

**RDM Capital Funding, LLC v
Stellar Beach Rentals LLC**

2024 NY Slip Op 32482(U)

July 16, 2024

Supreme Court, Kings County

Docket Number: Index No. 520319/2023

Judge: Leon Ruchelsman

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

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RDM CAPITAL FUNDING, LLC DBA FINTAP,
Plaintiff,

Decision and order

- against -

Index No. 520319/2023

STELLAR BEACH RENTALS LLC,
and JOHN KOZAK,

Defendants,

July 16, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #2 & #3

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 defendant has cross-moved seeking a default judgement on counterclaims filed. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, on May 16, 2022, the plaintiff a merchant cash advance funding provider entered into a contract with defendants who reside in North Carolina. Pursuant to the agreement the plaintiff purchased \$600,000 of defendant's future receivable for \$500,000. The defendant John Kozak guaranteed the agreement. According to the complaint, the defendants stopped remittances in July 2023 and now owe \$136,500. 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. As noted, the defendants have also filed a default motion which is opposed.

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]).

It is well settled that if the party that provided the funds is absolutely entitled to repayment in all circumstances then a loan exists, however, if the provider is not absolutely entitled to repayment then the transaction is not a loan. The court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances. Unless a principal sum advanced is repayable absolutely, the transaction is not a loan (LG Funding LLC, v. United Senior Properties of Olathe, LLC, 181 AD3d 664, 122 NYS3d 309 [2d Dept., 2020]). The court already explained that since the contract contained a reconciliation provision the

plaintiff was not entitled to payment in all circumstances. Consequently, the contract is not a loan and not subject to usury. The defendants have not submitted any evidence raising any questions of fact in this regard.

Next, it is well settled that a trial court maintains broad discretion to deny summary judgment and to afford parties the opportunity to engage in discovery (CPLR §3212(f)). Thus, "the court has discretion to deny a motion for summary judgment, or to order a continuance to permit affidavits to be obtained or disclosure to be had, if facts essential to justify opposition to the motion may exist but cannot then be stated. For the court to delay action on the motion, there must be a likelihood of discovery leading to such evidence. The mere hope that evidence sufficient to defeat the motion may be uncovered during the discovery process is insufficient" (Spatola v. Gelco Corp., 5 AD3d 469, 773 NYS2d 101 [2d Dept., 2004]).

The basis seeking denial so the parties can engage in discovery concern statements made in support of the motion which require further investigation. Thus, Ian Goldberg, a managing member of the plaintiff submitted an affidavit which stated that "the Defendants never informed Plaintiff of any condition or event that would affect Business Defendant's ability to perform its obligations under the Agreement" (see, Affidavit of Ian Goldberg, ¶19 [NYSCEF Doc. No. 24]). There may be questions


whether Mr. Goldberg contemplated conditions or events other than seeking a reconciliation. However, that statement does not raise any questions of fact concerning the defendant's failure to repay the money owed pursuant to the agreement.

Thus, there are no questions of fact presented and no basis to engage in any further discovery. Consequently, the motion seeking summary judgement is granted. Furthermore, the motion seeking a default judgement is now denied as moot. The counterclaims are all essentially claims the merchant agreement is improper and usurious. The court has already granted summary judgement rendering the counterclaims moot. Therefore, the cross-motion is denied.

So ordered.

ENTER:

DATED: July 16, 2024
Brooklyn N.Y.



Hon. Leon Buchelsman
JSC