

**AKF Inc. v Angleton Roadhouse Inc**

2023 NY Slip Op 33060(U)

September 5, 2023

Supreme Court, New York County

Docket Number: Index No. 653372/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS**  
*Justice*

**PART 10M**

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**INDEX NO.** 653372/2023

AKF INC., D/B/A FUNDKITE,  
Petitioner,

**MOTION DATE** 08/24/2023

**MOTION SEQ. NO.** 001

- v -

ANGLETON ROADHOUSE INC D/B/A ANGLETON  
ROADHOUSE / ROADHOUSE BAR, and DAVID JOSEPH  
HOCUTT,

**DECISION + ORDER ON  
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, since Respondents Angleton Roadhouse Inc D/B/A Angleton Roadhouse / Roadhouse Bar and David Joseph Hocutt (collectively "Respondents") failed to appear in court for oral argument on August 24, 2023, after being duly served and notified of said appearance, and since they failed to oppose Petitioner AKF Inc., D/B/A Fundkite's ("Petitioner") Verified Petition and motion by order to show cause, the court grants in part the Verified Petition and motion by order to show cause to the extent that the court grants a preliminary injunction in aid of arbitration, pending the resolution of the arbitration between the parties and until further order of the court, and the court restrains the funds held in Respondent Angleton Roadhouse Inc D/B/A Angleton Roadhouse / Roadhouse Bar's PNC Bank account ending 5774, titled Angleton Roadhouse Inc. up to the amount of \$61,220.25.

This matter involves Petitioner's attempt to collect on a Revenue Purchase Agreement ("RPA"), dated May 24, 2023, that Respondents allegedly defaulted on by failing to make the agreed upon weekly payments. Pursuant to the terms of the RPA, Petitioner provided

Respondent Angleton Roadhouse Inc D/B/A Angleton Roadhouse / Roadhouse Bar with \$50,700.00 in funding, minus \$2,213.00 in service fees, for a total of \$48,487.00. Respondent Angleton Roadhouse Inc D/B/A Angleton Roadhouse / Roadhouse Bar agreed to pay back \$69,966.00 of its future receipts, which included a 17% remittance percentage, with an initial estimated delivery amount of \$1,749.15/week from its PNC Bank account ending in 5774. The RPA was guaranteed by Respondent David Joseph Hocutt, however his electronic signature incorrectly listed his name as David *Joeph* Hocutt.

Petitioner alleges in substance that beginning on July 5, 2023, Respondent Angleton Roadhouse Inc D/B/A Angleton Roadhouse / Roadhouse Bar stopped making the required weekly payments and the bank notified Petitioner that the payment was declined because the payment was stopped. Petitioner further alleges in substance that at the time of the default, Respondent had paid \$8,745.75 of the \$69,966.00 purchased amount, leaving a balance of \$61,220.25 due under the RPA.

Petitioner further alleges that, in addition to the \$61,220.25 owed, Respondents also owe a default fee of 25%, or \$15,305.31, for a total amount due of \$76,525.31. Petitioner further alleges that it attempted to contact Respondents numerous times regarding why Respondents blocked their payments and failed to pay the money owed, but Respondents failed to respond. Petitioner argues that since Respondents intentionally blocked Petitioner from making the agreed upon withdrawals and failed to respond to Petitioner's attempts to contact them, Respondents are likely to remove all assets from the designated bank account. Therefore, any arbitration award in Petitioner's favor would be rendered ineffectual because if Respondents dissipated the funds from the designated account, then there would be no funds available to satisfy any judgment rendered in favor of Petitioner.

Petitioner further alleges that the RPA grants any party the right to arbitrate disputes or claims arising from the RPA and they agreed upon the forum.

Petitioner now moves by order to show cause, which includes the same relief requested in the Petition, for an order restraining Respondents' bank accounts at PNC Bank up to \$76,525.31, pursuant to CPLR 7502(c). The court declined to grant Petitioner's request for a temporary restraining order, but directed the parties to appear in court on August 24, 2023, at 10:00 a.m., for oral argument on Petitioner's request for a preliminary injunction to restrain Respondents' account(s) pending the resolution of the arbitration proceedings.

Petitioner complied with the service requirements set forth in the order to show cause. Respondents failed to file written opposition to Petitioner's order to show cause, failed to file an Answer, failed to oppose the Verified Petition, failed to otherwise appear in this proceeding and failed to appear for oral argument. As such, Respondents are in default.

Here, the court determines that Petitioner demonstrated its entitlement to the relief requested in the order to show cause and Petition as set forth herein. The court finds that Petitioner demonstrated its need for the restraint on Respondent Angleton Roadhouse Inc D/B/A Angleton Roadhouse / Roadhouse Bar's PNC bank account set forth in the RPA, but only up to \$61,220.25. Additionally, Petitioner demonstrated that it is likely to succeed on the merits, that Respondents owe the money and that Petitioner will suffer irreparable injury if the preliminary injunction is not granted.

Therefore, the court grants in part Petitioner's order to show cause and the relief requested in the Verified Petition, without opposition, to the extent that the court grants a preliminary injunction in aid of arbitration, pending the resolution of the arbitration between the parties and until further order of the court, and the court restrains all funds in Respondent

Angleton Roadhouse Inc D/B/A Angleton Roadhouse / Roadhouse Bar's PNC bank account ending in 5774, up to the amount of \$61,220.25. The court declines to restrain the additional \$15,305.31 for the 25% default fee or to restrain the bank accounts of Respondent David Joseph Hocutt because of the error in the spelling of his name on the electronic signature.

The court has considered any additional arguments raised by Petitioner which were not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it appearing to this court that a cause of action exists in favor of Petitioner and against Respondent Angleton Roadhouse Inc D/B/A Angleton Roadhouse / Roadhouse Bar and that Petitioner is entitled to a preliminary injunction on the ground that Respondents threaten or are about to do, or are doing or procuring or suffering to be done, an act in violation of Petitioner's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth above, it is hereby

ORDERED that the court grants in part Petitioner AKF Inc., d/b/a Fundkite's motion by order to show cause filed under motion sequence 001 and relief requested in its Verified Petition, without opposition, to the extent set forth herein; and it is further

ORDERED that the undertaking is fixed in the sum of \$1,000.00 conditioned that the Petitioner, if it is finally determined that it was not entitled to an injunction, will pay to the Respondents all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that the court grants a preliminary injunction in aid of arbitration, pending the resolution of the arbitration between the parties and until further order of the court; the court restrains all funds held by Respondent Angleton Roadhouse Inc D/B/A Angleton Roadhouse /

Roadhouse Bar's PNC bank account ending in 5774, up to the amount of \$61,220.25, but denies the remainder of the relief requested in the Verified Petition and motion by order to show cause; and it is further

ORDERED that by granting the requested relief, the court disposes of Petitioner's Verified Petition and motion by order to show cause filed under motion sequence 001.

This constitutes the decision and order of the court.

9/5/2023  
DATE

  
ERIKA M. EDWARDS, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE