

American Funding Servs. v Singh Contr. Inc

2025 NY Slip Op 34429(U)

November 19, 2025

Supreme Court, Kings County

Docket Number: Index No. 510892/2025

Judge: Reginald A. Boddie

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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 19th day of November 2025.

PRESENT:
Honorable Reginald A. Boddie
Justice, Supreme Court

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AMERICAN FUNDING SERVICES,

Plaintiff,

Index No. 510892/2025

-against-

Cal. No. 3 MS 1

SINGH CONTRACTING INC and HARVINDER SINGH,

Decision and Order

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 1

14-32

Plaintiff’s unopposed motion for summary judgment is decided as follows:

This action arises out of defendants’ alleged breach of two October 21, 2024 Sale of Future Receipts Agreements (the “Agreements”), under which plaintiff purchased a specified percentage of defendant Singh Contracting Inc.’s future receivables, along with defendant Harvinder Singh’s personal guaranty of performance (the “Guaranty”).

Plaintiff moves for summary judgment pursuant to CPLR 3212 for \$596,243.46 plus interest, arguing that the material facts are undisputed, that defendants breached the Agreements and the Guaranty by defaulting on February 28, 2025, and that defendants’ usury defense fails because the Agreements are true purchases of future receivables, not loans, under the established three-factor test of reconciliation clause, no finite term, and no bankruptcy-default provision.

Plaintiff further asserts that all remaining affirmative defenses are vague, unsupported, and contradicted by the documentary evidence, warranting dismissal and entry of judgment as a matter of law.

By Order dated October 9, 2025, the Court adjourned the instant motion, filed on August 18, 2025, to November 13, 2025, to afford defendants additional time to submit their response. As of the date of this Decision and Order, however, no opposition papers have been filed.

It is well established that summary judgment is warranted when “the proponent makes a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]). Once the proponent has made a prima facie showing, the burden then shifts to the motion’s opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). 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]).

In the present action, plaintiff has made a prima facie showing of entitlement to judgment as a matter of law. The documents of record, including the executed Agreements, proof of payment, bank transfer reports, and remittance history, establish the existence of a valid receivables purchase agreement and guaranty, plaintiff’s full performance thereunder by funding

defendants, defendants' default on February 28, 2025, and the resulting balance of \$596,243.46.

Defendants have not submitted opposition or otherwise raised any triable issue of fact.

“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.*).

Here, the documentary evidence establishes that the Agreement is a purchase and sale of future receivables, not a loan subject to usury statutes, as (i) repayment was contingent on defendants' generation of future receivables, (ii) the Agreements contain a mandatory reconciliation provision, (iii) the Agreements lacks a finite term and (iv) the Agreements expressly provide that bankruptcy does not constitute a default event. Plaintiff has also shown that the personal guaranty is absolute and unconditional, rendering the guarantor jointly and severally liable for the merchant's default. Defendants' affirmative defenses are conclusory, unsupported by admissible evidence and contradicted by the record.

Accordingly, plaintiff's unopposed motion for summary judgment is granted in favor of plaintiff and against defendants Singh Contracting Inc. and Harvinder Singh, jointly and severally, in the principal sum of \$596,243.46, plus interest at the rate of 9% from February 28, 2025, reasonable fees as well as costs taxed by the clerk. Plaintiff shall, within twenty (20) days of entry

of this Decision and Order, file a proposed judgment along with an attorney affirmation and detailed breakdown supporting the amount of reasonable fees and costs sought for taxation by the Clerk.

ENTER:

AMB

Honorable Reginald A. Boddie
Justice, Supreme Court

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