

Credit Acceptance Corp. v Traylor

2024 NY Slip Op 31797(U)

May 10, 2024

Supreme Court, Monroe County

Docket Number: Index No. E2023005976

Judge: Elena F. Cariola

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT
STATE OF NEW YORK MONROE COUNTY

CREDIT ACCEPTANCE CORPORATION,

Plaintiff,

-vs-

**DECISION, ORDER &
JUDGMENT**

TINA R. TRAYLOR & KASHAYE TRAYLOR,

INDEX No.: E2023005976

Defendants.

APPEARANCES: JOSEPH M. SHUR, ESQ.
Attorney for Plaintiff

BRIAN R. GOODWIN, ESQ.
Attorney for Defendants

Elena F. Cariola, J.

Plaintiff, in this action for an alleged breach of a motor vehicle retail instalment 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. Defendants opposed and cross-moved for summary judgment alleging, in the main, that the subject contract is unenforceable as violative of New York’s prohibition against usurious loans. By way of Decision, Order and Judgment, this Court granted Defendants’ cross motion inasmuch as it appeared unopposed by Plaintiff (the “Order”).

Now comes Plaintiff, by order to show cause, seeking to vacate the Order pursuant to CPLR § 5015, permitting reargument on Defendants’ cross motion for summary

judgment and upon reargument, granting summary judgment in its favor. Plaintiff offers certain law firm failures as the bases of an excusable default and further contends a meritorious defense to Defendants' cross-motion. To be certain, Plaintiff contends that pursuant to New York Motor Vehicle Retail Instalment Sales Act ("MVRISA"), New York's usury laws do not apply to sales of automobiles on credit through retail instalment contracts. Furthermore, Plaintiff alleges that Defendants' reliance upon *Credit Acceptance Corp. v Holness* is misplaced inasmuch as the decision was subsequently reversed and vacated (*see generally Acceptance Corp. v Holness*, 81 Misc 3d 346 [Civ Ct, Bronx County 2023] *rev'd*, 81 Misc 3d 133[A], 2023 NY Slip Op 51376[U] (App Term, 1st Dep't 2023)). Defendants oppose and argue that Plaintiff has failed to demonstrate any cognizable basis for vacatur of the Order, and furthermore, that the Court was correct in its original analysis in determining the subject loan to be usurious. Now, upon due consideration of NYSCEF Docket Nos. 6-7, 9, 11-14, 17-23 and 25-63, the following constitutes the decision and order of the Court.

By way of background, on or about October 17, 2019, Defendants went to Fuccillo Enterprises of Greece, Inc. ("Dealer") and purchased a 2013 Kia Optima 4D Sedan ("Vehicle"). The Dealer owned the Vehicle and delivered it to the Defendants after the sale thereof. The Dealer and Defendants negotiated the terms of the transaction and ultimately agreed to a cash sale price of \$24,315.88 for the Vehicle. Defendants paid \$1,649.00 directly to the Dealer at the time of the sale as a downpayment and financed the

remaining \$22,666.38 at a 22.99% annual percentage rate through a retail installment contract ("Contract"). Pursuant to the Contract, Defendants agreed to make sixty monthly payments of \$343.43 starting on November 17, 2019 and the Dealer took a security interest in the car. The Contract included a provision that assigned the Contract to Plaintiff under a separate agreement between the Dealer and Plaintiff, a tactic known as indirect financing.

Defendants failed to make the monthly installment payments as agreed, and the last payment received was on or about January 5, 2021. Plaintiff commenced this action, by way of summons and complaint filed on June 8, 2023, wherein it alleged a cause of action for breach of contract based upon Defendants' purported default on their obligations under the Contract.

CPLR § 5015

A party seeking to vacate an order or judgment on the ground of excusable default must offer a reasonable excuse for its default and a meritorious defense to the action (*Wells Fargo Bank, N.A. v Dysinger*, 149 AD3d 1551 [4th Dept 2017]). In considering whether to vacate an order entered on default, the Court should "consider relevant factors, such as the extent of the delay, prejudice or lack of prejudice to the opposing party, whether there has been willfulness, and the strong public policy in favor of resolving cases on the merits" *Calaci v Allied Interstate, Inc.*, 108 AD3d 1127, 1128 [4th Dept 2013]). "The determination of what constitutes a reasonable excuse lies within the

Supreme Court's discretion, and the court has discretion to accept law office failure as a reasonable excuse where that claim is supported by a detailed and credible explanation of the default at issue. While CPLR 2005 allows courts to excuse a default due to law office failure, it was not the Legislature's intent to routinely excuse such defaults, and mere neglect will not be accepted as a reasonable excuse." (*Residential Mtge. Loan Tr. v Battle*, 207 AD3d 764, 766 [2d Dept 2022] [internal citations and quotations omitted].) In this Court's estimation, Plaintiff has demonstrated a reasonable excuse for its failure to submit opposition papers. Initially, as duly observed by Plaintiff, Defendants failed to file a notice of motion (*see generally* CPLR § 2215). However, the human error described by Plaintiff's counsel, wherein he explained that two near simultaneous email notifications (one involving the instant matter and the other involving an unrelated matter with the same attorney for Defendants) were inadvertently overlooked by a new paralegal. Plaintiff's counsel further explained that a second error wherein a paralegal did not independently check the NYSCEF system (as the employee overlooked the initial email notification) compounded the error and resulted in Plaintiff's counsel being unaware that opposition papers (and a cross motion) had been filed. Considered in totality --- Defendants' failure to file an independent notice of motion combined with Plaintiff's legal support staff overlooking certain email notifications --- these circumstances constitute a reasonable excuse for Plaintiff's shortcomings. Now, the

Court now turns to consider whether Plaintiff has presented a meritorious defense to Defendants' cross-motion.

In the main, Plaintiff contends that this Court erred in its reliance upon *Credit Acceptance Corp. v Holness*, 80 Misc 3d 346 (Civ Ct, Bronx County 2023) arguing that its subsequent reversal and vacatur render it without any persuasive value. Furthermore, it argues that the *Holness* court misapplied and misapprehended the laws governing retail instalment contracts. For the reasons which follow, the Court, in considering Plaintiff's arguments relative to *Holness*, finds that Plaintiff has met its burden of establishing a meritorious defense, and thus grants the branch of Plaintiff's motion seeking to vacate the Court's previous Order pursuant to CPLR § 5015.

CPLR § 2221

On a motion to reargue, CPLR § 2221 provides:

(d) a motion for leave to reargue:

1. shall be identified specifically as such;
2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and
3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. This rule shall not apply to motions to reargue a decision made by the appellate division or the court of appeals (CPLR § 2221).

“A motion to reargue may be granted only upon a showing that the court overlooked or misapprehended the facts or the law, or for some reason mistakenly arrived at its earlier decision” (*see Andrea v E.I. du Pont de Nemours & Co.*, 289 AD2d 1039 [4th Dept 2001], [internal quotation marks and citations omitted]). A motion to reargue will be denied where a party “wholly failed to demonstrate that Supreme Court overlooked any significant facts or misapplied the law” (*In the Matter of Ida Q.*, 11 AD3d 785 [3rd Dept 2004], [internal quotation marks and citation omitted]). The purpose of a motion to reargue is to provide a party with an opportunity to demonstrate that the court overlooked or misapprehended the law or facts on the original motion (*Andrea*, 289 AD2d at 1040-41). “Its purpose is not to serve as a vehicle to permit the unsuccessful party to reargue once again the very questions previously decided.” (*Foley v Roche*, 68 AD2d 558, 567 [1st Dept 1979]). “Whether to grant leave to renew or reargue is within the sound discretion of the motion court” (*Biscone v Jet Blue Airways Corp.*, 103 AD3d 158, 179 [2d Dept 2012]).

The Court finds that, without the benefit of any opposition papers submitted by Plaintiff due to its law office failures, it overlooked and/or misapprehended *Credit Acceptance Corp. v Holness*, 80 Misc 3d 346 (Civ Ct, Bronx County 2023). Now, upon review and consideration of Plaintiff’s papers and analysis along with Defendants’ papers, the Court is not persuaded by the reasoning employed by the *Holness* court and declines to follow its decision.

Assuming arguendo the Appellate Term, First Department did not reverse and vacate the trial court's judgment (*see generally Holness*, 81 Misc 3d 133[A], 2023 NY Slip Op 51376[U]), contrary to Defendants' contention, the subject Contract is not an attempt to disguise what is really a loan agreement between the Plaintiff and Defendants as a retail instalment contract between the Dealer and Defendants.

The *Holness* court relied upon several factors, all of which are present in the instant matter, in arriving at an opposite conclusion: (1) all five pages of the contract have a preprinted marker at the bottom of the page reading "New York Credit Acceptance Corporation" with a copyright marker; (2) the Contract includes a pre-printed assignment clause which immediately assigned the contract to the plaintiff; (3) the arbitration clause explicitly referenced plaintiff, and further required all notices for arbitration are to be sent to Southfield, Michigan (the plaintiff's location); (4) a statement in the arbitration agreement explicitly acknowledged that the transaction constituted one in interstate commerce, and thus, the arbitration agreement was be interpreted pursuant to the FAA. Taken together, the *Holness* Court concluded the contract was merely a veneer to conceal a loan agreement between the plaintiff-assignee and defendants so as to avoid New York's usury laws. This Court, however, disagrees, and finds that those factors relied upon by the *Holness* court do not lend credence to the conclusion that the Contract before this Court was in actuality an agreement between Plaintiff and Defendants. To be sure, the Contract exemplifies a "retail instalment contract" under the

MVRISA as it reflects that the Dealer (a "retail seller") sold a motor vehicle to the Defendants (each a "retail buyer") "for a time sale price payable in two or more instalments, payment of which [was] secured by a retail instalment contract (*see generally* Personal Property Law §§ 301 [2] –[5]). Specifically, the Contract reflects that the Dealer sold a motor vehicle to the Defendants for a total sale price of \$24,315.38, and that the Defendants financed \$12,803.16 of their purchase at a 22.99% APR resulting in a "finance charge" or "credit service charge" of \$9,863.22. The second page of the Contract itemized the amount financed, including the \$10,988.00 "cash price" of the car. After the Defendants paid the Dealer their \$1,649.00 down payment, they owed \$22,666.38 under the Contract, which was payable in 66 instalments of \$343.43. Through the Contract, the Dealer took a security interest in the vehicle. The Contract also included a "Notice of Assignment" wherein the Dealer assigned the Contract to Plaintiff.

The references to Plaintiff within the Contract are infrequent and identify it as an assignee, not a party to the Contract. To be certain, the Contract explicitly identifies the Dealer and Defendants as parties to the Contract, and the only references to Plaintiff are extraneous to the underlying agreement. Moreover, that the form was pre-printed and contained a copyright marker indicating Plaintiff was the creator of the form Contract does not, in this Court's view, impliedly create an agreement between Plaintiff and Defendant. Furthermore, neither the pre-printed assignment clause nor the arbitration agreement's inclusion of Plaintiff's information constitute evidence that Plaintiff is a

party to the Contract. Rather, these circumstances suggest that the Dealer and Plaintiff had a previously existing arrangement wherein the Dealer assigned contracts to Plaintiff as a matter of custom, routine and practice. Such a practice is not prohibited and does not convert a retail instalment agreement into a loan agreement. Simply stated, a plain reading of the Contract supports a finding that the agreement for the sale of the Vehicle was negotiated by and entered into by the Dealer and Defendants.

“[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 instalment 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). “The assignability of a retail installment contract, obligation, or agreement, or a retail installment credit agreement is implicitly acknowledged by the Retail Installment Sales Act, as in the provision making payment to the last known holder of the contract, obligation or agreement binding upon all subsequent holders or assignees, and the provision making acknowledgment by the buyer of delivery of a copy of a retail installment contract or obligation presumptive evidence of delivery and of compliance with certain statutory requirements in any action or proceeding by or against an assignee of the contract or obligation without knowledge to the contrary when the assignee purchases the contract or obligation” (21 NY Jur 2d, Consumer and Borrower Protection

§ 145 [citations omitted]). “While retail installment contracts are transferable (Personal Property Law § 411), 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” (*Capitol Discount Corp. v Rivera*, 38 Misc 3d 1226(A) [Civ Ct 2013]). Upon a careful reading of the subject Contract and analysis of *Holness*, it is the opinion of this Court that the Contract is a valid retail instalment contract and does not constitute a sham financial arrangement between Plaintiff and Defendants designed to avoid New York’s usury laws. Based upon the foregoing, the Court’s previous Order granting summary judgment in Defendants’ favor is vacated.

CPLR § 3212

A party seeking summary judgment pursuant to CPLR § 3212 must make a *prima facie* showing of entitlement to judgment as a matter of law and submit sufficient evidence to demonstrate the absence of any material issue of fact (*Iselin & Co. Inc v Mann Judd Landau*, 71 NY2d 420 [1988]). The Court must view the evidence presented in the light most favorable to the nonmoving party (*Russo v YMCA of Greater Buffalo*, 12 AD3d 1089 [4th Dept 2004]). When faced with a motion for summary judgment, “a court’s task is issue finding rather than issue determination,” and thus the Court “must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable

issue of fact" (*Esposito v Wright*, 28 AD3d 1142, 1143 [4th Dept 2006]). Likewise, a moving defendant must affirmatively demonstrate the merits of its defense and cannot meet its burden in moving for summary judgment by pointing to gaps in plaintiff's proof (*George Larkin Trucking Co. v Lisbon Tire Mart, Inc.*, 185 A.D.2d 614 [4th Dept 1992]). If the proponent demonstrates entitlement to summary judgment, the opposing party must then demonstrate, generally by admissible evidence, the existence of an issue of fact requiring a trial (*Zuckerman v City of New York*, 49 NY2d 851 [1985]).

"The essential elements of a cause of action to recover damages for breach of contract are (1) the existence of a contract, (2) the plaintiff's performance pursuant to that contract, (3) the defendant's breach of the contract, and (4) damages resulting from that breach" (*Wedgewood Care Ctr., Inc. v Kravitz*, 198 AD3d 124, 131 [2d Dept 2021] [citations omitted]).

Here, for all the reasons stated above, Defendants have failed to establish prima facie entitlement to summary judgment based upon the defense of a usurious loan, and thus the burden does not shift to Plaintiff.

With respect to Plaintiff's motion for summary judgment, Plaintiff has met its prima facie entitlement to summary judgment on a breach of contract claim by submitting proof of a retail instalment contract wherein the Dealer and Defendants entered into an agreement for the purchase of a motor vehicle with a cash sale price of \$24,315.88. Defendants paid \$1,649.00 directly to the Dealer at the time of the sale as a downpayment

and financed the remaining \$22,666.38 at a 22.99% annual percentage rate, and Defendants agreed to make sixty monthly payments of \$343.43 starting on November 17, 2019. The Contract was validly assigned to Plaintiff. Plaintiff further submitted a payment history and records reflecting that the last payment tendered by Defendants occurred on January 5, 2021. Based upon the foregoing, Plaintiff has established through its records that there was a retail instalment contact for the sale of a motor vehicle, that the motor vehicle was delivered to Defendants, that Defendants incurred a debt based upon that retail instalment contract, and breached the agreement by failing to make the continuing required monthly payments. Since Plaintiff has met its initial burden on a motion for summary judgment and Defendants have failed to raise a triable issue of fact in opposition, Plaintiff is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

Accordingly, it is hereby

ORDERED that Plaintiff's motion to vacate pursuant to CPLR § 5015 is GRANTED; and it is further

ORDERED that the previous Order of this Court dated December 19, 2023 is vacated in its entirety; and it is further

ORDERED that Plaintiff's motion to reargue Defendants' motion for summary judgment pursuant to CPLR § 2221 is GRANTED; and it is further

ORDERED and ADJUDGED that Defendants' motion for summary judgment pursuant to CPLR § 3212 is denied; and it is further


ORDERED and ADJUDGED that Plaintiff's motion for summary judgment pursuant to CPLR § 3212 is GRANTED, including the award of \$15,234.66, plus pre-judgment interest at 9 percent from the date of the Defendants' breach, August 18, 2022, through the entry of judgment; and it is further

ORDERED that Plaintiff may enter a judgment against Defendants, jointly and severally, in the amount of \$15,234.66, plus pre-judgment interest at 9 percent from the date of the Defendants' breach, August 18, 2022, through the entry of judgment and such other, further, and different relief as may be just and proper.

Any prayers for relief not specifically addressed herein are DENIED.

The above constituted the Decision and Order of the Court.

Dated: May 10, 2024



HON. ELENA F. CARIOLA
Supreme Court Justice