

Velocity Capital Group LLC v Air Tel Sys. LLC
2026 NY Slip Op 30357(U)
January 23, 2026
Supreme Court, Kings County
Docket Number: Index No. 517183/2024
Judge: Lisa S. Ottley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

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VELOCITY CAPITAL GROUP LLC,

Plaintiff,

-against-

AIR TEL SYSTEMS LLC and GAREY VINCENT GRAY,

Defendants.

-----X

HON. LISA S. OTTLEY, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion to Dismiss and Notice of Motion for Summary Judgment submitted May 12, 2025.

Papers	Numbered
Notice of Motion and Affirmation in Support to Dismiss.....	1&2
Affirmation in Opposition.....	4[Exh. A-D]
Memorandum of Law in Support of Motion to Dismiss.....	3
Reply Affirmation in Support of Motion to Dismiss.....	5
Notice of Motion and Affirmation in Support Summary Judgment.....	1&2[Exh. A-N]
Affirmation and Affidavit in Opposition to Motion.....	4&5
Memorandum of Law in Support of Motion.....	3

Plaintiff, Velocity Capital Group LLC, commenced this action against the defendants, Air Tel Systems LLC, and Garey Vincent Gray, for monies allegedly due and owing as a result of a breach of contract and personal guaranty entered between the plaintiff and defendants pursuant to a Revenue Purchase Agreement(s) entered into on January 31, 2024, and April 4, 2024. Plaintiff filed its summons and verified complaint on June 21, 2024, which included the agreements, history payments and outgoing wire transfer reports. Defendants filed a Verified Answer on July 25, 2024, to which plaintiff replied on August 14, 2024.

Plaintiff moves for an order pursuant to CPLR 3211(a)(7) and 3211(b) dismissing defendants’ counterclaims for failure to plead facts sufficient to state a claim; and on the grounds that the affirmative defenses lack merit; failure to plead facts and lack of documentary evidence. Plaintiff also moves for summary judgment pursuant to CPLR 3212 against defendants, Air Tel Systems LLC and Garey Vincent Gray, jointly and severally, in the principal amount of \$24,515, plus statutory interest at 9% from May 31, 2024, with costs and disbursements. Defendants oppose the motions to dismiss and summary judgment on the grounds that the defendants’ counterclaims are supported by sufficient factual

allegations that demonstrate a plausible entitlement to relief; there are issues are fact which preclude summary judgment, and the motions are premature due to outstanding discovery.

After careful review of the moving papers, opposition and reply thereto, the court finds as follows:

The underlying action seeks damages based on an alleged breach of a purported Revenue Purchase Agreement(s) entered into between the parties on or about January 31, 2024, wherein the Defendants sold \$35,000 of its business receivables/revenue to the plaintiff for an upfront sum of \$25,000, less any purchase fees. Thereafter, on April 4, 2024, the parties entered into a second agreement wherein the defendants sold \$35,000 of its business receivables/revenue to the plaintiff and plaintiff provided an upfront sum of \$25,000 to defendants. Defendants partially performed under the agreements leaving a balance of \$14,250 under the January 31, 2024, agreement and a balance of \$25,600 under the April 4, 2024, agreement. A breach of both agreements was declared on May 31, 2024 . In support of their motion to dismiss and for summary judgment plaintiff argues that the defendants have failed to set forth sufficient facts to state a claim, the affirmative defenses lack merit and documentary evidence and fail to raise issues of fact which would preclude summary judgment from being granted. Specifically, plaintiff argues that usury defense fails because the agreements were not loans and defendants' proof does not establish that the agreements were loans; nor does defendants' second counterclaim plead sufficient facts to state a claim for breach of contract, since defendants fail to set forth plaintiff's breach, damages sustained by the defendants because of the breach and defendants' performance. In opposition to plaintiff's motion to dismiss and for summary judgment, defendants argue that the counterclaims are valid and supported by sufficient factual allegations grounded in substantial evidence; the contract being usurious and void ab initio and premature due to outstanding discovery.

In reviewing a motion to dismiss an affirmative defense, the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference. See, L.G. Funding, LLC v. United Senior Props. Of Olathe, LLC, LLC, 181 A.D.3d 664, 665, 122 N.Y.S.3d 309 (2nd Dept., 2020).

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, Grassick v. Hicksville Union Free School District, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). "Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action or tender an acceptable excuse for his failure and submission of a hearsay affirmation by counsel alone does not satisfy this requirement." See, Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

Whether the agreement to purchase future accounts receivable is a loan with a usurious interest in excess of New York State's permitted civil rate (see, Adler v. Marzario, 200 A.D.3d 829, 155 N.Y.S.3d 337 (2nd Dept., 2021), the language purporting to state its nature is not conclusive, rather, the contract must be considered in its totality and judged

by its real character, rather than by the name, color, or form which the parties have seen fit to give it. *See, L.G. Funding, LLC v. United Senior Props. Of Olathe, LLC, LLC*, 181 A.D.3d 664, 665, 122 N.Y.S.3d 309 (2nd Dept., 2020). The court will look at whether the purchasing party is entitled to repayment under all circumstances, as unless the principal sum is repayable absolutely, the transaction cannot be a loan. Three factors are usually weighed to determine whether the 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. *See, L.G. Funding, LLC v. United Senior Props. Of Olathe, LLC, supra.*

If the agreement is found to be a loan, criminal usury would be a defense to its enforcement, rendering it void (*see Davis v. Richmond Capital Group, LLC*, 194 A.D.3d 516, 517, 150 N.Y.S.3d 2). “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.” *See, Principis Capital, LLC v. I Do, Inc.*, 201 A.D.3d 752, 160 N.Y.S.3d 325 (2nd Dept., 2022); citing, *LG Funding, LLC v. United Senior Props. of Olathe, LLC*, 181 A.D.3d 664, 665, 122 N.Y.S.3d 309 (2nd Dept., 2020).

In the case at bar, the agreement does not set a finite term for repayment. It indicates that the agreement is for estimated payments that could be debited from the defendants’ revenue. In addition, the agreement provides a reconciliation clause (See NYSCEF Doc. #45, p. 2 paragraphs 1.4) under Adjustment to Remittance. The defendants could request reconciliation via a written reconciliation request to the purchaser, to reconcile the amount the purchaser is receiving.

Accordingly, after considering the three factors above, as well as the context of the agreement in its entirety, the court finds the agreement is a valid agreement to purchase future accounts receivable, and not a disguised loan. The agreement states on Page 1 at the very top page “Revenue Purchase Agreement.” The plaintiff established the essential elements of a cause of action for breach of contract, to wit the existence of a contract, the plaintiff’s performance under the contract and the defendants’ breach of contract resulting in damages. *See, Liberty Equity Restoration Corporation v. Park*, 160 A.D.3d 628, 75 N.Y.S.3d 47 (2nd Dept., 2018).

The court finds that the plaintiff has satisfied its burden in making a prima facie showing of its entitlement to summary judgment by submitting evidence showing defendants’ default under the Contract and Guaranty. The defendants’ opposition does not raise an issue of fact as to the breach of contract. Defendant, Garey Vincent Gray, merely argues that the plaintiff’s claim for damages is a stacking fee of \$7,500.00 and a default fee of \$10,000.00 for each agreement. As indicated above, the contract has been considered in its totality and is not a loan disguised as a purchase future accounts receivable and is therefore not usurious. *See, True Business Funding, LLC v. Guerrero A Construction Corp.*, 239 A.D.3d 787, 236 N.Y.S.3d 679 (2nd Dept., 2025). The defendants have failed to raise a triable issue of fact which would preclude summary judgment from being granted, as well as dismissal of the counterclaim and defense of usury.

Based upon the foregoing, it is hereby

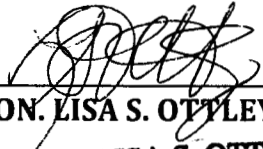
ORDERED that the plaintiff's motion to dismiss is granted dismissing defendants' counterclaims and affirmative defenses, and it is further,

ORDERED that plaintiff's motion for summary judgment is granted and the clerk of the court is directed to enter judgment in favor of plaintiff, jointly and severally against the defendants, AIR TEL SYSTEMS LLC and GAREY VINCENT GRAY, in the amount of \$39,950.00 the balance total for both agreements, with statutory interest at 9% from May 31, 2024, with costs and disbursements.

The stacking and default fees are not awarded and deemed penalties by this court.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
January 23, 2026



HON. LISA S. OTTLEY, J.S.C.
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KINGS COUNTY CLERK
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