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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HORIZON CAPITAL NY L.P,

Plaintiff,

-against-

RIGHT TIME AUTOMOTIVE LLC D/B/A IDRIVE, DOUGLAS M KURZYNSKI, LUMOS LLC, IDEAL GUN & PAWN LLC, and RIGHT TIME AUTOMOTIVE,

Defendants.

Index No. 518653/2025

Cal. No. 13-15 MS 1-3

Decision and Order

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The following e-filed papers read herein:	NYSCEF Doc Nos.
MS 1	9-11, 14, 18, 29
MS 2	15-17, 27-28, 44
MS 3	36-41

Pro se defendant Douglas Kurzynski's motion to dismiss the instant action (Motion Sequence 1), plaintiff's motion to dismiss defendants' counterclaims and affirmative defenses (Motion Sequence 2), and plaintiff's motion seeking a default judgement (Motion Sequence 3), are decided as follows:

This action arises out of an alleged breach of a May 1, 2025 Sale of Future Receipts Agreement (the "Agreement") pursuant to which plaintiff purchased $449,700 of future receivables of defendant Right Time Automotive LLC d/b/a iDrive ("Automotive") for a $300,000

purchase price, to be delivered by remitting 24.05% of revenues. Plaintiff alleges Automotive defaulted by May 23, 2025, triggering an acceleration and leaving an unpaid balance of $434,754.92, and seeks attorneys' fees pursuant to the Agreement. Plaintiff further sues guarantors Douglas M. Kurzynski ("Kurzynski"), Lumos LLC ("Lumos"), Ideal Gun & Pawn LLC ("Gun"), and Right Time Automotive ("Right") on a guaranty of performance.

Kurzynski's Motion to Dismiss (Motion Sequence 1)

Pro se defendant Kurzynski moves under CPLR 3211(a)(1) and (a)(7), seeking dismissal of the complaint in its entirety and a declaration that the underlying agreements are "void and unenforceable." Kurzynski argues the "sale of future receivables" is a disguised, criminally usurious loan, unsupported by genuine risk-shifting or reconciliation; that plaintiff funded only half, then coerced a second, worse deal and attempted to secure additional real-estate collateral via a Purchase Option Agreement; and that the contracts were procured and enforced through bad faith and economic duress, with the agreements and communications serving as documentary proof.

In opposition, plaintiff argues that the motion should be denied because (i) Kurzynski, appearing pro se, cannot move on behalf of the business defendants, and, as such, any relief sought on the business defendants' behalf is a nullity pursuant to CPLR 321[a]; (ii) the Agreement is not a usurious loan as a matter of law since it includes reconciliation, features no finite term and no bankruptcy recourse, and/ as such, repayment is not absolute; and (iii) the complaint adequately pleads breach of contract and guaranty, is supported by the Agreement, funding proofs, and transaction history, and on a CPLR 3211(a)(7) motion its allegations must be accepted as true with all favorable inferences, while, in contrast, defendants' usury, fraud, and duress assertions are conclusory, fact-intensive, and improper at the pleading stage.

In reply, Kurzynski reiterates that the "receivables" transactions are criminally usurious loans, that plaintiff only partially funded the Sale of Future Receipts Agreement dated April 29, 2025, thereafter coercing him into entering into the harsher Agreement dated May 1, 2025, and further attempted to coerce him into entering a Purchase Option Agreement dated May 14, 2025 to encumber his real and commercial properties. Kurzynski further contends that he acted in good faith and intended to repay.

"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" (*Principis Capital, LLC v I Do, Inc.*, 201 AD3d 752, 754 [2d Dept 2022] [citation omitted]). "To determine whether a transaction constitutes a usurious loan: [t]he court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances" (*id.* [internal quotation marks omitted]). "Unless a principal sum advanced is repayable absolutely, the transaction is not a loan" (*id.*). "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" (*id.*).

In the present case, plaintiff established as a matter of law that the transaction set forth in the Agreement was a purchase of future receivables, as distinguished from a loan. The Agreement contains specific provisions that defeat a claim of absolute repayment—an essential element of any usurious loan claim. Section 4 of the Agreement provides both prospective and retroactive reconciliation mechanisms: the Business Defendant's remittance may be reduced "to decrease the Periodic Amount" so that total payments reflect the "Specified Percentage of Seller's actual revenue," and any excess remitted must be refunded "[w]ithin five business days after making

th[e] calculation." Moreover, the Agreement lacks a finite term for repayment, as payments are to continue until the purchased amount is collected, without any specified deadline. Furthermore, the Agreement disclaims any default in the event of bankruptcy, confirming that "Buyer assumes … the risk that the full Purchased Amount may never be remitted because Seller's business goes bankrupt or otherwise ceases operations."

