

**Falcone v BLCE, LLC**

2025 NY Slip Op 33108(U)

July 25, 2025

Supreme Court, New York County

Docket Number: Index No. 656411/2021

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*

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PHILIP A FALCONE

Plaintiff,

- v -

BLCE, LLC D/B/A NEW YORK LOAN COMPANY,

Defendant.

-----X

**INDEX NO.** 656411/2021

**MOTION DATE** 12/13/2024

**MOTION SEQ. NO.** 006

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

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

Upon the foregoing documents, defendant’s motion is granted.

**Background**

Plaintiff Philip Falcone, a former hedge-fund manager, found himself in money troubles in the 2010s. In 2013, he (along with his wife and two entities he controlled) entered into a \$92 million loan and guaranty, that was secured by collateral including four pieces of fine art (the “Artworks”). By 2018, Plaintiff had defaulted on the 2013 loan, and the loan holder Melody Business Finance, LLC (“Melody”) notified him of the default in March of 2019. Beginning the following month, Plaintiff attempted to raise money through secured loans. One of these was secured by a diamond ring, and was entered into with luxury pawnbroker defendant BLCE, LLC, d/b/a New York Loan Company. Three subsequent loans were entered into between the parties, all secured by the diamond ring. Between September of 2019 and October of 2020, Plaintiff entered into a succession of further loans with Defendant, each memorialized in a written loan

agreement and secured by the Artworks (the “Artwork Loans”). Defendant had physical possession of the Artworks at this time.

In February of 2020, Melody sued Plaintiff on the 2013 loan and sought to foreclose on the Artworks. Plaintiff entered into a stipulation in that proceeding, agreeing to refrain from transferring or pledging any collateral pledged to Melody. Shortly thereafter, Plaintiff pledged two the Artworks to Defendant. In early 2021, Defendant sold two of the Artworks at public auction after foreclosing on the secured loans due to Plaintiff’s default. Upon finding out about this foreclosure, Melody sued Defendant claiming to have superior title to the Artworks. Defendant first argued in that proceeding that they had superior title as the pledges made by Plaintiff as to ownership of the Artworks were valid. Upon discovering that Plaintiff had, in fact, pledged the Artworks to Melody prior to pledging them to Defendant, Defendant settled with Melody in that proceeding.

On November 9, 2021, Plaintiff brought suit against Defendant, alleging that the loan secured by the diamond ring was usurious and that Defendant wrongfully foreclosed upon the ring. Defendant, in turn, brought counterclaims against Plaintiff, alleging that Plaintiff misrepresented his ownership of the artworks from September 2019 to November 2020, constituting fraudulent inducement, breach of contract, and contractual indemnification. In 2023, Defendant made a motion for summary judgment on the complaint that was granted in part by the Court. After further discovery, Defendant now moves for summary judgment on their counterclaims.

### **Standard of Review**

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be

established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

### **Discussion**

Defendant now moves for summary judgment on their breach of contract, indemnity, and fraudulent inducement counterclaims. Plaintiff opposes, although it is unclear from the papers whether Plaintiff opposes the motion as to all counterclaims or simply the fraudulent inducement claim. For the reasons that follow, the motion is granted.

#### **The Fraudulent Inducement Counterclaim**

Defendant’s first counterclaim alleges fraud in the inducement, related to Plaintiff’s alleged representations of ownership of the Artworks. They allege that Plaintiff represented both orally and in writing that he had ownership of the Artworks, although at the time they were owned by one of Plaintiff’s entities, First Street LLC. Other alleged representations include that Plaintiff was able to pledge the Artworks and that they were not subject to any other lien or security interest. Plaintiff has submitted an affidavit on this motion, claiming that Defendant’s principal was aware that there could be other liens on the Artworks because Plaintiff had told him that he “should” conduct a UCC search on the Artworks. Defendant has argued that they did conduct such a search, but that because they did not know about First Street LLC, the search turned up no liens on the Artworks (when queried as owned by Plaintiff).

The elements of a claim for fraudulent inducement are “a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury.” *GoSmile, Inc. v. Levine*, 81 A.D.3d 77, 81 [1st Dept. 2010]. Plaintiff here made multiple misrepresentations on the Artwork Loans, that were clearly intended on their face to induce Defendant to issue the loans that later resulted in substantial financial injury to Defendant. To the extent that any element of this claim is in question, it is the reliance element. *See, e.g., Federal-Mogul Corp. v. UTi, United States, Inc.*, 146 A.D.3d 468, 471 [1st Dept. 2017] (holding that [t]o be viable, a fraudulent inducement claim must demonstrate justifiable reliance on the false representation”). Plaintiff’s affidavit attempts to raise issues of fact regarding Defendant’s reliance, alleging that Plaintiff advised Defendant that they “should” do a UCC lien search, and that this meant that Defendant’s principal was “fully aware of the fact that [the Artworks were] possibly pledged to other entities.”

Ultimately, Plaintiff’s affidavit fails to raise a question of fact for several reasons. To begin with, Plaintiff does not allege that he informed Defendant’s principal of the true ownership of the Artworks or the existence of other liens, only that Defendant “should” do a UCC search. Given that such a search would not turn up any liens on the Artwork as owned by Plaintiff (due to the works in question being owned by Plaintiff’s entity), these allegations do not raise questions of fact as to justifiable reliance. Furthermore, while generally a court may not weigh the credibility of an affirmant on a summary judgment, it may do so when “it clearly appears that the issues are not genuine, but feigned.” *Glick & Dolleck, Inc. v. Tri-Pac Export Corp.*, 22 N.Y.2d 439, 441 [1968]; *see also Kennedy v. Mossafa*, 100 N.Y.2d 1, 10 [2003] (holding that a “bare allegation is insufficient to defeat a motion for summary judgment”). Here, the Court finds that the Plaintiff’s affidavit only feigns to raise issues of fact regarding reliance. This is in part

due to factors such as what the affidavit stops short of outright alleging, basic common sense, and the rest of the record (including emails from Defendant's principal to Plaintiff specifically requesting "replacement collateral you might have that is lien-free"). Plaintiff has made out a prima facie case of fraudulent inducement and Defendant has failed to defeat that showing by raising any genuine issues of material fact.

*The Breach of Contract and Indemnity Counterclaims*

Defendant has moved for summary judgment on their second counterclaim for breach of contract. Plaintiff's papers are silent as to this issue. Neither does Plaintiff address the third counterclaim for indemnity of Defendant's legal fees in the Melody action, pursuant to an indemnity clause in the Artwork Loans. The Artwork Loan contained Plaintiff's clear warranty and representation that he was the owner of the Artworks, and that there were no liens or encumbrances against them. Defendant has made a prima facie case to summary judgment in their favor on the second and third counterclaims, and Plaintiff has failed to oppose this portion of the motion or to raise any genuine issue of material fact going to either counterclaim.

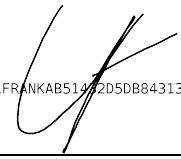
Accordingly, it is hereby

ADJUDGED that the motion is granted as to liability; and it is further

ORDERED that defendant BLCE, LLC d/b/a New York Loan Company is granted summary judgment in their favor on their counterclaims as against plaintiff Philip A. Falcone; and it is further

ORDERED that defendant BLCE, LLC d/b/a New York Loan Company is to be granted a money judgment in an amount to be determined at the time of trial or other such resolution of this matter.

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7/25/2025

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE