

**SUPREME COURT- STATE OF NEW YORK
COUNTY OF NASSAU: TRIAL/TAS PART16**

PRESENT:

Hon. Thomas Rademaker, J.S.C.

_____x

UNIQUE FUNDING SOLUTIONS LLC

Plaintiff(s),

Index No:610578/2021

-against-

Motion Seq. No.: 001; 002

Motion Submitted: 12/15/2021

DECISION AND ORDER

**MDR INVESTMENTS INC and ROGER A
WATSON,**

Defendant(s).

_____x

The following papers read on this motion:

Notice of Motion/Memorandum of Law/Affidavit/Affirmation	
Supporting Exhibits. (mot seq 001).....	1
Notice of Cross-Motion/Statement of Material Facts/Affirmation	
Affidavit (mot seq 002)	
Affirmations in Opposition to Cross-Motion	
Memorandum of Law	2
Reply Affirmation.....	3

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 moves the Court by Cross-Motion for an Order which, *inter alia*, denies Plaintiff's motion for summary judgment on the grounds that there exist genuine issues of material fact as to the claims of the Plaintiff; denies Plaintiff's motion for summary judgment as it is facially deficient as it failed to include a Statement of Undisputed Material Facts; and grants Defendant's Cross-Motion for summary judgment on the grounds that the transaction set forth in the Verified Complaint is a "criminally usurious loan."

The Plaintiffs contends this matter is a "straightforward breach of contract case, with no triable issues of fact," and that the parties entered into a contract where Plaintiff paid Defendant a sum in advance to purchase a percentage of Defendant's future receivables, and that the Defendant breached the contract by failing to turn over the receivables to Plaintiff and to otherwise breach the covenants and warranties made in the contract.

In contrast, the Defendants contend that the agreement between the parties constitutes a criminally usurious loan which would be void and would relieve the borrower of the obligation to repay principal and interest. The Defendants contend that they are entitled to summary judgment against the Plaintiff based upon the Defendants' theory that the transaction between the parties was a "criminally usurious loan" and that there are genuine

issues of material fact at issue in the case which warrants denial of the Plaintiff's summary judgment motion.

It is well settled that in a motion for summary judgment the moving party bears the burden of making a prima facie showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact (*see Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 [1957]; *Friends of Animals, Inc. v. Associates Fur Mfrs.*, 46 NY2d 1065 [1979]; *Zuckerman v. City of New York*, 49 NY2d 5557 [1980]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegard v. New York University Medical Center*, 64 NY2d 851 [1985]). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v. City of New York*, 49 NY2d 5557 [1980]). The primary purpose of a summary judgment motion is issue finding not issue determination (*Garcia v. J.C. Duggan, Inc.*, 180 AD2d 570 [1st Dept. 1992]), and it should only be granted when there are no triable issues of fact (*see also Andre v. Pomeroy*, 35 N2d 361 [1974]).

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 and the Defendants' Cross-Motion for summary judgment are both **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: February 07, 2022
Mineola, N.Y.



Hon. Thomas Rademaker, J. S. C.