Platinum Asset Funding, LLC v Platinum Rapid Funding Group Ltd.
2025 NY Slip Op 32437(U)
July 9, 2025
Supreme Court, New York County
Docket Number: Index No. 652167/2020
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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PLATINUM ASSET FUNDING, LLC,

Plaintiff,

- v -

PLATINUM RAPID FUNDING GROUP LTD., ALI MAYAR, VINCENT BARDONG, JBMML, LLC, FRIEDLAND CAPITAL 2, INC, CFG MERCHANT SOLUTIONS, LLC, CETERIS PORTFOLIO SERVICES, LLC, PRIME MERIDIAN SPECIAL OPPORTUNITIES FUND, L.P, ARENA PRFG, LLC, ARENA INVESTOR, LP., and NEXTWAVE ENTERPRISES,

Defendants.

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INDEX NO. 652167/2020

MOTION DATE --

MOTION SEQ. NO. 018 019 020

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 018) 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 496, 497, 498, 621, 624, 655, 656

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

The following e-filed documents, listed by NYSCEF document number (Motion 019) 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 499, 500, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 627, 628, 629, 630, 631, 632, 633, 634, 650, 651, 652, 653, 654, 665, 666

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 020) 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 501, 502, 625, 626, 635

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

In motion sequence 018, intervenor and counterclaim plaintiff Friedland Capital 2, Inc. (Friedland) moves pursuant to CPLR 3212 for summary judgment on its counterclaims (NYSCEF Doc. No. [NYSCEF] 183) for (i) declaratory relief, (v) conversion, (vi) unjust enrichment, and (vii) constructive trust against plaintiff and counterclaim defendant Platinum Asset Funding, LLC (PAF) and counterclaim

defendants Arena Investors, LP (AILP), Arena PRFG, LLC (Arena PRFG), Ceteris Portfolio Services, LLC (Ceteris), and Prime Meridian Special Opportunities Fund, L.P. (Prime, and collectively, including PAF, CC Defendants.)

In motion sequence 020, intervenors and counterclaim plaintiffs Nextwave Enterprises, LLC (Nextwave) and Ronald Stein move pursuant to CPLR 3212 for summary judgment on their counterclaims (NYSCEF 487) for (i) conversion and (iv) declaratory judgment against PAF, AILP, Arena PRFG.

In motion sequence 019, CC Defendants move for summary judgment dismissing intervenors' counterclaims against them.[1]

Background

This is an action by PAF, the lender and agent under credit agreements, against the guarantors, defendants Platinum Rapid Funding Group, Ltd. (PRFG), Ali Mayar, and Vincent Bardong, for breach of contract and tortious interference. (*See generally* NYSCEF 446, First Amended Complaint.) This decision, however, concerns counterclaims against PAF and remaining CC Defendants alleged by Friedland, Nextwave, and Stein (collectively, Participants).

Master Participation Agreements

PRFG is a merchant cash advance (MCA) funder. (NYSCEF 345, Joint Statement of Undisputed Material Facts [JSUF] ¶ 4.) The Participants each entered into a form Master Participation Agreements (MPA) with PRFG pursuant to which the Participants co-invested with PRFG in MCA funding opportunities. (*Id*. ¶¶ 63-65,

[1] This decision addresses motion sequence 019 to the extent it seeks dismissal of the causes of action that are subject to motions sequence 018 and 020. The remaining relief sought in motion sequence 019 will be addressed in a separate decision.

NYSCEF 352, Nextwave MPA; NYSCEF 353, Stein MPA; NYSCEF 354, Friedland MPA; NYSCEF 443, Friedland's participations; NYSCEF 491, Nextwave and Stein's participations.)

Credit Agreements

In 2017, PRFG negotiated a $25 million credit facility from AILP; the credit facility was extended by Arena PRFG, a lending vehicle organized by AILP, to PRFG SPV #1 LLC (SPV), a special purpose vehicle wholly owned by PRFG. (NYSCEF 345, JSUF ¶¶ 9-11.) In 2018 and 2019, SPV, as borrower, and PRFG, "'in its individual capacity'" and as servicer, entered into Credit Agreements with Arena PRFG, as lender, collateral agent, and administrative agent, for a $25 million secured loan. (*Id*. ¶¶ 15, 46; NYSCEF 359, 2018 Credit Agreement; NYSCEF 379, 2019 Credit Agreement.) Prime was an additional lender under the 2019 Credit Agreement. (NYSCEF 345, JSUF ¶ 46; NYSCEF 379, 2019 Credit Agreement at 109/138.) Pursuant to two Receivables Purchase Agreements and several Assignments, PRFG transferred to SPV certain merchant receivables that SPV pledged as collateral as defined in the Credit Agreements to Arena PRFG. (NYSCEF 345, JSUF ¶¶ 20-23; NYSCEF 359, 2018 Credit Agreement § 5.1[a]; NYSCEF 379, 2019 Credit Agreement § 5.1[a]; NYSCEF 362, 2018 Receivables Purchase Agreement; NYSCEF 380, 2019 Receivables Purchase Agreement; NYSCEF 363-364, 424, Sample Assignments.)

SPV was to deposit the merchant collections in an account (Collection Account) controlled by Arena PRFG. (*See* NYSCEF 345, JSUF ¶¶ 19, 62; NYSCEF 359, 2018 Credit Agreement § 5.2[a]; NYSCEF 379, 2019 Credit Agreement § 5.2[a].) Upon Arena PRFG's approval, a portion of merchant collections was distributed to

participants. (*See* NYSCEF 345, JSUF ¶¶ 58-62; NYSCEF 359, 2018 Credit Agreement § 2.6[c]; NYSCEF 379, 2019 Credit Agreement § 2.6[c].) Arena PRFG was issued a security interest in the funds in the Collection Account, Receivables, and proceeds, among other things. (NYSCEF 359, 2018 Credit Agreement §§ 5.1[a][i], [xv], [xviii], 5.2[b]; NYSCEF 379, 2019 Credit Agreement §§ 5.1[a][i], [xv], [xviii], 5.2[b]; NYSCEF 358, Dec. 28, 2017 Control Account Agreement § 4; NYSCEF 388, Feb. 28, 2020 Control Account Agreement § 3.) Arena PRFG was also issued a security interest in the SPV equity interests. (NYSCEF 345, JSUF ¶ 52; NYSCEF 381, Pledge Agreement.) Arena PRFG filed UCC-1 financing statements. (NYSCEF 345, JSUF ¶ 16; NYSCEF 360, New York UCC-1; NYSCEF 361, Delaware UCC-1.)

Default under the Credit Agreements

On February 29, 2020 and March 5, 2020, Arena PRFG notified PRFG that SPV was in default under the Credit Agreements. (NYSCEF 345, JSUF ¶¶ 71, 75; NYSCEF 393, Feb. 29, 2020 Notice; NYSCEF 394, Mar. 5, 2020 Notice.) By March 31, 2020 Notice, Arena PRFG notified PRFG that it was exercising voting control over SPV. (NYSCEF 345, JSUF ¶ 91; NYSCEF 405, Mar. 31, 2020 Notice.) On March 31, 2020, PRFG was terminated as servicer of the MCA contracts. (NYSCEF 345, JSUF ¶ 86; NYSCEF 403, Servicer Termination Notice.) Ceteris began servicing receivable collections pursuant to an April 8, 2020 Servicing Agreement. (NYSCEF 345, JSUF ¶¶ 96; NYSCEF 390, Servicing Agreement.) Arena PRFG assigned its interest under the Credit Agreements to PAF. (NYSCEF 345, JSUF ¶ 98; NYSCEF 412, Assignment of Agency § a.) On May 1, 2020, PAF issued notices stating that it intended to foreclose upon the Collateral as defined in the Credit Agreements and sell the same in

