

Vox Funding LLC v Garrido Co. Truck Inc
2024 NY Slip Op 35683(U)
September 6, 2024
Supreme Court, Nassau County
Docket Number: Index No. 618279-2023
Judge: Jerome C. Murphy
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**SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. JEROME C. MURPHY,
Justice.**

VOX FUNDING LLC,

Plaintiff,

- against -

**GARRIDO COMPANY TRUCK INC and
IVAN GARRIDO,**

Defendants.

TRIAL/IAS PART 5

Index No. 618279-2023

Motion Date: 6-5-24

Sequence No.: 001

DECISION AND ORDER

The following papers have been read on this motion:

Notice of Motion, Affirmation, Affidavit, and Exhibits	1
Memorandum of Law in Support.....	2
Statement of Material Facts.....	3

PRELIMINARY STATEMENT

In Motion Sequence No. 001, plaintiff moves, pursuant to CPLR 3212, for summary judgment on the complaint in its favor and against defendants Garrido Company Truck Inc and Ivan Garrido; and for such other, further, and different relief as to this Court may seem just, proper, and equitable. No opposition has been submitted.

BACKGROUND

Plaintiff, as purchaser, defendant Garrido Company Truck Inc. (hereinafter Corporate defendant), as merchant, and defendant Ivan Garrido (hereinafter Individual defendant), as guarantor, entered into a future receipts sale agreement on February 22, 2023 (*see* NYSCEF Doc. No. 16).

On November 9, 2023, plaintiff commenced this action against defendants to recover damages for breach of contract (first cause of action), breach of personal guarantee (second cause of action), and, in the alternative, unjust enrichment (third cause of action), and to recover its fees,

costs, and expenses (fourth cause of action)(*see* NYSCEF Doc. No. 14). Defendants answered the complaint on December 13, 2023 (*see* NYSCEF Doc. No. 15).

Plaintiff now moves, pursuant to CPLR 3212, for summary judgment on the complaint in its favor and against defendants. In support of its motion, plaintiff submits an affidavit from its president Louis Calderone, who avers that, as president, he is responsible for supervising sales and collections and, as such, has personal knowledge of all of the facts set forth in his affidavit, and has also reviewed the relevant business records of plaintiff which were included as exhibits to this motion (*see* NYSCEF Doc. No. 13). He avers that plaintiff purchased the future receivables of the Corporate defendant, valued at \$355,000, for \$250,000, by wiring funds to the Corporate defendant and in exchange the Corporate defendant would deposit its receivables into an account from which plaintiff would debit a weekly amount of \$6,826.93, and that the Individual defendant personally guaranteed that the Corporate defendant would abide by its contractual obligations (*see id.*). He also avers that after the Corporate defendant made payments totaling \$40,961.58, the Corporate defendant stopped making payments to plaintiff as of April 28, 2023, leaving a default balance of \$314,038.42 (*see id.*). He further avers that \$31,403.84 representing a default fee of 10% of the undelivered sold amount as set forth in the subject agreement, a Blocked Account fee of \$1,000, and 15 returned item fees of \$50 each for a total of \$750, plus a UCC termination fee of \$150, are also owed to plaintiff for a total of \$347,342.26 (*see id.*).

As exhibits to Calderone's affidavit, plaintiff submits the subject agreement, a document relating to the wire transfer to Corporate defendant of the purchase price, and a printout which concerns the Corporate defendant's payment history (*see id.*). Calderone avers that he has personal knowledge of the attached business records, and of those kept under his supervision and control (*see id.*). Calderone further avers that the entries in the books of account are made in the ordinary course of business at or near the time of the relevant transactions and it is the regular course of business to make such records (*see id.*).

Defendants, through counsel, advised the Court that they would not be submitted opposition.

DISCUSSION

"The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material

issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “This burden is a heavy one and on a motion for summary judgment, “facts must be viewed in the light most favorable to the non-moving party”” (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013], quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499,503 [2012]).

“To recover damages for breach of contract, a plaintiff must demonstrate ‘the existence of a contract, the plaintiff’s performance pursuant to the contract, the defendant’s breach of its contractual obligations, and damages resulting from the breach’” (*Ben Ciccone, Inc. v Naber Elec. Corp.*, 214 AD3d 936, 937,938 [2nd Dept. 2023], quoting *Legum v Russo*, 133 AD3d 638, 639 [2nd Dept. 2015]; see *Dean Bldrs. Group, P.C. v M.B. Din Constr., Inc.*, 186 AD3d 1612, 1614 [2nd Dept. 2020]). ““On a motion for summary judgment to enforce a written guaranty, all that the creditor need prove is an absolute and unconditional guaranty, the underlying debt, and the guarantor’s failure to perform under the guaranty”” (*H.L. Realty, LLC v Edwards*, 131 AD3d 573, 574 [2nd Dept. 2015], quoting *City of New York v Clarose Cinema Corp.*, 256 AD2d 69, 71 [1st Dept. 1998]; see *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., “Rabobank Intl.” N.Y. Branch v Navarro*, 25 NY3d 485, 492 [2015]).

Here, plaintiff has established its prima facie entitlement to summary judgment on the first, second, and fourth causes of action through the submission of Calderone’s affidavit, the subject agreement, proof of payment to the Corporate defendant via wire transfer, and blocked account information relating to the Corporate defendant. The affidavit establishes that plaintiff executed an agreement whereby plaintiff purchased future receipts from the Corporate defendant having a face value of \$355,000, for \$250,000. The affidavit further establishes that the Individual defendant executed a personal guaranty of performance of all obligations of the Corporate defendant. The affidavit further establishes that plaintiff performed its obligations by paying the agreed upon purchase price and that defendants defaulted on the agreement, leaving a remaining balance of \$314,038.42, plus fees for a total of \$347,342.26 due and owing pursuant to the agreement. Consequently, plaintiff is entitled to summary judgment on its first cause of action against the Corporate defendant in the amount of \$347,342.26, plus interest, and on its second cause of action against the Individual defendant in the amount of \$347,342.26, plus interest.

Although plaintiff is entitled to its attorneys' fees, costs, and expenses in the event of a default, plaintiff has not submitted any evidence as to the amount of such fees. As a result, plaintiff is entitled to summary judgment on the issue of liability with respect to the fourth cause of action but the amount owed with respect to the fourth cause of action has yet to be determined and requires further proceedings before judgment can be entered in this action in plaintiff's favor.

Accordingly, it is

ORDERED that the branch of plaintiff's motion which is for summary judgment on its first cause of action against the defendant Garrido Company Truck Inc., in the amount of \$347,342.26, plus interest of 9% per annum, from the date of the breach, April 28, 2023, is GRANTED; and it is further

ORDERED that the branch of plaintiff's motion which is for summary judgment on its second cause of action against the defendant Ivan Garrido, in the amount of \$347,342.26, plus interest of 9% per annum, from the date of the breach, April 28, 2023, is GRANTED; and it is further

ORDERED that the branch of plaintiff's motion which is for summary judgment on its fourth cause of action on the issue of liability against both defendants is GRANTED; and it is further

ORDERED that there will only be one judgment in this case and Plaintiff can waive attorneys fees, costs and expenses, and submit a judgment on notice to all parties within 60 days; or Plaintiff can elect to appear at a conference in this Part 5 on November 14, 2024 at 11:30 a.m. in court and at that time a hearing date for attorney fees and costs will be set up for a future date.

ORDERED that all requests for relief not addressed herein are denied.

This shall constitute the Decision and Order of the Court.

Dated: Mineola, New York
September 6, 2024

ENTER:


JEROME C. MURPHY, J.S.C.

ENTERED

Sep 09 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE