Chatham Capital Mgt. IV LLC v Platinum Asset Funding LLC
2024 NY Slip Op 31302(U)
April 14, 2024
Supreme Court, New York County
Docket Number: Index No. 157977/2020
Judge: Andrea Masley

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

----------X

CHATHAM CAPITAL MANAGEMENT IV LLC and CHATHAM CAPITAL MANAGEMENT LLC,

Plaintiffs,

- v -

PLATINUM ASSET FUNDING LLC and ARENA PRFG LLC, and ARENA INVESTORS LLP,

Defendants.

----------X

INDEX NO. 157977/2020

MOTION DATE _____

MOTION SEQ. NO. 005 006

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 140, 141, 142, 143, 151, 153, 158, 159, 160, 161, 162, 163, 165, 166, 167
were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 006) 144, 145, 146, 147, 148, 149, 150, 154, 155, 156, 157, 164, 168
were read on this motion to/for JUDGMENT - SUMMARY.

This action arises out of an alleged scheme by defendants Platinum Asset Funding LLC, Arena PRFG LLC, and Arena Investors LLP (collectively, Arena) to convert monies owed to plaintiffs Chatham Capital Management IV LLC and Chatham Capital Management LLC (together, Chatham) in connection with certain receivables that Chatham purchased pursuant to Master Participation Agreements that they entered into with nonparty Platinum Rapid Funding Group LLC (PRFG). According to Chatham, although they purchased these receivables outright from PRFG, Arena wrongfully collected Chatham's pro rata share and improperly failed to remit Chatham's pro rata share of collections.

In motion sequence no. 005, Arena moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint. In motion sequence no. 006, Chatham moves, pursuant to CPLR 3212, for summary judgment on (1) their first cause of action for a declaratory judgment, declaring them "the owner of the Chatham RTR;" (2) their third cause of action for unjust enrichment; and (3) their fourth cause of action for conversion. (NYSCEF 144, Notice of Motion [seq. no. 006].)

BACKROUND

PRFG

PRFG provides cash advances to small and medium-sized businesses in exchange for future receipts or future receivables, which are deducted monthly in incremental amounts from the merchant's bank account until the full purchased amount is paid out (Merchant Cash Advances). (NYSCEF 72, Joint Statement of Material Facts [JSMF] ¶ 2.) "PRFG purchased Future Receipts from each of the following Merchants:

- Zadeh Kicks, LLC ('Zadeh') (Apr. 2019)

  'Purchase Price': $1,200,000

  'Purchased Amount': $1,656,000
- Alliance HR, Inc. ('Alliance') (Aug. 2019)

  'Purchase Price': $500,000

  'Purchased Amount': $675,000
- Del Hutson Designs, LLC ('Del') (Oct. 2019)

  'Purchase Price': $450,000

  'Purchased Amount': $639,000
- Zadeh Kicks, LLC ('Zadeh') (Dec. 2019)

'Purchase Price': $900,000

'Purchased Amount': $1,242,000

- MVS Mailers, Inc. ('MVS') (Jan. 2020)

'Purchase Price': $1,100,000

'Purchased Amount': $1,540,000" (Merchant Agreements). (*Id.* ¶ 3; *see also* NYSCEF 74, 75, 76, 77 and 78, Merchant Agreements.)

The Merchant Agreements granted PRFG, defined as Funder, a security interest and constituted a security agreement under the UCC. (*Id.*)

The Master Participation Agreements

In January of 2017 and June of 2019, Chatham and PRFG entered into two Master Participation Agreements (MPAs). (NYSCEF 72, JSMF ¶¶ 4-5; *see also* NYSCEF 79-80, MPAs.) Pursuant to the MPAs, PRFG would present Chatham with funding opportunities to co-invest in and Chatham could elect to participate in these funding opportunities by directly investing their funds with PRFG "under the same terms and conditions as detailed in the individual Funding Agreement(s)."[1] (NYSCEF 79-80, MPAs at Recital B.) Upon agreement to participate, Chatham would then purchase a

[1] Funding Agreement is defined as "[t]hat certain Funding Agreement described in the Recitals between [PRFG] and Client, including but not limited to a Merchant Cash Advance Agreement, a Revenue Based Financing Agreement and /or a Business Loan Agreement and all related documents." (NYSCEF 79-80, MPAs § 1.15.) The Recitals state PRFG "may enter into Merchant Cash Advance Agreement(s), Revenue Based Financing Agreement(s) or Loan Agreement(s) with business Client(s), collectively the 'Funding Agreement' (as defined below) … ." (*Id.* at Recital A.) Client is defined as "[a] business which enters into a Funding Agreement with [PRFG] and Participants." (*Id.* § 1.9.) Chatham is defined as a Participant. (*Id.* at 1.)

certain share of the "Collections"[2] received by PRFG under the Funding Agreements in PRFG's name. Pursuant to Section 2.5 of the MPAs, PRFG agreed to "collect payments from the Clients and provide to each Participant on a weekly basis an amount equal to the pro-rata co-investment percentage minus deductions … ." (*Id.* § 2.5)

Regarding the five Merchant Agreements identified above, PRFG first sent Chatham an email with the heading "Platinum Syndication Opportunity: [with name of merchant here]," asking Chatham to confirm via email by a specific date as to whether they "would commit to participate in the 'Platinum Syndication Opportunity,' and if so, how much Chatham would commit within the maximum amount PRFG made 'available' to Chatham." (NYSCEF 72, JSUF ¶ 6.) After confirmation of acceptance, "there would be a submission with wire instructions to PRFG's specified bank account." (*Id.*) For each of the Merchant Agreements, PRFG emailed Chatham the fully executed Merchant Agreements and Chatham then transmitted payment directly into PRFG's bank account as per the wire instructions. (*Id.* ¶ 7.) Pursuant to Section 2.4 of the MPAs, once Chatham accepted the investment opportunity and delivered the funds, PRFG was then to simultaneously fund "the full contracted amount as specified on the Clients Funding Agreement with all co-investment monies." (NYSCEF 79-80, MPAs § 2.4).

Chatham participated in each of the Merchant Agreements in accordance with the MPAs in the following amounts:

"1. Zadeh (April 2019):

---

[2] The MPAs define Collections as "[p]roceeds of Purchased Receivables received by the [PRFG], a portion of which may be passed on to [Chatham] on a pro rata basis in accordance with [Chatham]'s participation interest." (NYSCEF 79-80, MPAs § 1.12.)

a. Chatham Funded Amount: $250,000

b. Chatham RTR[3]: $345,000

2. Alliance:

1. Chatham Funded Amount: $250,000

2. Chatham RTR: $337,500

3. Del:

1. Chatham Funded Amount: $175,000

2. Chatham RTR: $248,500

4. Zadeh (Dec. 2019):

1. Chatham Funded Amount: $250,000

2. Chatham RTR: $345,000

5. MVS:

1. Chatham Funded Amount: $250,000

2. Chatham RTR $350,00." (NYSCEF 72, JSUF ¶ 8.)

Chatham, admittedly, did not file a UCC financing statement, or Form UCC-1. (*Id.* ¶ 9.)

The Credit Agreements

In 2018 and 2019, PRFG entered into Credit Agreements with defendants Platinum Asset Funding LLC and Arena PRFG LLC for a $25 million secured loan, subject to increase (Credit Agreements or the Credit Facility). (NYSCEF 72, JSUF ¶10;

[3] The parties agreed that "[t]he phrase 'Chatham RTR' is used herein solely for purposes of this Joint Statement, and is meant to denote Chatham's purported total anticipated amount owed equal to its total 'pro-rata share' of the 'Collections based upon' its 'percentage of participation' under each Merchant Agreement." (NYSCEF 72, JSUF n 1.) For the purposes of these motions, the court will also refer to this alleged amount owed to Chatham as "Chatham RTR."

see also NYSCEF 81, 2018 Credit Agreement; NYSCEF 82, 2019 Credit Agreement.) As a condition of the Credit Facility, PRFG formed the bankruptcy-remote entity, PRFG SPV #1 LLC (SPV), to hold title to the specific Merchant Receivables that were pledged as collateral as defined in the Credit Agreements. (NYSCEF 72, JSUF ¶ 11.) SPV was to maintain the revenue from the Merchant Accounts in an account at Signature Bank (Collections Account). (*Id.*) The Collections Account was to be segregated from PRFG's other business not connected to the Credit Agreements. (*Id.*) "Arena was issued a security interest in the funds in the Collections Account …and all receivables within the scope of the terms of the Credit Agreements." (*Id.*) Arena was also issued a security interest [in SPV's Membership Units,] demonstrating 100% ownership and control if seized following a default." (*Id.*)

In connection with the Credit Agreements, PRFG and SPV entered into a Receivables Purchase Agreement which transferred the specific Merchant Receivables from PRFG to SPV upon collateralization. (NYSCEF 72, JSUF ¶ 12; *see also* NYSCEF 86, Receivables Purchase Agreement.) "Upon each draw from the Credit Facility, PRFG would sell and assign certain specific Merchant Receivables into the SPV via an Assignment." (NYSCEF 72, JSUF ¶ 13; *see also* NYSCEF 87, Transfer of Receivables.) All payments under the Merchant Agreements went through the Collections Account, which was controlled by Arena. (NYSCEF 72, JSUF ¶ 14.) Arena filed Form UCC-1s, "perfecting their interest in the specific Merchant Receivables arising out of the Credit Agreements." (*Id.* ¶ 17.)

PRFG Defaults

On February 29, 2020 and March 5, 2020, Arena notified PRFG that it was in default under the Credit Agreements. (NYSCEF 72, JSUF ¶ 19.) As a result of this default, Arena exercised their rights and remedies under the Credit Agreements (*see* §§ 9.2 [b] and 9.4) and seized the Merchant Receivables that flowed through the Collections Account, including the Chatham RTR." (NYSCEF 72, JSUF ¶ 20, 24.) "On May 1, 2020, Arena issued notices that it was seizing the Collateral as defined in the Credit Agreements and put the Collateral up for sale in accordance with UCC Article 9 ('Foreclosure Sale')." (*Id*. ¶ 25.) The Foreclosure Sale was advertised in two newspapers on three separate occasions. The Foreclosure Sale took place on May 15, 2020 by telephone due to the Covid-19 pandemic. (*Id*. ¶¶ 26-27.) Arena was the only bidder that appeared and "credit bid" $1 million, and thus, Arena won the auction. (*Id*. ¶ 28.) Arena foreclosed on the collateral. (*Id*. ¶ 29.) Although Arena had previously delivered revenue from the syndicated portions to the Collection Account for distribution as provided for in the Credit Agreements, it stopped doing so on the date of the Foreclosure Sale. (*Id*. ¶ 30.) Arena contacted Chatham, informing them that Arena had taken the funds. (*Id*. ¶ 31.) On September 29, 2020, Chatham filed this action asserting claims for a declaratory judgment, an accounting, unjust enrichment, and conversion. (NYSCEF 1, Summons and Complaint.)

DISCUSSION

Summary judgment is a drastic remedy that will be granted only where the movant demonstrates that no genuine triable issue of fact exists. (*See Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) On a motion for summary judgment,

"the proponent of a summary judgment motion must make 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." (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citation omitted].) Where this showing is made, the burden shifts to the party opposing the motion to produce sufficient evidentiary proof to establish the existence of a material issue of fact which requires a trial of the action. (*Id.*) In deciding a summary judgment motion, the "evidence must be analyzed in the light most favorable to the party opposing the motion." (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997] [citation omitted].) The motion should be denied if there is any doubt about the existence of a material issue of fact. (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012].) However, bare allegations or conclusory assertions are insufficient to create genuine issues of fact to defeat the motion. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility." (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citations omitted].) "New York courts routinely grant summary judgment where, as here, summary resolution may be determined as a matter of law based on the plain language of the operative contracts." (*CNY Residential LLC v 68-70 Spring Partners, LLC*, 2024 NY Slip Op 30176[U], *8 [Sup Ct, NY County 2024] [citations omitted].)

Chatham asserts that they owned the Chatham RTR outright prior to the sale of the Receivables from PRFG to SPV, and that the Chatham RTR could not have been collateralized or transferred to SPV; thus, Arena's seizure and subsequent UCC Sale

was improper and/or void as to the Chatham RTR. Chatham argues that Arena's security interest was subject to Chatham's ownership interest in the Chatham RTR. Conversely, Arena argues that Chatham was an unperfected or unsecured creditor of PRFG and its ownership claim on the collateral was, at most, a subordinate security interest which was legally extinguished when Arena, as PRFG's creditor, foreclosed on the collateral.

