

Pinnacle Bus. Funding, LLC v Muharib
2023 NY Slip Op 33680(U)
September 5, 2023
Supreme Court, Kings County
Docket Number: Index No. 504416/2023
Judge: Ingrid Joseph
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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 5th day of September 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X
PINNACLE BUSINESS FUNDING, LLC

Plaintiff(s)

-against-

Index No: 504416/2023

ANTHONY S MUHARIB d/b/a ONLINE BONDS, and
ANTHONY S MUHARIB

Defendant(s)

-----X
The following e-filed papers read herein:

Notice of Motion/Affirmation in Support/Affidavits Annexed

Exhibits Annexed/Reply.....

Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....

NYSCEF Nos.:

3-9; 14

10-13

In this action, ANTHONY S MUHARIB d/b/a ONLINE BONDS ("Company Defendant"), and ANTHONY S MUHARIB ("Muharib") move for a pre-answer dismissal of PINNACLE BUSINESS FUNDING, LLC ("Plaintiff's") complaint with prejudice pursuant to CPLR § 3015(b) on the grounds that Plaintiff is unregistered in New York in violation of Limited Liability Company Law § 808.

This matter arises out of a contractual dispute between Plaintiff and Company Defendant about a Standard Merchant Cash Advance Agreement ("The Agreement"), entered into on or about August 11, 2022, wherein Plaintiff agreed to purchase all rights of company Defendant's future receivables valued at \$112,425.00. The purchase price for the receivables was \$75,000.00. Additionally, Defendant Muharib personally guaranteed any and all amounts owed to Plaintiff from Company Defendant, upon a breach in performance. In the complaint, Plaintiff alleges that on or about October 05, 2022, Company Defendant breached the Agreement by blocking and depriving Plaintiff of its daily withdrawals from the specified bank account while still conducting regular business operations. Plaintiff claims that Company Defendant has paid a total of \$24,273.00 to Plaintiff leaving a balance due and owing in the amount of \$88,152.00.

In his memorandum of law in support, Defendants argue that the Complaint falsely states that Plaintiff is "an entity organized under the laws of the United States of America" in violation of CPLR 2015(b). Defendants claim that Plaintiff is a domestic entity organized under

the State of Maryland and is unregistered in New York. Similarly, Defendants argue that because Plaintiff is a foreign corporation not registered to do business in New York that there is no subject matter jurisdiction for it to sue in the state pursuant to BCL 1314(b). Alternatively, Defendants also argue that as an unregistered limited liability company ("LLC"), Plaintiff cannot maintain an action, suit, or special proceeding in any court in the state without a proper certificate of authority and also that Plaintiff violated the law by not conducting business under their fictitious name, Pinnacle Business Funding NY LLC.

In opposition, Plaintiff states that CPLR 3015(b) and BCL 1314 are inapplicable because it is a limited liability company, not a corporation. Assuming *arguendo* that BCL 1314 did apply, Plaintiff argues that the exceptions under sections BCL 1314(a), (b)(1), (b)(4), and (c) would apply granting it authority to sue. Moreover, Plaintiff states that it is a Maryland LLC authorized to do business in New York as evidenced by their application for a certificate of authority and that it has an office located at 1202 Avenue U Suite 1115, Brooklyn New York, 11229, which was also listed in the Agreement. Plaintiff claims that the choice of law and forum selection clauses in the Agreement establish that Defendants consented to jurisdiction in New York.

CPLR 3015(b) states that where any party is a corporation, the complaint shall so state and, where known, it shall specify the state, country, or government by or under whose laws the party was created. Additionally, BCL 1314 permits an action or special proceeding by a foreign corporation to be maintained against another foreign corporation in certain instances. Here, as evidenced by Plaintiff's certificate of authority, it is undisputed that Plaintiff is a limited liability company organized under the laws of Maryland and authorized to do business in New York under the fictitious name Pinnacle Business Funding NY LLC. Company Defendant is a sole proprietorship. Neither party is a corporation or foreign corporation as defined by the BCL, therefore CPLR 3015(b) and BCL 1314(b) are inapplicable.

Accordingly, those branches of Defendants' motion to dismiss are denied.

Limited Liability Company Law 802(a)(ii)(1) states *inter alia* that a foreign LLC shall apply for authority to do business in this state by submitting to the department of state... an application for authority as a foreign limited liability company... signed and setting forth... the name of the foreign limited liability company and, if a foreign liability company's name is not acceptable for authorization pursuant to section two hundred four of this chapter, the fictitious

name under which it proposes to apply for authority and do business in this state, which name shall be in compliance with section two hundred four of this chapter and shall be used by the foreign limited liability company in all its dealings with the department of state and in the conduct of its business in this state. Similarly, while Limited Liability Company Law 808(a) states that a foreign limited liability company doing business in this state without having received a certificate of authority to do business in this state may not maintain any action, suit, or special proceeding in any court of this state unless and until such limited liability company shall have received a certificate of authority in this state, section 808(b) states the failure of a foreign limited liability company that is doing business in this state to comply with the provisions of this chapter does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action or special proceeding in any court of this state.

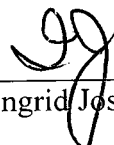
Here, Plaintiff has submitted its application and certificate of authority to do business in New York under its fictitious name. However, the contract and the caption of this action use Plaintiff's Maryland name, Pinnacle Business Funding LLC. While the issue of contracts or transactions entered into under the real and not the fictitious name has not generally been discussed in case law, in the majority of cases which have addressed the validity and enforceability of contracts and transactions entered into with persons who use a fictitious name instead, if no harm or injury resulted to the other party from this fact, then non-compliance does not defeat recovery (see Annotation, *Construction and Effect of Statutes as to Doing Business Under an Assumed or Fictitious Name or Designation Not Showing the Names of the Persons Interested*, 45 A.L.R. 198 [1926]; *Gay v Seibold*, 97 N.Y.472 [1884]; *Taylor v Bell & Bogart Soap Co.*, 18 A.D. 175 [2d Dept. 1897]; *Fawcett v Andrews*, 203 A.D. 591 [1st Dept. 1922]; *Hoyt v Allen*, 2 Hill 322 [1842]; *Cohen v OrthoNet New York IPA, Inc.*, 19 A.D.3d 261 [1st Dept. 2005]). Moreover, Defendants' motion is supported only by an attorney affirmation that raises allegations against Plaintiff in a conclusory fashion. The bare affirmation of an attorney who demonstrates no personal knowledge of the incident, is without evidentiary value and is thus unavailing (*Zuckerman v. City of New York*, 49 NY2d 557 [1980]; citing *Columbia Ribbon & Carbon Mfg. Co. v A-1-A Corp.*, 42 N.Y.2d 496 [1977]).

Accordingly, it is hereby

ORDERED, that Defendants' motion to dismiss the complaint with prejudice is denied,
and it is further

ORDERED, that an Answer shall be filed within 30 days of notice of entry of this order,
and it is further

This constitutes the decision and order of the Court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**