

Pearl Delta Funding, LLC v Bevel Constr.
2025 NY Slip Op 35439(U)
February 26, 2025
Supreme Court, Nassau County
Docket Number: Index No. 611385/23
Judge: Gregg Roth
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SHORT FORM ORDER**SUPREME COURT - STATE OF NEW YORK****Present:****HON. GREGG ROTH,
Supreme Court Justice**

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PEARL DELTA FUNDING, LLC

TRIAL/IAS, PART 29**NASSAU COUNTY
INDEX NO.: 611385/23****Plaintiffs,****MOTION SEQS.: 002****MOTION SUBMITTED: 1/13/25****-against-****BEVEL CONSTRUCTION and FRANK SMALLS,****Defendants.**

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The following papers read on this motion:

Notice of Motion/Supporting Exhibits/ Memorandum of Law.....X

Plaintiff, Pearl Delta Funding LLC (Pearl), moves this court pursuant to CPLR §3212, for an order granting it summary judgment¹ against Defendant, Bevel Construction (Bevel) in the amount of \$61,001.00 plus interest, costs and disbursements. The motion is unopposed.

According to the complaint, on or about May 4, 2023, Pearl and Bevel entered into a contract whereby Pearl purchased \$72,001.00 of Bevel's future receivables in return for

¹The motion also sought to sever the action against Defendant, Frank Smalls (Smalls), in light of Smalls filing for bankruptcy. The bankruptcy resulted in this action being stayed, including the within motion. While the stay was in effect, Pearl filed a stipulation of discontinuance of its action against Smalls. The stay was then lifted and this motion was re-calendared and re-assigned to this Part. So much of the motion that sought to sever the action has been rendered moot by the discontinuance.

an up front payment of \$51,799.00. Frank Smalls (Smalls) guaranteed the contract. Pearl would receive its payment by withdrawing 6% of Bevel's daily receivables from a particular bank account. Pearl paid the money, minus contractual fees. Bevel made daily payments initially and repaid \$13,500.00 before cutting off Pearl's access to the bank account and failed to make any more payments. This action ensued. The complaint contains one cause of action against Bevel, to wit: breach of contract. Pearl now moves for summary judgment.

It is well established that a party moving for summary judgment must make a *prima facie* showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issue of fact (*see Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). Once the moving party has made a *prima facie* showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form which establishes the existence of a material issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]; *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]).

A defendant seeking summary judgment bears the burden of establishing its *prima facie* entitlement to judgment as a matter of law by affirmatively demonstrating the merit of its defense, rather than merely by pointing out gaps in the plaintiff's case (*see Alizio v Feldman*, 82 AD3d 804 [2d Dept 2011]; *Nationwide Prop. Cas. v Nestor*, 6 AD3d 409, 410 [2d Dept 2004]). Where the moving party fails to make a *prima facie* showing, the

motion must be denied regardless of the sufficiency of the opposing party's papers (*see Lee v Second Ave. Vil. Partners*, 100 AD3d 601 [2d Dept 2012], citing *Winegrad v New York Univ. Med. Center, supra*, at p. 852). The motion court is required to accept the opponents' contentions as true and resolve all inferences in the manner most favorable to opponents (*see Giraldo v Twins Ambulettes Serv., Inc.*, 96 AD3d 903 [2d Dept 2012]).

Further, "[t]he courts function on a motion for summary judgment is 'to determine whether material factual issues exist, not to resolve such issues (citations omitted)' " (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010], quoting *Lopez v Beltre*, 59 AD3d 683, 685 [2d Dept 2009]). Further, "[o]n a motion for summary judgment to enforce a written guarantee, all that the creditor need prove is an absolute and unconditional guarantee, the underlying debt, and the guarantor's failure to perform" (*City of New York v. Clavose Cinema Corp.*, 256 AD2d 69 [1st Dept. 1998]).

A cause of action for breach of contract requires showing that a contract existed, that the plaintiff performed under the contract, that the defendant did not perform under the contract and the failure to perform resulted in damages (*see Palmetto Partners, L.P. v. AJW Qualified Partners, LLC*, 83 AD3d 804 [2d Dept. 2011]).

In support of the motion, Pearl submits, *inter alia*, the contract, and the affidavit of Elie Friedman, Pearl's Chief Underwriting Officer. In his affidavit, Mr. Friedman refers to the affidavit he submitted on a prior motion, wherein he addresses entering into the contract and states that Pearl paid the money. Originally, Pearl was allowed to access the

bank account to receive its payment. However, a time came when access to the bank account was cut off and Bevel has not made a payment since. Based upon the affidavit and the documents provided, the court finds Pearl has established entitlement to summary judgment as a matter of law. Pearl has supplied proof of a contract, that Pearl performed under the contract and that Bevel failed to perform under the contract. The burden shifts to Bevel to raise a material issue of fact requiring a trial of the action. As Bevel has not opposed the motion, it is unable to raise an issue of fact.

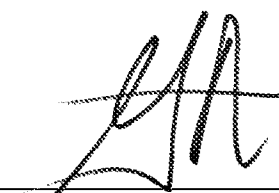
Accordingly, it is hereby

ORDERED, that Pearl's motion for summary judgment is GRANTED in its entirety. Pearl is entitled to judgment against Bevel in the amount of \$61,001.00 plus statutory interest from July 13, 2023, costs and disbursements.

This constitutes the Decision and Order of the Court.

Settle judgment on notice.

Dated: February 26, 2025
Mineola, N.Y.



Hon. Gregg Roth, J.S.C.

ENTERED

Feb 27 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE