

**Pinnacle Bus. Funding, LLC v World Auto Group
Houston LLC**

2026 NY Slip Op 31199(U)

March 23, 2026

Supreme Court, New York County

Docket Number: Index No. 655371/2024

Judge: Phaedra F. Perry-Bond

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 655371/2024

PINNACLE BUSINESS FUNDING, LLC,

MOTION DATE 01/10/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

WORLD AUTO GROUP HOUSTON LLC, USED AUTO
OUTLET, WORLD AUTO GROUP HOUSTON, WORLD
AUTO INC, and AMIR RAUF

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, Plaintiff's motion for summary judgment seeking
dismissal of Defendants' affirmative defenses and summary judgment on its causes of action for
breach of contract and breach of guaranty is granted in part and denied in part.

I. Background

On July 15, 2024, Plaintiff and Defendants World Auto Group Houston LLC, Used Auto
Outlet, World Auto Group Houston, and World Auto Inc. (collectively "Merchant Defendants")
entered a cash advance agreement (the "First Agreement") whereby Plaintiff purchased 1% of
Merchant's of future receipts up to the sum of \$272,000 in exchange for an advance of \$200,000.
On September 3, 2024, Plaintiff and Merchant entered another agreement (the "Second
Agreement") (collectively the "Agreements") whereby Plaintiff purchased another 1% of
Merchant's future receipts, up to the sum of \$272,000, in exchange for an advance of \$200,000.
The Agreements were guaranteed by Defendant Amir Rauf (the "Guarantor").

Under each agreement, Merchant agreed to deliver a weekly remittance of \$9,066.66, which was estimated to be 1% of Merchant's average weekly receipts. The parties agreed that Merchant and its customers would deposit receipts from all transactions into one bank account (the "Account") which Plaintiff would then draw the weekly remittance from until the receipts purchased were paid in full. On October 1, 2024, Merchant allegedly defaulted when Plaintiff's attempt to debit the Account was blocked without Defendants providing advance written notice.

According to Defendants, the Account was shut down by their bank due to a fraudulent check issued by a third-party funding company on September 24, 2024. Defendants claim the shutdown of the Account prevented them from processing transactions and caused their business to fail. Defendants claim they did not block or revoke Plaintiff's ACH authorization, but rather the Account was shut down due to a unilateral decision from the bank based on a third-party's fraudulent check. Defendants have initiated lawsuits against the companies that issued the fraudulent check, and those companies are curiously represented by the same attorney representing Plaintiff here. Defendants further argue that Plaintiff's attempt to enforce the Agreements without reconciling the actual receivables with the amount sought makes the Agreements the functional equivalent of unenforceable usurious loans. Finally, Defendants cite the doctrine of impossibility, claiming the bank's decision to shut down Defendants' Account made it impossible to perform.

In reply, Plaintiff argues the affirmation in opposition is only that of an attorney and the arguments made are not substantiated by any documentary evidence. Plaintiff further argues that impossibility is not pled as an affirmative defense and that Defendants numerous other affirmative defenses should be dismissed as abandoned.

II. Discussion

The branch of the motion seeking summary judgment for breach of contract and breach of guarantee are denied. On a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial” (*Nellenback v Madison County*, 44 NY3d 329, 334 [2025] [internal quotations and citations omitted]). The movant’s burden is heavy, and the facts must be viewed in the light most favorable to the non-movant (*Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]). “If the moving party fails to meet this initial burden, summary judgment must be denied ‘regardless of the sufficiency of the opposing papers’” (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014] quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). “It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact” but rather the Court’s function is to identify material triable issue of fact or point to the lack thereof (*Vega, supra* at 505 [2012]).

To make out a *prima facie* breach of contract claim, a movant must demonstrate the absence of material issues of fact with respect to (a) the existence of an enforceable contract; (b) the movant’s performance; (c) the non-movant’s breach, and (d) the movant’s damages (*see Markov v Katt*, 176 AD3d 401 [1st Dept 2019]). Plaintiff’s motion fails to demonstrate, *prima facie*, that the Agreements are not actually usurious loans in disguise (*see People v Richmond Capital Group LLC*, --- N.Y.S.3d ----, 2026 N.Y. Slip Op. 00990 at *1-2 [1st Dept 2026] citing *LG Funding, LLC v United Senior Properties of Olathe, LLC*, 181 AD3d 664 [2d Dept 2020]). Therefore, the motion must be denied regardless of the sufficiency of the opposing papers.

The Agreements at issue contain unconditional guaranties and granted Plaintiff a security interest in all of Merchants' personal property which was referred to as "Collateral", which are hallmarks of a loan (*see Kapitus Servicing, Inc. v Ragtime Gourmet Corp./Joe-Le Holding Corp.*, 242 AD3d 638, 638-639 [1st Dept 2025]). Moreover, while the Agreements contain a right to reconciliation, there is no evidence that any reconciliation took place here (*see, e.g. People v Richmond Capital Group LLC, supra* at *1 ["Although the MCAs have mandatory reconciliation provisions, no reconciliation was performed in practice"]).

While Plaintiff hangs its hat on the fact that Merchant never requested a reconciliation, this ignores the fact that per the Agreements, Plaintiff "may also conduct a reconciliation on its own at any time by reviewing Merchant(s)'s Receivables covering the period from the date of this Agreement until the date of initiation of the reconciliation" (*see* NYSCEF Doc. 2 at ¶ 4). Rather than conduct a reconciliation, Plaintiff decided to sue on the remainder of the balance loaned, plus a 25% default fee and other contractual fees.

Further, the Agreements state Plaintiff "is entering this Agreement knowing the risks that each Merchant's business may decline or fail, resulting in [Plaintiff] not receiving the Receivables Purchased Amount" and that "Merchant going bankrupt or going out of business or experiencing a slowdown in in business or a delay in collecting Receivables will not on its own without anything more be considered a breach of this Agreement" (NYSCEF Doc. 2 at ¶ 15). Nonetheless, Plaintiff is suing here for the remainder of the balance, plus a 25% default fee and other contractual fees – in essence seeking to recoup the balance of the principal loaned, plus interest as if it did not accept the risk of Defendants going out of business (*see also Crystal Springs Capital, Inc. v Big Thicket Coin, LLC*, 220 AD3d 745 [2d Dept 2023] [failure to reconcile and entitlement to collect full

uncollected purchase amount plus all fees due constituted usurious loan as opposed to merchant cash agreement]).

Plaintiff has also failed to address whether Defendants' bank account shut down due to a fraudulent check from another funder, as evidenced by ongoing lawsuits against the other funders¹ (*see World Auto Chevrolet LLC et al. v Proventure Capital LLC et al.*, Index No. 140005/2024 [Sup. Ct., Ontario County]), constitutes a breach of the Agreements. Simply put, Plaintiff failed to eliminate numerous issues of fact and therefore failed to meet its *prima facie* burden (*see also Kapitus Servicing Inc. v Point Blank Construction, Inc.*, 221 AD3d 532, 533-534 [1st Dept 2023] [record presented issues of fact as to whether transaction was a loan or a sale and purchase of receivables]).

However, the motion to dismiss Defendants' affirmative defenses is granted. Defendants have asserted fifty-nine affirmative defenses, many of which contain nothing more than a single conclusory sentence or contain no statement aside from a heading listing the affirmative defense. These affirmative defenses are wholly insufficient. In other instances, the affirmative defenses are not properly pled as an affirmative defense because they seek relief in the form of a counterclaim, such as the first affirmative defense seeking declaratory judgment, the second affirmative defenses seeking an injunction, the third affirmative defense seeking unjust enrichment, and the fifth affirmative defense alleging a violation of New York General Business Law § 349.

The Court dismisses the affirmative defenses, without prejudice, subject to a motion seeking leave to amend. Defendants are cautioned from seeking leave to plead any frivolous or patently deficient affirmative defenses and if they believe they have valid counterclaims, those should be asserted properly as counterclaims and not improperly labeled as affirmative defenses.

¹ The Court may take judicial notice of the documents filed on NYSCEF dockets (*see, e.g. Kazantzis v Cascade Funding RMI Acquisitions Grantor Trust*, 217 AD3d 410, 411 [1st Dept 2023]).

Therefore, the Court dismisses the fifty-nine affirmative defenses, without prejudice, and with leave to replead if supported by the requisite factual allegations.²

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion for summary judgment is denied but the branch of the motion seeking dismissal of Defendants’ affirmative defenses is granted, and Defendants’ affirmative defenses are dismissed, without prejudice, and with leave to replead with the requisite supporting facts; and it is further

ORDERED that the parties shall meet and confer and submit a proposed compliance conference order to the Court via e-mail, but in no event shall the proposed compliance conference order be submitted any later than April 28, 2026; and it is further

ORDERED that if the parties elect to explore resolution through the Court’s sponsored ADR program as opposed to through discovery, they shall notify the Court accordingly; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

3/23/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER

² Defendants assert certain affirmative defenses, such as ratification, forum shopping, “service”, subject matter jurisdiction, personal jurisdiction, duress, waiver, release, lack of consideration, failure of consideration, accord & satisfaction, failure of condition precedent, statute of frauds, res judicata, laches, debt fully paid, bankruptcy, payment made, settlement, collateral estoppel, arbitration and award, limitation of liabilities, statute of limitations, and failure to state a claim, without providing any supporting details as to how these affirmative defenses are applicable.