

**SUPREME COURT- STATE OF NEW YORK
 COUNTY OF NASSAU: TRIAL/IAS PART14**

PRESENT:

Hon. Thomas Rademaker, J.S.C.

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**EMERALD GROUP HOLDINGS LLC D/B/A
 VITALCAP FUND**

**Index No: 607524/2022
 Motion Seq. No.: 001
 Motion Submitted: 3/15/2023**

Plaintiff(s),

DECISION AND ORDER

-against-

**EVOLUTION ENTERPRISE GROUP, LLC
 D/B/A EVOLUTION ENTERPRISE GROUP
 AND THOMAS DUANE RODERICK,**

Defendant(s).

_____x

The Plaintiff moves the Court pursuant to CPLR §3212 for an Order which seeks, *inter alia*, summary judgment against Defendant on the causes set forth in its Verified Complaint: Dismissing Defendant’s affirmative defenses; and awarding Plaintiff costs, expenses, and disbursements. The Defendant opposes the Plaintiff’s motion and contend that the agreement between the parties must be considered usurious.

The Plaintiffs contends this matter is a “straightforward breach of contract case, with no triable issues of fact,” and that the parties entered int a contract where Plaintiff paid Defendant a sum in advance to purchase a percentage of Defendant’s future receivables, and

Upon review of a careful review of the papers submitted in support and in opposition to the Plaintiff's motions, along with their respective annexed exhibits, and given the factual differences between the accounts of the parties, the Plaintiff's motion for summary judgment is **DENIED**, and it is further

CPLR 3212[F] provides that "should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just,"

And accordingly, it is

ORDERED, that the denial of summary judgment is without prejudice to either party's right to file a motion for Summary Judgment after the completion of discovery.

This constitutes the Decision and Order of the Court.

Dated: May 9, 2023
Mineola, N.Y.



Hon. Thomas Rademaker, J. S. C.