The contracts at issue here are the MPAs. Although Arena asserts that the Credit Agreements must also be examined, the court disagrees as Chatham is not a signatory to those Agreements, and thus, they have no binding effect on Chatham as Chatham never agreed to the terms of those Agreements. (*Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd.*, 184 AD3d 116, 121 [1st Dept 2020] [citation omitted] [holding that "[i]t is a general principle that only the parties to a contract are bound by its terms"].)[4]

Chatham asserts that the MPAs are true participation agreements, and the court agrees. "Courts have developed two tests to determine whether a transaction is a true participation or whether it is in fact a disguised loan. The following factors indicate that a transaction is a true participation: 1) money is advanced by participant to a lead lender; 2) a participant's right to repayment only arises when a lead lender is paid; 3) only the lead lender can seek legal recourse against the borrower; and 4) the document is evidence of the parties['] true intentions." (*Rothenberg v Oak Rock Fin.*, LLC, 2015 US

[4] The court notes Arena does not argue that Chatham falls into any exception to this general principal.

Dist LEXIS 44032, at *26-27 [EDNY Mar. 31, 2015, No. 14-cv-3700].) The MPAs satisfy each of these factors.

Nevertheless, the court must examine the language of the MPAs to determine what Chatham bargained for. There is no dispute that the terms of the 2017 MPA and 2019 MPA are substantially the same.[5] (NYSCEF 72, JSUF ¶ 5.) The MPAs define several terms, including but not limited to "Collateral" ("All collateral and guarantees received by or granted to Lead pursuant to a Merchant Agreement, or otherwise securing a Client's Obligations"), "Collections" ("Proceeds of Purchased Receivables received by the Lead, a portion of which may be passed on to the Participant on a pro rata basis in accordance with the Participant's participation interest"), "Participant's Share of Collections" ("The Participant's pro-rata share of the Collections based upon Participant's percentage of participation"), "Participant's RTR or Participant's Right to Receive" ("The total amount of credit card or bank deposit receivables which the Participant has invested in and owns outright as a co-investor"), "Purchased Receivables" ("Credit card receivables or bank deposit receivables purchased by Lead and Participants from a Client as described in a Funding Agreement"), and "RTR" ("The Lead's and Participant's "Right to Receive," which represents the full receivable due and payable under the Merchant Agreement"). (NYSCEF 79 and 80, MPAs at 2-3 [§§ 1.11,

[5] After review of the MPAs, the difference of terms in in Section 2.5, involving the percentage of fees to be deducted from the pro-rata co-investment percentage. Section 2.5 of the 2017 MPA provides for deduction of a 2% Administrative Fee and requires the Participant to "pay both the referral fee (a/k/a commission) and administrative fee simultaneously with and in addition to its investment funds." (NYSCEF 79, 2017 MPA at 4.) Section 2.5 of the 2019 MPA provides for a deduction of a 3% Administrative Fee and eliminates the requirement to pay both the referral fee and administrative fee simultaneously. (NYSCEF 80, 2019 MPA at 4.)

1.12, 1.21, 1.22, 1.27, and 1.32].) With the exception of "Collections," none of these defined terms are used outside of Section 1 (Definitions) of the MPAs. Section 4.2 provides

> "[o]n a weekly basis Lead shall pay to Participant, its pro-rata share, less those amounts described in Section 2.4 above, of Collections via ACH transfer to a bank account designated by the Participant to receive payments. If for any reason the Lead shall hold on to the Participants share of Collections, it is acknowledged by the Lead that such Collections are the property of the Participant and shall be held for the benefit of the Participant except in circumstances where this amount is used to offset any unpaid costs or extraordinary expenses associated with this Agreement. All payments due hereunder shall be made by ACH transfer." (*Id.* at 6.)

Chatham argues that it owns the Receivables, or at a least a portion of, but what Chatham bargained for is the Collections, which are the proceeds of the Purchased Receivables and not the Receivables themselves. That the MPAs define "Participant's RTR or Participant's Right to Receive" as "[t]he total amount of credit card or bank deposit receivables which the Participant has invested in and owns outright as a co-investor" does not advance Chatham's ownership argument.

> "A fundamental tenet of contract law is that agreements are construed in accordance with the intent of the parties and the best evidence of the parties' intent is what they express in their written contract. Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms, without reference to extrinsic materials outside the four corners of the document." (*Goldman v White Plains Ctr.*, 11 NY3d 173, 176 [2008] [internal quotation marks and citations omitted].)

The MPAs are unambiguous and neither party makes an argument to the contrary. The fact that the defined term "Participant's RTR or Participant's Right to Receive" is not used anywhere else in the MPAs besides the Definitions section, whereas the defined term "Collections" evidences the parties' intent that Chatham bargained for the right to

collect proceeds from the Receivables but not the Receivables themselves. Thus, Chatham's ownership argument fails. Chatham's interest is in the Collections. PRFG only had a contractual obligation to pay Chatham a portion of the proceeds of the Receivables. (*See* NYSCEF 79 and 80, MPAs at 6 [§4.2].) The court agrees with Arena that the Collections were subsumed as collateral in connection with the Credit Agreements.

Article 9 of the Uniform Commercial Code (UCC) makes clear that there is no distinction between securities interests and outright sales of Receivables, including the accounts at issue here, with respect to its priority, attachment and perfection rules. (*See* UCC § 9-109, comment 5 [2001] ["This Article applies to both types of transactions. The principal effect of this coverage is to apply this Article's perfection and priority rules to these sales transactions"].) Comment 5 addresses the situation at hand, PRFG's transfer of the Receivables to SPV as part of a secured transaction:

> "Following a debtor's outright sale and transfer of ownership of a receivable, the debtor-seller retains no legal or equitable rights in the receivable that has been sold. … This is so whether or not the buyer's security interest is perfected. … However, if the buyer's interest in accounts or chattel paper is unperfected, a subsequent lien creditor, perfected secured party, or qualified buyer can reach the sold receivable and achieve priority over (or take free of) the buyer's unperfected security interest under Section 9-317. … It is so for the simple reason that Sections 9-318 (b), 9-317, and 9-322 make it so. … Because the buyer's security interest is unperfected, for purposes of determining the rights of creditors of and purchasers for value from the debtor-seller, under Section 9-318(b) the debtor-seller is deemed to have the rights and title it sold. Section 9-317 subjects the buyer's unperfected interest in accounts and chattel paper to that of the debtor-seller's lien creditor and other persons who qualify under that section." (*Id.*)

PRFG transferred the Receivables to SPV, and the Receivables were pledged as collateral as defined in the Credit Agreements (NYSCEF 72, JSUF ¶¶ 11, 13). The

Credit Agreement granted Arena a security interest in the Receivables (NYSCEF 81, 2018 Credit Agreement at 50 [§5.1]; NYSCEF 82, 2019 Credit Agreement at 52 [§5.1]), and Arena properly filed a UCC-1 to "[a]ll of [PRFG]'s right, title and interest in and to, whether now existing or hereafter created, the Receivables and Related Security sold pursuant to that certain Receivables Purchase Agreement, dated as of February 1, 2018 (the 'Purchase Agreement'), by and between [PRFG] and [SPV] … ." (NYSCEF 85, UCC-1; *Lashua v La Duke*, 272 AD2d 750, 751 [3d Dept 2000] [citations omitted] ["In order for a security interest to be valid and enforceable . . . , the debtor must sign a document describing the collateral, the security interest must attach, and [the interest] must be perfected"].) Chatham concedes that "it never filed a UCC financing statement, or form UCC-1, in any jurisdiction." (NYSCEF 72, JSUF ¶ 9.) Simply put, Arena has a perfected security interest in the Receivables, and Chatham does not. Arena, in their senior secured position, has no obligation to Chatham. (See Spielman, 169 AD2d at 223 ["secured creditor" "not … bound to contracts entered into between the debtor and third parties, notwithstanding the secured creditor's possession of the debtor's assets as collateral after default"].)

Chatham also asserts that the Article 9 sale was not commercially reasonable. Chatham raises this theory for the first time in opposition to Arena's motion to dismiss. Chatham's complaint is devoid of any allegations as to a commercially unreasonable sale. While Chatham alleged the Article 9 sale was a "sham," that allegation is premised on Chatham's assertion that Chatham was an owner of the Receivables and not another basis. (NYSCEF 1, Complaint ¶ 79.) "A court should not consider the merits of a new theory of recovery, raised for the first time in opposition to a motion for

summary judgment, that was not pleaded in the complaint." (*Ostrov v Rozbruch*, 91 AD3d 147, 154 [1st Dept 2012] [citations omitted].) Thus, the court will not consider this new theory.

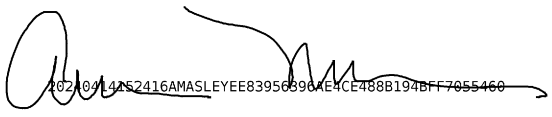
All remaining arguments have been considered and do not alter the court's determination.

Accordingly, it is

ORDERED that defendants Platinum Asset Funding LLC, Arena PRFG LLC, and Arena Investors LLP's motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to said defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that plaintiffs Chatham Capital Management IV LLC and Chatham Capital Management LLC's motion for summary judgment is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.



4/14/2024
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE