

<b>Bizfund LLC v USA Fast Liquidations Inc</b>
2026 NY Slip Op 31475(U)
April 16, 2026
Supreme Court, Monroe County
Docket Number: Index No. E2025017321
Judge: Daniel J. Doyle
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STATE OF NEW YORK  
SUPREME COURT COUNTY OF MONROE

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BIZFUND LLC,

Plaintiff,

-vs-

**Decision and Order**

Index No. E2025017321

USA FAST LIQUIDATIONS INC  
DBA USA FAST LIQUIDATIONS,  
AND J&B RENT CAR CORP,  
AND BERNARDO RODRIGUES ZEYMER  
SOARES,

Defendants.

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**Appearances:**

Adam R. Nichols, Esq., Murray Legal PLLC, for the Plaintiff  
Mikhail Usher, Esq., USHER LAW GROUP P.C., for the Defendants

**Daniel J. Doyle, J.**

Plaintiff initiated this action in August of 2025 alleging that that the defendants breached a sale of receivables agreement (hereinafter “agreement”) and seeking resultant damages.<sup>1</sup> Defendants USA Fast Liquidations Inc dba USA Fast Liquidations, J&B Rent Car Corp, and Bernardo Rodrigues Zeymer Soares, as

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<sup>1</sup> The Verified Complaint contains three causes of action: (1) breach of contract; (2) liability on a personal guarantee; and (3) attorney’s fees. (NYSCEF Docket # 1.)

personal guarantor, (hereinafter “defendants”) answered the complaint and asserted numerous affirmative defenses.<sup>2</sup>

Plaintiff now moves pursuant to CPLR Rule 3211 (b) to dismiss the defendants’ affirmative defenses and for summary judgment on the complaint. For the reasons set forth below, the motion summary judgment is partially GRANTED and the affirmative defenses are dismissed. Upon a review of the record, the Court awards partial summary judgment to the defendants on the issue of the default fee dismissing same. Attorneys’ fees are awarded but shall be determined by the Court.

### ***The Motion for Summary Judgment is Partially Granted***

A party seeking summary judgment pursuant to CPLR 3212 must make prima facie showing of entitlement to judgment as a matter of law and submit sufficient evidence to demonstrate the absence of any material issue of fact. (*Iselin & Co. Inc v Landau*, 71 NY2d 420 [1988].) Summary judgment may only be granted when “it has been clearly ascertained that there is no triable issue of fact outstanding; issue finding, rather than issue determination, is its function”. (*Suffolk County Dep’t of Soc. Servs. v James M.*, 83 NY2d 178, 182 [1994].) Only when the proponent demonstrates entitlement to summary judgment, the opposing party must then

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<sup>2</sup> NYSCEF Docket # 4.

demonstrate, generally by admissible evidence, the existence of an issue of fact requiring a trial. (*Zuckerman v City of New York*, 49 NY2d 851 [1985].)

Plaintiff and the defendants entered into an agreement (dated May 1, 2025) wherein the plaintiff would purchase \$207,000 of the defendants' receivables in exchange for a \$150,000 purchase price. Plaintiff submits a copy of the agreement and evidentiary submissions establishing that the plaintiff remitted funding to the defendants, the defendants partially performed by remitting receivables to the plaintiff, and that the defendants ceased making payments.<sup>3</sup>

Plaintiff submits the affirmation of Raymond Mizrahi (hereinafter "Mizrahi") to establish the necessary foundation to admit the agreement, proof of funding, and the partial performance defendants in their deliverance of \$56,925 in receivables (see the remittance history attached as Exhibit H the Mizrahi affirmation) as business records.

Mizrahi avers that:

Defendants partially performed by delivering \$56,925.00 of the total Purchased Amount of \$207,000.00 leaving a balance of \$150,075.00 but then breached the Agreement on July 31, 2025. \* \* \* The debit scheduled for July 31, 2025 ("Posting Date"), in the amount of \$5,175.00, failed to clear, with the Plaintiff's bank reporting back to Plaintiff a Return Code of "R02 - AC & NSF" [FN omitted]. \* \* \* This information was provided to the Plaintiff contemporaneously with this transaction

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<sup>3</sup> The agreement stated that the periodic payments were to be made weekly in the amount of \$5,175.

and was logged in accordance with the procedure set forth herein.  
Exhibit H.

Notably, the submitted exhibit indicates the following:



September 2nd, 2025

Usa Fast Liquidations Inc/#15086

**BALANCE STATEMENT**

Funding Amount: \$150,000.00

Payback Amount: \$207,000.00

Fees: \$100.00

Posting Date	Daily Payment	Balance Due	Fee Balance Due	Trans Ref Note
May 15th, 2025	\$5,175.00	\$207,000.00	\$50.00	R01 - NSF
May 20th, 2025	\$5,175.00	\$201,825.00	\$50.00	
May 22nd, 2025	\$5,175.00	\$196,650.00	\$50.00	
May 29th, 2025	\$5,175.00	\$191,475.00	\$50.00	
Jun 5th, 2025	\$5,175.00	\$186,300.00	\$50.00	
Jun 12th, 2025	\$5,175.00	\$181,125.00	\$50.00	
Jun 19th, 2025	\$5,175.00	\$175,950.00	\$50.00	
Jun 26th, 2025	\$5,175.00	\$170,775.00	\$50.00	
Jul 3rd, 2025	\$5,175.00	\$165,600.00	\$50.00	
Jul 10th, 2025	\$5,175.00	\$160,425.00	\$50.00	
Jul 17th, 2025	\$5,175.00	\$155,250.00	\$50.00	
Jul 24th, 2025	\$5,175.00	\$150,075.00	\$50.00	
Jul 31st, 2025	\$5,175.00	\$150,075.00	\$100.00	R02 -- AC & NSF
Jul 31st, 2025	\$0.00	\$150,175.00	\$30,015.00	Default
Jul 31st, 2025	\$0.00	\$180,190.00	\$0.00	Balance

The transaction history establishes that the defendants “blocked” access to the account by closing the account (R02). A provision of the agreement stated that “Merchant shall not block or otherwise interfere with Purchaser's access to the

Specified Account to effect ACH Debits in accordance with the terms of this Agreement.” (Section 2). The transaction history establishes that the defendants breached these provisions in the agreement.

Plaintiff also submits a copy of a summons and complaint titled *Itria Ventures, LLC, et al. v. USA Fast Liquidations Inc, et al.*, Ninth Judicial Circuit Court of Florida, Case No. 2025-CA- 007560-O. In that case, the plaintiff therein avers that on December 31, 2024, the defendants entered into an agreement to sell \$150,000 of the defendants’ receivables to the plaintiff therein. This violates Section 6.9 of the agreement between plaintiff and the defendant herein.<sup>4</sup>

Finally, the agreement contains a personal guaranty signed by Defendant Bernardo Rodrigues Zeymer Soares on his behalf and on behalf of the defaulting defendants.<sup>5</sup>

“The essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff’s performance pursuant to the contract, the defendant’s breach of its contractual obligations, and damages

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<sup>4</sup> “Merchant has not (unless previously disclosed to Purchaser in advance) and shall not enter into any arrangement, agreement or commitment that relates to or involves the Purchased Receipts, whether in the form of a purchase of, a loan against, collateral against or the sale, assignment, transfer, factoring or purchase of credits against, Receipts, cash deposits or receipts or future sales with any Person other than Purchaser without Purchaser’s prior express written consent, which Purchaser may or may not give in its sole discretion.”

<sup>5</sup> The defendants do not contest the validity of the agreement or the personal guaranty.

resulting from the breach” (*Wilsey v. 7203 Rawson Rd., LLC*, 204 A.D.3d 1497, 1498, 168 N.Y.S.3d 198 [4th Dept. 2022]).” (*Marinaccio v. Town of Clarence*, 215 AD3d 1289, 1290 [4th Dept. 2023].) With this evidence, the plaintiff met its initial burden in establishing entitlement to summary judgment.

In opposition, the defendants submit the affirmation of Bernardo Rodrigues Zeymer Soares, authorized agent of the corporate defendants. He avers that that the agreement was a usurious loan, and they need additional discovery.

The Court is mindful that “to defeat a motion for summary judgment, the party opposing the motion must “assemble and lay bare its proof to demonstrate that there are genuine triable issues and reliance upon conclusory assertions, conjecture, mere suspicion or surmise will not suffice for this purpose” (*Spielman v. Acme Natl. Sales Co. [Del.]*, 159 A.D.2d 918, 919, 553 N.Y.S.2d 532 [1990] [internal citation omitted]).” (*Bank of New York Mellon v. Slavin*, 156 AD3d 1073, 1076 [3<sup>rd</sup> Dept. 2017].) “Conclusory assertions will not defeat summary judgment (*Freedman v. Chemical Constr. Corp.*, 43 N.Y.2d 260, 401 N.Y.S.2d 176, 372 N.E.2d 12; *Indig v. Finkelstein*, 23 N.Y.2d 728, 296 N.Y.S.2d 370, 244 N.E.2d 61; *HNC Realty Co. v. Bayview Towers Apts.*, 64 A.D.2d 417, 409 N.Y.S.2d 774; *Kahn v. City of New York*, 37 A.D.2d 520, 321 N.Y.S.2d 791, *affd.* 30 N.Y.2d 690, 332 N.Y.S.2d 638, 283 N.E.2d 615; *Holdridge v. Town of Burlington*, 32 A.D.2d 581, 299 N.Y.S.2d 340, 6 Carmody-Wait 2d, NY Prac, s 39:29).” (*Chem. Bank v. Queen Wire & Nail Inc.*, 75 AD2d 999, 1000 [4<sup>th</sup> Dept. 1980].)

The Court rejects the defendants' argument that the agreement is a usurious loan. To determine whether a transaction constitutes a usurious loan: "The court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances. Unless a principal sum advanced is repayable absolutely, the transaction is not a loan. 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" (*LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d at 665-666 [citations and internal quotation marks omitted])." (*Principis Cap., LLC v. I Do, Inc.*, 201 AD3d 752, 754 [2nd Dept. 2022].)

The agreement between plaintiff and defendants contained a right of mandatory reconciliation. The agreement required reconciliation to occur upon request. (Section 3.) Additionally, the agreement did not have a finite term and was subject to a "downturn" in Defendants' business. Finally, the agreement did not make as a condition of default the Defendants filing for bankruptcy (Section 6.8). Thus, the agreement was not a loan contract, and it is not subject to the usury laws. (*Principis Cap., LLC v. I Do, Inc.*, 201 A.D.3d 752 [2<sup>nd</sup> Dept. 2022].)

As to the defendants' claims for the need to additional discovery, "[i]n opposing a summary judgment motion as premature pursuant to CPLR 3212(f), "the

opposing party must make an evidentiary showing supporting [the conclusion that facts essential to justify opposition may exist but cannot then be stated, and] mere speculation or conjecture [is] insufficient” (*Resetarits Constr. Corp. v. Elizabeth Pierce Olmsted, M.D. Center for the Visually Impaired* [Appeal No. 2], 118 A.D.3d 1454, 1456, 988 N.Y.S.2d 797 [4th Dept. 2014] [internal quotation marks omitted]). The opposing party must demonstrate that “the discovery sought would produce evidence sufficient to defeat the motion ..., and that facts essential to oppose the motion were in [the movant's] exclusive knowledge and possession and could be obtained by discovery” (*id.* [internal quotation marks omitted]). (*Weiss v. Zellar Homes, Ltd.*, 169 A.D.3d 1491, 1493 [4<sup>th</sup> Dept. 2019].) The defendants make no such showing here. Notably, the defendants do not allege they served discovery demands—a necessary predicate to the argument they now make for the information they claim is necessary (e.g., a deposition of the plaintiff's representative). Furthermore, they fail to allege what information was needed in the discovery process to oppose the instant motion other than vague, speculative allegations. The lack of efforts made by the defendants to engage in the discovery process does not warrant denial of the summary judgment motion.

Summary judgment is awarded to the plaintiff on its causes of action in the complaint.

Upon its authority to search the record and award summary judgment to a non-moving party,<sup>6</sup> the Court finds the default fee to be an unenforceable penalty. “Newco has not shown—or attempted to show—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 *Forever Funding LLC v S.F. Meats, Inc.*, 2022 NY Slip Op 513056[U], at \*2-3 [Sup Ct, NY County Dec. 22, 2022]; *Irwin Funding, LLC v Dexter Young Cattle Feeding*, 2022 NY Slip Op 51035[U], at \*2 n 1 [Sup Ct, NY County Oct. 21, 2022].)” (*Newco Cap. Grp. VI LLC v. La Rubia Rest. Inc.*, 81 Misc. 3d 1203A [N.Y. Sup. Ct. 2023].)

With respect to the fees “[a] contractual provision fixing damages in the event of breach will be sustained if the amount liquidated bears a reasonable proportion to the probable loss and the amount of actual loss is incapable or difficult of precise estimation.” (*Truck Rent-A-Ctr., Inc. v. Puritan Farms 2nd, Inc.*, 41 NY2d 420, 425 [1977].) “If, however, the amount of actual damages that would be suffered upon a breach is readily ascertainable when the contract is entered, or the amount fixed as liquidated damages is conspicuously disproportionate to the foreseeable losses, the liquidated damages provision is unenforceable as a penalty.” (*Cent. Irr. Supply v. Putnam Country Club Assocs., LLC*, 57 AD3d 934, 935 [2<sup>nd</sup> Dept. 2008].) “Where, however, a liquidated damages provision is found to be an unenforceable penalty,

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<sup>6</sup> See CPLR Rule 3212(b).

the recovery is limited to actual damages proven.” (*Id.*) Here, the amount of damages upon a breach is readily ascertainable: it is the sum remaining due on the factoring agreement. The request for a default fee of “20% of the balance or \$5,000 whichever is greater” is an unconscionable penalty as the provision is only a penalty and bears absolutely no relation to measuring the actual loss suffered by the Plaintiff. It will not be enforced.<sup>7</sup>

With respect to attorneys’ fees, the agreement provides that the defendants are liable for attorneys’ fees should plaintiff prevail in collection efforts. “An award of attorneys’ fees pursuant to such a contractual provision may only be enforced to the extent that the amount is reasonable and warranted for the services actually rendered.” (*Kamco Supply Corp. v. Annex Contracting Inc.*, 261 AD2d 363, 365 (2<sup>nd</sup> Dept. 1999].) “The fixed percentage fee, therefore, is viewed only as a maximum fee, limiting the amount of reasonable attorneys’ fees which the creditor may charge upon proving the extent of the necessary services actually rendered.” (*Mead v. First*

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<sup>7</sup> The plaintiff makes no factual showing that this fee is justified. Although plaintiff alleges that this fee somehow creates a “compliance burden” forcing plaintiff to incur “additional costs” the plaintiff makes no effort to establish- with evidentiary submission- those costs. Furthermore, presumably those costs would be the same in each case (i.e., collection costs) and would be easily established through evidentiary submissions (i.e., a bill from a collection agency). Plaintiff does not provide any evidence in support of the claim of 20% of the outstanding amount as a “default fee” is justified. This compels the conclusion it is a penalty and not a reasonable collection fee.

*Tr. & Deposit Co.*, 60 AD2d 71, 78 [4<sup>th</sup> Dept. 1977].) The Fourth Department continued:

We note that it is not the intent of the law, nor of the petitioner in this proceeding, to deprive the creditor of full payment of its actual necessary legal expenses in collecting the defaulted debt, limited only by the reasonable value of such services and the percentage provision expressed in the contract. The aim is to prevent creditors and their attorneys from receiving more than such sums, which they may otherwise be able to accomplish because of the debtors' defaults.

(*Id.*)

The amount of those fees will be determined by the Court.

The defendants' remaining affirmative defenses not addressed above are dismissed based upon documentary evidence conclusively establishing they have no merit, or for failure to adequately plead sufficient facts in support of the affirmative defense. (CPLR Rule 3211[b] and § 3013.)

Based upon the foregoing, and the papers submitted herein,<sup>8</sup> it is hereby

ORDERED that the plaintiff's motion for summary judgment is GRANTED, summary judgment is awarded to the plaintiff on the causes of action in the

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<sup>8</sup> Notice of Motion (NYSCEF Docket # 34); Affirmation in Support (NYSCEF Docket # 35); Memorandum of Law in Support with exhibits (NYSCEF Docket #s 36-39); Affirmation in Opposition (NYSCEF Docket # 62); Memorandum of Law in Reply (NYSCEF Docket # 68); Notice of Motion (NYSCEF Docket # 45); Affirmation in Support (NYSCEF Docket # 46); Statement of Material Facts with exhibits (NYSCEF Docket #s 47-59); Memorandum of Law in Support (NYSCEF Docket # 60); Memorandum of Law in Opposition (NYSCEF Docket # 63); Affirmation in Opposition (NYSCEF Docket # 64); Response to Statement of Material Facts (NYSCEF Docket # 65); Memorandum Reply (NYSCEF Docket # 69).

complaint; the defendants' affirmative defenses are dismissed, and plaintiff is awarded judgment in the amount of \$150,125, costs and disbursements, interest from the date of default as set forth in the agreement, and post-judgment interest, and attorneys' fees to be determined by the Court; and it is further

ORDERED that upon a review of the record summary judgment is GRANTED to the defendants and the default fee is dismissed as an unenforceable penalty, and it is further

ORDERED that the plaintiff is to submit a proposed Judgment to the Court reflecting the above and an affidavit as to attorneys' fees expended in the prosecution of this matter with evidentiary submissions supporting same by *Mary* ~~18~~, 2026.

Dated: ~~March~~ <sup>April 16</sup>, 2026

  
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Hon. Daniel J. Doyle, JSC