

**Favo Funding LLC v Solar One Serv. Pros LLC**

2023 NY Slip Op 33990(U)

November 9, 2023

Supreme Court, Kings County

Docket Number: Index No. 518224/2023

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: CIVIL TERM: COMMERCIAL PART 8

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FAVO FUNDING LLC,

Plaintiff,

Decision and order

- against -

Index No. 518224/2023

SOLAR ONE SERVICE PROS LLC and ASHER  
BRONSTIN,

Defendants,

November 9, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

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 oppose the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

On September 7, 2022, the plaintiff a merchant cash advance funding provider entered into a contract with defendants who reside in California. Pursuant to the agreement the plaintiff purchased \$205,000 of defendant's future receivable for \$150,000.00. The defendants guaranteed the agreement. The plaintiff asserts the defendants stopped remittances in December 2022 and now owe \$178,510. 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 arguing there are questions of fact which

preclude a summary determination at this time.

#### 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]).

"A proper foundation for the admission of a business record must be provided by someone with personal knowledge of the maker's business practices and procedures" (Citibank N.A. v. Cabrera, 130 AD3d 861, 14 NYS3d 420 [2d Dept., 2015]). In this case, the plaintiff submitted the affidavit of Shaun Quin the president of the plaintiff who stated that he reviewed the plaintiff's records in connection with the loan extended in this case. He further stated that all the documents he reviewed were maintained in the regular course of business and all such records were made near their occurrence with someone who had knowledge at that time and that the plaintiff's standard practice is to keep such records in the ordinary course of business. Thus, the plaintiff has established the admissibility of the records relied

upon since Mr. Quin had knowledge and familiarity of the plaintiff's practices and procedures (see, Cadlerock Joint Venture L.P. v. Trombley, 150 AD3d 957, 54 NYS3d 127 [2d Dept., 2017]).

The specific record in support of the motion seeking summary judgement is a remittance payment statement which demonstrates the payment by the plaintiff of \$650,000 for which it seeks recovery demonstrates the fact certain payments due were never forwarded to the plaintiff (see, NYSCEF Doc. No. 16). Therefore, the proper foundation for the admission of such document has been provided by Mr. Quin who establish familiarity with the record keeping practices of the plaintiff (see, JPMorgan Chase Bank N.A., v. Rads Group Inc., 88 AD3d 766, 930 NYS2d 899 [2d Dept., 2011]).

Therefore, the plaintiff established its entitlement to summary judgement.

The defendants opposition to the motion for summary judgement is rooted in the fact the documents as well as the affidavit of Mr. Quin do not establish non-payment sufficient to be awarded a summary determination. However, as noted, the affidavit of Mr. Quin provides the necessary evidentiary support for the contentions. There are no questions of fact raised merely because Mr. Quin did not adequately explain the nature of his position or how he acquired the requisite knowledge of the

plaintiff's business practices. Likewise, the documents presented were made in the ordinary course of business and are authenticated as such. Consequently, there are no questions that raise any factual issues regarding the plaintiff's ability to provide a foundation for the authentication of the amount due or to provide general information in support of the summary judgement request.

Therefore, no issues of fact have been raised which would demand a denial of the motion for summary judgement.


Further, the mere fact the movant failed to include a statement of material facts does not demand denial of the motion. 2 NYCRR 202.8-g(a) states that a court "may" direct the submission of a statement of material facts. It's omission is not grounds to deny the motion.

Consequently, the motion seeking summary judgement is granted.

So ordered.

ENTER:

DATED: November 9, 2023  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC