

**Highland Hill Capital, LLC v Rip's Venice Sports Bar
& Billiards, LLC**

2025 NY Slip Op 34175(U)

October 30, 2025

Supreme Court, Kings County

Docket Number: Index No. 525093/2025

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 30th day of October 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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HIGHLAND HILL CAPITAL, LLC.,

Index No. 525093/2025
Cal. No. 18 MS 1

Plaintiff,

-against-

DECISION AND ORDER

RIP'S VENICE SPORTS BAR & BILLIARDS, LLC,
et. al.,

Defendants.
-----X

The following e-filed papers read herein
MS 1

NYSCEF Doc Nos.
Doc Nos. 1-41

Upon the foregoing cited papers, Plaintiff, Highland Hill Capital, LLC (“Highland”), moves pursuant to CPLR 3212 for summary judgment in the amount of \$285,378.99, plus interest of 16% per annum from July 24, 2025, costs and disbursements; and pursuant to CPLR 3211 (b) to dismiss Defendants’ Affirmative Defenses. The motion is decided as follows:

Plaintiff herein alleges that it entered into a Merchant Cash Agreement with the Defendant entities (hereinafter “Defendants”), wherein it agreed to remit weekly disbursements for a specific amount of weekly receivables. Plaintiff contends it remitted ten weekly deposits for a total purchase price of \$239,777, less contractual fees, and in return Plaintiff was to receive 11% of the Defendants’ future receivables until the amount of \$342,970.71 was paid to Plaintiff, and, that in the event of default, as set forth in the Agreement, Defendants agreed to pay the full

uncollected purchase amount plus fees, and reasonable attorney's fees and costs. Plaintiff alleges that Defendants defaulted on July 24, 2025, by purposely preventing Plaintiff from receiving what it purchased and failing to remit the receivables. Plaintiff states Defendants made payments totaling \$142,139.80, prior to the breach, leaving a balance of \$226,107.19, plus contractual costs and fees of \$56,526.80, a default fee of \$2,500, NSF fees of \$50, and a UCC filing fee of \$195, for a total balance of \$285,378.999 due to Plaintiff, along with 16% interest from the date of breach and attorney's fees. The debt was also alleged to have been personally guaranteed by Defendants Linda Villani and Thomas Villani. Plaintiff contends because the Agreement is a Merchant Cash Agreement, and meets all the necessary requirements for such, the affirmative defenses should be dismissed and Plaintiff awarded summary judgment.

In opposition, Defendants contend the alleged Agreement was a loan, that Plaintiff fails to establish payment to Defendants and how the alleged amount owed was calculated. Defendants also allege Plaintiff has failed to establish entitlement to additional fees, the payment history, and that the records produced are admissible as business records.

In reply, Plaintiff restates that Defendants' affirmative defenses are predicated solely on the assumption that the Agreement was a criminally usurious loan or that Plaintiff breached the Agreement, and therefore should be dismissed. Plaintiff also reiterates that the affidavit is sufficient to admit the produced documents as business records pursuant to CPLR 4518 (a), and that Plaintiff is entitled to summary judgment because no questions of fact exist.

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). A party moving for summary judgment must make a prima facie showing of entitlement as a matter of law sufficient to demonstrate the absence of any material issues of fact,

but once a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require trial of the action (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman*, 49 NY2d at 562). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). "It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012] [citation omitted]).

Further, pursuant to CPLR 3211(b), a court may dismiss one or more defenses of a party on the ground a defense is not stated or has no merit.

Here, Defendants allege that the subject Agreement is a usurious loan, and not a Merchant Cash Agreement ("MCA"). "The rudimentary element of usury is the existence of a loan or forbearance of money, and where there is no loan, there can be no usury, however unconscionable the contract may be" (*LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d 664, 665 [2d Dept 2020]).

As stated by the court in *Principis Capital, LLC v I Do, Inc.*, 201 AD3d 752, 754 [2d Dept 2022]:

"To determine whether a transaction constitutes a usurious loan: 'The court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances. Unless a principal sum advanced is repayable absolutely, the transaction is not a loan. Usually, courts weigh three factors when determining whether repayment is absolute or contingent: (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'" (*citing to LG Funding, LLC v United Senior Props. of Olathe, LLC, supra*).

Here, the subject agreement satisfies all of the above criteria for an MCA. Specifically, the agreement contains a valid reconciliation provision in paragraph 4, maintains an indefinite term and does not render the filing of a bankruptcy petition a breach of the agreement. Thus, there is no issue of fact that the transaction set forth in the agreement was not a loan. Plaintiff also established that Defendants breached the contract in failing to make the payments as agreed and that Margaret Villani and Thomas Villiani are also liable as guarantors. Defendants' contention that the financial documents submitted by Plaintiff are not admissible as business records lacks merit. Plaintiff thus met its prima facie burden of proof for summary judgment.


Defendants, in response, neither disputed signing the Agreement (and guarantees), nor nonpayment. They indicate, however, that Plaintiff requests additional fees, sued for the wrong amount and has failed to clearly establish how the damages amount was calculated.

This Court, however, finds that the Agreement specifically provides for payment of additional fees and costs in the event of default, including attorney's fees. Nevertheless, Plaintiff has failed to clearly set forth how the amounts sought as damages were calculated. Accordingly, Plaintiff is granted summary judgment on liability only. Damages and attorney's fees shall be determined at trial.

In light of this determination, Plaintiff's motion for dismissal of the Affirmative Defenses, pursuant to CPLR 3211 (b), is also granted to the extent that the Sixth, Ninth, Tenth,

Eleventh, Twelfth, Fourteenth, Fifteenth, Sixteenth, Nineteenth, Twenty, Twenty First, Twenty Second and Twenty Third, Affirmative Defenses are dismissed. The remainder of the motion is denied.

ENTER:



Hon. Reginald A. Boddie
Justice, Supreme Court