

Fora Fin. Warehouse, LLC v Foresite Concepts LLC

2025 NY Slip Op 30672(U)

February 27, 2025

Supreme Court, New York County

Docket Number: Index No. 154766/2024

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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FORA FINANCIAL WAREHOUSE,LLC,

Plaintiff,

- v -

FORESITE CONCEPTS LLC,GEORGE GUZZIE

Defendant.

-----X

INDEX NO. 154766/2024

MOTION DATE 11/22/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, plaintiff’s motion is granted, and defendants’ cross-motion is denied.

Background

Fora Financial Warehouse, LLC (“Plaintiff”) is in the business of the purchase and sale of future receivables agreements (“FRA”) for small businesses. In September of 2022, an FRA was executed with Foresite Concepts LLC (“Business Defendant”) with George Guzzie (“Individual Defendant”, collectively with Business Defendant the “Defendants”) as personal guarantor. Part of the agreement was that Plaintiff would make daily withdrawals from the Business Defendant’s bank. Plaintiff alleges that starting in May of 2023, the Business Defendant began to refuse Plaintiff’s daily withdrawals despite still collecting accounts receivable. Under the terms of the FRA agreement (the “Agreement”), this would constitute a breach that causes the remaining balance to become due. Plaintiff filed the underlying suit alleging breach of contract and conversion against the Business Defendant and breach of guaranty against the Individual Defendant. The Defendants have answered.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 (2016). The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

Plaintiff brings the present motion for summary judgment and to dismiss Defendants’ affirmative defenses. Defendants oppose and cross-move to dismiss the complaint. For the reasons that follow, Defendants’ cross-motion is denied, and Plaintiff’s motion is granted.

The FRA Is Not a Usurious Loan

One of Defendants’ affirmative defenses, and one of the grounds for dismissal of the complaint that they argue, is the contention that the FRA is actually a usurious loan and therefore the contract is void for illegality. Plaintiff points to the many cases that have upheld identical language as not a usurious loan. *See, e.g., Fora Fin. Asset Securitization 2021, LLC v. Grill on 2nd LLC*, 2024 N.Y. Misc. LEXIS 19092 (Sup. Ct. New York Cnty.). The *Principis* factors set forth a three-part test to determine whether a transaction is a loan: 1) if there is a reconciliation provision, 2) whether the agreement has a finite term, and 3) if there is any recourse when the merchant declares bankruptcy. *Principis Capital, LLC v. I Do, Inc*, 201 A.D.3d 752, 754 (2nd

Dept. 2022). Here, the agreement on its face satisfies the three prongs. Defendant argues that despite this, in practice the agreement functioned like a loan.

For instance, Defendant argues that because Plaintiff withdrew a fixed amount daily, this by necessity gives the transaction a finite time period for repayment. According to the sworn affidavit submitted by Plaintiff, and the collection notes provided, Plaintiff attempted to contact Defendants multiple times in order to arrange a reconciliation regarding the amount being withdrawn daily. The agreement states that upon reasonable verification of reconciliation information provided by Defendants, Plaintiff would adjust the daily withdrawal to “more closely reflect the Seller’s actual Future Sales Proceeds times the Purchased Percentage.” Because Defendants do not allege that they attempted to utilize the reconciliation provisions and Plaintiff refused to revise the daily withdrawal amount, it cannot be conclusively said that there was a finite term on the agreement.

Defendants also argue that the reconciliation provisions in the agreement are a “sham” provision. But because they do not allege that they sought to utilize them, just that Plaintiff should have realized that the business had slowed down based on the insufficient funds return code and voluntarily reduced the withdrawal amount, it cannot be said that the reconciliation provision is a sham. Ultimately, Defendants have not sufficiently shown that the FRA in question was a usurious loan and not a valid receivables purchase agreement.

Defendant has Failed to Show Fraud in the Inducement

Defendant also argues that the FRA is voidable because it was fraudulently obtained. Essentially, Defendants argue that it was misrepresented to them that the daily withdrawals would be automatically revised to reflect the true percentage of receivables. But the agreement clearly states that changes to the initial remittance amount requires the Defendants to make a

request and timely submit required documentation to the Plaintiff. When a fraudulent inducement claim is contradicted by the express terms of the agreement, it fails to state a claim.

Pate v. BNY Mellon-Alcentra Mezzanine III, L.P., 163 A.D.3d 429, 430 (1st Dept. 2018).

Defendants have not made a showing of fraudulent inducement, nor have they met their burden of showing that the agreement is a usurious loan, and therefore their motion to dismiss is denied.

Plaintiff's Motion for Summary Judgment is Granted

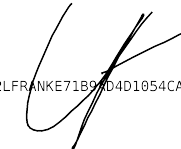
Plaintiff contends that they have made a prima facie case for breach of contract and guaranty. Defendants oppose the summary judgment and argue that there are material issues of fact remaining. Primarily, Defendants argue that there are issues regarding whether the agreement is illegal as a usurious loan, which essentially reargues their position on the motion to dismiss. Because, for the reasons given above, the agreement in question has not been shown to be a usurious loan, this argument fails to raise a material issue of fact. Defendants also argue that there are issues of fact on whether they breached the agreement. According to Plaintiff's affirmation, they did not declare a default until the R20 code was given when their daily withdrawal was denied, as they allege this code is assigned when ACH withdrawal transactions are intentionally blocked. In his affidavit, the Individual Defendant does not dispute the allegation that the Plaintiff's daily withdrawals were intentionally blocked. This would be a default event under section 6.1(e). Because Defendants have failed to raise a material issue of fact, Plaintiff's summary judgment motion is granted. There is not a dispute as to the amount due under the agreement.

The Court has considered the parties' remaining arguments and found them unavailing. Accordingly, it is hereby

ADJUDGED that defendants' cross-motion is denied; and it is further

ADJUDGED that plaintiff's motion is granted; and it is further

ORDERED the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendants jointly and severally in the amount of \$ 73,005.00 , together with interest at the statutory rate from the date of May 16, 2023, until the date of the decision and order on this motion, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

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LYLE E. FRANK, J.S.C.

2/27/2025
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE