

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WARREN

-----X
COCONUT FUNDING CORPORATION,

Plaintiff,

-against-

DLS BUSINESS ENTERPRISES LLC and
DAVID SMITH, individually,

Defendants.

Index No.

Date of Purchase:

Plaintiff designates
WARREN COUNTY as
the place of trial

SUMMONS

Plaintiff resides at:

1225 Franklin Avenue, Suite 325
Garden City, New York 11530

The basis of venue is:

CPLR §§ 509; 302

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To the above named Defendant(s):

You are hereby Summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
December 14, 2023

RHETT A. FRIMET, P.C.

By: 

Rhett A. Frimet

Attorney for Plaintiff

10 East 40th Street, 46th Floor
New York, New York 10016
Tel.: (212) 290-2247

Defendants' Addresses:

DLS BUSINESS ENTERPRISES LLC
961 Kathy Street
Los Banos, California 93635

DAVID SMITH
961 Kathy Street
Sunnyvale, California 94086

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WARREN

-----X
COCONUT FUNDING CORPORATION, Index No.

Plaintiff,

-against-

COMPLAINT

DLS BUSINESS ENTERPRISES LLC and
DAVID SMITH, individually,

Defendants.

-----X

Plaintiff, Coconut Funding Corporation (hereinafter "Plaintiff" or "Buyer"), by Rhett A. Primet, P.C., its attorney, complaining of the Defendants, DLS Business Enterprises LLC (hereinafter "Company") and David Smith, individually (hereinafter "Owner") (together, Company and Owner shall be referred to as "Defendants" or "Borrower") respectfully alleges:

PRELIMINARY STATEMENT

1. By this action, Plaintiff seeks to recover not less than \$ 20,423.49 (as of December 9, 2023), plus interest, costs and attorney's fees, based upon Borrower's payment default under a Commercial Loan Agreement, entered into as of December 5, 2023, by and between Borrower and Lender (the "Agreement").

2. As used in the Agreement, each of the named Defendants in this case falls within the definition of the term "Borrower." The Agreement specifically provides:

"Borrower" includes the business entity or merchant identified above (the "Company"), to whom the loan is made. "Borrower" also includes any principal shareholder, partner, member or other owner of Borrower owning at least 25% of the Borrower or Borrower's voting rights or control ("Owner"). The Company agrees to identify any principal shareholder, partner, member or other owner of Borrower owning at least

25% of the Borrower or Borrower's voting rights or control. **This Agreement governs the credit extended to you by us. Please read it carefully. By signing this Agreement, you are agreeing to all of the terms and conditions in this Agreement on behalf of the Company and in your individual capacity as an Owner.**

THE PARTIES

3. Plaintiff, Coconut Funding Corporation, is a corporation duly organized and existing under and by virtue of the State of California and is authorized to do business under and by virtue of the laws of the State of New York, and is located at 1225 Franklin Avenue, Suite 325, Garden City, New York 11530.

4. Upon information and belief, Defendant, DLS Business Enterprises LLC, was and is a limited liability company duly organized and existing under and by virtue of the State of California.

5. Upon information and belief, Defendant, David Smith, is a resident of the State of California and is an owner of Company.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Defendants pursuant to CPLR §§ 301 and 302. Additionally, Borrower consented to this Court's exercise of personal jurisdiction over it in the Agreement, agreeing that, in connection with any claim relating to the Agreement, it "IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF" the state courts of New York. *See* Agreement, ¶ 26 (capitalization in original). The parties waived any right to a jury trial. *See* Agreement, ¶ 33.

7. Venue is proper in this Court pursuant to CPLR §§ 501 and 503. Indeed, the Agreement provides:

EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST AGENT, LENDER OR OF THEIR RESPECTIVE AFFILIATES OR ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, TRUSTEE, ADMINISTRATOR, MANAGER, ADVISOR AND REPRESENTATIVE OF AGENT, LENDER OR ANY OF THEIR RESPECTIVE AFFILIATES (COLLECTIVELY, “RELATED PERSONS”) IN ANY WAY RELATING TO THIS AGREEMENT OR ANY RELATED DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN ANY NEW YORK STATE SUPREME COURT AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH BORROWER AND OWNER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER DOCUMENT SHALL AFFECT ANY RIGHT THAT LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED DOCUMENT IN ANY COURT DESCRIBED ABOVE. EACH OBLIGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT

PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH BORROWER UNDERSTANDS THAT AGREEING TO THE VENUE IS A MATERIAL FACTOR IN LENDER'S WILLINGNESS TO ENTER INTO THIS AGREEMENT. (Agreement, ¶ 26) (capitalization in original; bold emphasis added).

8. Defendants also agreed to service of process by mail:

Each BORROWER hereby further agrees that the mailing of any Summons and Complaint in any proceeding commenced by LENDER by certified or registered mail, return receipt requested to the Mailing Address listed on this Agreement (or any other addresses provided in writing to LENDER), will constitute valid and lawful service of process against them without the necessity for service by any other means provided by statute or rule of court, and such service shall be deemed complete five (5) days after dispatch. (Agreement, ¶ 26).

FACTS COMMON TO ALL CAUSES OF ACTION

A. **The Agreement**

9. The Agreement "is governed by federal law pursuant to 12 USC § 1831d and the laws of the state of California." Agreement, ¶ 25.

10. The Agreement contains a Pricing and Repayment Table summarizing the financial terms as follows:

| Principal Loan Amount (Includes the Origination Fee) | Origination Fee | Loan Funds Disbursed to Borrower or on Borrower's Behalf (After deducting the Origination Fee) | Precomputed Interest Amount (including \$495 Administrative Fee) | Total Repayment Amount (Principal Loan Amount plus Precomputed Interest Amount) | Daily Payment Amount |
|---|------------------------|---|---|--|-----------------------------|
| \$13,000.00 | \$899.00 | \$21,101.00 | \$8,107.99 | \$21,17.99 | \$234.53 |

11. As set forth in the Agreement:

You promise to pay to us the Total Repayment Amount (identified above in the Pricing and Repayment Table) and any other fees and charges payable to us pursuant to this Agreement. The Total Repayment Amount includes an Origination Fee that will be withheld from the loan proceeds distributed to you upon funding of this loan, and an Administrative Fee of \$495 that you will be charged to you after the we fund your loan. You agree that the Origination Fee and Administrative Fees are fully earned upon funding and/or payment and are not subject to refund or rebate in the event of prepayment of this Agreement or for any other reason, except if this Agreement is cancelled in accordance with the Cancellation section of this Agreement. in accordance with this Agreement. You also agree to pay any other fees or amounts due in accordance with this Agreement, until the Total Repayment Amount has been paid in full. (Agreement, ¶ 1)¹

¹ As set out in the Agreement, Lender also is referred to as "we," "us," and "our." Borrower also is referred to as "you."

12. Further, “[t]he Daily Payment Amount is due each calendar day.” *Id.* The

Agreement continues:

We will collect each Daily Payment Amount either through (i) our debiting or otherwise withdrawing payments from a deposit account acceptable to us (“Deposit Account”), (ii) your payment processor (“Payment Processor”) remitting payments directly to us, or (iii) other method as determined in our sole discretion. If: (a) we are unable to debit or otherwise withdraw the Daily Payment Amount on the day it is due for any reason (for example, because it is a weekend, a Federal Reserve Bank holiday, or banks are authorized to be closed under the laws of Company’s business location); or (b) your Payment Processor fails to remit payments directly to us on the due date for any reason, as applicable, then the Daily Payment Amount for that day will be debited or withdrawn, or paid by the Payment Processor, as applicable, on the next day that banks or the Payment Processor are open and processing payments (along with the Daily Payment Amount due on the day payments are processed). (*Id.*)

13. The interest rate for the Agreement was “precomputed in the amount reflected in the Pricing and Repayment Table as the Precomputed Interest Amount.” Agreement, ¶ 2.

14. The Agreement further provides:

If you do not pay at least the Daily Payment Amount on its scheduled due date, or you otherwise fall behind in making payments as required by this Agreement, you authorize us, at our sole and delegated discretion, to initiate automatic payments directly from your Deposit Account for those amounts. We may initiate these payments at any time we determine funds are available to do so, and in any amounts available (including up to 100% of all funds held in the Deposit Account), for as long as amounts remain past due. The authorization to initiate payments to make up for past due amounts does not, in any way, impair or relieve your obligation to remit daily payments of the Daily Payment Amount. Our election to initiate automatic payments for past due amounts does not impair our right to declare the Agreement to be in default in accordance with Section 14 of this Agreement, and we do not waive our right to pursue other remedies we may have under this Agreement or the law. (Agreement, ¶ 4).

15. Paragraphs 15, 16 and 17 of the Agreement provide for various fee payments in the event of Borrower's failure to make timely payments:

15. Late Payment Fee. If any payment is not paid in full within 10 days after the date it is due, you will pay a late fee equal to \$215.00.

16. Returned Payment Fee. You agree to pay a fee to us of \$215.00 if you make a payment which is dishonored for any reason.

17. Bank Change Fee. You agree to pay a Bank Change Fee of \$499.00 each time you request to change the Deposit Account to a different account to be used for payment of the amounts due under this Agreement. You understand and agree that any account you select to serve as the Deposit Account will not be a personal account and will be used solely for business and commercial purposes related to Borrower's business.

16. Paragraph 14 of the Agreement specifies ten events of default:

Default. You will be considered to be in default if: (i) you fail to pay the Daily Payment Amount in full on five occasions; (ii) the Deposit Account is seized or attached by legal process; (iii) you cancel the Automatic Payment Authorization as set forth in Section 10 of this Agreement; (iv) you fail to adhere to any of the terms and conditions of this Agreement; (v) your creditworthiness is impaired; (vi) you become insolvent, or you are the subject of Bankruptcy or receivership proceedings; (vii) you are in default on any other loan or credit agreement with us; (viii) any judgment, lien, attachment or execution is issued against you or your property; (ix) you change the Deposit Account or Payment Processor or add an additional payment processor without first notifying us and receiving our written consent ; or (x) you have made any misrepresentation in connection with your application and/or this Agreement. (Agreement, ¶ 14.)

17. The Agreement also delineates Lender's rights upon default:

Rights Upon Default. If you are in default, we may (i) terminate this Agreement and demand immediate payment of the Total Repayment Amount and all other outstanding obligations under this

Agreement; (ii) realize upon any security interest granted to us pursuant to this Agreement, by selling or liquidating such interest and applying any proceeds to the amounts due under this Agreement; (iii) debit any past due amounts from the Deposit Account; and/or (iv) temporarily or permanently increase the Daily Payment Amount. (Agreement, ¶ 18.)

18. And, “if any part of the Total Repayment Amount remains outstanding after the Maturity Date” -- here, March 4, 2024 (see Agreement, p. 1) -- “Lender may, in its sole discretion, charge interest on a daily simple-interest basis on such outstanding amounts until those amounts are repaid in full. In such case, interest will accrue at the annual rate of 30%. Nothing herein, however, shall be considered a waiver of any of Lender’s rights under this Agreement or applicable law, including the right to declare amounts not paid on or before the Maturity Date in default, or subject to the Arbitration section of this Agreement, the right to exercise any other remedy available to Lender under this Agreement or applicable law.” Agreement, ¶ 19.

19. In the event of litigation, the Agreement provides that Borrower shall pay Lender’s collection costs:

Collection Costs. In the event collection efforts are required to obtain payment on your Agreement, to the extent permitted by law, you agree to pay all collection costs, including, but not limited to, court costs incurred in collection and reasonable attorneys’ fees incurred in the course of collecting any amounts owed under this Agreement. (Agreement, ¶ 24.)

**B. Lender Provides The Agreed Funding;
Borrower Ultimately Defaults On Its Payment Obligations**

20. On or about December 6, 2023, Lender provided \$ 13,000.00 to Borrower.

21. Borrower, however, did not pay the Daily Payment(s) and placed a stop payment with its banking institution, Borrower therefore has defaulted under paragraph 14 of the Agreement.

22. As a result of Borrower's default under the Agreement, Borrower owes Plaintiff not less than \$ 20,423.49, as of December 9, 2023, plus interest, costs and attorney's fees.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Breach of Contract)

23. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "22" above as though fully set forth herein.

24. The Agreement is valid, binding and enforceable.

25. Plaintiff has performed all of its obligations under the Agreement.

26. Defendant(s) breached the Agreement by failing to pay the Daily Payment(s) and by placing a stop payment order with its banking institution.

27. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but in no event less than \$ 20,423.49 as of December 9, 2023, plus interest, costs and attorney's fees.

SECOND CAUSE OF ACTION

(Attorney's Fees)

28. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "27" above as though fully set forth herein.

29. The Agreement is valid, binding and enforceable.

30. Plaintiff has performed all of its obligations under the Agreement.

31. Paragraph 3.3 of the Agreement provides that of the Agreement provides that, in the event of collection efforts, Borrower agrees to “pay all collection costs, including, but not limited to, court costs incurred in collection and reasonable attorneys’ fees incurred in the course of collecting any amounts owed under this Agreement.”

32. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

CONCLUSION

WHEREFORE, Plaintiff demands judgment awarding it monetary damages, attorney’s fees, costs and disbursements and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 14, 2023

Yours, etc.,

RHETT A. FRIMET, P.C.

by: 

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