accordance with UCC Article 9 on May 15, 2020. (NYSCEF 345, JSUF ¶ 99; NYSCEF 413, May 1, 2020 Notification at 2, 4.) The foreclosure sale was advertised in two newspapers. (NYSCEF 345, JSUF ¶ 101; NYSCEF 414, affs of publication) and took place on May 15, 2020. (NYSCEF 345, JSUF ¶ 103.) PAF was the only bidder that appeared and "credit bid" $1 million, and thus, PAF won the auction. (*Id*. ¶¶ 104-105.) PAF foreclosed on the collateral. (*Id*. ¶ 106; NYSCEF 417, Memo of Sale & Notice of Public Foreclosure Sale.) The Participants received no remittances since the foreclosure sale. (NYSCEF 497, Warren Friedland[2] aff ¶ 25; *see* NYSCEF 502, Nextwave/Stein MOL at 13, 15/28.)

Claims

Friedland

Friedland seeks summary judgment declaring that "it is the absolute owner of the Friedland Capital Receivables and Friedland Capital RTR and has an unconditional right of possession to them, regardless of when merchant collections occurred." (NYSCEF 498, Friedland MOL at 20/33.) Friedland's motions papers focus on establishing its entitlement to such declaration of ownership. The court notes that Friedland's cause of action for declaratory judgment does not seek such ownership declaration. (*See* NYSCEF 183, Verified Amended Answer with Counterclaims [VAC] ¶ 199 [seeking declaratory judgment that (1) PAF's May 15, 2020 UCC-9 foreclosure sale was commercially unreasonable, (2) the collateral that was foreclosed upon at the sale did not include the participants' interests in the receivables, (3) that PAF is required to

[2] Warren Friedland is an officer of Friedland. (NYSCEF 497, Friedland aff ¶ 1.)

pay the syndicate participants their share of receivables, and (4) there were no Trigger Events under either the principal or parent guarantees].)

Friedland further alleges causes of action for (v) conversion in that CC Defendants "misappropriated … Friedland['s] … Receivables Participation Payments[3] and … converted those payments for their own use, dominion and control, when Counterclaim Defendants knew or should have known that Friedland … [is] and remain[s] the rightful owner[] thereof" (NYSCEF 183, VAC ¶ 222), (vi) unjust enrichment by "retain[ing] … Receivables Participation Payments" that "are the exclusive property belonging … to Friedland" (*id*. ¶ 226), and (vii) constructive trust, seeking an order "declaring and adjudicating that the wrongful withholding of … Friedland's Receivables Participation Payments in violation of [its] rights are to be held in a constructive trust for the benefit of … Friedland." (*Id*. ¶ 231.[4])

Nextwave, Stein

Nextwave and Stein's causes of actions at issue are for (i) conversion of the funds that represent their Participation Interest under the MPA[5] (NYSCEF 487, Complaints ¶¶ 47-52 [at 9, 21-22/29]) and (v) a declaratory judgment that Nextwave and Stein each "is the rightful owner of and has the absolute right to possess the Participation Interest effective as of the date of the MPA and that [each] is entitled to all

[3] Friedland refers to Receivables Participation Payments as portions of merchant collections that PRFG was to pay to participants from Collection Account. (NYSCEF 183, VAC ¶ 63.)
[4] The pages in VAC are out of order. VAC's paragraph 231 starts on page 50/53 and continues on page 47/53.
[5] Nextwave and Stein define Participation Interest as a pro rata share of receivables from the MCA transactions in which they co-invested. (NYSCEF 487, Complaints ¶ 17 [at 5, 17/29].)

future receivables that make up the Participation Interest under the terms of the MPA." (*Id*. ¶ 72 [at 11, 23/29].)

Legal Standard

Under CPLR 3212, "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 demonstrate the absence of any material issues of fact." (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citations omitted].) Once the movant has made such a showing, the burden shifts to the opposing party to demonstrate, with admissible evidence, facts sufficient to require a trial, or summary judgment will be granted. (*See id*.) "[S]ummary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just." (CPLR 3212 [e].) "New York courts routinely grant summary judgment where … summary resolution may be determined as a matter of law based on the plain language of the operative contracts." (*CNY Residential LLC v 68-70 Spring Partners, LLC*, 2024 NY Slip Op 30176[U], *8 [Sup Ct, NY County 2024] [citations omitted].)

