

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS-----X
BOW APPLE CAPITAL,

Index No.

Plaintiff,

VERIFIED COMPLAINT

-against-

CLUB FOREIGN LLC and PASHA BORSUK,

Defendants.
-----X

Plaintiff, BOW APPLE CAPITAL, by its attorney, Erica R. Gilerman, Esq. as and for its complaint against Defendants(s) herein, alleges as follows:

1. Plaintiff BOW APPLE CAPITAL ("Plaintiff") is a New York limited liability company, engaged in the receivables financing business.
2. Upon information and belief, CLUB FOREIGN LLC ("Defendant-Seller") is a foreign limited liability company.
3. Defendant PASHA BORSUK ("Defendant Guarantor") is an individual residing in the State of New York and upon information and belief is a principal of Defendant-Seller.
4. Pursuant to a receivables purchase agreement and personal guaranty dated May 2, 2023 (collectively, the "Agreement"), Plaintiff purchased from Defendant-Seller \$59,960.00 ("Purchased Amount") of each future account and payment obligation owing to Defendant-Seller from its customers as they are generated in the course of Defendant-Seller's business ("Future Receivables"). A copy of the Agreement is attached as *Exhibit A*.
5. The Agreement contains the parties' express consent to the jurisdiction of the courts

located in the State of New York.

6. Pursuant to the Agreement, Plaintiff was authorized to collect via an ACH electronic debit of the Future Receivables, until such time that Plaintiff collected the total Purchased Amount.
7. The Agreement contains Defendant-Seller's express covenant not to revoke its ACH authorization to Plaintiff or otherwise take any measure to interfere with Plaintiff's ability to collect the Future Receivables.
8. Contrary to Defendant-Seller's express covenant set forth above, Defendant-Seller materially breached the terms of the Agreement on July 12, 2023, by changing the designated bank account without Plaintiff's authorization, by placing a stop payment on Plaintiff's debits to the account or by otherwise taking measures to interfere with Plaintiff's ability to collect the Future Receivables. A copy of the remittance history is attached as *Exhibit B*.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract as to Defendant-Seller)

9. After a series of payments, on or about July 12, 2023, Defendant-Seller stopped paying and went into default. Plaintiff has not received any cleared payments from the Defendants since the default.
10. Plaintiff demanded repayment of money paid under the Agreement. Defendant has failed and refused to pay the sums due under the Agreement.
11. The Agreement provides that Defendant-Seller shall be in default of the Agreement if, *inter alia*, it breaches any covenants contained therein or makes any representation or warranty providing to have been incorrect, false or misleading in any material respect.

12. As a result of Defendant-Seller's breach of the provisions set forth above, Defendant-Seller has defaulted under the Agreement.
13. Pursuant to the Agreement, in the event of Defendant-Seller's default, Plaintiff may declare the total amount of receivables purchased and not delivered as immediately due and owing to Plaintiff, including costs and fees. Plaintiff now has a balance of \$42,870.00 in undelivered Future Receivables, along with a contractual default fee of \$2,500.00 ("Default Fee").
14. Subtracting the amount of receivables Plaintiff has previously collected from Defendant-Seller under the Agreement from the total Future Receivables purchased by Plaintiff, there is presently due and owing from Defendant-Seller to Plaintiff the amount of \$45,370.00, with interest from July 12, 2023, plus its costs and expenses of collection, including reasonable attorney's fees.
15. Pursuant to the terms of the Agreement, the Defendant-Seller agreed to pay Plaintiff's reasonable attorney's fees.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Guaranty as to Defendant Guarantor)

16. Plaintiff repeats and re-alleges paragraphs 9 through 15 above, as though more fully set forth herein at length.
17. The Agreement contains Defendant Guarantor's separately executed and unconditional guarantee of payment in the event of default under the Agreement by Defendant-Seller ("Guaranty").
18. Plaintiff made demand upon Defendant Guarantor to pay the outstanding balance due under the Agreement, which Defendant Guarantor has failed and refused to do.
19. As a result of Defendant-Seller's breach and default under the Agreement as set

forth above and pursuant to the Guaranty, there is presently due and owing from Defendant Guarantor to Plaintiff the amount of \$45,370.00, with interest thereon from July 12, 2023, plus its costs and expenses of collection, including reasonable attorney's fees.

WHEREFORE, Plaintiff demands judgment as follows:

1. On the first cause of action, against Defendant-Seller, in the sum of \$45,370.00, plus interest from July 12, 2023, plus Plaintiff's costs, expenses of collection, including reasonable attorney's fees of \$11,342.50, or any such other amount as the court deems just.
2. On the second cause of action, against Defendant Guarantor, in the sum of \$45,370.00, plus interest from July 12, 2023, plus Plaintiff's costs, expenses of collection, including reasonable attorney's fees of \$11,342.50, or any such other amount as the court deems just.
3. Plaintiff's costs and expenses and such other and further relief as the court may deem just and proper.

Dated: July 14, 2023

By: /s/ Erica R. Gilerman

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Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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BOW APPLE CAPITAL,

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Plaintiff,

**VERIFICATION BY A
PARTY**

-against-

CLUB FOREIGN LLC and PASHA BORSUK,

Defendants.
-----X

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

MOSHE GULKAROV, being duly sworn, hereby deposes and states the following:

I am the AUTHORIZED REPRESENTATIVE of BOW APPLE CAPITAL, in the within action. I have read the foregoing Verified Complaint and know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true.

The foregoing statements are true under penalties of perjury.

Sworn to me this:

14th day of July, 2023.



Notary



MOSHE GULKAROV

