SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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PURITAN PARTNERS LLC,

Plaintiff,

- v -

BREEZER HOLDINGS, LLC,MAXIFY SOLUTIONS, INC.

Defendant.

INDEX NO. 654132/2023

MOTION DATE 05/03/2024

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents, Puritan Partners LLC (**Puritan**)'s motion (Mtn. Seq. No. 005) to reargue and renew the Court's prior Decision and Order (the **Prior Decision;** NYSCEF Doc. No. 68) dated April 3, 2024 is DENIED.

Reference is made to the Prior Decision pursuant to which the Court granted the defendants' motion for summary judgment, holding that the transaction was for a loan less than $2.5 million and was therefore subject to the usury laws and that the interest charged viewed from the time of inception was criminally usurious such that the transaction was void *ab initio* (*Id*. at 1).

As relevant to the instant motion, Puritan argued in its opposition papers that multiple loans should be aggregated such that the $2.5 million threshold was exceeded because among other things (i) Puritan was designated as agent for other investors, (ii) because the facility authorized lending up to $3.3 million (which amount admittedly had never been loaned) and (iii) because

Breezer had indicated in certain papers that in total from multiple lenders it had borrowed $2.8 million (NYSCEF Doc. No. 51, at 8-10). Additionally, Puritan argued in its opposition papers, that even if the transaction was subject to the usury laws, the Court of Appeals decision in *Adar Bays, LLC v GeneSYS ID, Inc.*, 37 NY3d 320 [2021] "was distinguishable" (*Id.* at 12). The Court disagreed.

Now, Puritan argues that (i) Breezer raised triable issues of fact for the first time in their reply papers[1] leaving Puritan without an opportunity to respond, and thus providing a reasonable justification for the Court's consideration of its new submissions and (ii) the Court mistakenly overlooked triable issues of fact raised by Puritan in its opposition papers and accepted as true new arguments raised for the first time in the defendants' reply papers. The arguments fail.

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion." (CPLR § 2221[e]). Although motions to renew are addressed to the court's sound discretion (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]), such motions should be "granted sparingly" and are not a second chance for parties who have not exercised due diligence submitting facts in the prior motion (*Beiny v Wynyard (In re Beiny)*, 132 AD2d 190, 209-210 [1st Dept 1987]).

[1] Specifically, that "(1) Defendants only raised $1.9 million in the offering in which Puritan invested in Breezer; and (2) Puritan was guaranteed a minimum of 10 percent interest on the Warrant in the event that the Warrant was not based upon the conditional put right enumerated in Section 5(o) thereof" (NYSCEF Doc. No. 90, at 4).

A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" (CPLR § 2221[d]). Reargument is not intended "to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted" (*Haque v Daddazio*, 84 AD3d 940, 242 [2d Dept 2011]; *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]). Simply put, reargument "does not afford another bite of the apple" (*Weaver v. Weaver*, 198 AD3d 1140, 1144 [3d Dept 2021]).

As an initial matter, the Court already considered Puritan's argument that their loan should be aggregated with other loans not made pursuant to the same agreement and rejected their argument. *Adar Bays* itself involved a series of 8 loans and in that case, the Court (Wilson, J.) did not aggregate the loans. Aggregation in this case is equally inappropriate.

General Obligations Law §5-501(6)(b) provides that "[l]oans or forbearances aggregating two million five hundred thousand dollars or more which are to be made or advanced to any one borrower in one or more installments pursuant to ***a*** written agreement by one or more lenders shall be deemed to be a single loan or forbearance for the total amount which the lender or lenders have agreed to advance or make pursuant to such agreement on the terms and conditions provided therein" (emphasis added).[2] The loan at issue in this case was a standalone loan, senior

[2] Courts that have looked at General Obligations Law §5-501 have held that aggregation is appropriate where multiple loans are made pursuant to a single but not multiple agreements. *See, e.g., Tripoint Glob. Equities, L.L.C. v. Fasolino*, No. 13 CIV. 1030 DLC, 2013 WL 5677126, at *5 (S.D.N.Y. Oct. 18, 2013) (explaining that General Obligations Law §5-501[6][b]) requires loans from multiple lenders advanced to a single borrower and "pursuant to a written agreement" to be treated as a single loan and holding that the two loans in that case from two different lenders extended to one borrower in one written agreement should be treated as one) and *In re BH Sutton Mezz LLC*, No. AP 16-01187 (SHL), 2016 WL 8352445, at *36 (Bankr. S.D.N.Y. Dec. 1, 2016) (clarifying that *Tripoint* interpreted "a written agreement" in Section 5-501(6)(b) as "one written agreement" and holding that the loan at issue should not be aggregated with loans from other lenders because, among other reasons, the outside loans were

to both previous and subsequently made loans. According to the Securities Purchase Agreement (**SPA;** NYSCEF Doc. No. 53), up to $3.3 million could be advanced by the "Purchasers." Although the SPA could have defined "Purchasers" to include other lenders or other loans made up to $3.3 million. It does not. The SPA defined "Purchasers" as only Puritan and not any other lender (*Id.* at 29). Inasmuch as no other loans were part of the single written agreement, aggregation simply is not appropriate. Thus, the Court has already considered Puritan's argument that the usury laws do not apply and rejected it.

It is also simply not correct that Breezer argued for the first time in their reply papers that the interest rate was usurious based on the inclusion of the Warrant in the interest calculation. Breezer's CEO, Ofir Baharav's moving Affirmation (NYSCEF Doc. No. 18 ¶¶ 17 and 27) and the Expert Report of CFGI (NYSCEF Doc. No. 30, at 6) address this very point. Equally importantly, Puritan proffered the affidavit of Richard L. Smithline arguing that the expert report of CFGI was not correct (NYSCEF Doc. No. 52). Thus, this issue was fully framed in front of the Court. Ultimately, the Court held that "the Warrant must be included in the interest

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extended pursuant to separate written agreements). For the avoidance of doubt, to the extent that Puritan relies on *In re 16th St. Regency LLC*, 14-46104-NHL, 2018 WL 4219179, at *6 (Bankr EDNY Sept. 4, 2018), the case is inapposite. In that case, there was a single loan made pursuant to which different lenders in their loan documents indicated that they were advancing a percentage of the total amount loaned (i.e., "57.5% of the total loan amount being made by himself and other parties"). Putting aside that this case predates *Adar Bays,* the loan documents in this case as discussed below do not indicate that anyone other than Puritan was making the loan up to the $3.3 million which was authorized. Indeed, the SPA (hereinafter defined) only indicated that the "Purchaser" (**defined solely as Puritan in the SPA itself**) was Puritan and no one else. Thus, loans made by other lenders should not be aggregated (as the Court previously held) and the loan is subject to the usury laws.

calculation" (NYSCEF Doc. No. 68, at 6 [citing *Adar Bays*, 37 NY3d at 334]). Thus, the motion must be denied for this reason as well.

For the avoidance of doubt, Puritan's attempt to adduce documents that have always been in its possession in support of this motion also fails. Having fully briefed the issues the Court considered, they offer no reasonable justification for their failure to adduce these documents in their opposition papers. However, even if considered, they would not change the result. Thus, Puritan fails to establish that the Court overlooked or misapprehended matters of fact or law in the Prior Decision.

The Court has considered Puritan's remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the motion to reargue and renew is DENIED.

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11/18/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE