

**Essential Funding Group Inc. v JAC Contr. Servs.**

2026 NY Slip Op 30393(U)

January 29, 2026

Supreme Court, Kings County

Docket Number: Index No. 536066/2025

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 29<sup>th</sup> day of January 2026.

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

-----X

ESSENTIAL FUNDING GROUP INC,

Plaintiff,

Index No. 536066/2025

-against-

Cal. No. 3 MS 1

JAC CONTRACTING SERVICES, and JAMES MARKS  
CARR,

Defendants.

**Decision and Order**

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 1

10-26

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

This action arises out of defendants' alleged breach of a sale of future receipts agreement and related personal guaranty dated August 4, 2025, by diverting receivables, impeding ACH withdrawals, and failing to remit payments. Plaintiff moves for summary judgment under CPLR 3212 on its breach of contract and breach of guaranty claims, seeking \$243,587.50 plus 9% statutory interest from August 20, 2025, costs, and fees. Plaintiff argues the facts are undisputed: it funded a future receivables purchase agreement, defendants partially performed and then defaulted by interfering with remittances, triggering contractual damages and guarantor liability, and defendants' usury and other affirmative defenses lack merit because the agreement is a non-loan purchase of receivables and the defenses are conclusory and unsupported.

In opposition, defendants argue that plaintiff failed to meet its prima facie burden because it submitted inadmissible, self-serving, and incomplete proof that does not establish a breach, a clear date of default, or a reliable calculation of damages. Defendants further contend the agreement is not a true receivables purchase but an unlawful usurious loan, that plaintiff failed to authenticate its alleged payment and accounting records or show proper reconciliation and demand. Defendants assert that material factual disputes remain, including the nature of the transaction, the amount actually funded and owed, and the existence of any default, making summary judgment premature, particularly before discovery is completed under CPLR 3212(f).

In reply, plaintiff argues that defendants' opposition raises no triable issue of fact because it is based solely on counsel's conclusory attorney affirmation without any affidavit from a witness with personal knowledge, and therefore has no evidentiary value to defeat summary judgment. Plaintiff reasserts that it properly authenticated and laid a foundation for its documents under the business records exception through Ronnie Humphries' affidavit, and that the breach is established by the remittance history showing defendants stopped and blocked ACH withdrawals. Plaintiff argues the motion is not premature because defendants failed to specify what discovery is needed, and notes defendants do not meaningfully dispute entering into the agreement, the default, or the amount owed.

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 agreement, proof of wire transfer to the corporate defendant, and defendants' payment 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 of \$194,870. In opposition, defendants submit no affidavit from any person with personal knowledge and fail to raise any triable issue of fact sufficient to defeat 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 agreement concerns the purchase and sale of future receivables, and is not a loan subject to usury statutes, as (i) repayment was contingent on defendants' generation of future receivables, (ii) the agreement contains a mandatory reconciliation provision, (iii) the agreement lacks a finite term and (iv) the agreement expressly provides 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.


The Court notes that the total balance of \$243,587.50 sought by plaintiff includes "a default fee in the amount of \$48,717.50." 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 \$48,717.50 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, in the amount of \$194,870.00, together with the 9% per annum statutory interest from August 20, 2025.

It is further ORDERED that plaintiff shall, within twenty (20) days of entry of this Decision and Order, serve and file a proposed judgment reflecting the amount of \$194,870.00, together with the 9% per annum statutory interest from August 20, 2025 to the date of entry of judgment, to be taxed by the Clerk.

Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:

  
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Honorable Reginald A. Boddie  
Justice, Supreme Court

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