Parkview Advance LLC v Torre Fuerte Ins. Inc
2026 NY Slip Op 31823(U)
April 27, 2026
Supreme Court, Kings County
Docket Number: Index No. 524604/2025
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 27th day of April 2026.

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

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PARKVIEW ADVANCE LLC,

Plaintiff,

-against-

TORRE FUERTE INSURANCE INC and LUIS GARRIDO PALACIO a/k/a LUIS BAUTISTA GARRIDO PALACIO,

Defendants.

Index No. 524604/2025

Cal. No. 21 MS 1

Decision and Order

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The following e-filed papers read herein: NYSCEF Doc Nos.
MS 1 14-25

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

This action arises out of defendants' alleged breach of a June 3, 2025 receivables purchase agreement (the "Agreement") and related personal guaranty by stopping ACH remittances and otherwise interfering with plaintiff's collection of future receivables. Plaintiff now moves pursuant to CPLR 3212 for summary judgment on its breach of contract and breach of guaranty claims, together with statutory interest from July 14, 2025, costs, disbursements, and dismissal of defendants' affirmative defenses. Plaintiff argues that the material facts are undisputed because the parties executed a valid future receivables purchase agreement and guaranty, plaintiff fully performed by funding the transaction, defendants initially remitted but then defaulted by causing

ACH debits to be returned, failing to communicate or provide bank records needed for reconciliation, and leaving an outstanding balance. Plaintiff further asserts that the agreement is a true merchant cash advance purchase of receivables rather than a usurious loan because it includes a reconciliation provision, has no finite term, and does not make bankruptcy an event of default.

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 transfers to defendants, plaintiff's text messages to defendants, and defendants' payment history, establish the existence of a valid receivables purchase agreement and guaranty, plaintiff's full performance thereunder by funding defendants, defendants' default, and the resulting balance. Defendants, who are represented by counsel according to NYSCEF, have not submitted opposition or otherwise raised any triable issue of fact.

"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, 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 Agreemens 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 $222,485.50 sought by plaintiff includes a "default fee" in the amount of $5,000. 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 $5,000 in default fees is denied.

When a party moves to dismiss or strike an affirmative defense, it "bears the burden of demonstrating that the affirmative defense is without merit as a matter of law" (*Blachowicz v City of New York*, 241 AD3d 1513, 1516 [2d Dept 2025] [citations and internal quotation marks omitted]). "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" (*id.*). "If there is any doubt as to the availability of a defense, it should not be dismissed" (*id.*).

Here, defendants' affirmative defenses are either conclusory and boilerplate, or are foreclosed by the Court's determinations herein. In response to plaintiff's prima facie showing, defendants have failed to proffer evidentiary facts or legal arguments sufficient to sustain those defenses. Accordingly, the branch of plaintiff's motion seeking dismissal of defendants' affirmative defenses is likewise granted, and defendants' affirmative defenses are hereby dismissed.

Accordingly, plaintiff's unopposed motion for summary judgment is granted in favor of plaintiff and against defendants Torre Fuerte Insurance Inc. and Luis Garrido Palacio a/k/a Bautista Garrido Palacio, jointly and severally, in the amount of $217,485.50 reflecting the unpaid balances under the Agreement, together with the statutory interest at 9% per annum from July 14, 2025 through the date of entry of judgment, and reasonable attorneys' fees and costs. Defendants' affirmative defenses are hereby dismissed. The remainder of plaintiff's motion is denied.

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: (i) the unpaid balance of $217,485.50 under the Agreement; (ii) the amount of reasonable attorneys' fees sought, supported by an attorney affirmation and contemporaneous billing records; (iii) the amount of reasonable costs and fees sought, supported by an attorney affirmation and itemized records; and (iv) the statutory

interest at 9% per annum from July 14, 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:

Honorable Reginald A. Boddie
Justice, Supreme Court

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