Pinnacle Bus. Funding LLC v CST Drilling Fluids Inc
2025 NY Slip Op 33083(U)
August 4, 2025
Supreme Court, New York County
Docket Number: Index No. 659730/2024
Judge: Leslie A. Stroth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH **PART** 12M
Justice

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PINNACLE BUSINESS FUNDING LLC,

Plaintiff,

- v -

CST DRILLING FLUIDS INC, WILLIAM HENRY FRANCE

Defendant.

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INDEX NO. 659730/2024

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

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

BACKGROUND AND PROCEDURAL HISTORY

This action arises from an August 23, 2024 Standard Merchant Cash Advance Agreement between Plaintiff, Pinnacle Business Funding, LLC, and Defendants, pursuant to which Plaintiff purchased 5% of Defendant, CST Drilling Fluids, Inc. ("Merchant") future receivables up to $349,750 in exchange for an upfront purchase price of $250,000. Merchant received $237,500 after agreed-upon fees. The Agreement expressly provided that it was not a loan, that its term was indefinite, and that payments would be adjusted based on Merchant's actual receipts.

Defendant William Henry France ("Guarantor") executed a Personal Guarantee of Performance, guaranteeing Merchant's obligations. (NY St Cts Elec Filing [NYSCEF] Doc No. 2 ¶ 17).

Plaintiff wired the purchase price on August 27, 2024. Merchant remitted only $61,720.62, then defaulted by halting payments on October 15, 2024. Guarantor failed to cure the default. Plaintiff now moves for summary judgment seeking $360,036.73 (outstanding balance plus contractual fees), interest from October 15, 2024, and reasonable attorney's fees.

Defendants filed an Answer asserting affirmative defenses but have not opposed this motion.

LEGAL STANDARD

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 Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

DISCUSSION

Here, Plaintiff has made the required showing by submitting the Agreement, the Guarantee, proof of its funding, and proof that Merchant defaulted and Guarantor failed to perform. Plaintiff also established damages of $360,036.73 as provided under the Agreement. Because Defendants filed no opposition, Plaintiff's evidence is unrebutted.

Plaintiff provides proof of the remittance history showing a balance on Defendant's account of $288,029.38. (NYSCEF Doc No. 9). Further, the Contract provides for a calculation of damages in the amount of 25% of unpaid balance in the event of default, which equates to $72,007.35. (NYSCEF Doc No. 2 ¶ 33). Combined, the outstanding balance and contractual damages equals $360,036.73.

The Agreement was Not a Loan

Defendants assert usury as an affirmative defense, contending the Agreement was a loan. That argument fails as a matter of law. Under New York law, "[i]f the transaction is not a loan, there can be no usury" (*Seidel v 18 E. 17th St. Owners, Inc.*, 79 NY2d 735, 744 [1992]). A loan requires an absolute obligation to repay principal with interest (*Donatelli v Siskind*, 170 AD2d 433, 434 [2d Dept 1991]). By contrast, where repayment depends on the merchant's revenue and the purchaser bears the risk of non-collection, the agreement is a true sale of receivables and not a loan.

Courts weigh three factors in deciding if an agreement is contingent, and therefore not a loan: "(1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the merchant declare bankruptcy. (*LG Funding, LLC v United Senior Properties of Olathe, LLC*, 181 AD3d 664, 666 [2d Dept 2020]).

Here, the Court finds that the Contract's Mandatory Reconciliation provision, the indefinite term of the contract, and the provisions of the contract stating that bankruptcy is not an event of default support Plaintiff's showing that the agreement does not constitute a loan, and as such that Defendant's Usury affirmative defense is inapplicable.

First, the Mandatory Reconciliation provision allows Merchant to request adjustments so that Plaintiff collects no more than 5% of actual receipts (NYSCEF Doc No. 7 ¶ 4). Such provisions negate any fixed repayment obligation and are incompatible with a loan (*LG Funding, LLC,* 181 AD3d 664).

Second, the court finds the indefinite term and assumption of risk on the Plaintiff's part indicate that the agreement was not a loan. The Agreement expressly states it is indefinite

(NYSCEF Doc No. 7 ¶ 7). There is no maturity date; payment depends on actual receipts. Plaintiff assumed the risk that Merchant's business might slow or fail, resulting in partial or no repayment, further undercutting any argument that the agreement was a loan.

Finally, the Agreement does not make bankruptcy an event of default; it expressly states bankruptcy "will not on its own…be considered a breach" (Id. ¶ 15). The Court further notes that Plaintiff has limited recourse in insolvency, unlike a lender who accelerates debt on bankruptcy, further distinguishing the agreement from a loan. (*See generally K9 Bytes, Inc. v Arch Capital Funding, LLC*, 56 Misc 3d 807, 818 [Sup Ct 2017]).

These terms demonstrate that the transaction lacks an absolute repayment obligation and instead shifts risk to Plaintiff, confirming that it is a purchase of receivables, not a loan. Accordingly, New York usury statutes do not apply, and Defendants' usury affirmative defense is inapplicable.

Other Affirmative Defenses

The remaining defenses—improper service, unconscionability, mitigation, and unclean hands—fail as a matter of law. Service was effectuated in compliance with the parties' contractual provision, which is enforceable under New York law (*Gilbert v. Burnstine*, 255 N.Y. 348 [1931]). Plaintiff provides proof of service demonstrating said compliance, and as such the affirmative defense of improper service is without merit. (NYSCEF Doc Nos. 3, 12)

Unconscionability is not established, as the Agreement was between sophisticated commercial parties and contains standard terms recognized under the UCC. The duty to mitigate applies only to consequential damages, not the compensatory damages sought here. Moreover, as the matter herein exclusively seeks money damages, the equitable defense of unclean hands is unavailable. (*Greco v. Christoffersen*, 70 AD3d 769, 771 [2d Dept 2010]).

Defendants' defenses are boilerplate and lack factual support which cannot defeat summary judgment. (*Bd. of Managers of Park Ave. Ct. Condominium v Sandler*, 48 Misc 3d 1230(A) [Sup Ct 2015]). Defendants do not show facts to support that Plaintiff failed to comply with a notice of claim provision. Moreover, Plaintiff has adequately produced documentary evidence of both an agreement and breach of said agreement. Defendant further fails to demonstrate a reason to be excused from contractual performance. Defendant also fails to prove that Plaintiff acted in bad faith. As the Court finds such defenses inadequately supported, and given Defendants failure to set forth sufficient proof that there are unresolved issues of fact, the Court finds that Plaintiff has proven their prima facie entitlement to summary judgment.

Accordingly, it is hereby:

ORDERED that Plaintiff's motion for summary judgment is granted in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff and against Defendants, jointly and severally, in the amount of $360,036.73, together with statutory interest from October 15, 2024, plus fees, costs and disbursements related to this action.

8/4/2025
DATE

HON. LESLIE A. STROTH
J.S.C.

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