Itria Ventures LLC v Aneela 1 LLC
2025 NY Slip Op 32925(U)
July 16, 2025
Supreme Court, New York County
Docket Number: Index No. 653252/2023
Judge: Emily Morales-Minerva
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. EMILY MORALES-MINERVA** **PART** **42M**

Justice

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ITRIA VENTURES LLC,

Plaintiff,

- v -

ANEELA 1 LLC, ANEELA 2 LLC, ANEELA 3 LLC, ANEELA 4 LLC, MUHAMMAD RASHAD MUNIR

Defendant.

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INDEX NO. 653252/2023

MOTION DATE 01/25/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32

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

APPEARANCES:

Kasowitz Benson Torres LLP, New York, NY (David Jacob Abrams, Esq., of counsel), for plaintiff.

Usher Law Group P.C., New York, NY (Mikhail Usher, Esq., of counsel), for defendants.

EMILY MORALES-MINERVA, J.S.C.

In this commercial contract action, plaintiff ITRIA VENTURES LLC moves, by notice of motion (sequence no. 002), for an order of summary judgment against defendants ANEELA 1 LLC D/B/A SAMS FOOD STORE, ANEELA 2 LLC, ANEELA 3 LLC D/B/A MAX MART, ANEELA 4 LLC, and MUHAMMAD RASHAD MUNIR on all claims and counterclaims[1] pursuant to CPLR § 3212. Defendants submit

[1] Defendants do not assert counterclaims against plaintiff (see NYSCEF Doc. No.17, Answer with 16 Affirmative Defenses).

written opposition to the motion. For the reasons that follow, the motion (seq. no. 002) is denied entirely.

BACKGROUND

Plaintiff ITRIA VENTURES LLC (plaintiff), is a limited liability company, "whose business is to purchase future receivables of other businesses" for purposes of providing those other businesses with "immediate working capital needs" (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 22, Memorandum of Law, dated November 08, 2024, p. 2). These transactions typically include the execution of Receivables Sale Agreement -- a contract in which the seller of the future accounts receivables agrees to transfer such to plaintiff, as buyer, for immediate cash payment.

According to the complaint here, the following allegations are true:

On January 19, 2023, plaintiff and defendants ANEELA 1 LLC D/B/A SAMS FOOD STORE and ANEELA 2 LLC (Aneela 1&2) entered such a contract (see NYSCEF Doc. No. 001, Complaint, dated July 6, 2023, ¶ 1, ¶ 2). Therein, plaintiff agreed to pay Aneela 1&2 $125,000.00, less fees, in exchange for $156,250.00 of Aneela 1&2's future receivables (see NYSCEF Doc. No. 001, Complaint, dated July 6, 2023, ¶ 1, ¶ 2). Pursuant to their Receivables

Sale Agreement (RSA I), Aneela 1&2 agreed to pay the $156,250.00 in future receivables in weekly installments of $3,255.21 (see NYSCEF Doc. No. 001, Complaint, ¶ 2). Among other things, parties to RSA I agreed that plaintiff could charge Aneela 1&2 $25.00 for each returned payment check, if any (id. at ¶ 2).

Further, RSA I includes a "guarantee of performance" provision which identifies defendant MUHAMMAD RASHAD MUNIR as guarantor (see NYSCEF Doc. No. 002, "Exhibit A" to Complaint, January RSA; NYSCEF Doc. No. 003, "Exhibit B" to Complaint, April RSA). Said provision provides:

> "(a) Guaranty of Performance. Each Guarantor hereby guarantees (this "Guaranty") Merchant's complete and timely performance of the obligations specified in Section 6 hereof upon the occurrence of a Material Breach.[2] Upon such occurrence of a Material Breach, the obligations of Guarantors shall remain in effect and enforceable by Purchaser until the entire Amount Sold has been received by Purchaser, including (i) any assessed fees and Costs of Collection, whether or not litigation is commenced and (ii) the return of any amount of remittances set aside or returned by Purchaser for any reason. If there is more than one Guarantor, the liability of all Guarantors shall be joint and several"

(id. at 12).

Following execution of RSA I, Aneela 1&2 paid plaintiff $3,255.21 through automatic electronic check from February 7,

[2] In both RSAs, "Material Breach" is defined on page 7, section 7, as relevant here: "(ii) Merchant interferes with Purchaser's right to collect the Amount Sold, including without limitation by any act prohibited under this Agreement" (NYSCEF Doc. No. 002, "Exhibit A" to Complaint, January RSA; NYSCEF Doc. No. 003, "Exhibit B" to Complaint, April RSA).

2023, until May 19, 2023, remitting to plaintiff a total $48,828.15 (see NYSCEF Doc. No. 001, Complaint). However, on or around May 26, 2023, nonparty Automated Clearing House (ACH) cancelled Aneela 1&2's automatic payment transaction due to "insufficient funds" (id.).

Since then, Aneela 1&2 have made no payments to plaintiff in satisfaction of their RSA I contract (id.). Plaintiff further assessed a returned item fee of $25.00 against Aneela 1&2 for the returned check on or around May 26, 2023.

Prior to Aneela 1&2's cancelled payment, on or around April 28, 2023, plaintiff entered a second RSA (RSA II) with Aneela 1&2 and defendants ANEELA 3 LLC D/B/A MAX MART, and ANEELA 4 LLC (collectively Aneela) to purchase Aneela's future account receivables (id. at ¶ 1, ¶ 3). Therein, plaintiff agreed to pay Aneela $200,000.00, less fees, in exchange for $270,000.00 of said receivables (id.). Under the terms of RSA II, Aneela agreed to pay plaintiff in installments of $3,750.00 up to $270,000.00 (see id. at ¶ 3). Like RSA I, RSA II identifies defendant MUHAMMAD RASHAD MUNIR as guarantor incorporating the same "guarantee of performance" provision as set forth above (see id. at ¶ 1).

On or around May 5, 2023, Aneela made its first payment to plaintiff, pursuant to RSA II. However, said payment totaled $1,953.13, not the required $3,750.00 (id.). The next week,

Aneela submitted no payment to plaintiff on the RSA II. Thereafter, at or around May 19, 2023 -- which appears to be the date of the third scheduled payment -- Aneela remitted two separate payments to plaintiff in the amount of $3,750.00 each.

However, ACH cancelled Aneela's payment to plaintiff the following week due to "insufficient funds" (id.). Thereafter, Aneela made no attempts to make another payment toward its obligations, pursuant to RSA II (id.). Plaintiff assessed a returned item fee of $25.00 against Aneela for the returned check (id.).

Consequently, on or around July 6, 2023, plaintiff commenced this action against defendants, alleging five causes of action for (1) breach of contract against Aneela 1&2, (2) unjust enrichment against Aneela 1&2, (3) breach of contract against Aneela, (4) unjust enrichment against Aneela, and (5) breach of contract against guarantor (see NYSCEF Doc. No. 001, Complaint). As for damages, plaintiff seeks judgment against Aneela 1&2 in an amount "to be determined at trial, but in no event less than $107,471.85 plus any accrued interest and fees and costs of collection", against Aneela in an amount "to be determined at trial, but in no event less than $260,596.87 plus any accrued interest and fees and costs of collection", and against guarantor "in an amount to be determined at trial but in no event less than $368,068.72 plus any accrued interest and

fees and costs of collection" (NYSCEF Doc. No. 1, Complaint, ¶50 , ¶60 , ¶ 70).

Thereafter, defendants filed a motion (seq. no. 001), seeking an order pursuant to CPLR § 3211 (e), dismissing plaintiff's complaint (see NYSCEF Doc. 005, Notice of Motion to Dismiss Complaint, dated August 15, 2023). The court (S. Adams J.S.C.) (1) denied defendant's motion and (2) directed parties "to complete a Preliminary Conference order and submit it to Part 39 w/n 60 days of this order" (NYSCEF Doc. No. 15, Decision and Order, dated February 05, 2024 [S. Adams, J.S.C.] [emphasis added]). Neither party filed a preliminary conference order, and neither party objected to the other's failure to comply with the order of the court (S. Adams, J.S.C.).

Instead, on February 15, 2024, defendants filed an answer to the complaint, asserting 15 affirmative defenses. Among those defenses are: unconscionability of the contract; violation of good faith and fair dealing; fraudulent inducement; failure to mitigate damages; and inducement of defendants to enter into an unlawful, usurious loan (see NYSCEF Doc. No. 17, Answer, dated February 15, 2024). Defendants also served a demand to produce documents upon plaintiff (NYSCEF Doc. No. 19, Document Demand, dated May 30, 2024).

Thereafter, plaintiff filed the instant motion (motion seq. no. 002), for an order, pursuant to CPLR § 3212, granting it an

order of summary judgment on all claims and counterclaims[3] (NYSCEF Doc. No. 21, Notice of Motion for Summary Judgment, dated November 8, 2024). Plaintiff also moves to dismiss defendants' affirmative defenses.[4]

Plaintiff argues that it has established prima facie proof of its entitlement to judgement, as a matter of law, on its breach of contract and unjust enrichment claims against Aneela 1&2 and Aneela (see NYSCEF Doc. No. 22, Memorandum of Law in Support of Motion, dated November 8, 2024, at p 7). In support of its motion for summary judgement, plaintiff submits the affirmation of Harrison Smalbach, Esq., plaintiff's senior legal counsel (NYSCEF Doc. No. 23); January 2023 Receivable Sale Agreement (NYSCEF Doc. No. 24); April 2023 Receivables Sale Agreement (NYSCEF Doc. No. 25); January RSA Automation Statement (NYSCEF Doc. No. 26); April RSA Automation Statement (NYSCEF Doc. No. 27).

Defendants counter that "serious and various issues of material fact" exist and that plaintiff's proof is "insufficient and highly suspect" (see NYSCEF Doc. No. 28, Memorandum of Law in Opposition, dated November 19, 2024, p 02-03). Among other

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[3] It appears that the use of "counterclaims" may be a typographical error, as defendants do not assert any counterclaims herein.

[4] Though plaintiff does not specifically cite to CPLR § 3211 (b), which governs the dismissal of defenses, the court deems plaintiff's application to be a request to dismiss defendants' affirmative defenses pursuant to such (see CPLR § 3211 ["A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit"]).

things, defendants essentially contend that discovery remains outstanding and should be completed as there is no evidence to support summary judgment at this time (id. at p 10).

ANALYSIS

Summary Judgment

Summary judgment is an extraordinary remedy and is only appropriate where the movant has established that there is no question of fact on any issue which would require a trial (see Andre v Pomeroy, 35 NY2d 361, 364 [1974]; see also Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr., 161 AD2d 480 [1st Dept 1990] [holding that "summary judgment is a drastic remedy, the procedural equivalent of a trial [] it should not be granted where there is any doubt about the issue"]). The court may grant summary judgment upon prima facie showing of entitlement to judgment as a matter of law, through admissible evidence sufficient to eliminate material issues of fact (CPLR § 3212[b]; Nomura Asset Capital Corp. v Cadwalader, Wickersham & Taft LLP, 26 NY3d 40, 49 [2015]; Alvarez v Prospect Hosp., 68 NY2d 320, 324 [1986]; Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 [1985]). If the moving party makes the requisite showing, the non-moving party then has the burden "'to establish the

existence of [factual issues] which require a trial of the action'" (Nomura Asset Capital Corp., 26 NY3d at 49, citing Vega v Restani Constr. Corp., 18 NY3d 499, 503 [2012], quoting Alvarez, 68 NY2d at 324).

However, summary judgment is premature if -- as here -- discovery is incomplete and note of issue has not been filed (see Jeffrey v DeJesus, 116 AD3d 574, 575 [1st Dept 2014][finding that motion for summary judgment was properly denied as premature as limited discovery had been conducted]; see also Curry v Hundreds of Hats, Inc., 146 AD3d 593, 594 [1st Dept 2017]). To this date, discovery is in its infancy, and all depositions remain outstanding (see Bey v Rosado, 192 AD3d 575 [1st Dept 2021][finding that summary judgment motion was premature given defendants did not have the opportunity to depose plaintiff]; see also Mediant Communications Inc. v Spectrum Pharm, Inc., 2025 NY Slip Op 03161 [1st Dept, May 27, 2025][holding that it was premature for the trial court to grant summary judgment to plaintiff where discovery, including depositions of key witnesses, had not yet occurred]).

Further, despite the court's (S. Adams, J.S.C.) February 05, 2024 order, a preliminary conference has not yet been held, and no discovery deadlines have been set (see Rutherford v Brooklyn Navy Yard Dev. Corp., 174 AD3d 932 [2d Dept 2019][reasoning that motion for summary judgment made before a

preliminary conference was held, before any written discovery was exchanged, and before depositions were taken, was premature]). Therefore, the motion (seq. no. 002) for summary judgment is denied, as premature, with leave to renew following the completion of discovery.

Notwithstanding the prematurity of the application, plaintiff's submission of the affidavit of Harrison Smalbach, Esq., Senior Legal Counsel for plaintiff, who attests to "personal knowledge of the facts set forth herein or bas[ing] my knowledge on corporate records of and discussions with other employees of Plaintiff", is insufficient to satisfy the strict procedural requirements of CPLR § 3215 (emphasis added)(NYSCEF Doc. No. 23, Affidavit in Support). A review of corporate records and discussions with other employees does not equate to "firsthand confirmation of the facts forming the basis of the claim" (Guzetti v City of New York, 32 AD3d 234, 236 [1st Dept 2006]; see also William v N. Shore LIJ Health Sys., 119 AD3d 937 [2nd Dept 2014][plaintiff failed to proffer requisite affidavit of the facts by a party with personal knowledge]).

While plaintiff utilizes several cases to demonstrate that "New York courts have found a substantially identical showing to be sufficient," plaintiff fails to recognize the considerable differences between the proffered cases and the instant matter (NYSCEF Doc. No. 32, Memorandum of Law in Reply, citing Fox

Capital Group, Inc. v City Closets Systems Inc, Cgr, 2024 WL 1354366 [Sup Ct NY Cnty 2024] [L. Nock, J.S.C.] [finding sufficient the affidavit of an employee that reviews company's records to authorize the company's collection efforts] [emphasis added]; Fora Financial Advance, LLC v Preferred Choice Financial Ltd. Liability Co., 2024 WL 3379821 [Sup Ct NY Cnty 2024] [L. Nock, J.S.C.] [finding sufficient the affidavit of plaintiff's Director of Collections & Servicing] [emphasis added]; Knightsbridge Funding, LLC v Mulch Mfg. Inc., 2024 WL 3468652 [Sup Ct Nassau Cnty 2024] [L. Nock, J.S.C.] [finding sufficient the affidavit of the plaintiff's Principal] [emphasis added]).

The court next addresses plaintiff's application to dismiss defendants' affirmative defenses pursuant to CPLR 3211 § (b).

Dismissal of Affirmative Defenses

"The standard of review on a motion to dismiss an affirmative defense pursuant to CPLR § 3211 (b) is akin to that used under CPLR § 3211 (a)(7), i.e., whether there is any legal or factual basis for the assertion of the defense" (Bd. Of Managers of Cove Club Condominium v Jade Car Park, LLC, 79 Misc3d 1228[A] [Sup Ct, NY Cnty 2023], quoting Matter of Ideal Mut. Ins. Co., 140 AD2d 62, 67 [1st Dept 1988]). "On a motion to dismiss affirmative defenses pursuant to CPLR § 3211 (b), the

plaintiff bears the burden of demonstrating that the defenses are without merit as a matter of law" (534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick, 90 AD3d 541, 541 [1st Dept 2011] [emphasis added]). "Upon a motion to dismiss a defense, a defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (Warwick v Cruz, 270 AD2d 255 [2d Dept 2000]). "A defense should not be stricken where there are questions of fact requiring trial" (534 E. 11th St. Hous. Dev. Fund Corp., 90 AD3d at 542, citing Atlas Feather Corp. v Pine Top Ins. Co., 128 AD2d 578, 578-579 [1987]).

Plaintiff's application to dismiss the first affirmative defense -- that the excessive fees charged by plaintiff, including the liquidated damages clauses in the contract, are contrary to law -- is granted. Plaintiff submits both contracts, and neither contract contains a liquidated damages clause (see NYSCEF Doc. No. 002, "Exhibit A" to Complaint, January RSA; NYSCEF Doc. No. 003, "Exhibit B" to Complaint, April RSA).

The court denies plaintiff's application to dismiss the second (unconscionability of the contract), third (unjust enrichment), fourth (violation of good faith and fair dealing), seventh (fraudulent inducement), thirteenth (plaintiff induced defendants to enter into an unlawful, usurious loan), and

fourteenth (the contract is invalid) affirmative defenses. Plaintiff has not satisfied its burden that these defenses are without merit as a matter of law (see Granite State Ins. Co. v Transatlantic Reinsurance Co., 132 AD3d 479, 481 [1st Dept 2015]). Further, "a defense should not be stricken where there are questions of fact requiring a trial" (see 534 E. 11th St. Hous. Dev. Fund Corp., 90 AD3d at 542). Here, defendants raise sufficient questions of fact in its opposition papers as to these affirmative defenses.

The court grants plaintiff's application to dismiss the eighth affirmative defenses. Therein, defendants allege that "plaintiff's filing of this matter against defendant violates the doctrine of *in pari delicto*" (NYSCEF Doc. No. 17, Answer). "*In pari delicto* is a long-established tenant of law that instructs courts to refrain from intervening in a dispute between two parties at equal fault" (Kirschner v KPMG LLP, 15 NY3d 466, 478 [Ciparick, J. (dissenting), 2010], citing Stone v Freeman, 298 NY 268, 271 [1948]). While this defense "raises factual issues that require factual exploration" (id. at 479, quoting Stahl v Chemical Bank, 237 AD2d 231 [1st Dept 1997]), defendants allege no facts under which they plead *in pari delicto*. Accordingly, this affirmative defense is dismissed.

Similarly, defendants do not state any facts whatsoever to support the following affirmative defenses: fifth (plaintiff is

suing for the wrong amount), sixth (laches), ninth (failure to mitigate damages), tenth (lack of damages), eleventh (plaintiff failed to exhaust all necessary prerequisites to commence this action), and twelfth (plaintiff failed to comply with its obligations). They plead these defenses as conclusions of law (see Chelsea 8th Ave. LLC v Chelseamilk LLC, 220 AD3d 565, 566 [1st Dept 2023] [holding that "bare legal conclusions are insufficient to raise an affirmative defense"], citing Robbins v Growney, 229 AD2d 356, 358 [1st Dept 1996]). Finally, as defendants do not address any of these affirmative defenses in their opposition papers, these "defenses are deemed abandoned" (Knickerbocker Retail LLC v Bruckner Forever Young Social Adult Day Care Inc., 204 AD3d 536, 538 [1st Dept 2022], citing McHale v Anthony, 41 AD3d 265, 266-267 [1st Dept 2007]).

The court grants plaintiff's application to dismiss defendants' fifteenth affirmative defense, that the agreement is a contract of adhesion. Defendants plead this affirmative defense as a conclusion of law without any factual support; they fail to allege any high pressure tactics or deceptive language in the contract, demonstrating the inequality of bargaining power between the parties (see Estates NY Real Estate Services LLC v City of New York, 184 AD3d 56, 62 [1st Dept 2020] [providing that "adhesion is found where the party seeking to enforce the contract uses high pressure tactics or deceptive

language in the contract and where there is inequality of bargaining power between the parties"]).

The sixteenth affirmative defense (failure to state a cause of action) is viable. "No motion by the plaintiff lies under CPLR § 3211(b) to strike the defense of failure to state a cause of action, as this amounts to an endeavor by the plaintiff to test the sufficiency of his or her own claim" (Ochoa v Townsend, 209 AD3d 867, 868 [2d Dept 2022]; see Tribbs v 326-338 E 110th LLC, 215 AD3d 480 [1st Dept 2023]). Accordingly, plaintiff's application to dismiss the sixteenth affirmative defense is denied.

Accordingly, it is hereby

ORDERED that plaintiff ITRIA VENTURES LLC's motion (seq. no. 002) for summary judgment is denied in its entirety; it is further

ORDERED that plaintiff ITRIA VENTURES LLC's motion (seq. no. 002) to dismiss defendants' ANEELA 1 LLC D/B/A SAMS FOOD STORE, ANEELA 2 LLC, ANEELA 3 LLC D/B/A MAX MART, ANEELA 4 LLC, and MUHAMMAD RASHAD MUNIR affirmative defenses, is granted, in part, to the extent that defendants' affirmative defenses numbered first, fifth, sixth, eighth, ninth, tenth, eleventh, twelfth and fourteenth are dismissed; it is further

ORDERED that plaintiff ITRIA VENTURES LLC's motion (seq. no.002) to dismiss the affirmative defenses of defendants ANEELA

1 LLC D/B/A SAMS FOOD STORE, ANEELA 2 LLC, ANEELA 3 LLC D/B/A MAX MART, ANEELA 4 LLC, and MUHAMMAD RASHAD MUNIR is otherwise denied; it is further

ORDERED that plaintiff ITRIA VENTURES LLC shall serve defendants ANEELA 1 LLC D/B/A SAMS FOOD STORE, ANEELA 2 LLC, ANEELA 3 LLC D/B/A MAX MART, ANEELA 4 LLC, and MUHAMMAD RASHAD MUNIR with notice of entry within ten days from the date of this decision and order; and it is further

ORDERED that this matter is scheduled for a preliminary conference on September 3, 2025, at 11:30 A.M. in Part 42M at 111 Centre Street, Courtroom 574.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

07/16/2025
DATE

EMILY MORALES-MINERVA, 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