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 8th day of January 2026.

PRESENT:
Honorable Reginald A. Boddie
Justice, Supreme Court

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ULTRA FUNDING LLC,

Plaintiff,

-against-

24 SHELLS INC, and TUSHIT J SHAH,

Defendants.

Index No. 524765/2025

Cal. No. 21 MS 1

Decision and Order

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The following e-filed papers read herein: NYSCEF Doc Nos.
MS 1 8-28

Upon the foregoing papers, plaintiff's motion seeking an order pursuant to CPLR 3212 granting it summary judgment against defendants in the amount of $460,540.00, plus interest at the rate of 9% from March 11, 2025, plus reasonable fees and costs, and dismissing defendants' affirmative defenses, is decided as follows:

This action arises out of defendants' alleged breach of a Future Receivable Purchase Agreement (the "Agreement"), pursuant to which plaintiff purchased 25% of Merchant's total future account receivables. In connection with the Agreement, defendant Tushit J. Shah executed a Personal Guaranty of Performance.

Plaintiff contends that, on March 11, 2025, Merchant materially breached the Agreement, by performing an Event of Default under section 3.1(d) and section 2.1 of the Agreement. Specifically, plaintiff claims that Merchant violated section 3.1(d) by failing to give 24 hours advance notice that there would be insufficient funds in the account such that the ACH of the Remittance amount would not be honored by Merchant's bank. Section 2.1 states "UFLLC may request statements at any time during the performance of this Agreement and the Merchant and Guarantors shall provide them to UFLLC within five business days after request from UFLLC. Merchant's or Guarantors' failure to do so is a material breach of this Agreement." Plaintiff states that defendants' breach resulted in a Bank Return Code R01.

After the default, on June 11, 2025, plaintiff submits that defense counsel emailed plaintiff requesting a "restricting" of the Agreement but that defendants failed to provide any documentation, let alone documentation that would justify a reconciliation. Prior to the default, plaintiff represents that it collected $62,460.00 of the purchased amount leaving an outstanding receivables balance of $458,040.00. Plaintiff also seeks a default fee in the amount of $2,500.00 pursuant to the Agreement, leaving $460,540.00 as the total balance due after fees.

Regarding defendants' affirmative defenses, plaintiff argues that such defenses are boilerplate and meritless, particularly the usury defense since the Agreement concerns the purchase of future receivables and not a loan. In this regard, plaintiff contends that the Agreement (1) obligates plaintiff to perform a reconciliation upon Merchants' request for reconciliation and the receipt of the required documents; (2) lacks a finite term for repayment; and (3) does not make Merchant's filing for bankruptcy an event of default.

In opposition, defendants argue that summary judgment should not be awarded to plaintiff since discovery has yet to take place. Further, defendants contend that the Agreement constitutes

a usurious loan with a final effective interest rate of approximately "2606%" because (1) the Agreement makes reconciliation extremely unlikely and difficult to obtain; (2) the term was finite and consisted of 50 days; and (3) the Agreement provides plaintiff with recourse in the event of bankruptcy because plaintiff is a secured creditor. Defendants also represent that a reconciliation was attempted but that plaintiff initiated this lawsuit demanding payment of the full amount plus interest.

Discussion

It is well established that summary judgment is warranted when "the proponent makes a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Here, plaintiff's submission establishes its entitlement to judgment as a matter of law. Defendants, in opposition, fail to raise an issue of fact. Contrary to defendants' assertion, the agreement does not set a finite term for repayment as there is no time period during which the Purchased Amount must be collected, and the rate of repayment is subject to a slowdown in Merchant's business. Although defendants contend that reconciliation under the Agreement is illusory, there is no evidence that defendants ever requested a reconciliation pursuant to the terms of the Agreement. Finally, the Agreement does not make a bankruptcy filing a condition of default.

Defendants fail to explain how their argument that plaintiffs are a "secured creditor" in bankruptcy negates the fact that the Agreement does not make a bankruptcy filing an event of default.

Based on the foregoing, plaintiffs' motion for summary judgment is granted in the amount of $458,040.00, plus interest and disbursements. Plaintiffs' request for a default fee in the amount of $2,500.00 is denied since "[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]). In addition, that branch of plaintiff's motion seeking dismissal of defendants' affirmative defenses is granted. Plaintiff shall submit a proposed judgment within 30 days.

ENTER:

Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.