Velocity Capital Group LLC v Generations Adult Day Servs., Inc.
2026 NY Slip Op 31565(U)
April 10, 2026
Supreme Court, Kings County
Docket Number: Index No. 518835/2024
Judge: Anne J. Swern
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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 10th day of April 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

VELOCITY CAPITAL GROUP LLC,

Plaintiff,

-against-

GENERATIONS ADULT DAY SERVICES, INC and KIMBERLY HOLLIS,

Defendants.

DECISION & ORDER
Index No.: 518835/2024

Calendar No.: 35

Return Date: 1/22/2026

Motion Seq. No.: 2

Recitation of the following papers as required by CPLR 2219 (a):

	NYSCEF Papers Numbered
Notice of Motion, Supporting Documents and Affirmation of Service	50-70

Upon the foregoing papers, the decision and order of the Court is as follows:

This is a motion by plaintiff VELOCITY CAPITAL GROUP LLC ("plaintiff") for an order pursuant to: (1) CPLR § 3212, granting plaintiff summary judgment against defendants GENERATIONS ADULT DAY SERVICES, INC ("Generations") and KIMBERLY HOLLIS ("Hollis") jointly and severally in the principal amount of $102,201.25, plus statutory interest at 9% from July 10, 2024 (the date of the breach), with costs and disbursements as taxed by the clerk; and (2) CPLR § 3211 (b), dismissing defendants' affirmative defenses.

On or about March 7, 2024, defendants electronically solicited plaintiff with offers to sell a portion of their future receivables to plaintiff in exchange for an upfront sum. On or about June 4, 2024, the parties entered into a sales agreement wherein plaintiff purchased $91,200.00 of

Generations' future receivables/revenue to plaintiff. The purchase price was $60,000.00. Generations agreed to remit a percentage of its daily revenue to plaintiff.

Defendants executed the agreement via DocuSign on June 4, 2024, a leading cloud-based platform that allows users to securely send, sign, and manage documents electronically from almost anywhere on various devices. According to page 6 of the agreement, entitled "Guaranty of Performance," Hollis agreed to be held personally and unconditionally liable in the event of a breach in performance.

Plaintiff asserts that it performed under the agreement by transferring $28,001.00, representing the purchase price of $60,000.00, less agreed upon fees of $3,815.00, and the outstanding balance on a previous purchase between parties of $28,184.00 (*see* NYSCEF Doc No. 62, plaintiff's bank statement). This is corroborated by corporate defendant's own bank statements, which confirm plaintiff's performance by funding the merchant. Defendants partially performed by delivering $9,771.00 of the total purchased amount of $91,200.00, leaving a balance of $81,429.00, but breached the agreement on July 10, 2024. Defendants' ongoing business operations continued after their breach. As a result of defendants' breach, plaintiff asserts that it was caused to incur additional damages as set forth in the transaction history (*see* NYSCEF Doc No. 63) and as provided for in the agreement (*see* NYSCEF Doc No. 59).

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320, [1986]). "A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a *prima facie* entitlement to a summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063

[1993], *citing Alvarez v Prospect Hospital,* 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v Prospect Hospital*, 68 NY2d 324).

However, the law is clear that "A movant's failure to sufficiently demonstrate its right to summary judgment requires a denial of the motion regardless of the sufficiency, *or lack thereof*, of the opposing papers (*Cugini v System Lbr. Co.*, 111 AD2d 114, 115 [1st Dept 1985], *appeal dismissed* 65 NY2d 1053 [1985]; *Liberty Taxi Management, Inc. v Gincherman,* 32 AD3d 276, 278, fn.1 [1st Dept 2006], *citing Cugini v System Lbr., Co.,* [A motion for summary judgment should not be granted merely because the adversary failed to submit opposition papers.]).

"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" (*Crystal Springs Capital, Inc. v Big Thicket Coin, LLC*, 220 AD3d 745, 746-747 [2d Dept 2023], citing *LG Funding, LLC v United Senior Props. of Olathe, LLC*, 181 AD3d 664, 665 [2020]). "To determine whether a transaction constitutes a usurious loan, it 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" (*Crystal Springs Capital, Inc. v Big Thicket Coin, LLC*, 220 AD3d 746 [internal quotation marks omitted], quoting *Abir v Malky, Inc.*, 59 AD3d 646, 649 [2009]). "Unless a principal sum advanced is repayable absolutely, the transaction is not a loan" (*Crystal Springs Capital, Inc. v Big Thicket Coin, LLC*, 220 AD3d 747). To determine whether repayment is absolute or contingent, the Court weighs three factors: "(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.*).

Therefore, agreements to purchase future receivables are not usurious and may be enforced (*LG Funding, LLC v United Senior Props. of Olathe, LLC,* 181 AD3d 665, 665-666 [2d Dept 2020] and *Champion Auto Sales, LLC v Pearl Beta Funding, LLC,* 159 AD3d 507, 507 [1st Dept 2018]). Thus, unless the New York State Legislature enacts legislation prohibiting such agreements, the defense of usury is without merit.

Applying the above factors, the agreement here contained an express and mandatory adjustment provision by which corporate defendant had the right to request unlimited bi-weekly downward adjustments to its remittance to ensure that payment "more closely reflect the Merchant's actual receipts . . . " (Exhibit F, p. 2, § 1.4). The agreement did not impose a finite term (Exhibit F, p.1 ('there is no . . . payment schedule and no time period during which the Purchased Amount must be collected by VCG."). Lastly, the agreement did not provide for any recourse in the events of bankruptcy or business failure, nor are these occurrences listed as Termination Events (Exhibit F, p.4, § 3.1 ("Merchant going bankrupt or going out of business, or experiencing a slowdown in business, or a delay in collecting its receivables, in and of itself, does not constitute a breach of this Agreement."). As such, the agreement satisfies all three factors, making defendants' usury defense legally meritless and dismissible.

Moreover, exhibits submitted by plaintiff show that defendants affirmatively placed stop-payment orders on plaintiff's ACH debits on June 28, 2024, causing R08 returns on July 1, 2024, and July 8, 2024[1]; that plaintiff fully funded the advances and was authorized to debit by executed ACH agreements; that defendants continued substantial receivables, payroll, and operations after the stop-payment, refuting any claim of business failure; and that defendants remained active, licensed, and compliant with the Georgia Secretary of State and Department of

[1] An R08 ACH return code means "Payment Stopped," indicating that the account holder formally instructed their bank to block a specific ACH debit transaction.

Community Health, establishing a willful contractual default, not impossibility or lender misconduct.[2] There is no opposition from defendants.

Plaintiff's motion for summary judgment is granted. Plaintiff has established all the elements of a breach of contract claim (*Cruz v Cruz,* 213 AD3d 805, 807 [2d Dept 2023]) and a *prima facie* entitlement to summary judgment through admissible evidence (*Alvarez v Prospect Hospital,* 68 NY2d 324 and *Giuffrida v Citibank*, 100 NY2d 81).

The essential elements to recover damages for breach of contract are the existence of a contract, plaintiff's performance, defendant's breach of its contractual obligations, and damages (*see Cruz v Cruz, supra*). Here, plaintiff submitted bank checks to establish proof of funding (CPLR § 4518), along with supporting evidence listed above.

Based on the foregoing findings, that branch of plaintiff's motion per CPLR § 3211 [b], defendants' affirmative defenses, are without merit and dismissed.

The Court has considered the parties remaining arguments and finds same to be without merit.

Accordingly, it is hereby

[2] Defendants have ongoing business operations as a private adult home health care provider in the state of Georgia.

ORDERED that plaintiff's motion for an order pursuant to CPLR 3212, granting plaintiff summary judgment against defendants jointly and severally in the principal amount of $102,201.25, plus statutory interest at 9% from July 10, 2024 (the date of the breach), with costs and disbursements as taxed by the clerk, is GRANTED; and it is further

ORDERED that plaintiff's motion pursuant to CPLR 3211 (b), dismissing defendants' affirmative defenses, is also GRANTED.

This constitutes the decision and order of the Court.

ENTER:

Hon. Anne J. Swern, J.S.C.
Dated: 4/10/2026