

**Grape Leaf Capital Inc. v Harmon**

2025 NY Slip Op 31185(U)

April 2, 2025

Supreme Court, New York County

Docket Number: Index No. 655511/2024

Judge: Arthur F. Engoron

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

**PRESENT: HON. ARTHUR F. ENGORON PART 37**

*Justice*

-----X  
GRAPE LEAF CAPITAL INC.,  
Plaintiff,  
- v -  
DEBRA HARMON, ROSENBERG, MINC, FALKOFF &  
WOLFF, LLP,  
Defendants.  
-----X

INDEX NO. 655511/2024  
MOTION DATE 12/20/2024,  
01/30/2025  
MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20,  
were read on this motion to DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27,  
were read on this motion to AMEND CAPTION/PLEADINGS

Upon the foregoing documents, and for the reasons stated hereinbelow, the defendants' motion to amend their motion to dismiss is granted, and the amended motion to dismiss is denied.

Background

On September 11, 2017, plaintiff and defendant Debra Harmon entered into an "Agreement to Advance Interim Non-Recourse Funding Assignment, Sale, Springing Assignment, Equitable Lien & Security Agreement" (the "Grape Leaf Loan") in which plaintiff advanced Harmon \$16,525 in exchange for a portion of her potential proceeds in a personal injury action, Debra Harmon v Con Edison Co. of New York, Index No. 154503/2013 (the "Underlying Action"). NYSCEF Doc. No. 2. Pursuant to ¶ 3 of the Grape Leaf Loan agreement, Harmon agreed that her

obligation to pay over the portion of the Proceeds specified herein pursuant to this Agreement is totally contingent, speculative and without recourse with respect to the Funder, except the security interest in the Action, and any successor claim(s) and/or litigation(s)... **If there is no recovery of Proceeds by me as specified herein then the Funder shall receive NOTHING.**

Id. (emphasis in original).

In addition, pursuant to the Grape Leaf Loan agreement, Harmon also represented

to the funder that I have good and marketable title to the proceeds of the Claim(s) and that I have not, prior to the date hereof, sold, encumbered, transferred, assigned and/or conveyed any interest in the proceeds of the Claim(s) to any person or entity ... and that I shall not do so in the future.

Id. ¶17.

On January 18, 2024, Harmon entered into a second litigation funding agreement, pursuant to a Purchase and Sale Agreement, with non-party Cash4Cases, Inc. (the “Cash4Cases Loan”), in which Cash4Cases advanced Harmon \$26,668.53 for a portion of the potential proceeds of the Underlying Action. NYSCEF Doc. No. 10.

In a letter dated January 22, 2018, an employee of Cash4Cases wrote to defendant Rosenberg, Minc, Falkoff & Wolff, LLP (“RMFW”), to thank them for helping with the cash advance to Harmon, and stating that the “check in the amount of \$20,160.50 regarding your client’s payment in full to Grape Leaf Capital Inc will be sent on 02/01/2018.” NYSCEF Doc. No. 11.

On January 3, 2020, Cash4Cases, as part of Liberty Bridge Capital Management LLC, filed for bankruptcy in the Southern District of New York, Case No. 20-10010. NYSCEF Doc. No. 12.

In an email dated October 27, 2023, RMFW responded to an email from plaintiff seeking information on the payoff status of the Underlying Action, and explained that the Cash4Cases had bought out the Grape Leaf Loan. NYSCEF Doc. No. 14.

In early August 2024 the Underlying Action settled, and on August 12, 2024, defendants sent a check to an agent of Cash4Cases’ Chapter 7 Trustee in the amount of \$75,000 to satisfy the Cash4Cases Loan. NYSCEF Doc. No. 15.

On October 17, 2024, plaintiff commenced this action, seeking to recover \$71,057.50 from defendants based on the Grape Leaf Loan and asserting three purported causes of action: (1) money advanced as against Harmon; (2) breach of contract against Harmon; and (3) breach of fiduciary duty against RMFW. NYSCEF Doc. No. 1.

On December 20, 2024, defendants moved, pursuant to CPLR 3211, to dismiss, based on laches and failure to include a necessary party, Cash4Cases. NYSCEF Doc. No. 6.

In opposition, plaintiff argues, inter alia, that laches is inapplicable, as plaintiff seeks to enforce legal rights, not equitable ones; that defendants’ delays in paying are self-inflicted; and that Cash4Cases is not a necessary party. NYSCEF Doc. No. 19.

On January 30, 2025, defendants moved, pursuant to CPLR 3025(b), to amend their motion to dismiss to include a statute of limitations defense, on the theory that Harmon breached the Grape Leaf Loan agreement in January 2018 when she entered into the Cash4Cases Loan. NYSCEF Doc. No. 21.

In opposition, plaintiff argues that defendants' time to raise a statute of limitations defense expired on January 13, 2025, when the parties had stipulated for defendants to answer; and, in any event, the argument fails on the merits because defendants' duty to pay was subject to a condition, the conclusion of the Underlying Action, which occurred in 2024. NYSCEF Doc. No. 25.

### Discussion

As an initial matter, the Court grants defendants' motion to amend their motion to dismiss. CPLR 3025(b) ("Leave shall be freely given upon such terms as may be just...").

However, upon consideration, defendant's Statute of Limitations claim fails. It is well settled that, in

contract cases, the cause of action accrues and the Statute of Limitations begins to run from the time of the breach. And, as a general rule, when the right to final payment is subject to a condition, the obligation to pay arises and the cause of action accrues, only when the condition has been fulfilled.

John J. Kassner & Co., Inc. v City of New York, 46 NY2d 544, 550 (1979) (citations omitted).

Here, although it appears that Harmon breached the Grape Leaf Loan by obtaining the Cash4Cases Loan, the Grape Leaf Loan agreement is clear that plaintiff's right to a payment from Harmon was contingent upon a payout in the Underlying Action. Therefore, plaintiff's breach of contract cause of action only accrued when the Underlying Action settled in 2024, and, thus, the six-year Statute of Limitations on breach of contract claims does not bar the instant action.

Defendants' laches argument fails for similar reasons. "The essential elements of laches are unreasonable and inexcusable delay by the plaintiff in undertaking to enforce his rights, which result in prejudice to the opposing party..." 214 Lafayette House LLC v Akasa Holdings LLC, 227 AD3d 75, 82 (1st Dept 2024) (internal citation and quotation marks omitted). Laches is "an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party. The mere lapse of time, without a showing of prejudice, will not sustain a defense of laches. Saratoga County Chamber of Commerce, Inc. v Pataki, 100 NY2d 801, 816 (2003).

Here, plaintiff loaned Harmon money contingent upon the Underlying Action and repeatedly checked in on that case's status and only sought to enforce its rights when the Underlying Action settled. Defendants' argument that they alerted plaintiff to the Cash4Cases Loan a year earlier without a response and already paid off the Cash4Cases Loan is unavailing; there was no unreasonable delay in plaintiff bringing the instant action, and the only prejudice defendants have shown is self-inflicted.

Dismissal for nonjoinder “is a possibility under the CPLR, but it is only a last resort. Before reaching that point, the court should stretch its judicial imagination to see if it can devise some way of allowing the action to proceed without that person's joinder.” Siegel, NY Prac. § 133. In the case at bar, no elaborate devising is necessary. Defendants have failed to show that Cash4Cases is a necessary party – Cash4Cases presence would not preclude settling this action, and it was neither a party to the Grape Leaf Loan nor subject to RMFW’s alleged fiduciary duties in disbursing any settlement funds obtained in the Underlying Action.

Conclusion

Therefore, defendants’ motion, Motion Sequence 2, to amend Motion Sequence 1, is hereby granted, and defendants’ amended Motion Sequence 1, to dismiss the complaint, is hereby denied.

  
**HON. ARTHUR F. ENGORON**

4/2/2025

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE