

**DLP Funding LLC. v C & LS Legacy Group LLC**

2026 NY Slip Op 31874(U)

April 23, 2026

Supreme Court, Kings County

Docket Number: Index No. 510040/2025

Judge: Cenceria P. Edwards

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At an IAS Term, Comm 2 off the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23rd day of April, 2026.

**P R E S E N T:**

HON. CENCERIA P. EDWARDS, CPA,

Justice.

-----X  
DLP FUNDING LLC.,

Plaintiff(s),

-against-

C & LS LEGACY GROUP LLC, ENVIROMENT HOLDINGS INC., IM-EX ENERGY CORPORATION, WHIZCO CONSTRUCTION INC., LCL LEGACY ENTERPRISES, LLC, SURETY LEASING ADDISON INC., WM PAINTING, LLC, LCL LEGACY ENTERPRISES, LLC, DREAMY REAL ESTATE, LLC, OILFIELD INDONESIAN LTD., INC, CHARLES SIMPSON CHRISTOPHER, and LINDA KAY CHRISTOPHER

Defendant(s).  
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**ORDER**

Calendar Date: 05/21/25

Calendar #(s): 6

Index #: 510040/2025

Mot. Seq. #(s): 1, 2

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion/Order to Show Cause/Petition/Cross-Motion and Affidavits (Affirmations) and Exhibits \_\_\_\_\_

63, 64, 66

Opposing Affidavits (Affirmations) and Exhibits \_\_\_\_\_

69

Reply Affidavits (Affirmations) and Exhibits \_\_\_\_\_

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On March 25, 2025, plaintiff DLP Funding LLC ("Plaintiff") commenced this action by filing a summons and complaint against C & Ls Legacy Group LLC, Enviroment Holdings Inc, IM-EX Energy Corporation, Whizco Construction, Inc., LCL Legacy Enterprises Inc, Surety Leasking Addison Inc, WM Painting LLC, LCL Lacay Enterprises LLC, Dreamy Real Estate LLC, Oilfield Indonesian Ltd (all together "Company Defendants"), Charles Simpson Christopher, and Linda Kay Christopher ("Individual Defendants", all together "Defendants") (*see* NYSCEF Doc. #1).

This action arises from a Merchant Cash Advance and Security Agreement (“the Agreement”) between Plaintiff and Defendants that was guaranteed by the Individual Defendants. Plaintiff purchased \$982,500 in future receivables for \$750,000 from the Company Defendants (*see* NYSCEF Doc. #1 at ¶ 4). Plaintiff’s Complaint alleges that Defendants breached the agreement by preventing Plaintiff from collecting the future receivables and asserts two causes of action (1) Breach of Contract and (2) Personal Guarantee (*see* NYSCEF Doc. #1 at ¶¶ 17-23).

## RELIEF SOUGHT

### Motion Sequence One (“MS 1”)

On May 4, 2025, Plaintiff moved the Court pursuant to CPLR § 3212 for an Order granting Summary Judgment in favor of Plaintiff in the amount of \$787,511.77 plus interest and pursuant to CPLR 3211(b) to dismiss Defendants Affirmative Defenses (*see* NYSCEF Doc. #10).

### Motion Sequence Two (“MS 2”)

On May 13, 2025, Defendants cross moved the Court pursuant to CPLR § 3211 (a) (7) and CPLR § 3211 (a) (1) to dismiss Plaintiff’s complaint in its entirety on the grounds that (1) the Complaint fails to state a claim and (2) that the documentary evidence shows that Plaintiff breached the agreement by withdrawing fixed amounts and that the Agreement was instead a usurious loan (*see* NYSCEF Doc. #33; *see also* NYSCEF Doc. #34).

## BACKGROUND

It is undisputed that on February 28, 2024, Plaintiff and Defendant C and LS Legacy Group (“Merchant”) fully executed the Merchant and Security Agreement in which Plaintiff agreed to advance Defendants \$750,000 in exchange for the right to collect 5.16% of the Company Defendants’ daily future receipts until Plaintiff received the total Purchased Amount of \$982,500 (*see* NYSCEF Doc. #1 at ¶4; *see also* NYSCEF Doc. #15 at 1).

To facilitate the collection of the 5.16%, the Agreement designated a “Weekly Remittance” of \$25,855.27 to Plaintiff based on Defendants’ “average monthly revenues” of \$2,170,000 (*see id.*) The Agreement characterized the Weekly Remittance as a good faith estimate derived by determining the specified percentage by the Company Defendants’ historical average revenue (*see id.*) Section 1.4 of the Agreement, the reconciliation provision, provides that Defendants could request a retroactive reconciliation of the remittance amount via email to Plaintiff with copies of

Defendants' bank account statements, credit card processing statements, and accounts receivable reports, for the requested month and the preceding month (*see id.* at 3).

In conjunction with the Agreement, the Individual Defendants, Charles Simpson Christopher and Linda Kay Christopher executed a "Security Agreement and Guaranty" ("the Guaranty") (*see* NYSCEF Doc. #12 at ¶24; *see also* NYSCEF Doc. #15 at 9) holding them contractually responsible for performance and Defendants breach of contract. (*see* NYSCEF Doc. #15).

In accordance with the Agreement, on February 29, 2024, Plaintiff wired \$742,500 (the purchase price minus the applicable fees) to Company Defendants' bank account and starting on March 7, 2024, Plaintiff commenced ACH withdrawals of \$25,855.27 from the Company Defendants' designated bank account (*see* NYSCEF Doc. #12 at ¶19; *see also* NYSCEF Doc. #16; *see also* NYSCEF Doc. #17).

However, Plaintiff alleges that on or about June 10, 2024, Defendants breached the Agreement by purposefully preventing Plaintiff from receiving the receivables *see* NYSCEF Doc. #12 at ¶25). Defendant Charles Christopher counters that neither he nor any of the Defendants instructed the bank to stop making payments to Plaintiff but that there were insufficient funds in the account due to a drop in weekly receivables (*see* NYSCEF Doc. 38 at ¶12). It is undisputed that the Company Defendants did not invoke the reconciliation procedure prior to their default (*see* NYSCEF Doc. #42 at ¶5).

Following the defaults, Plaintiff accelerated the entire remaining balance, added the contractual ten percent default fee, and commenced the instant litigation on March 25, 2025 (*see* NYSCEF Doc. 1 at ¶11). On April 24, 2025, Defendants filed an Answer, interrogatories, a Notice of Deposition, and demands for discovery (*see* NYSCEF Doc. #3; *see also* NYSCEF Doc. #4; *see also* NYSCEF Doc. #5; *see also* NYSCEF Doc. #6; *see also* NYSCEF Doc. #7; *see also* NYSCEF Doc. #8).

## DISCUSSION

### CPLR 3212- Plaintiff's Summary Judgment Relief

A plaintiff moving for Summary Judgment must make a prima facie showing entitlement to judgment as a matter of law under, CPLR 3212. The moving party must tender sufficient evidentiary proof in admissible form to conclusively demonstrate the absence of any material issues of fact and if the movant fails to make such a showing, the motion for summary judgment

must be denied. However, if the movant does meet this burden, then the burden shifts to the opponent to produce evidentiary proof sufficient to establish material issues of fact (*see Alvarez v. Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

### **Breach of Contract**

To establish a prima facie case for breach of contract a Plaintiff must demonstrate (1) the existence of a contract (2) Plaintiff's performance under the contract, (3) Defendant's material breach of the contract and (4) resulting damages (*see I-Fix-Screens-Com, Inc. v. Ibrahem*, 238 AD3d 1011, 1013 [2d Dept 2025]).

Plaintiff has established a prima facie case for breach of contract. Plaintiff submitted the affidavit of Menucha Mayberg (a manager for Plaintiff who oversees reconciliation requests), and the internal payment history detailing Plaintiff's alleged performance and the unremitted balance (*see* NYSCEF Doc. #28 at 10-11). Plaintiff proved the existence of a contract via submission of the fully executed Merchant Cash Advance and Security Agreement (*see* NYSCEF Doc. #15). Plaintiff established its performance via proof it wired \$742,500 (the purchase price minus the applicable fees) to Company Defendants' bank account and starting on March 7, 2024, Plaintiff commenced ACH withdrawals of \$25,855.27 from the Company Defendants' designated bank account (*see* NYSCEF Doc. #12 at ¶19; *see also* NYSCEF Doc. #16; *see also* NYSCEF Doc. #17). Further, Plaintiff demonstrated Defendants breach of the contract with their failure to remit the agreed upon ACH deposits and resulting damages (*see* NYSCEF Doc. #16; *see* NYSCEF Doc. #17). Moreover, Defendant has not disputed the existence of the contract, the receipt of \$742,000 from Plaintiff and that it failed to remit the monthly payment to Plaintiff as contracted.

Accordingly, Plaintiff established its prima facie entitlement to judgment as a matter of law for breach of contract and breach of guaranty. (*see Principis Capital, LLC v I Do, Inc.*, 201 AD3d [2<sup>nd</sup> Dept. 2022]).

### **CPLR 3211(a)(1), (7) Motion to Dismiss**

On a motion to dismiss pursuant to CPLR 3211 (a) (7) the court must afford the complaint a liberal construction, accept the allegations contained as true and provide the plaintiff with the benefit of every possible favorable inference. The sole criteria is whether the pleading has a cause of action (*see Bono v. Stim & Warmuth, P.C.*, 215 AD3d 911 [2d Dept 2023]). Similarly, under a

motion to dismiss pursuant to CPLR 3211 (a) (1) dismissal is warranted only if the documentary evidence submitted utterly refutes the plaintiffs' factual allegations (*see id.*)

Conversely, Defendants offer two main arguments as to why the action should be dismissed. First, Defendant argues that the Agreement is in fact an usurious loan and that it is void on grounds of illegality (*see* NYSCEF Doc. #40 at 6). Second, the Agreement was procured through fraud and as a result, it is void. Defendant argues that Plaintiff stated that it was going to collect 5.16% of Defendants' revenue but instead collected a fixed amount of 25,855.27 (*see id.* at 13).

### **Criminal Usury**

"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" (*see Crystal Springs Capital, Inc. v Big Thicket Coin, LLC*, 220 AD3d 745 [2<sup>nd</sup> Dept 2023]). 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" (*Principis Capital, LLC v I Do, Inc.*, 201 AD3d 752, 754, 160 N.Y.S.3d 325 [internal quotation marks omitted]). Courts generally "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".

Plaintiff demonstrated via its reconciliation provision that the Agreement contained a clause that provided for review and modification of Defendants' payments in response to fluctuations in the defendants' receipts (*see Principis Capital, LLC v I Do, Inc.*, 201 AD3d at 754). Defendants' assertion that the reconciliation provision is illusory and subject solely to Plaintiff unfettered discretion and as such is invalid is meritless (*see* NYSCEF Doc. #40 at 16) since Defendant never requested a reconciliation. (*see Apollo Funding Co. v. Dave Reilly Constr., LLC*, 241 AD3d 1508, 1509 [2d Dept 2025]). Defendants have not alleged that they've made a reconciliation request, instead they've only alleged that the fixed withdrawal continued despite declining revenues.

The second factor is whether the Agreement has a finite term. The Agreement explicitly states that "there is no interest rate or payment schedule and no time period during which the Purchase Amount must be collected." (*see* NYSCEF Doc. #15 at 1). While Defendants argue that

withdrawing a fixed amount creates an “implied finite term” this ignores the fact that the transaction was subject to the reconciliation provision, and because the remittance could be adjusted, the terms of the Agreement were indefinite (*see* NYSCEF Doc. #40 at 17). The variability disproves the concept of a finite term meaning that the second factor waves heavily in favor of the validity of the transaction (*see Principis Cap., LLC v. I Do, Inc., 201 AD3d 752, 754* [2d Dept 2022]).

The final factor is whether the funder has absolute recourse if the merchant declares bankruptcy. The Agreement has no provision that establishes bankruptcy as an event of default. Instead, the Agreement state that the “Merchant going bankrupt or going out of business...does not constitute a breach of this Agreement.” This once again strongly supports the conclusion that the Agreement is a valid transaction (*see* NYSCEF Doc. #15 at 1).

Thus, Plaintiff's transaction is a purchase of future receivables and not a criminally usurious loan (*see Principis Capital, LLC v I Do, Inc., 201 AD3d at 754*). Defendants have not raised a triable issue sufficient to defeat summary judgment or grant dismissal of the Complaint.

### **Fraud in the Inducement**

Defendants further allege that the Agreement is voidable because it was procured by fraud in the inducement. Defendants argue that Plaintiff made a material misrepresentation of fact by telling the Company Defendants that it would only withdraw 5.16% of future receivables while having a secret intent to withdraw fixed amounts regardless of the merchants' revenue (*see* NYSCEF Doc. #40 at 12-13).

To sustain a claim for fraud in the inducement, a party must allege a material misrepresentation of an existing fact, made with knowledge of its falsity, an intent to induce reliance, justifiable reliance by the party, and damages (*see Gruber v. Donaldsons, Inc., 201 AD3d 887, 888, [2d Dept 2022]*). Defendants' fraud in the inducement defense fails because the Agreement is unambiguous with no material misrepresentation of fact. Defendant has failed to meet any of its burden of proofs.

Defendants' argument that the Individual Defendants are not liable to Plaintiff because the alleged personal guaranty does not include a guarantee of payment meaning that the Individual Defendants did *not* fail to perform under the guaranty is linguistically flawed with a cherry picked short-sighted read and relay of the Agreement. (*see* NYSCEF Doc. #40 at 3). The Agreement, in

multiple paragraphs, clearly set forth the personal guarantors' obligations and since the Merchant has breached the Agreement the guarantors are liable.

### **Procedural Validity of Motion Sequence 1**

A party asserting that a summary judgment motion is premature must demonstrate (1) that discovery might lead to relevant evidence or (2) that the facts essential to justify opposition were exclusively within the knowledge and control of the movant. The mere hope or speculation that evidence is sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying summary judgment (*see Cappiello v. City of Glen Cove*, 232 AD3d 844, 846 [2d Dept 2024]).

The specific information Defendants seek through discovery (the internal underwriting mechanics of how Plaintiff calculated the \$25,855.27) is irrelevant to the breach of contract claim. Defendants failed to invoke the Agreement's reconciliation process, and they waived the right to challenge the accuracy of the remittance amount. Whatever internal calculus Plaintiff used to arrive at the estimate is not a material issue of fact capable of defeating summary judgment. Furthermore, the essential facts governing liability in this action are not hidden within the control of Plaintiff, the contract, the receipts, and cessation of payments are all facts fully known to Defendants and are within their own bank records. As a result, Plaintiff's Motion Sequence 1 is not premature.

### **CONCLUSION**

Plaintiff's motion sequence 1 is granted in its entirety. Defendants' motion sequence 2 is denied in its entirety.

Accordingly, it is hereby:

**ORDERED** that Plaintiff's motion for summary judgment AND to dismiss Defendants' affirmative defenses (Motion Sequence 1) is **GRANTED** in its entirety it is further

**ORDERED** that Defendants' (Motion Sequence 2) cross-motion to dismiss the complaint pursuant to CPLR 3211 (a) (1) and CPLR 3211 (a) (7) is **DENIED** in its entirety; and it is further

**ORDERED** that Plaintiff is granted summary judgment on its causes of action for breach of contract against the Company Defendants (C & LS Legacy Group LLC, Environment Holdings, Inc., LCL Legacy Enterprises, LLC, Surety Leasing Addison, Inc., WM Painting, LLC, Dreamy

Real Estate, LLC, and Oilfield Indonesian Ltd., Inc. and the Individual Defendants), and the Clerk of the Court is directed to enter judgment in favor of Plaintiff and against the Company Defendants, jointly and severally, against Individual Defendants Charles Simpson Christopher and Linda Kay Christopher, jointly and severally, in the amount of \$787,576.76;

This constitutes a Decision and Order of the Court.

**E N T E R,**

**Dated:** April 23, 2026



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