Parkview Advance LLC v TFB Option
2026 NY Slip Op 30257(U)
January 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 532902/2025
Judge: Reginald A. Boddie
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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 20th day of January 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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PARKVIEW ADVANCE LLC,

Plaintiff,

-against-

THE TFB OPTION, and OTTO BEASLY,

Defendants.

Index No. 532902/2025

Cal. No. 11 MS 1

Decision and Order

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The following e-filed papers read herein:	NYSCEF Doc Nos.
MS 1	14-27, 30-36

Plaintiff's motion for summary judgment is decided as follows:

This action arises out of defendants' alleged breach of two merchant cash advance agreements dated December 17, 2024, and February 11, 2025 (the "Agreements"), by impeding ACH withdrawals and failing to remit payments. Plaintiff moves for summary judgment under CPLR 3212, seeking a money judgment for the alleged unpaid balances under the Agreements, plus default fees, 9% statutory interest from August 13, 2025, attorneys' fees, costs, and disbursements. Plaintiff argues the material facts are undisputed: it funded the transactions, defendants remitted only partial payments, then defaulted by interfering with ACH collections, triggering return code R08. Additionally, plaintiff asserts that defendant Otto Beasly's personal guaranty makes him liable for the merchant's nonperformance. Plaintiff further argues defendants'

usury defense fails because the Agreements are not loans under binding authority, and that the remaining affirmative defenses are conclusory and unsupported.

In opposition, defendants contend that the purported Agreements are, in substance, criminally usurious loans disguised as purchases of receivables, as evidenced by plaintiff's practice of withdrawing fixed weekly amounts unrelated to actual receipts, the illusory reconciliation provisions, the personal guaranty, and the implied finite repayment term. Defendants further assert that plaintiff breached the Agreements first by imposing fixed withdrawals rather than percentage-based remittances, that any ACH return codes were caused by bank-imposed restrictions rather than intentional interference, and that the Agreements were procured by fraud in the inducement. Defendants also argue that plaintiff's business records lack proper foundation, material issues of fact remain as to breach and damages, and the motion is premature because discovery has not yet been completed.

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]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). "It is not the function of a court . . . to make credibility

determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012] [citation omitted]).

In the present action, plaintiff has made a prima facie showing of entitlement to judgment as a matter of law. The documents of record, including the executed Agreements, proof of wire transfers to defendants, and defendants' remittance history, establish the existence of valid receivables purchase Agreements and guaranty, plaintiff's full performance thereunder by funding defendants, defendants' default, and the resulting balance. In opposition, defendants failed to present evidentiary facts in admissible form sufficient to raise triable issues of fact defeating plaintiff's prima facie showing.

"The rudimentary element of usury is the existence of a loan or forbearance of money, and where there is no loan, there can be no usury, however unconscionable the contract may be" (*Principis Capital, LLC v I Do, Inc.*, 201 AD3d 752, 754 [2d Dept 2022] [citation omitted]). "To determine whether a transaction constitutes a usurious loan: [t]he court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances" (*id.* [internal quotation marks omitted]). "Unless a principal sum advanced is repayable absolutely, the transaction is not a loan" (*id.*). "Usually, courts weigh three factors when determining whether repayment is absolute or contingent: (1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the merchant declare bankruptcy" (*id.*).

Here, the documentary evidence establishes that the Agreements concern the purchase and sale of future receivables, not a loan subject to usury statutes, as (i) repayment was contingent on defendants' generation of future receivables, (ii) the Agreements contain a mandatory reconciliation provision, (iii) the Agreements lack a finite term and (iv) the Agreements expressly

provide that bankruptcy does not constitute a default event. Plaintiff has also shown that the personal guaranty renders the guarantor jointly and severally liable for the merchant's default.

Notwithstanding the foregoing, plaintiff has failed to meet its prima facie burden for summary judgment as to damages. Plaintiff seeks "an award of summary judgment against Defendants in the amount of $91,250.00, plus interest at the rate of 9% from August 13, 2025, plus reasonable fees, plus costs," yet plaintiff makes no showing whatsoever as to the amount or basis for the claimed fees and costs. Moreover, the $91,250.00 figure does not correspond with the documentary evidence, which reflects "Amount Outstanding" balances of $84,093.75 and $346,886.69 for the two Agreements, respectively (*see* NYSCEF Docs No. 20 & 23). Plaintiff offers no explanation for this discrepancy.

Plaintiff further asserts entitlement to "contractual Default Fee in the amount of $5,000.00 and 5,000.00, for each Agreement, respectively" (NYSCEF Doc No. 27). However, such default-related fees under a merchant-cash-advance agreement and guaranty are not enforceable when "[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]). Plaintiff has made no such showing here. Accordingly, the branch of plaintiff's motion seeking summary judgment on the total of $10,000 in default fees is denied.

Based on the foregoing, plaintiff's motion for summary judgment is granted in favor of plaintiff and against defendants, jointly and severally, on liability only. The remainder of plaintiff's motion is denied. Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:

Honorable Reginald A. Boddie
Justice, Supreme Court

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