

**Fora Fin. Warehouse 2024 LLC v  
Stalk Mkt. Co LLC**

2026 NY Slip Op 31918(U)

May 4, 2026

Supreme Court, New York County

Docket Number: Index No. 654763/2025

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. 654763/2025

FORA FINANCIAL WAREHOUSE 2024 LLC,

MOTION DATE 10/27/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

STALK MARKET CO LLC D/B/A STALK MARKET CO,
GRACE NOE, LEAH BROWN

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 27, 28, 29

were read on this motion to/for DISMISS DEFENSE

Upon the foregoing documents, Plaintiff's motion to dismiss Defendants' affirmative defenses is granted in part and denied in part. Plaintiff seeks Defendants' affirmative damages based on Defendants' alleged breach of contract. Plaintiff allegedly advanced Defendants a lump sum as part of an agreement to purchase a certain share of Defendants' accounts receivable. Defendants filed their Answer with several affirmative defenses. Prior to the exchange of any discovery, Plaintiff moved to dismiss Defendants' affirmative defenses, relying solely on an attorney affirmation and a memorandum of law. Defendants oppose and argue the motion is premature and fails to meet Plaintiff's burden.

On a motion to dismiss pursuant to CPLR 3211(b), the plaintiff bears the burden of demonstrating that the defense is without merit as a matter of law, and a defendant is entitled to the benefit of every favorable inference which may be drawn from the pleadings (534 East 11th Street Housing Development Fund Corp. v Hendrick, 90 AD3d 541, 541-42 [1st Dept 2011]). The plaintiff's burden on a CPLR 3211(b) motion is a heavy one (Granite State Ins. Co. v Transatlantic

*Reinsurance Co.*, 132 AD3d 479, 481 [1st Dept 2015]). However, bare legal conclusions, with no factual or legal bases presented, are insufficient to raise an affirmative defense (*see Chrysler East Building, L.L.C. v Keenwawa, Inc.*, 217 AD3d 494, 494-495 [1st Dept 2023]).

The fifth affirmative defense claims the statute of limitations has expired, but there is no explanation as to how or why it expired considering the Complaint alleges the contract and guaranty were breached on or about January 24, 2025. The statute of limitations for breach of contract is six years, making this case timely. Likewise, the cause of action for conversion is timely. The eighth affirmative defense is duplicative of the first affirmative defense since both affirmative defenses claim Plaintiff fails to state a cause of action. The tenth and eleventh affirmative defenses, which assert that Plaintiff failed to name a necessary party and that Plaintiff's claims are barred by the doctrine of waiver, ratification, res judicata, collateral estoppel, statute of limitations and/or laches are dismissed as they are not pled with any factual specificity. Moreover, in opposition, Defendants fail to proffer any factual basis for these affirmative defenses. Therefore, the fifth, eighth, tenth and eleventh affirmative defenses are dismissed.

However, the remainder of the motion is denied. The first affirmative defense states Plaintiff failed to state a cause of action. At this juncture, considering Defendants may still move to dismiss pursuant to CPLR 3211(a)(7) depending on what discovery yields, there is no basis to dismiss this affirmative defense.

The second affirmative defense claims Plaintiff failed to accurately account for payments. Considering Plaintiff failed to even support its motion with a copy of a ledger regarding payments, the Court cannot find Plaintiff met its heavy burden of showing dismissal here is appropriate.

The third affirmative defense claims Plaintiff failed to properly effectuate service. Here, the only affidavit of service on NYSCEF is an affidavit of service on Leah Brown. Plaintiff fails

to show all Defendants were properly served, therefore the motion to dismiss this affirmative defense is denied.

The fourth affirmative defense asserts the doctrine of unclean hands. Considering the central dispute here is whether the transaction constitutes a usurious loan or a proper purchase of accounts receivable, the doctrine of unclean hands is properly asserted. If Plaintiff is attempting to collect on a usurious loan, then it is coming to the Court with unclean hands. The sixth affirmative defense asserts the amounts owed are in dispute – Plaintiff fails to show how the amounts are not in dispute considering the parties dispute whether the contract is an unenforceable usurious loan.

The seventh affirmative defense is sustained as the contract has a reconciliation provision which could have been utilized to mitigate Plaintiff's damages, but there is no evidence the reconciliation provision was ever exercised. The ninth affirmative defense which claims Defendants performed all obligations owed to date is a factual issue requiring discovery which also may be contingent on whether the Defendants have any obligations under a void usurious loan.

Finally, the twelfth and thirteenth affirmative defenses present factual issues which Plaintiff has failed to reconcile on this motion. Plaintiff fails to demonstrate, *prima facie*, that the contract at issue is not actually usurious loans in disguise (*see People v Richmond Capital Group LLC*, 246 AD3d 585 [1st Dept 2026] citing *LG Funding, LLC v United Senior Properties of Olathe, LLC*, 181 AD3d 664 [2d Dept 2020]). The contract at issue contains unconditional guaranties and granted Plaintiff a security interest 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 586

["Although the MCAs have mandatory reconciliation provisions, no reconciliation was performed in practice"]).

Further, the contract states Plaintiff "is entering this Agreement knowing the risks that Seller's business may slow down or fail, and [Plaintiff] assumes these risks" (NYSCEF Doc. 2 at ¶ 1.1(d)). Nonetheless, Plaintiff is suing here for the remainder of the balance, without reconciliation, plus 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 business slowing down or failing (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]). Given there has been little discovery into the parties' performance, and the reason for the alleged default, it remains an issue as to whether the contracts are usurious loans. Therefore, these affirmative defenses survive.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion is granted solely to the extent that the fifth, eighth, tenth and eleventh affirmative defenses are dismissed, and the remainder of the motion is denied; 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.

This constitutes the Decision and Order of the Court.

5/4/26  
DATE

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

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: