Webfund LLC v AGLA Rest. Corp.
2025 NY Slip Op 35441(U)
March 13, 2025
Supreme Court, Nassau County
Docket Number: Index No. 611707/2024
Judge: Anna M. Grimaldi
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU

PRESENT: HON. ANNA M. GRIMALDI, A.J.S.C.

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WEBFUND LLC,

Plaintiff,

-against-

AGLA RESTAURANT CORP., TJ4 RESTAURANT CORP, TJ3 RESTAURANT CORP., TJL RESTAURANT CORP, YOGURT & SUCH CAFÉ'S INC., ALFONSO SPENNATO and GINA J SPENNATO,

Defendants.

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IAS PART 35

Index No.: 611707/2024

Motion Seq. No.: 001

Motion Date: 1/27/2025

DECISION + ORDER

The following documents numbered as below were read on the motion by Plaintiff, WEBFUND LLC, for an Order pursuant to CPLR 3212, granting Summary Judgment against Defendants, AGLA RESTAURANT CORP., TJ4 RESTAURANT CORP, TJ3 RESTAURANT CORP., TJL RESTAURANT CORP, YOGURT & SUCH CAFÉ'S INC., ALFONSO SPENNATO and GINA J SPENNATO, and dismissing Defendants' nineteen (19) affirmative defenses.

NYSCEF Documents

Notice of Motion/Affirm Exhibits/Memorandum of Law in Support of Motion……...9-20
Affirmation/Affidavit of Service……………………………………...…………………22
Memorandum of Law in Opposition of Motion……………………...…………………26
Counterstatement of Material Facts...27
Affirmation/Memorandum of Law in Reply…………………....……………………..28-29

This is an action where Plaintiff alleges causes of action for: breach of contract, breach of guarantee, and unjust enrichment pursuant to a Futures Receivables Sale and Purchase Agreement (the "Agreement") entered into by the parties on April 26, 2024. According to the terms of the Agreement, Plaintiff purchased the rights to a percentage of Defendant Agla Restaurant Corp.'s ("Agla") accounts receivables. Defendants Alfonso Spennato and Gina J. Spennato executed the Agreement, as the President and Secretary of Agla. The Agreement also included guaranty provisions naming Alfonso Spennato and Gina J. Spennato, as Guarantors, (hereinafter "Guarantor or Guarantors") in the event that Agla defaulted pursuant to the Agreement. Defendants TJ4 Restaurant Corp, TJ3 Restaurant Corp., TLJ Restaurant Corp., and Yogurt & Such Café's Inc. ("Company Defendants"), are named as "Additional Entities Included in the Definition of the Term 'Merchant' That Have Sold Future Receipts and Granted [Webfund] a Blanket Security Interest" in an Exhibit to the Agreement.

Plaintiff now moves for summary judgment on its complaint[1], dismissing Defendant's Affirmative Defenses and awarding it costs, expenses and disbursements. For the reasons set forth herein, the within motion is granted in part and denied in part.

In order to prevail on a motion for summary judgment, the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating the absence of any material issue of fact (*see Klein v. City of New York*, 89 N.Y.2d 833 [1996]; *Ayotte v. Gervasio*, 81 N.Y.2d 1062 [1993]; *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]).

Plaintiff has established its *prima facie* entitlement to summary judgment on its causes of action for breach of contract and breach of personal guarantee through the Affirmation of Shloime Nelken ("Nelken"), an authorized representative of Plaintiff, (NYSCEF Doc No. 11), and a Business Records Affirmation also executed by Nelken.(NYSCEF Doc No. 12). A copy of the Agreement, a confirmation of funding document, and a transaction history were also annexed to the motion (NYSCEF Doc. Nos. 15, 16, 17).

On or about April 26, 2024, Plaintiff, Company Defendants and Guarantors entered into the Agreement whereby Plaintiff agreed to buy $134,400.00 ("Purchase Amount") of Company Defendants' future receivables for a sum of $96,000.00 ("Purchase Price").In addition, Guarantor executed a guarantee of performance of all the representations, warranties, and covenants made by the Company Defendants in the contract with Plaintiff. On April 26, 2024, Plaintiff honored its end of the bargain and paid Company Defendants the Purchase Price, minus agreed to fees, for the future receivables. Payments were initially made pursuant to the agreement but promptly stopped on or about June 17, 2024, thereby breaching the Agreement. Specifically, Company Defendants breached the Agreement by failing to remit the purchased receivables to Plaintiff from the Bank Account without proper notice, without providing proper financial disclosures or a written request for reconciliation.

As of the date of this motion, Company Defendants have made payments totaling $17,453.95 leaving a balance of $116,946.05 of the purchase amount owed to Plaintiff. Additionally, Company Defendants owe Plaintiff $5,000.00 for a Default Fee under the Agreement (NYSCEF Doc. Nos. 15, 16, 17). As such, the total owed to Plaintiff as a result of the breach of contract is $121,946.05. Guarantor has failed to perform the guarantee in failing to remit the $121,946.05 owed to Plaintiff pursuant to the Agreement.

[1]Plaintiff waives attorney fees solely for the application of the instant motion for summary judgment and retains its right to renew its application for attorney fees on future applications to the Court.

Plaintiff's third cause of action asserts unjust enrichment. However, a cause of action for unjust enrichment is not viable where there is a contract (*see Brandeis School, Inc. v Yakobowicz*, 130 AD3d 850 [2d Dept 2015]; *see also Ochoa v Montgomery*, 132 AD3d 827 [2d Dept 2015]). Consequently, the portion of Plaintiff's motion seeking summary judgment on the third cause of action for unjust enrichment is denied.

In opposition to the motion, Defendants first challenge the admissibility of Nelken's Affirmations. Defendants argue that Nelken fails to identify the employees who created the records upon which Plaintiff relies. The Court is not aware of this requirement, nor do Defendants provide legal authority for such a requirement. Next, Defendants assert that Nelken fails to assert that it is Plaintiff's regular business to create the business records. However, the Court notes that Nelken asserts this in paragraph 2 of the initial Affirmation. As such, the Court finds Defendants' arguments challenging the sufficiency of Nelken's Affirmations unavailing.

Defendants next argue that Plaintiff's evidence fails to support its claims, asserting that the Agreement is unsigned. The Court finds no validity to this assertion. A simple review of this document reveals that not only did Defendants sign the Agreement, but they also initialed every page of the Agreement.

Defendants further argue that the Funding Confirmation and the Pay Run are unreliable. This Court finds this argument disingenuous, as Defendants do not dispute that they received the money from Plaintiff in accordance with the Agreement; that they are in default; or that Plaintiff's calculation of damages is correct. Additionally, this Court finds that the information in the Funding Confirmation and Pay Run were confirmed through the Affidavit of Shloime Nelken (NYSCEF Doc No. 11). As such, the Court finds this argument to be without merit, as Plaintiff established its entitlement to summary judgment based on the Agreement and the transaction history.

Defendants also argue that Plaintiff fails to properly address Defendants' nineteen Affirmative Defenses. However, the only affirmative defenses which Defendants elaborate upon is the sixteenth Affirmative Defense of usury and the thirteenth Affirmative Defense of unconscionability. The other seventeen Affirmative Defenses are not substantiated with factual allegations, conclusory in nature, and are therefore dismissed (*see CPLR 3013*; *see also Becher v Feller*, 64 AD3d 672 [2d Dept 2009]).

The fundamental element of usury is the existence of a loan or forbearance of money, without which there can be no usury (*see LG Funding, LLC v United Senior Properties of Olathe, LLC, et al*, 181 AD3d 664 [2d Dept 2020]). Unless a principal sum advanced is repayable absolutely, the transaction is not a loan (*see LG Funding LLC, supra.).* "A person seeking to establish usury in a transaction must prove it by clear and convincing evidence. In determining whether a transaction is usurious, the law looks not to its form, but its substance, or real character" (*Abraham v Am. Gardens Co.*, 189 AD3d 741, 744 [2d Dept 2020]). In the case at bar, the Agreement premises Defendants' obligation to pay upon Defendants' generation of receipts, it provides that Defendants may request a reconciliation, there is no fixed term, and the Agreement explicitly states that bankruptcy does not constitute a breach. As such, this Court finds that the Agreement is not usurious, and Defendants' sixteenth Affirmative Defense is dismissed (*id.*).

"[A]n unconscionable contract has been defined as one which is so grossly unreasonable as to be unenforceable because of an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party" (*Emigrant Mortg. Co., Inc. v Fitzpatrick*, 95 AD3d 1169, 1170 [2d Dept 2012]). "The determination of unconscionability is a matter of law for the court to decide. Where the significant facts germane to the unconscionability issue are essentially undisputed, the court may determine the issue without a hearing" (*id.* at 1170). Although Defendants contend that Plaintiff employed high pressure tactics to provide Defendants with no choice but to accept the terms of the Agreement, defendants provide no facts, details or evidence of such tactics. The Court finds that the elements of the Agreement relied upon by Defendants do not meet the definition of unconscionable. Accordingly, Defendants' thirteenth Affirmative Defense is also dismissed.

Lastly, to the extent that Defendants argue that Plaintiff's motion is premature, "A summary judgment motion is not premature merely because discovery has not been completed" (*Northfield Ins. Co. v Golob*, 164 AD3d 682, 683 [2d Dept 2018]). "A party contending that a motion for summary judgment is premature is required to demonstrate that additional discovery might lead to relevant evidence or that the facts essential to oppose the motion are exclusively within the knowledge and control of the movant" (*id.* at 684 citing *Reynolds v Avon grove Props,* 129 AD3d 932, 933 (2d Dept 2015). Here, Defendants have failed to make any such a showing.

The Court has considered the remainder of Defendants' arguments and finds them unconvincing and/or without merit.

Plaintiff has met its *prima facie* burden to establish that Defendants are in breach of the Agreement and Defendants have failed to offer a question of fact such that the motion should be denied.

Therefore, it is hereby

ORDERED that the portion of Plaintiff Webfund LLC's motion for summary judgment on Plaintiff's first two causes of action for breach of contract and for personal guarantee is GRANTED; and it is further

ORDERED that the portion of Plaintiff Webfund LLC's motion for summary judgment on Plaintiff's third cause of action for unjust enrichment is DENIED; and it is further

ORDERED that the portion of Plaintiff Webfund LLC's motion seeking to dismiss Defendants' nineteen Affirmative Defenses is GRANTED and those nineteen Affirmative Defenses and Defendants' Answer are hereby DISMISSED; and it is further

ORDERED, that the Clerk is directed to enter judgment in favor of Webfund LLC and against Defendants, jointly and severally, in the amount of $121,946.05, with 9% interest thereon from June 17, 2024, together with Webfund LLCs' costs, expenses, and disbursements in this action; and it is further

ORDERED, that Plaintiff shall serve a copy of this order with notice of entry on Defendants within 15 days of the date of entry of this order; and it is further

ORDERED that all other requested relief is denied; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

This constitutes the Decision and Order of this Court.

Date: March 13, 2025

Hon. Anna M. Grimaldi, A.J.S.C.

ENTERED
Mar 14 2025
NASSAU COUNTY
COUNTY CLERK'S OFFICE