Fiji Funding LLC v VIP Courier Express LLC
2025 NY Slip Op 34820(U)
December 11, 2025
Supreme Court, Kings County
Docket Number: Index No. 526887/2025
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 11th day of December 2025.

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

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FIJI FUNDING LLC,

Plaintiff,

-against-

VIP COURIER EXPRESS LLC and TAMELA VAHNITA COLSON,

Defendants.

Index No. 526887/2025

Cal. No. 9 MS 1

Decision and Order

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The following e-filed papers read herein:	NYSCEF Doc Nos.
MS 1	8-37

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

This action arises out of defendants' alleged breach of three standard merchant cash advance agreements dated June 24, 2024, November 25, 2024, and December 26, 2024 (the "Agreements") by diverting receivables, impeding ACH withdrawals, and failing to remit payments. Plaintiff moves for summary judgment under CPLR 3212 for $1,105,029.53 plus 16% interest per annum from defendants' default on August 1, 2025, together with attorneys' fees, costs, and disbursements, and also seeks dismissal of defendants' affirmative defenses under CPLR 3211(b). Plaintiff argues that the Agreements are valid purchases of receivables, not usurious loans, because repayment is contingent on future receipts, the Agreements include a mandatory reconciliation provision, have no fixed term, and specifically provide that bankruptcy

[* 1]

or slowdown is not a default. Plaintiff further contends that the documentary evidence conclusively establish that plaintiff fully performed by funding the Agreements, defendants breached by diverting receivables while still operating, and that the guarantor is personally liable under her unconditional guarantee, leaving no triable issues of fact.

By Order dated October 30, 2025, the Court adjourned the instant motion, filed on September 30, 2025, to December 11, 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 wire transfers to defendants, and defendants' payment history, establish the existence of valid

receivables purchase agreements and guaranty, plaintiff's full performance thereunder by funding defendants, defendants' default, and the resulting balance. 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 Agreements concern the 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.

The Court notes that the total balance of $1,105,029.53 sought by plaintiff includes (1) $69,230.74 in "costs and fees" added to an unpaid balance of $276,922.95 under the June 24, 2024 Agreement; (2) $132,595.58 in "costs and fees" added to an unpaid balance of $530,382.33 under the November 25, 2024 Agreement; (3) $17,679.59 in "costs and fees" added to an unpaid balance

of $70,718.34 under the December 26, 2024 Agreement; and (4) "default fees" totaling $7,500 ($2,500 under each Agreement). By the Court's calculation, the combined fees, costs, and default charges represent approximately 25% of the unpaid principal balances.

Such default-related fees under a merchant-cash-advance agreement and guaranty are not enforceable when "[p]laintiff has not established (or attempted to establish) that these fees constitute a reasonable advance estimate of difficult-to-calculate damages, as required for the fees to be collectible liquidated damages, rather than impermissible penalties" (*see Irwin Funding LLC v Adrian Valdez Transp.*, LLC, 80 Misc 3d 1210(A) [Sup Ct 2023]). Plaintiff has made no such showing here. Accordingly, the branch of plaintiff's motion seeking summary judgment on the $7,500 in default fees is denied.

With respect to attorneys' fees and costs, Paragraphs 41 and 43 of the Agreements provide for "a contingency fee of up to 40% of the amount claimed." Plaintiff has not demonstrated that such a high percentage is reasonable under the circumstances of the instant action, nor has plaintiff submitted any contemporaneous billing records substantiating the "costs and fees" that constitute approximately 25% of the balance sought or explaining what those charges represent. Therefore, although the branch of plaintiff's motion seeking an award of reasonable attorneys' fees and costs pursuant to the Agreements is granted, the amount of such fees is not established on this record. Plaintiff shall submit detailed billing records and contemporaneous documentation supporting the calculation of any attorneys' fees, costs, or expenses for which it seeks reimbursement.

As to defendants' affirmative defenses, they are conclusory boilerplate assertions directly contradicted by the record. For example, defendants' twelfth affirmative defense alleges that "Plaintiff's tort-based claims (fraud, unjust enrichment, etc.) and quasi-contract claims are precluded by the breach of contract cause of action," yet plaintiff has asserted no such tort or quasi-contract claims in this action. The only two causes of action alleged in the Verified Complaint are

breach of contract and breach of personal guaranty. Defendants' second affirmative defense similarly contends that plaintiff failed to serve defendants in accordance with the Agreements and failed to provide proof of service. However, the Affirmation of Service was filed on August 11, 2025 (NYSCEF Doc. No. 5), and establishes that defendants were served by the method expressly authorized in Paragraph 46 of the Agreements. Defendants further assert that they did not default, a contention flatly contradicted by the documentary evidence showing their failure to remit the purchased percentage. Because each of defendants' thirteen affirmative defenses is refuted by the record, the branch of plaintiff's motion seeking dismissal of all affirmative defenses is also granted.

Accordingly, plaintiff's unopposed motion for summary judgment is granted in favor of plaintiff and against defendants VIP Courier Express LLC and Tamela Vahnita Colson, jointly and severally, in the amounts reflecting the unpaid balances under each of the three Agreements, together with the contractual interest rate of 16% per annum from August 1, 2025 through the date of entry of judgment, and reasonable attorneys' fees and costs. Defendants' affirmative defenses are hereby dismissed. The remainder of plaintiff's motion is denied.

It is further ORDERED that plaintiff shall, within twenty (20) days of entry of this Decision and Order, serve and file a proposed judgment reflecting: (i) an itemization of the unpaid balance for each of the three Agreements on separate lines; (ii) the amount of reasonable attorneys' fees sought, supported by an attorney affirmation and contemporaneous billing records; (iii) the amount of reasonable costs and fees sought, supported by an attorney affirmation and itemized records; and (iv) the contractual interest at 16% per annum from August 1, 2025 to the date of entry of judgment, to be taxed by the Clerk.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

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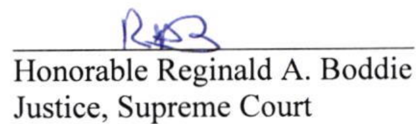

Honorable Reginald A. Boddie
Justice, Supreme Court

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