At a Term of the Supreme Court, in and for the County of Monroe, Hall of Justice, Rochester, New York.

PRESENT: HON. ELENA F. CARIOLA
Supreme Court Justice

SUPREME COURT
STATE OF NEW YORK MONROE COUNTY

CREDIT ACCEPTANCE CORPORATION,

Plaintiff,

-vs-

TINA R. TRAYLOR & KASHAYE TRAYLOR,

Defendants.

DECISION, ORDER & JUDGMENT

INDEX No.: E2023005976

APPEARANCES:

Attorneys for Plaintiff : *Shelly L. Baldwin, Esq.*

Attorney for Defendants: *Brian R. Goodwin, Esq.*

Elena F. Cariola, J.

Plaintiff, in this action for an alleged breach of a motor vehicle retail installment contract, filed a motion pursuant to CPLR § 3212 for summary judgment, striking the answer, and an award of damages in the amount $15,234.66 with interest in the amount of 9% from August 18, 2022. Defendants oppose and cross move for summary judgment. In the main, Defendants allege that the contract is unenforceable as violative of New

York's prohibition against usurious loans. Now, upon due consideration of NYSCEF Docket Nos. 6-7, 9, 11-14 and 17-23, the following constitutes the decision and order of the Court.

It is well-settled that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, by tendering sufficient evidence in admissible form to demonstrate the absence of any material issues of fact (*see Oddo v City of Buffalo*, 159 AD3d 1519, 1520 [4th Dept 2018]; *Wingrad v NY Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The failure of the movant to make the prima facie showing requires denial of the motion regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]; CPLR § 3212 [b]). The evidence must be viewed as true in a light most favorable to the non-moving party (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Dix v Pines Hotel, Inc.*, 188 AD2d 1007 [4th Dept 1992]). Once the prima facie showing has been met, the burden shifts to the non-moving opposing party to submit evidentiary proof in admissible form sufficient to raise a triable issue of fact (*Alvarez*, 68 NY2d at 324). The court's function on a summary judgment motion is issue finding not issue determination (*see Patton v Matusik*, 16 AD3d 1072 [4th Dept 2005]). The court must carefully consider the material facts to determine whether any facts are genuinely in dispute (*see Forrest v Jewish Guildfor the Blind*, 3 NY3 295, 312 [2004]; *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]). Mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient to

warrant denial of summary judgment (*see Zuckerman*, 49 NY2d at 562; *see also Christina v Erbsmehl*, 233 AD2d 909, 910 [4th Dept 1996]).

"[New York] State's usury laws are designed to protect desperately poor people from the consequences of their own desperation. An exception to New York's usury laws exists for retail instalment contracts, a specific type of sales agreements established by the Motor Vehicle Retail Instalment Sales Act, codified as Personal Property Law § 301 et seq. As defined by Personal Property Law § 301(5), a 'retail instalment contract' is an agreement, entered into in this state, pursuant to which the title to, the property or a security interest in or a lien upon a motor vehicle, which is the subject matter of a retail instalment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. A 'retail seller' is defined as a person or entity who sells a motor vehicle to a retail buyer under or subject to a retail instalment contract, who may then sell the interest in the contract to a 'financing agency,' which is defined in relevant part as someone who is engaged, in whole or in part, in the business of purchasing retail instalment contracts from one or more retail sellers. Retail instalment contracts may provide for interest at any rate agreed to by the retail seller and the buyer. A willful violation of the procedures governing retail instalment contracts shall bar recovery of any credit service charge[,] i.e., interest, delinquency or collection charge or refinancing charge on the retail instalment contract involved." (*Credit Acceptance Corp. v Holness*, 80 Misc 3d 346, 349-351 [Civ Ct, Bronx County 2023] [internal citations and

quotations omitted].) "[C]ourts have recognized the need to carefully review and scrutinize purported retail instalment contracts. This includes scrutiny to guard against the use of shams or cut-outs, as while retail installment contracts are transferable that presumes that the original transaction between the buyer and seller is a real payment agreement between those parties and not merely a vehicle for a third-party financing company to avoid the usury laws." (*Id.* at 351 [internal citations and quotations omitted]). Usurious contracts are void by statute (*see* General Obligations Law § 5-511).

In this case, Defendants have established prima facie entitlement to summary judgment inasmuch as a review of the papers reveals a loan agreement that "violates the clear public policy of New Yorkers from usurious lenders through the sham use of a retail instalment contract to charge illegally high interest, and cannot be enforced in a New York court" (*id.* at 437) and as such, Plaintiff has not established a claim for which relief can be granted. To be sure, just as in *Credit Acceptance Corporation v Holness*, Defendants have established:

> "The subject contract itself (ostensibly between defendant and non-party [Fuccillo Enterprises of Greece, Inc.]) is a five-page pre-printed form labeled as a "New York Credit Acceptance Corporation" form, bearing a copyright mark and reservation of rights by plaintiff Credit Acceptance Corporation on the bottom of every page. Further, although the identified seller in the contract is non-party [Fuccillo Enterprises of Greece, Inc.] with an address in [Monroe] County, the contract itself includes (at page 4) pre-printed language immediately assigning the contract to plaintiff, and (at page 5) an extensive arbitration clause specifically detailing an arbitration scheme between [P]laintiff and [D]efendant[s]. Not a single payment

> pursuant to the agreement was scheduled to be made to [Fuccillo Enterprises of Greece, Inc.]. Additionally, despite the contract ostensibly being between defendant and [Fuccillo Enterprises of Greece, Inc.] in [Monroe County], all notices under the arbitration clause are pre-printed to be noticed to a post office box in Southfield, Michigan (the location of plaintiff, not [Fuccillo Enterprises of Greece, Inc.]), and the arbitration clause contains a provision stating that "[i]t is expressly agreed that this Contract evidences a transaction in interstate commerce," and that the arbitration clause will be interpreted pursuant to the terms of the Federal Arbitration Act rather than state law. Indeed, unlike the definitions section in page 1 of the contract, the parties to the subject contract are identified in page 5 to expressly include [P]laintiff. Notably, that express inclusion is pre-printed in a form contract to which [P]laintiff was ostensibly not yet a party." (*Credit Acceptance Corp. v Holness*, 80 Misc 3d 346, 352 [Civ Ct 2023] [internal citations omitted]).

Since Defendants have met their initial burden on a motion for summary judgment, and Plaintiff has failed to raise a triable issue of fact in opposition, or raise any opposition whatsoever, Defendants are entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendants' motion for summary judgment, pursuant to **CPLR** § 3212, is GRANTED in its entirety; and it is further

ORDERED that Plaintiff's motion for an order striking Defendants' answer and granting plaintiff summary judgment in this action is DENIED; and it is further

ORDERED that Plaintiff's complaint is dismissed in its entirety and this action is dismissed.

Any prayers for relief not specifically addressed herein are DENIED.

The above constitutes the decision and order of the Court.

Dated: 12/19/23

HON. ELENA F. CARIOLA
Supreme Court Justice