

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

2025 NY Slip Op 34850(U)

December 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 525093/2025

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

-----X
HIGHLAND HILL CAPITAL LLC,

Plaintiff,

Index No. 525093/2025

-against-

Cal. No. 12 MS 2

RIP'S VENICE SPORTS BAR & BILLIARDS, LLC
D/B/A RIP'S VENICE SPORTS BAR &
BILLIARDS / IRMA'S TACOS, et al.

Decision and Order

Defendants.

-----X
The following e-filed papers read herein:
MS 2

NYSCEF Doc Nos.
44-54

Plaintiffs' motion for reargument of their motion resulting in the Court's October 30, 2025 Decision and Order is decided as follows:

Background

This action arises out of an alleged breach of a Standard Merchant Cash Advance Agreement dated May 20, 2025 (the "Agreement"), under which plaintiff claimed defendants ceased remitting purchased receivables and owed significant outstanding amounts, fees, and interest. By Decision and Order dated October 30, 2025, the Court found that the Agreement was a valid future receivables agreement rather than a usurious loan, dismissed numerous affirmative defenses of defendants, and granted plaintiff summary judgment on liability only. The Court

denied summary judgment as to damages and attorneys' fees, holding that plaintiff "failed to clearly set forth how the amounts sought as damages were calculated" and directed that damages and attorneys' fees shall be determined at trial (NYSCEF Doc No. 42).

Plaintiff moves pursuant to CPLR 2221(d) for leave to reargue the branch of its prior summary judgment motion relating to damages, asserting that the Court overlooked plaintiff's original submissions detailing how the outstanding balance and contractual fees were calculated. Plaintiff contends that the Agreement expressly authorizes the requested fees, that the amounts sought were set forth in the affidavit by its manager already before the Court, and that similar motions have previously resulted in awards of damages before this Court. Plaintiff asserts that no new evidence is being offered, that the undisputed record establishes the amount due, and that, if necessary, plaintiff is willing to waive certain fees so that damages may be awarded based solely on the established outstanding balance.

In opposition, defendants contend that plaintiff identifies no fact or law the Court overlooked or misapprehended, and is simply attempting to relitigate an issue the Court already decided. Defendants argue that reargument is improper because plaintiff raises new damages theories and calculations not presented in its original summary judgment motion, and that the Court correctly exercised its discretion in declining to award damages where plaintiff failed to meet its burden. Defendants further contend that features of the Agreement resemble a loan rather than a true receivables purchase, reinforcing why damages should not be summarily awarded, and assert that plaintiff's reliance on unrelated decisions is irrelevant.

In reply, plaintiff argues that defendants' opposition improperly revisits issues of liability already resolved by the Court and fails to dispute the principal balance owed under the Agreement. Plaintiff reasserts that the damages calculation, including contractual fees of up to 40%, was already supported by the Agreement and prior motion papers, and no new evidence has been

introduced. Plaintiff contends the Court merely overlooked the Agreement's fee provision and, at minimum, should award the undisputed principal balance of \$226,107.19 now that liability has been established.

Discussion

“A motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include matters of fact not offered on the prior motion” (*Pryor v Commonwealth Land Tit. Ins. Co.*, 17 AD3d 434, 435-36 [2d Dept 2005] [citation and internal quotation marks omitted]; see CPLR 2221[d][2]). “The motion does not offer an unsuccessful party ... successive opportunities to present arguments not previously advanced” (*id.*). “It is well settled that a motion to reargue is not an appropriate vehicle for raising new questions ... which were not previously advanced” (*People v D'Alessandro*, 13 NY3d 216, 219 [2009] [citation and internal quotation marks omitted]). “Necessarily, where a new argument is presented on the motion, that argument could not have been overlooked or misapprehended ... in the first instance” (*id.*).

Here, plaintiffs fail to identify any fact or law that this Court overlooked or misapprehended in its October 30, 2025 Decision and Order. Plaintiff asserts that it “detailed the amount that had been paid under the Agreement,” citing Paragraph 30 of the Affidavit of Andrew Versace (“Versace”), a manager of plaintiff, and further contends that “the amount sought was 25% of the outstanding balance” because “that is the amount Plaintiff is being charged as a contingency fee,” which it claims is permissible because the Agreement authorizes “up to 40% of the outstanding balance as costs and fees.” Paragraph 30 of the Versace affidavit, however, merely states:

“MERCHANT made payments totaling \$142,139.80 prior to breaching the Agreement, leaving a total 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, leaving a total balance of \$285,378.99 due to Plaintiff under the Agreement” (NYSCEF Doc No. 8).

Contrary to Plaintiff's position, this conclusory assertion does not clearly set forth how the damages were calculated. The reference to "contractual costs and fees of \$56,526.80" provides no breakdown between attorneys' fees and costs, no explanation as to how the attorneys' fees were calculated, and no contemporaneous billing records. Moreover, the damages claim is supported only by the affidavit of a manager of plaintiff, not counsel, and plaintiff's attorney provided neither an affirmation nor time records substantiating the fee application.

While the Agreement allows for fees "which may include a contingency fee of up to 40% of the amount claimed (NYSCEF Doc No. 2)," it does not entitle plaintiff to simply select an amount within that ceiling and demand it without submitting itemized billing, contemporaneous records, or any evidentiary support demonstrating why the claimed percentage or amount is warranted under the circumstances of this case.

With respect to plaintiff's alternative request to waive fees and costs and to seek summary judgment solely for the alleged outstanding balance of \$226,107.19, the Court finds, upon further review of the docket, that plaintiff has not established this amount as a matter of law.

Plaintiff derives the asserted balance from the Versace affidavit, which states: "MERCHANT made payments totaling \$142,139.80 prior to breaching the Agreement, leaving a total balance of \$226,107.19," yet the affidavit cites no documentary evidence in the docket supporting these figures. In contrast, the remittance history (NYSCEF Doc No. 12), payment history (NYSCEF Doc No. 13), and transactional history (NYSCEF Doc No. 15) provided by plaintiff reflect different numbers. Specifically, "Total Debits: 48 (\$155,061.60)" and "Total Credits: 10 (\$239,777.00)," as well as two returned payments dated July 24 and July 25, 2025, in the amounts of \$3,230.45 each, totaling \$6,460.90. Even adjusting the total debits and total credits to account for the returned payments, the resulting amounts paid and the corresponding balance remain thousands of dollars apart from the \$142,139.80 that plaintiff claims defendants paid and

the \$226,107.19 that plaintiff asserts is outstanding. These unexplained discrepancies in plaintiff's own records raise issues of fact that preclude awarding damages as a matter of law at this time.

As to the "Default fee of \$2,500" sought by plaintiff, 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 in its summary judgment motion or in the instant reargument motion. Accordingly, the default fees sought by plaintiff is denied.

Notwithstanding the foregoing, as the Court has already granted summary judgment in favor of plaintiff on liability and determined that plaintiff is entitled to reasonable contractual attorneys' fees and costs, the Court hereby, sua sponte, grants plaintiff leave to move for summary judgment on damages and to submit a proposed judgment. Any such motion shall include, with citation to the docket, (i) the exact amount of the outstanding balance under the Agreement, (ii) interest calculated at the contractual rate of 16% per annum from July 24, 2025 through the date judgment is entered, to be taxed by the Clerk, (iii) a claim for reasonable attorneys' fees supported by contemporaneous billing records, and (iv) an itemized breakdown of all fees and costs sought.

Conclusion

Based on the foregoing, plaintiff's motion for reargument is denied.

It is further ORDERED that plaintiff may elect to move for summary judgment on damages within thirty (30) days of entry of this Decision and Order.

Any arguments not expressly addressed herein were considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court
HON. REGINALD A. BODDIE
J.S.C.