

**Fora Fin. Warehouse,LLC v EZ Star Corp.**

2025 NY Slip Op 32710(U)

July 22, 2025

Supreme Court, New York County

Docket Number: Index No. 156265/2024

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*

-----X

FORA FINANCIAL WAREHOUSE, LLC,

Plaintiff,

- v -

EZ STAR CORP., MEHRAN PEYKAR

Defendant.

-----X

**INDEX NO.** 156265/2024

**MOTION DATE** 04/29/2025

**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, 50, 51

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

This action arises out of an alleged breach of an agreement of the purchase and sale of future receivables. Plaintiff now moves for summary judgment and to dismiss defendants’ affirmative defenses. Defendants oppose the motion and cross move to dismiss the complaint. For the reasons set forth below, defendants’ cross motion is denied, and plaintiff’s motion is granted in its entirety.

*Background*

On October 13, 2023, plaintiff’s assignor, Fora Financial Advance LLC (“FFA”), entered into a sales agreement with the defendant, EZ Star Corp. d/b/a EZ Star Corp (“EZ”). Pursuant to the sales agreement defendant EZ sold \$182,229.00 of its future receivables to FFA for \$131,100.00, to be paid from 14% of EZ’s daily revenue. Defendant, Mehran Peykar, guaranteed EZ’s performance under the agreement. On October 19, 2023, Fora Financial Advance, LLC assigned the agreement to plaintiff, Fora Financial Warehouse, LLC (“Fora”). Plaintiff contends that defendants breached the guaranty and agreement by preventing plaintiff from withdrawing funds from defendant EZ’s account and further failing to seek reconciliation.

Standard of Review

It is a well-established principle that the “function of summary judgment is issue finding, not issue determination.” *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851 [1985].

Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Discussion

In support of its motion, plaintiff submits the agreement, the guaranty, transaction history and the affirmation of Jonathan Headley, director of collections and servicing for plaintiff, to establish its prima facie case that defendants have breached the valid agreement between the parties. Moreover, plaintiff avers that defendants’ affirmative defenses, which defendants use in support of its cross motion, are meritless and require dismissal.

In opposition to plaintiff’s motion and in support of its cross motion, defendants contend that the agreement is a usurious loan. Further, defendants that plaintiff breached the agreement first and the agreement was procured by fraud. Defendants contend that the reconciliation provision in the agreement is illusory because the discretion lies with the plaintiff as to whether the payments will be adjusted and to what amount. Defendants also argue that the inclusion of a fixed payment amount in the agreement weighs in favor of the agreement being a usurious loan.

First, the Court does not agree with defendants' interpretation of the reconciliation provision nor the contention that the specified payment weighs in favor of the agreement being an unenforceable usurious loan. The plain language of the reconciliation provision reads in pertinent part "[t]he Initial Remittance Amount is intended to represent the Purchased Percentage of Seller's Future Sale Proceeds. Once each calendar month, either Purchaser or Seller may request a reconciliation to adjust the Remittance Amount to more closely reflect Seller's actual Future Sale Proceeds times the Purchased Percentage". The provision goes on to specify how either may request reconciliation. Contrary to defendants' assertion, nothing in this reconciliation provision lends itself to be a "sham".

Notably, defendants do not dispute that payments were not remitted pursuant to the terms of the agreement, nor do defendants contend that it did not collect any receivables to forward to plaintiff. Further, defendants do not contend that any attempt was made to reconcile the payment.

With respect to the argument that the guaranty, is a guaranty for payment, thus weighs in favor of the agreement being a usurious loan, the Court also rejects this argument, as the plain language of the guaranty indicates that the individual defendant guarantees the performances of the merchant, not payment. The Court also rejects defendants' contentions that the agreement was procured by fraud, as the factual allegations to support that claim are contradicted by the agreement. 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 AD3d 429, 430 [1st Dept 2018].

At this juncture the Court is satisfied that plaintiff has sufficiently established entitlement to judgment as a matter of law, dismissal of defendants’ affirmative defenses and defendants have failed to raise a triable issue of fact.

The Court has considered the defendants’ remaining arguments and found them unavailing. The plaintiff has satisfied this Court that their actions were consistent with the contract requirements, and that the estimated time for completion of the agreement by its very wording of “estimate” did not set a finite term. Accordingly, it is hereby

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

ADJUDGED that plaintiff’s motion is granted in its entirety; and it is further

ORDERED the Clerk of the Court is directed to enter judgment in favor of plaintiff Fora Financial Warehouse, LLC and against defendants EZ Star Corp. d/b/a EZ Star Corp. and Mehran Peykar, jointly and severally in the amount of \$128,945.90, plus statutory interest from March 18, 2024, and costs and disbursements as taxed by the Clerk.

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7/22/2025  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE