

Vox Funding, LLC v Second to None Exteriors
2025 NY Slip Op 35232(U)
October 14, 2025
Supreme Court, Nassau County
Docket Number: Index No. 609925/2024
Judge: Francis D. Ricigliano
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS PART 23**

Present: HON. FRANCIS RICIGLIANO
Justice of the Supreme Court

-----X
VOX FUNDING, LLC,

Plaintiff,

-against-

SECOND TO NONE EXTERIORS and
MICHAEL ECKLER a/k/a MICHAEL EDWARD
ECKLER a/k/a MICHAEL E ECKLER,

Defendants.
-----X

DECISION & ORDER

INDEX NO.: 609925/2024

Motion Seq. No. 1

The following e-filed documents were reviewed in consideration of this motion:

- Notice of Motion, Affirmations, Exhibits, etc. 16 - 27;
- Opposition to Motion 22 - 30;
- Reply 31.

By Notice of Motion, plaintiff VOX FUNDING, LLC, seeks an Order granting summary judgment to plaintiff against the defendants pursuant to CPLR 3212, and dismissing defendants' Verified Answer.

This action concerns a Merchant Cash Advance Agreement whereby defendant SECOND TO NONE EXTERIORS, LLC, agreed to sell \$165,600.00 in future merchant receivables to plaintiff, payable from a percentage of defendant's weekly revenue, for a sum of \$120,000.00. Defendant MICHAEL ECKLER executed the agreement as owner of SECOND TO NONE EXTERIORS, LLC, as well as a personal guaranty of performance. Plaintiff thereafter commenced this action seeking to recover damages for breach of contract, unjust enrichment, and breach of guaranty.

In support of the motion, plaintiff submits, among other things, an Affidavit sworn to by Louis Calderone, President of plaintiff VOX FUNDING, LLC, and Business Records Affidavit

sworn to by the same Mr. Calderone. Mr. Calderone asserts the parties entered into the agreement on or about January 11, 2024, and that plaintiff satisfied their obligation under the agreement by paying the defendants the purchase price minus agreed upon fees. Both the Complaint and Mr. Calderone are silent as to when that payment was made, the amount of the fees that were deducted up front, and the total sum paid to the defendants. Mr. Calderone also asserts that the defendants breached the agreement on or about April 4, 2024, after remitting an unspecified sum in payments, leaving a balance due on the agreement of \$144,900.00. Plaintiff is thus seeking a judgment on the balance due plus breach and returned items fees totaling another \$14,500.00, for a total sum of \$159,440.00, plus statutory interest from the date of the breach, reasonable attorneys' fees, and costs and expenses.

Defendants oppose the motion and submit, among other things, an Affirmation executed by defendant MICHAEL ECKLER and a Memorandum of Law prepared by counsel. Defendants contend plaintiff has failed to establish a breach of contract because the payment history submitted by plaintiff does not document any rejection codes or stopped payments, that plaintiff has failed to lay a proper foundation for its submission of business records, and that there is a question of fact as to whether the agreement is a valid merchant cash advance agreement.

It is well settled that a proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact. *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 (1986). If the movant does establish prima facie entitlement to judgment as a matter of law, the burden then shifts to the party opposing summary judgment to produce evidence sufficient to raise a question of fact sufficient to require a trial. *Alvarez*, 68 NY2d at 324. Further, in consideration of a motion for summary judgment, the court must view the facts in a light most favorable to those opposing the motion for summary judgment. *Stonehill Capital Management, LLC v. Bank of the West*, 28 NY3d 239 (2016); *Fairlane Corp. v. Longspagh*, 144 AD3d 858 (2d Dept 2016); *Phillip v. D7D Carting Co., Inc.*, 136 AD3d 18 (2d Dept 2015). Additionally, if conflicting testimony raises credibility issues that cannot be resolved on the papers, the motion for summary judgment must be denied. *Messina v. New*

York City Transit Auth., 84 AD3d 439 (1st Dept 2011); *Almonte v. 638 West 160, LLC*, 139 AD3d 439 (1st Dept 2016).

Here, considering these principles and the papers and exhibits before the court, the courts finds plaintiff's motion for summary judgment must be denied as plaintiff has failed to eliminate material questions of fact that require determination at trial, including but not limited to whether the subject agreement is a Merchant Cash Advance Agreement executed in good faith or a predatory lending scheme/usurious loan.

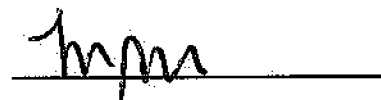
Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment against defendants SECOND TO NONE EXTERIORS, LLC, and MICHAEL ECKLER pursuant to CPLR 3212 is DENIED.

This constitutes the Decision and Order of this Court. Any and all relief not specifically addressed herein is denied.

Dated: October 14, 2025

ENTER:



HON. FRANCIS RICIGLIANO, J.S.C.

ENTERED

Oct 17 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE