Kalamata Capital Group, LLC v Squad LLC
2025 NY Slip Op 35421(U)
March 10, 2025
Supreme Court, Rockland County
Docket Number: Index No. 035568/2024
Judge: Keith J. Cornell
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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KALAMATA CAPITAL GROUP, LLC, :

Index #: 035568/2024

Plaintiff, :

-against- :

DECISION AND ORDER

(Motion Seq. #1)

THE SQUAD LLC D/B/A THE SQUAD NATION; SQUAD LLC; THE SQUAD NATION LLC; SQUAD LLC (THE) and STEPHANIE KRISTIN MUHLENFELD :

Defendants. :

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PRESENT: HON. KEITH J. CORNELL, A.J.S.C.

Before the Court is the motion pursuant to CPLR § 3212 for summary judgment submitted by Kalamata Capital Group, LLC ("Kalamata" or "Plaintiff") against each of the above captioned Defendants. The Court has read and considered NYSCEF documents #1-29 in deciding the motion.

Background

On July 1, 2024, The Squad LLC D/B/A The Squad Nation and/or The Squad ("Merchant") entered into a Revenue Purchase Agreement ("RPA") with Plaintiff. Stephanie Kristin Muhlenfeld signed the agreement as the principal of the Merchant and also personally signed the agreement as guarantor of the contract. Per the terms of the RPA, Merchant sold $49,700.00 of its future receivables to Kalamata for $35,000.00. Merchant agreed to make weekly payments to Kalamata in the amount of $956.00 until the $49,700.00 was paid. The weekly payment was set at 15% of Merchant's weekly receivables. According to Plaintiff, on July 1, 2024, $33,651.00 ($35,000.00 less applicable fees) was transferred to Merchant's bank account in accordance with the Agreement (Doc. 22 ¶ 3; Doc. 25).

This action was commenced by way of a Summons and Complaint filed on September 6, 2024. (Doc. 1). Plaintiff alleged that Defendants breached the RPA after remitting $7,648.00 of the amount owed, leaving a balance of $42,052.00. (Id. ¶ 11). Plaintiff also alleged that Defendants owed $35.00 for NSF fees, $2,500.00 in default fees, and $10,513.00 in attorneys' fees, for a total of $55,100.00 plus interest, costs, and disbursements. (Id.). Defendants filed an Answer with affirmative defenses on October 4, 2024. (Doc. 5).

On December 4, 2024, Plaintiff moved for summary judgment pursuant to CPLR § 3212 on the claims of breach of contract and the personal guarantee. In support, Plaintiff submitted the affirmations of Brandon Laks, a manager at Kalamata Capital Group, LLC. ("Laks Affidavit") (Doc. 17), a Statement of Material Facts (Doc. 22), and the affirmation of Ariel Bouskila, Esq. (Doc. 21) with exhibits A-F, (Doc. 23-28) which included a copy of the RPA, an exhibit entitled "pay history" on NYSCEF, and a document that allegedly showed proof of funding. Defendant The Squad LLC's bank statements were also included as an exhibit.

In his affirmation, Laks asserts that he has access to Plaintiff's business records maintained in the regular course of business; that he has personal knowledge of how Plaintiff keeps its records which are made at or near the time of the event from information transmitted by a person with knowledge and regularly kept in the course of business.

Laks claims that on July 1, 2024, Plaintiff performed its part of the Agreement by "causing the deposit of the 'Purchase Price' less applicable fees in accordance with the Agreement" (Doc. 20 ¶ 10). Plaintiff states that it attached proof of funding as Exhibit "E", but that document contains just two partially redacted lines. The document lacks any caption, heading, or other identifying information, significantly reducing its probative value. (Doc. 25).

Laks asserts that Plaintiff did not collect anything other than what it was entitled to and has complied with its obligations under the RPA. (Doc. 20 ¶ 12). Laks also affirmed that "Merchant performed under the Agreement on the dates and in the amounts as set forth in the Transaction/Remittance History, during which time Merchant remitted to Plaintiff $7,648.00." (Id. ¶ 11).

Plaintiff offers two documents that allegedly show that Defendants made payments between July 8, 2024, and August 26, 2024. First, as exhibit B to the Notice to Admit, Plaintiff attached what they denominate as a "transaction history." (Doc. 10). Review of the document reveals that it appears to be a type of default letter, as it states:

> By issuance of this letter or statement, merchant is hereby advised and understands that engagement of, or agreement with, any company or organization who provides and engages in debt consolidation, restructuring or similar service, or procuring debt consolidation, restructuring or similar financing, is an Event of Default under the Agreement, which entitles Black Olive Capital to enforce all of its right and remedies, **including a Default Fee in the amount of $2,500, a Stacking Fee in the amount of $7,500 or 10% of the original financing amount, whichever is less and reasonable attorney's fees and costs of collection in the amount of 25% of the financing amount**. [emphasis in the original]

The document is dated September 5, 2024. There is a list of Payment Dates with amounts allegedly paid. The final entry, dated 9/3/24, says $0.00 followed by the letters "NSF."

A similar document was submitted as Exhibit 24. This version lacks the paragraph copied above, and it is undated. The default fee of $2,500.00 and the NSF fee of $35.00 are listed, and the balance due, which is identified as "Remaining RTR," is listed as $44,587.00. The code next to the 9/3/25 entry is changed to R08.

Finally, Laks affirmed that Merchant breached the agreement on September 3, 2024, when Kalamata was deprived of the remittance due. Laks argues that the failure to pay that week's installment was an Event of Default per Section 3.1(a), which defines "violat[ion] of any term or covenant in this Agreement" as a default. Laks affirms that a stopped or blocked payment is a "direct occurrence of event of default." (Doc. 20 ¶ 15). Laks affirms that continued failure to remit the specified percentage of receivables is also a breach. (Id.).

Defendants did not respond to the motion for summary judgment.

Discussion

The remedy of summary judgment is a drastic one, and it should only be granted when it is clear no triable issue of material facts exists. See Alvarez v. Prospect Hosp., 68 N.Y.2d 320 (1986); Andre v. Pomeroy, 35 N.Y.2d 361 (1974). The proponent "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 852 (1985); see Zuckerman v. City of New York, 49 N.Y.2d 557 (1980). The evidence submitted must be in admissible form. See, e.g., JP Morgan Chase Bank, N.A. v RADS Group, Inc., 88 A.D.3d 766, 767 (2d Dept. 2011) (summary judgment denied because plaintiff failed to demonstrate admissibility of defendant's payment history). Once a *prima facie* showing has been made, the burden of proof shifts such that an opponent to a motion for summary judgment must demonstrate the existence of a genuine triable issue of fact. Alvarez, *supra*. As summary judgment is the procedural equivalent of a trial, if there is any doubt as to the existence of a triable issue of fact, or where a material issue of fact is even "arguable", the motion must be denied. See Phillips v. Kantok & Co., 31 N.Y.2d 307 (1982).

The papers submitted in support of and in opposition to a summary judgment motion should be scrutinized in a light most favorable to the party opposing the motion. See Gitlin v. Chirkin, 98 A.D.3d 561 (2d Dept. 2012); Dowsey v. Megerlan, 121 A.D.2d 497 (2d Dept. 1986).

Even if the plaintiff's motion is unopposed, summary judgment should not be granted merely because the party against whom judgment is sought failed to submit opposition papers. See Liberty Taxi Mgt., Inc v. Gincherman, 32 A.D.3d 276, 277 fn. 1 (1st Dept. 2006) (citing Vermont Teddy Bear Co., v. 1-800 Beargram Co., 373 F.3d 241 (2d Cir. 2004) ("the failure to oppose a motion for summary judgment alone does not justify the granting of summary judgment. Instead, the…court must still assess whether the moving party has fulfilled its burden of demonstrating that there is no genuine issue of material fact and its entitlement as a matter of law")).

To establish a *prima facie* claim for breach of contract, a plaintiff must establish the existence of a contract, that plaintiff performed pursuant to the contract, that defendant breached its contractual obligations, and that plaintiff was damaged as a result of the breach. See Liberty Equity Restoration Corporation v. Park, 160 A.D.3d 628, 630 (2d Dept. 2018); Dee v. Rakower, 112 A.D.3d 204 (2d Dept. 2013). Plaintiff meets its *prima facie* burden of proof on a motion for summary judgment regarding a breach of contract action by proffering evidence of satisfaction of its obligation and the defendant's default. See Velocity Investments, LLC v. Lymon, 218 A.D.3d 1091, 194 (3d Dept. 2023).

The Court finds that the documents submitted by Plaintiff in support of its summary judgment motion fail to establish a *prima facie* case for breach of contract. The alleged proof of deposit of funds by Plaintiff, attached as Exhibit C to the attorney affirmation (Doc. 25), is unidentifiable and does not establish that a deposit was made into Defendants' account. The bank statements proffered by Plaintiff are not in admissible form, as they lack any certification from the party that responded to the subpoena, so they, too, fail demonstrate that the funding was made to and received by Defendants. Thus, Plaintiff's performance under the contract has not been established.

But most importantly, Plaintiff does not identify which specific event of default occurred. Non-payment by a Merchant, in and of itself, is not an event of default. See RPA Sect. 3.1, listing Events of Default (Doc. 20).

Therefore, it is

ORDERED, that Plaintiff's motion for summary judgment is DENIED; and it is further

ORDERED, that all counsel shall appear for a preliminary conference on a date to be scheduled by the Clerk in a notice to follow, and it is further

ORDERED, that Defendant only may attend virtually by Teams; and it is further

ORDERED, that the attached Preliminary Conference Order shall be completed and submitted to the Court at the preliminary conference.

This constitutes the Decision and Order of this Court on Motion Seq. #1.

Dated: New City, New York
March 10, 2025

Hon. Keith J Cornell, A.J.S.C.

To: All counsel via NYSCEF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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Plaintiff/Petitioner,

-against-

Defendant/Respondent.

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PRELIMINARY CONFERENCE ORDER

Index No.

It is hereby stipulated and ordered that disclosure shall proceed as follows:

1. **Insurance Coverage** (CPLR 3101(f)) shall be furnished on or before ____________________;

2. **Bill of Particulars**, in compliance with 22 NYCRR 202.8 and 202.12:

   (a) Demand for Bill of Particulars shall be served on or before______________________

   (b) Bill of Particulars shall be served on or before _________________________

3. **Medical Reports and Authorizations** shall be served as follows:

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4. **Physical Examination**

   (a) Examination of Plaintiff on or before _______________________

   (b) Physician's report shall be furnished to Plaintiff on or before ___________________

5. **Depositions**

   (a) Party depositions to be completed on or before _______________________

   (b) Non-party depositions to be completed on or before _____________________

6. **Other Disclosure**

   (a) Demand for discovery and inspection shall be served on or before________________

   (b) Other interrogatories per CPLR § 3130 ____________________________

(c) Objections, if any, to be stated on or before ______________________

(d) All parties shall exchange names and addresses of all potential witnesses, statements of opposing parties and photographs (or affidavit of none) on or before ______________

(e) Authorization for employment records for the period ______________ shall be furnished on or before __________________

(f) Accident reports prepared in the regular course of business shall be exchanged pursuant to CPLR § 3101(q) on or before _________________

(g) Plaintiff to provide authorizations for the following collateral source providers: ______ __________________________ (CPLR § 4545) on or before _____________

7. **Expert Disclosure** – per CPLR or on or before _______________

8. **Other**: ____;

9. **Compliance Conference** is scheduled for _____________________________.

The parties are directed to notify the Court in writing if there are any issues with the above-mentioned discovery schedule. **Parties may not bring discovery motions without permission of the Court.**

No adjournments of these dates shall be granted, except with specific permission of the Court, for good cause shown. Failure to timely comply with the above dates may result in the imposition of sanctions, including the striking of pleadings and/or preclusion of evidence.

Attorney for Plaintiff:

____

Attorney for Defendant:

____

Dated: ______________
New City, New York

So ordered:

____
Hon. Keith J. Cornell, AJSC