

Fenix Capital Funding, LLC v Wyche-Smith

2025 NY Slip Op 32969(U)

July 17, 2025

Supreme Court, Kings County

Docket Number: Index No. 534586/2024

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 17th day of July 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

FENIX CAPITAL FUNDING, LLC,

Plaintiff(s),

-against-

MARITZA WYCHE-SMITH /DBA: RITZ WALTON WEDDING COLLECTION/THE RITZ WALTON WEDDING COLLECTION/RITZ WALTON COLLECTION, CASA DE FLORA BAR LLC, EXECUTIVE & SUITTEE LLC, THE CATEGORY IS BODY LLC AND MARITZA WYCHE-SMITH,

Defendant(s).

DECISION & ORDER

Index No.: 534586/2024

Calendar No.: 13

Motion Seq.: 001

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 6-12).....	1, 2
Affirmations and Exhibits in Opposition (NYSCEF 14-18).....	3
Reply Affirmation and Exhibits (NYSCEF).....	4

Upon the foregoing papers, the decision and order of the Court is as follows:

This is an action for, *inter alia*, Breach of Contract and Personal Guarantee, all relating to monies owed by defendants to plaintiff based on Merchant Cash Advance Agreement (the “Agreement”) dated 9/26/2024 with a dollar value of \$56,000.00. The purchase amount for the receivables was \$40,000.00. Defendant agreed to establish one bank account for plaintiff to make daily withdrawals of \$222.22 (\$1,555.56 weekly) until the agreement was paid in full. Defendant made \$17,111.16 in total payments. Therefore, plaintiff alleges that the amount of

\$38,888.84 plus additional interest, costs and disbursements in the total amount of \$75,938.84 is due as of the date of filing of the summons and complaint.

Defendant has moved to dismiss this action per CPLR § 3211 [a] [7] and [8] and General Obligations Law § 5-1402. These arguments are without merit.

CPLR § 3211 [a] [8] and General Obligations Law § 5-1402

Under the New York common law rule, matters of procedure are governed by the law of the forum and since matters of substantive law fall within a choice of law analysis, the Courts will apply *contractual* choice of law clauses only to substantive issues (*Matter of Frankel v Citicorp Ins. Servs., Inc.*, 80 AD3d 280, 285-286 [2010]). This is because when the parties contractually agree to a choice of law provision,

...they intend that the law of the chosen state – and no other state – ill [sic] be applied. In such a situation, the chose state’s substantive law – but not its common law conflict of law principles or statutory choice of law directives – is to be applied, unless the parties expressly indicate otherwise. (*Ministers & Missionaries Benefit Board v Snow*, 26 NY3d 466, 468 [2015]).

This principle is grounded in the basic precept of contract interpretation that agreements should be construed to effectuate the parties' intent" (*Welsbach Electric Corp v MasTec. N. Am., Inc.*, 7 NY3d 624, 629 [2006]). As such, "New York courts should not engage in any conflicts analysis where the parties include a choice-of-law provision in their contract, even if the contract is one that does not fall within General Obligations Law § 5-1401 [because subsection two] ...specifically states that, [*n*]othing contained in this section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract" (*Ministers & Missionaries Benefit Board v Snow*, 26 NY3d 474-475, citing General Obligations Law § 5-1501 [2] [*italics added*]).

Here, the forum selection and choice of law clause in the contract evinces an unambiguous intent to submit to personal jurisdiction in New York and apply its substantive law (*Ministers & Missionaries Benefit Board v Snow*, 26 NY3d 468).¹

CPLR § 3211 [a] [7]

Plaintiffs may submit affidavits in opposition to a motion to dismiss pursuant to CPLR § 3211 [a] [7] but it does not obligate them to do so to avoid a dismissal (*See Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976]). Therefore, plaintiff may stand on the pleadings alone, “confident that its allegations are sufficient to state all of the necessary elements of a cognizable cause of action” to survive a motion to dismiss under CPLR § 3211 [a] [7] (*id.*). When determining a motion to dismiss pursuant to CPLR § 3211 [a] [7], the Court must accept the factual allegations in the complaint as true and “accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit into any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 88 [1994]).

However, if the Court considers evidentiary material outside the pleadings and the motion is not converted to one for summary judgment, “the question becomes whether the pleader has a cause of action, not whether the pleader has stated one and, unless it has been shown that a material fact as claimed by the pleader is not a fact at all, and unless it can be said that no significant dispute exists regarding it, [a] dismissal should not [be granted]” (*Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 478, 480 [2d Dept. 2017]).

The complaint alleges the essential elements to recover damages for a breach of contract of action, *i.e.*, the existence of a contract, plaintiff’s performance, defendant’s breach of its contractual obligations, and damages (*Cruz v Cruz*, 213 AD3d 805, 807 [2d Dept 2023]). The

¹ NYSCDF 11, p.8, ¶26

complaint further alleges that the parties executed a contract, plaintiff performed its obligation under the contract by advancing \$40,000.00, defendant failed to make payments until the dollar value of \$59,600.00 was repaid, and plaintiff is owed a balance of \$38,888.84.

Here, the Court plaintiff has articulated verifiable facts that fit within a breach of contract cause of action without regard to the existence of material issues of fact concerning defenses to the complaint (*see Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 480).

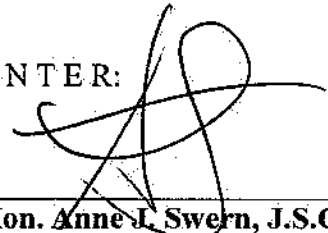
The Court has considered the parties' remaining arguments and finds same to be without merit. Accordingly, it is hereby

ORDERED that defendants' motion to dismiss per CPLR § 3211 [a] [7] and [8] is denied, and it is further

ORDERED that defendants shall serve an answer to the complaint in accordance with CPLR § 3211 [f].

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.

Dated: 7/17/25

For Clerks use only:
MG _____
MD _____
Motion seq. # _____