a tax return for 2013 (*id.*, ¶¶ 43-44). Put another way, there is absolutely no evidence that Bari is anything other than a mere continuation of Greenville and the record including Mr. Dellosio's testimony firmly established that Bari is a mere continuation of Greenville (and is thus subject to personal jurisdiction). Indeed, Mr. Dellosio testified that Bari was set up because of Greenville's obligation and because he thought that his ability to have Greenville attract work would otherwise be compromised. Thus, summary judgment must be granted.

For the avoidance of doubt, it does not matter that Mr. Dellosio funded Bari with money received from his girlfriend (and with the assets of certain Greenville jobs) or that that ultimately Bari moved physical locations (from the location that had been Greenville's). As discussed, the fact that the money was not deposited in Greenville where substantial sums were owed merely is indicative of the attempt to defraud creditors. It was up to Mr. Dellosio where he chose to deposit it and merely depositing in in another company's name – does not create a separate corporate existence. It is also significant in this regard that Mr. Dellosio failed to disclose Bari in his bankruptcy and that Bari continued to work on jobs that were Greenville's.

It is hereby ORDERED that the motion for summary judgment is granted; and it is further

ORDERED that Strategic shall serve judgment on notice.


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8/18/2023
DATE

ANDREW BORROK, 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