Discussion

The Participants' Rights Vis-à-Vis the Purchased Receivables

The Participants argue that they own a portion of receivables which they purchased; that they are entitled to a pro rata share of collections on such receivables; and that their portion of receivables could not have been pledged as collateral and foreclosed upon. CC Defendants counter that the Participants merely had an unsecured contractual right to a share of collections received by PRFG, the right that is

not enforceable against CC Defendants; that Arena PRFG obtained a security interest not in a portion but in the entirety of the pledged receivables; and that PAF properly foreclosed on the collateral.

The Participants' rights vis-à-vis the receivables are at issue. The contracts at issue are the MPAs. Although the parties also examine the Credit Agreements, Receivables Purchase Agreements, and Assignments in their motion papers, the court declines to do the same in determining the Participants' rights under the MPA. The Participants are not signatories to these agreements, and thus, these agreements do not alter the Participant' relationships with PRFG, which are controlled by the MPAs. (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd.*, 184 AD3d 116, 121 [1st Dept 2020] [holding that "[i]t is a general principle that only the parties to a contract are bound by its terms" (citation omitted)].)[6]

> "Courts have developed two tests to determine whether a transaction is a true participation or whether it is in fact a disguised loan. The following factors indicate that a transaction is a true participation: 1) money is advanced by participant to a lead lender; 2) a participant's right to repayment only arises when a lead lender is paid; 3) only the lead lender can seek legal recourse against the borrower; and 4) the document is evidence of the parties[']true intentions." (*Rothenberg v Oak Rock Fin., LLC*, 2015 US Dist LEXIS 44032, *26-27, 2015 WL 10663413, *7 [ED NY, Mar. 31, 2015, No. 14-cv-3700] [citation omitted].)

The MPAs satisfy each of these factors. Nevertheless, the court must examine the language of the MPAs to determine what the Participants bargained for. The MPAs define several terms, including but not limited to "'Collateral'" ("All collateral and guarantees received by or granted to [PRFG] pursuant to a [Funding] Agreement, or otherwise securing a Client's Obligations"), "'Collections'" ("Proceeds of Purchased

[6] The court notes that the parties do not argue that the Participants fall into any exception to this general principle.

Receivables received by [PRFG], a portion of which may be passed on to the Participant on a pro rata basis in accordance with the Participant's participation interest"), "'Participant's Share of Collections'" ("The Participant's pro-rata share of the Collections based upon the Participant's percentage of participation"), "'Participant's RTR' or 'Participant's Right to Receive'" ("The total amount of credit card or bank deposit receivables which the Participant has invested in and owns outright as a co-investor"), "'Purchased Receivables'" ("Credit card receivables or bank deposit receivables purchased by [PRFG] and the Participant from a Client as described in a Funding Agreement"), and "'RTR'" ("[PRFG]'s and the Participant's 'Right to Receive,' which represents the full receivable due and payable under the [Funding] Agreement"). (NYSCEF 352, 353, 354, MPAs §§ 1.11, 1.12, 1.21, 1.22, 1.27, 1.31, 1.32.)[7] With the exception of "Collections," only a handful of these defined terms are used outside of § 1 (Definitions) of the MPAs.[8] Section 4.2 provides:

> "[PRFG] shall pay to Participant, its pro-rata share, less those amounts described in Section 2.4 above, of Collections via ACH transfer to a bank account designated by the Participant to receive payments. If for any reason [PRFG] shall hold on to the Participant's share of Collections, it is acknowledged by [PRFG] that such Collections are the property of the Participant and shall be held for the benefit of the Participant except in circumstances where this amount is used to offset any unpaid costs or extraordinary expenses associated with this Agreement. All payments due hereunder shall be made by ACH transfer."

[7] The MPA's are similar in all material respects.