Accordingly, given that the Agreement includes a reconciliation provision, lacks a finite term, and expressly disclaims default in the event of bankruptcy, Kurzynski's contention that the Agreement is a criminally usurious loan and therefore void and unenforceable fails as a matter of law.

"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must afford the complaint a liberal construction, accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*USCHAG Corp. v Flagstar Bank, FSB*, 220 AD3d 823, 823-24 [2d Dept 2023] [citation omitted]). "Although a court may consider materials submitted by the defendant in support of its motion, the materials must establish conclusively that the plaintiff has no cause of action" (*id.*). "The pleading will be deemed to allege whatever may be implied from its statements by reasonable intendment and the court must give the pleader the benefit of all favorable inferences that may be drawn from the complaint" (*Dunn v Gelardi*, 59 AD3d 385, 386 [2d Dept 2009] [citation omitted]).

Accepting the facts as alleged in the complaint as true and according plaintiff the benefit of every possible favorable inference as the Court must, defendants fail to establish conclusively that plaintiff does not have a viable cause of action. Plaintiff duly alleges that defendants executed and defaulted on the Agreement, that the Agreement is enforceable as written, and that plaintiff

performed its obligations by advancing funds. Defendants' assertions of bad faith, coercion, and forced collateral fail to negate plaintiff's causes of action, as the alleged conduct does not constitute economic duress or unconscionability in circumstances where defendants had the contractual right to cancel and were under no legal compulsion to enter into the subsequent agreement. Likewise, defendants' contention that plaintiff failed to fund as required does not warrant dismissal at this stage, as it raises factual disputes that must be resolved through discovery, not on a CPLR 3211 motion.

"A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Fontanetta v Doe*, 73 AD3d 78, 83 [2d Dept 2010] [citation and internal quotation marks omitted]). Such documentary evidence must be "of undisputed authenticity" (*id.*). Indeed, "[t]o constitute documentary evidence, the evidence must be unambiguous, authentic, and undeniable" (*Xu v Van Zwienen*, 212 AD3d 872, 874 [2d Dept 2023] [citation and internal quotation marks omitted]).

In the instant proceeding, defendants argue that "[t]he agreements themselves, along with the related text messages and communications," conclusively establish plaintiff's bad faith and coercive conduct, thereby rendering the Agreement void. Such argument is unavailing. The plain language of the Agreement supports plaintiff's position that the transactions were purchases of future receivables, not loans, and that plaintiff's funding and collection rights were governed solely by the written contractual terms. Moreover, defendants have provided no authenticated "text messages or communications" as exhibits in support of their motion, and, had they been submitted, such materials would at best raise factual disputes regarding performance and intent, which cannot be resolved on a pre-answer motion to dismiss.

Based on the foregoing, defendants' motion to dismiss the complaint in its entirety and to declare the underlying Agreement void and unenforceable is denied.

Plaintiff's Motion to Dismiss (Motion Sequence 2)

Plaintiff moves to dismiss defendants' counterclaims under CPLR 3211(a)(7) and strike all affirmative defenses under CPLR 3211(b). Plaintiff argues that the usury counterclaim is barred as a matter of law for business entities and guarantors and, in any event, the receivables agreements are not loans. Plaintiff asserts the implied-covenant claim contradicts the Agreement's plain terms and right-to-cancel; fraudulent inducement lacks the particularity required by CPLR 3016(b) and merely re-pleads nonperformance; the economic duress claim merely repackages defendants' unconscionability argument, which, at most, may only be asserted as an affirmative defense rather than as a standalone claim; and intentional infliction of emotional distress lacks "extreme and outrageous" conduct or pleaded damages. Plaintiff contends that defendants' affirmative defenses are conclusory, contradicted by the Agreement, proof of funding, and transaction history, and corporate defendants cannot proceed pro se.

In opposition, pro se defendant Kurzynski argues that his counterclaims and defenses are well-pleaded and raise factual disputes: the two agreements imposed fixed daily debits with no meaningful reconciliation or risk-shift, making them criminally usurious, void "disguised loans"; plaintiff underfunded the first agreement by 50%, then coerced the second Agreement on worse terms and subsequently pushed an options agreement to encumber his home and business—conduct Kurzynski asserts evinces fraud, bad faith, unconscionability, and economic duress.

In reply, plaintiff argues that the motion is unsworn, inadmissible, and merely repeats conclusory allegations without factual support. Plaintiff maintains that usury cannot be asserted affirmatively by business entities or guarantors and, in any event, the May 2025 agreement's

reconciliation, open-ended term, and lack of bankruptcy recourse defeat any usury defense. Plaintiff reasserts that the remaining claims are duplicative, not legally viable, or contradicted by the Agreement, which imposed no funding obligation and allowed defendants to cancel, which they never did.

Defendants' first counterclaim, seeking a declaration that the agreements are criminally usurious loans, fails as a matter of law. As discussed in the Decision and Order on Motion Sequence 1 above, the transaction set forth in the Agreement constitutes a purchase of future receivables, not a loan. The Agreement includes reconciliation provisions permitting downward adjustment of payments to reflect a specified percentage of actual receipts, contains no fixed repayment term, and expressly disclaims default in the event of bankruptcy, all of which negate any claim of absolute repayment, a core element of a usurious loan.

Defendants' second counterclaim, alleging breach of the duty of good faith and fair dealing and that plaintiff "coerc[ed] Defendants to sign new terms and then further attempting to seize mortgage rights in bad faith," likewise fails as a matter of law. The Agreement expressly provides that "[t]he obligation of Buyer under this Agreement will not be effective unless and until Buyer has completed its review of the Seller and has accepted this Agreement by delivering the Net Funded Amount," and further grants defendants the right to "cancel this Agreement at any time within 3 calendar days after Buyer has delivered the Net Funded Amount to Seller" by simply notifying Plaintiff and returning the advanced funds." It is undisputed that defendants did not exercise their contractual right to cancel. Plaintiff's alleged conduct, therefore, cannot constitute bad faith.

Defendants' third counterclaim, alleging fraudulent inducement, fails to sufficiently state a cause of action. "To make out a prima facie case of fraud, the complaint must contain allegations

of a representation of material fact, falsity, scienter, reliance and injury" (*Moore v Liberty Power Corp., LLC*, 72 AD3d 660, 661 [2d Dept 2010] [citations omitted]). "CPLR 3016(b) further requires that the circumstances of the fraud must be stated in detail, including specific dates and items" (*id.* [internal quotation marks omitted]). Moreover, "[a] present intent to deceive must be alleged and a mere misrepresentation of an intention to perform under the contract is insufficient to allege fraud" (*WIT Holding Corp. v Klein*, 282 AD2d 527, 528 [2d Dept 2001] [citation omitted]). Here, defendants merely assert that plaintiff misrepresented its intent to fully fund the initial agreement to induce execution of the contracts. Such a conclusory allegation fails to meet the pleading standard under CPLR 3016(b) and, in any event, is insufficient to state an independent cause of action for fraud under *WIT Holding Corp.*

Defendants' fourth counterclaim alleges economic duress, asserting that they "had no choice but to sign [the Agreement] under threat of insolvency." "A contract may be voided on the ground of economic duress where the complaining party was compelled to agree to its terms by means of a wrongful threat which precluded the exercise of its free will" (*Sitar v Sitar*, 61 AD3d 739, 742 [2d Dept 2009] [citation omitted]). In the present action, even accepting defendants' allegation as true and according defendants the benefit of every possible favorable inference as the Court must, defendants fail to sufficiently allege facts establishing that plaintiff engaged in any unlawful conduct that deprived them of the ability to exercise free will. The purported "threat" to withhold additional funding or condition future advances on execution of a new agreement constitutes a lawful exercise of contractual discretion, not economic duress. Moreover, while defendants could have walked away from the deals and had the contractual right to cancel the Agreement, defendants opted to refrain from doing so. Accordingly, the fourth counterclaim for economic duress fails to state a cause of action and is dismissed.

Defendants' fifth counterclaim, alleging intentional infliction of emotional distress, likewise fails. "The tort of intentional infliction of emotional distress requires a plaintiff to establish four elements: (1) extreme and outrageous conduct, (2) committed with the intent to cause, or with disregard of a substantial probability of causing, severe emotional distress, (3) a causal connection between the conduct and injury, and (4) severe emotional distress" (*Lynch Dev. Assoc., Inc. v Johnson*, 219 AD3d 1328, 1330 [2d Dept 2023] [citations and internal quotation marks omitted]). "[O]f the four essential elements of the tort, the outrageousness element [is] the one most susceptible to determination as a matter of law since it is rigorous, and difficult to satisfy" (*id.*). Here, defendants fail to allege any conduct that could reasonably be characterized as "extreme and outrageous." Neither the alleged "indirect threatening of financial ruin," nor plaintiff's purported "coercing [of] leverage of real estate" or "bad faith contract switching," rises to the level of conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Taggart v Costabile*, 131 AD3d 243, 250 [2d Dept 2015] [citations and internal quotation marks omitted]). Moreover, defendants fail to plead any facts showing that plaintiff acted with the intent to cause, or with disregard of a substantial probability of causing, severe emotional distress. Accordingly, the fifth counterclaim for intentional infliction of emotional distress is also dismissed.

Defendants' affirmative defenses of (i) bad faith, partial funding, and economic duress; (ii) improper collateralization attempt; (iii) criminal usury and disguised loan; and (iv) stacking and broker collusion, are duplicative of the counterclaims and defenses dismissed above and are therefore likewise stricken. To the extent defendants allege that plaintiff "orchestrated overlapping positions, refused full funding, and forced unreasonable concessions under duress" "[t]hrough

brokers at Tino Capital," such allegations are conclusory and unsupported by specific facts identifying any individuals or conduct attributable to plaintiff. Moreover, the purported "Tino Capital" is not a party to this action.

Based on the foregoing, plaintiff's motion to dismiss is granted in its entirety, and defendants' counterclaims are dismissed, and their affirmative defenses are stricken.

Plaintiff's Motion for a Default Judgment (Motion Sequence 3)

Plaintiff Horizon Capital NY L.P. moves pursuant to CPLR 3215(a) for entry of a default judgment against the business defendants Automotive, Lumos, Gun, and Right, in the sum of $434,754.92 plus statutory interest from May 23, 2025, costs, and disbursements, on the ground that they failed to appear or answer the verified complaint despite proper service under the terms of the parties' Agreement. Plaintiff argues that its claims are meritorious and supported by the verified complaint and exhibits showing breach of contract and guaranty, that the business defendants cannot appear pro se under CPLR 321(a) and thus remain in default, and that service by certified mail was valid pursuant to the contractual service clause. Plaintiff further notes that more than thirty days have elapsed since service, no extensions were sought, the claims are for a sum certain, and plaintiff waives attorneys' fees to avoid an inquest.

As of the date of this Decision and Order, no opposition papers have been filed to Motion Sequence 3. Although defendant Kurzynski indicated on September 30, 2025, that he intended to retain counsel to represent himself and Automotive (*see* NYSCEF Doc No. 49), no attorney has appeared on behalf of any defendant to date.

CPLR 3215(a) provides that "[w]hen a defendant has failed to appear, plead or proceed to trial of an action ... the plaintiff may seek a default judgment against him." A corporate defendant is "in default when it appeared in [an] action without representation by a licensed attorney"

(*Lohmann v Castleton Gallery, Inc.*, 252 AD2d 482 [2d Dept 1998] [citations omitted]; see, CPLR 321[a]). "An applicant for a default judgment against a defendant must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant's failure to answer or appear" (*Countrywide Home Loans Servicing, L.P. v Vorobyov*, 188 AD3d 803, 806 [2d Dept 2020] [citations omitted]).

Here, plaintiff has provided affidavits of service establishing proper service on the corporate defendants in June 2025 (*see* NYSCEF Doc No. 3-6). Plaintiff has further submitted proof of the facts constituting its breach of contract and guaranty claims, including the executed Agreement and wire payment confirmations annexed to the verified complaint (*see* NYSCEF Doc No. 1). It is undisputed that the corporate defendants failed to appear or answer, did not request an extension of time, and remain unrepresented in violation of CPLR 321(a).

Accordingly, plaintiff's motion for default judgment is granted, and judgment is entered against defendants Right, Lumos, Gun, and Right in the amount of $434,754.92, plus statutory interest from May 23, 2025, together with costs and disbursements as calculated by the Clerk. Plaintiff shall file and serve a proposed judgment within twenty (20) days of the entry of this Decision and Order.

ENTER:

Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.