[8] Specifically, "Participant's Share of Collections" is used in §2.7 of the MPAs: "Participant acknowledges and accepts that Add-On Financings may result in a dilution of Participant's Share of Collections from a given Funding Agreement." (NYSCEF 352, 353, 354, MPAs § 2.7.) "Participant's Share of Collections" and "Participant's RTR" is also used in § 7.1 of Friedland's MPA: "In the event of Termination [of MPA] by [PRFG], [PRFG] shall Pay Participant any and all amounts due to Participant as of the date of Termination and shall continue to deliver the Participant's Share of Collections on Participant's RTR purchased on or before to the Termination date as said collections are delivered by Clients." (NYSCEF 354, Friedland MPA § 7.1.)

(NYSCEF 352, 353, 354, MPAs § 4.2.)

The Participants insist that they own a portion of the Purchased Receivables, but what the Participants bargained for are the Collections, which are the proceeds of the Purchased Receivables and not the Purchased Receivables themselves. That the MPAs define "'Participant's RTR' or 'Participant's Right to Receive'" as "[t]he total amount of credit card or bank deposit receivables which the Participant has invested in and owns outright as a co-investor" (NYSCEF 352, 353, 354, MPAs § 1.22) does not advance the Participants' ownership argument.

> "A fundamental tenet of contract law is that agreements are construed in accordance with the intent of the parties and the best evidence of the parties' intent is what they express in their written contract. Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms, without reference to extrinsic materials outside the four corners of the document." (*Goldman v White Plains Ctr.*, 11 NY3d 173, 176 [2008] [internal quotation marks and citations omitted].)

The MPAs are unambiguous and neither party makes an argument to the contrary. Accordingly, the court declines to look outside the MPAs' four corners in determining the Participants' rights under the MPAs. The fact that the defined term "'Participant's RTR' or 'Participant's Right to Receive'" is used almost nowhere else in the MPA besides the Definitions section, whereas the defined term "'Collections'" is used throughout the MPA, evidences the parties' intent that the Participants bargained for the right to receive proceeds from the Purchased Receivables but not the Purchased Receivables themselves. Thus, the Participants' ownership argument fails. Their interest is in the Collections. PRFG only had a contractual obligation to pay the Participants a portion of the proceeds of the Purchased Receivables once collected. (*See* NYSCEF 352, 353, 354, MPAs § 4.2; *see Chatham Capital Mgt. IV LLC v Platinum*

Asset Funding LLC, 2024 NY Slip Op 31302[U], *12 [Sup Ct, NY County 2024], *affd* 2025 NY Slip Op 03761 [1st Dept 2025]; *see also In re Yale Express Sys.*, Inc., 245 F Supp 790, 792 [SD NY 1965] [participant's "right to repayment would arise only upon the receipt by [lender] of payment from [borrower]"]; *In re Okura & Co.*, 249 BR 596, 610 [Bankr SD NY 2000] [same].) The Collections, however, were ultimately subsumed as collateral in connection with the Credit Agreements.

Arena PRFG's Security Interest

Article 9 of the UCC makes clear that there is no distinction between security interests and outright sales of receivables with respect to the priority, attachment, and perfection rules. (*See* UCC § 9-109, comment 5 [2001] ["This Article applies to both types of transactions. The principal effect of this coverage is to apply this Article's perfection and priority rules to these sales transactions"].) Comment 5 to UCC § 9-109 addresses this situation: PRFG's transfer of the Purchased Receivables to SPV as part of a secured transaction.

> "Following a debtor's outright sale and transfer of ownership of a receivable, the debtor-seller retains no legal or equitable rights in the receivable that has been sold. … This is so whether or not the buyer's security interest is perfected. … However, if the buyer's interest in accounts or chattel paper is unperfected, a subsequent lien creditor, perfected secured party, or qualified buyer can reach the sold receivable and achieve priority over (or take free of) the buyer's unperfected security interest under Section 9-317. … It is so for the simple reason that Sections 9-318 (b), 9-317, and 9-322 make it so. … Because the buyer's security interest is unperfected, for purposes of determining the rights of creditors of and purchasers for value from the debtor-seller, under Section 9-318(b) the debtor-seller is deemed to have the rights and title it sold. Section 9-317 subjects the buyer's unperfected interest in accounts and chattel paper to that of the debtor-seller's lien creditor and other persons who qualify under that section." (*Id*.)

"The creation of a valid and enforceable security interest requires (1) the secured debtor receive some value, (2) the debtor have rights in the collateral at issue, and (3)

an agreement." (*U.S. Claims, Inc. v Flomenhaft & Cannata, LLC*, 519 F Supp 2d 515, 520 [ED Pa 2006]; *see* UCC § 9-203[b].)

> "When all three requirements [of creating a valid and enforceable security interest] are met, a security interest 'attaches' to the collateral and is enforceable between the parties to the agreement. UCC § 9-203(a). The next step, 'perfection,' is necessary in order to maximize the secured creditor's rights (i.e. to establish priority) against third persons laying claim to the same collateral. 4 James J. White & Robert S. Summers, Uniform Commercial Code § 30-1(b) (5th ed. 2002). Where there are conflicting security interests in the same collateral, priority is determined by looking to the order of perfection. See UCC § 9-322(a). Perfected security interests take priority over conflicting unperfected interests. UCC § 9-322(a)(2). The subjective knowledge of a secured creditor with regard to another's conflicting security interest is irrelevant: the first to perfect prevails. UCC § 9-322, cmt. 4, ex. 2." (*U.S. Claims, Inc.*, 519 F Supp 2d at 520-21.)

First, SPV obtained rights in the Purchased Receivables. PRFG assigned the Purchased Receivables to SPV. (*See* NYSCEF 345, JSUF ¶¶ 20-23, 50-51; NYSCEF 363-364, 424, Sample Assignments § 2[a], [d] ["[PRFG] does hereby sell, transfer, assign, set over and-otherwise convey to the Purchaser, without recourse … all right, title and interest of [PRFG] in and to the following: (a) the Related Receivables listed on Schedule A to this Assignment" and "(d) all payments on or under and all proceeds" (emphasis added)].[9]) Thus, SPV had rights in the Purchased Receivables that SPV pledged as collateral. (*See* UCC § 9-203[b][2].) That the Assignments' Schedule A specified as to each transferred receivable "PRFG % Ownership" and "Open Right-to-Receive Percentage" (*see* NYSCEF 363-364, 424, Sample Assignments) is of no consequence. As discussed *supra*, PRFG remained the owner of the Purchased Receivables, whereas the Participants received a contractual right to receive a percentage of the proceeds of the Purchased Receivables.

[9] The parties concede that assignments entered pursuant to the two Receivables Purchase Agreements are substantially similar. (NYSCEF 345, JSUF ¶¶ 22-23, 51.)

Further, value has been given to SPV as borrower pursuant to the Credit Agreements. (*See* UCC § 9-203[b][1].) Finally, SPV pledged the Purchased Receivables and proceeds thereof to Arena PRFG as collateral as defined in the Credit Agreements. (*See* UCC § 9-203[b][3][A]; NYSCEF 359, 2018 Credit Agreement §§ 1.1, 5.1[a][i],[xv],[xviii], 5.2[b]; NYSCEF 379, 2019 Credit Agreement §§ 1.1, 5.1[a][i],[xv],[xviii], 5.2[b].)

Next, Arena PRFG properly filed a UCC-1 form listing as collateral "[a]ll of [PRFG]'s right, title and interest in and to, whether now existing or hereafter created, the Receivables and Related Security … sold pursuant to that certain Receivables Purchase Agreement, dated as of February 1, 2018 … by and between [PRFG] and [SPV]" as well as "all Collections and other money received with respect to the Related Receivables." (NYSCEF 360, New York UCC-1 at 6, 8/44; *see* NYSCEF 360, New York UCC-1 at 14, 16/44 [same as to assets transferred pursuant to August 28, 2019 Receivables Purchase Agreement between PRFG and SPV]; *see Lashua v La Duke*, 272 AD2d 750, 751 [3d Dept 2000] ["In order for a security interest to be valid and enforceable …, the debtor must sign a document describing the collateral, the security interest must attach, and [the interest] must be perfected" (citations omitted)].) Additionally, Arena PRFG perfected its security interest in the Collection Account by control. (*See* NYSCEF 345, JSUF ¶¶ 16, 23; NYSCEF 359, 2018 Credit Agreement §§ 5.2[a]; NYSCEF 379, 2019 Credit Agreement § 5.2[a]; NYSCEF 358, Dec. 28, 2017 Control Account Agreement § 3; UCC § 9-312[b][1] [perfection by control].) The Participants do not argue that they filed their own UCC financing statements. Simply put, Arena PRFG had a perfected security interest in the Purchased Receivables, and

the Participants did not. Arena PRFG and its assignee PAF, in their secured position, have no obligation to the Participants with respect to the Purchased Receivables. (*See Spielman v Acme Natl. Sales Co.*, 169 AD2d 218, 223 [3d Dept 1991] ["secured creditor" "not … bound to contracts entered into between the debtor and third parties, notwithstanding the secured creditor's possession of the debtor's assets as collateral after default" (citations omitted)].)

The Credit Agreements' § 2.6, which excludes "any amounts required to be paid as Receivables Participation Payments to a Receivables Participant" from weekly distribution to the Credit Agreements' parties, does not evidence Arena PRFG's intent to take on PRFG's obligations to the Participants under the MPAs. (NYSCEF 359, 2018 Credit Agreement § 2.6[a]-[b]; NYSCEF 379, 2019 Credit Agreement § 2.6[a]-[b].) Indeed, Arena PRFG specifically disclaimed assumption of any such obligations. (NYSCEF 359, 2018 Credit Agreement § 12.27 ["None of the Agents or the Lenders have assumed or will assume any obligations with respect to any Contract or any Receivables Participation Agreements"]; NYSCEF 379, 2019 Credit Agreement § 12.27 [same].)

Causes of Action

Friedland: (i) Declaratory Judgment

Friedland seeks a summary judgment declaring that it is "the absolute owner of the Friedland Capital Receivables and Friedland Capital RTR and has an unconditional right of possession to them, regardless of when merchant collections occurred." (NYSCEF 498, Friedland MOL at 20/33.) This relief is not sought in Friedland's counterclaim for declaratory judgment (NYSCEF 183, VAC ¶¶ 197-200) and thus

summary judgment as to this relief is denied. In any event, as stated, Friedland only has a contractual right to receive a portion of Collections.

Based on the foregoing, there are no issues of fact that Friedland's declaratory judgment cause of action fails to the extent Friedland seeks a declaration (2) that the collateral that was foreclosed upon at the sale did not include the participants' interests in the receivables and (3) that PAF is required to pay the syndicate participants their share of receivables.[10]

Friedland: (v) Conversion

The cause of action for (v) conversion of Friedland's portion of collections (*see* NYSCEF 183, VAC ¶¶ 63, 222) fails. (*See Spielman*, 169 AD2d at 223 [secured creditor's disposal of collateral does not support conversion claim].) This cause of action fails for the additional reason that Friedland lacks "legal ownership or an immediate right of possession to specifically identifiable funds" at issue. (*Whitman Realty Group, Inc. v Galano*, 41 AD3d 590, 592 [2d Dept 2007] [conversion requires showing that plaintiff "had legal ownership or an immediate right of possession to specifically identifiable funds and that the defendant exercised an unauthorized dominion over such funds to the exclusion of the plaintiff's rights" (citation omitted)].) Friedland's "mere right to payment cannot be the basis for a cause of action alleging conversion." (*Selinger Enters., Inc. v Cassuto*, 50 AD3d 766, 768 [2d Dept 2008]; *see also Stack Elec., Inc. v DiNardi Constr. Corp.*, 161 AD2d 416, 417 [1st Dept 1990] ["by failing to allege that the defendants had 'ownership, possession or control' of the

[10] The court will address the remainder of this declaratory judgment counterclaim in its forthcoming decision on motions sequence 019 and 021.

specific funds in question, but, rather, that the defendants had an obligation to pay the plaintiff what it was owed after receiving payment from the State University Construction Fund, plaintiff failed to allege the necessary elements for a cause of action for conversion" (citations omitted)]; *Independence Discount Corp. v Bressner*, 47 AD2d 756, 757 [2d Dept 1975] [conversion claim failed where "[t]he security agreement did not impose a duty upon [defendant] to pay over to plaintiff the specific proceeds of the sale of each appliance covered by the agreement" and "there was no specific fund from which payment had to be made"].)

Friedland: (vi) Unjust Enrichment, (vii) Constructive Trust

To sustain a claim for unjust enrichment, "plaintiff must allege that (1) the other party was enriched, (2) at [plaintiff's] expense, and that (3) it is against and good conscience to permit the other party to retain what is sought to be recovered." (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3D 511, 516 [2012] [internal quotation marks and citation omitted].)

Friedland' cause of action for unjust enrichment based on CC Defendants' retention of collections (NYSCEF 183, VAC ¶ 226) likewise fails. A secured creditor's foreclosure on collateral is not enrichment at expense of an unsecured creditor who has only a contractual right as against a debtor. Absent unjust enrichment, the constructive trust counterclaim fails. (*Panetta v Kelly*, 17 AD3d 163, 165, [1st Dept 2005] ["four elements must be established before a court may grant [constructive trust] remedy: (1) a confidential or fiduciary relationship, (2) a promise, express or implied, (3) a transfer in reliance thereon, and (4) unjust enrichment" (citation omitted)], *lv dismissed* 5 NY3d 783 [2005].)

Nextwave and Stein: (i) conversion, (iv) declaratory judgment

Based on the foregoing, Nextwave and Stein's causes of action for a declaration that each "is the rightful owner of and has the absolute right to possess the Participation Interest effective as of the date of the MPA and that [each] is entitled to all future receivables that make up the Participation Interest under the terms of the MPA" fail. (NYSCEF 487, Complaints ¶ 72 [at 11, 23/29].) Nextwave and Stein's causes of action for conversion of their share of collections likewise fails. (*See supra* at 15-16.)

Accordingly, it is

ORDERED that motion sequence 018 is denied; and it is further

ORDERED that motion sequence 020 is denied; and it is further

ORDERED that motion sequence 019 is granted, in part, to the extent that the following counterclaims are dismissed: Friedland Capital 2, Inc.'s counterclaim for (i) declaratory judgment as to declarations nos. (2) and (3), (v) conversion, (vi) unjust enrichment, and (vii) constructive trust; and Nextwave Enterprises, LLC and Ronald Stein's counterclaims for (i) conversion and (iv) declaratory judgment; and it is further

ORDERED that the remaining relief sought in motion sequence 019 will be addressed in a separate decision; and it is further

ORDERED that the caption be amended to reflect the parties' procedural positions[11] and that all future papers filed with the court bear the amended caption:

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PLATINUM ASSET FUNDING, LLC,

Plaintiff,

- v -

PLATINUM RAPID FUNDING GROUP LTD., ALI MAYAR, and VINCENT BARDONG,

Defendants.

----------X

PLATINUM RAPID FUNDING GROUP LTD., ALI MAYAR, VINCENT BARDONG, JBMML, LLC, FRIEDLAND CAPITAL 2, INC, NEXTWAVE ENTERPRISES, and RONALD STEIN

Counterclaim Plaintiffs,

- v -

PLATINUM ASSET FUNDING, LLC, CFG MERCHANT SOLUTIONS, LLC, CETERIS PORTFOLIO SERVICES, LLC, PRIME MERIDIAN SPECIAL OPPORTUNITIES FUND, L.P, ARENA PRFG, LLC, and ARENA INVESTOR, LP.,

Counterclaim Defendants.

----------X

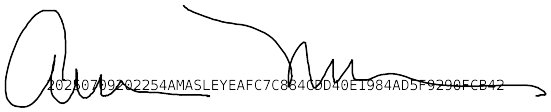
and it is further;

ORDERED that counsel for Platinum Rapid Funding Group, Ltd. serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General

[11] As the court noted in its decision granting motions to intervene, the caption must be corrected. (NYSCEF 170, Decision and Order at 1 [mot. seq. nos. 003, 004, 005, 008].)

Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).



7/9/2025
DATE

ANDREA MASLEY, J.S.C.

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