

SUPREME COURT OF THE STATE OF NEW YORK**COUNTY OF Kings****Fenix Capital Funding, LLC**

Plaintiff,

-against-

Sky Bar & Grill LLC /DBA: Sky Bar & Grill, AD&H LLC, Alpha & Omega Heating And Cooling, LLC, Ara Management, LLC, Virtual Venue, LLC, Ebbie D Herbert, and Antjuan D Herbert

Defendant(s).

x

Index No.**SUMMONS**

Plaintiff designates

Kings as the place of trial

The basis of venue is:

Contract

x

To The Above Named Defendants:

YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's Attorney, at their address stated below, an answer to the attached complaint. If this summons was personally served upon you in the State of New York, the answer must be served within twenty (20) days after such service of the summons, excluding the date of service. If the summons was not personally delivered to you within the State of New York, the answer must be served within thirty (30) days after service of the summons is complete as provided by law. If you do not serve an answer to the attached complaint within the applicable time limitation stated above, a judgment may be entered against you, by default, for the relief demanded in the complaint. The action will be heard in the Supreme Court of the State of New York, in and for the County of Kings. This action is brought in the County of Kings because it is the County designated pursuant to the terms of the parties' agreement.

Dated: Brooklyn, New York

December 15, 2023

To: Sky Bar & Grill LLC/DBA: Sky Bar & Grill15350 Fenkell Ave, Detroit,MI, 48227**To: Ebbie D Herbert**31262 Huntley Square E #1214, Beverly Hills,MI, 48025**To: Antjuan D Herbert**18627 Mark Twain St, Detroit,MI, 48235**To:**

AD&H LLC / DBA: AD&H LLC,



Maksim Leyvi

The Leyvi Law Group, P.C.

Attorneys for Plaintiff

227 Sea Breeze Ave, Suite 2A

Brooklyn, NY 11224

Telephone: 718-676-0900

18627 Mark Twain St, Detroit, MI,
48235
Alpha & Omega Heating And Cooling,
LLC / DBA: Alpha & Omega Heating
And Cooling, LLC, 31262 Huntley
Square E #1214, Beverly Hills, MI,
48025
Ara Management, LLC / DBA: Ara
Management, LLC, 31262 Huntley
Square E #1214, Beverly Hills, MI,
48025
Virtual Venue, LLC / DBA: Virtual
Venue, LLC, 31262 Huntley Square E
#1214, Beverly Hills, MI, 48025

Email: collection@fenixcapitalfunding.com

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Kings

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VERIFIED COMPLAINT

Plaintiff, Fenix Capital Funding, LLC, by its attorneys, The Leyvi Law Group, P.C., complaining of the above-named Defendants, **Sky Bar & Grill LLC /DBA: Sky Bar & Grill, AD&H LLC, Alpha & Omega Heating And Cooling, LLC, Ara Management, LLC, Virtual Venue, LLC, Ebbie D Herbert, and Antjuan D Herbert**, respectfully alleges as follows:

1. Plaintiff, Fenix Capital Funding, LLC (hereinafter "Plaintiff"), is a New York limited liability company with its principal place of business located at 9265 4th Ave, 2nd fl., Brooklyn, NY 11209.
2. Upon information and belief, Defendant, **Sky Bar & Grill LLC /DBA: Sky Bar & Grill** (hereinafter **Sky Bar & Grill**), is a foreign corporation with a principal place of business located at 15350 Fenkell Ave, Detroit, MI, 48227
3. Upon information and belief, Defendant, **Ebbie D Herbert**, is an individual residing in 31262 Huntley Square E #1214, Beverly Hills, MI, 48025, Oakland County, state of MI.
4. Upon information and belief, Defendant, **Antjuan D Herbert**, is an individual residing in 18627 Mark Twain St, Detroit, MI, 48235, Wayne, state of MI.
5. **AD&H LLC, Alpha & Omega Heating And Cooling, LLC, Ara Management, LLC, Virtual Venue, LLC** is a foreign corporation with a principal place of business located at:

AD&H LLC residing at 18627 Mark Twain St, Detroit, MI, 48235; Alpha & Omega Heating And Cooling, LLC residing at 31262 Huntley Square E #1214, Beverly Hills, MI, 48025; Ara Management, LLC residing at 31262 Huntley Square E #1214, Beverly Hills, MI, 48025; Virtual Venue, LLC residing at 31262 Huntley Square E #1214, Beverly Hills, MI, 48025

6. This is an action seeking to recover a debt due and owing by Defendants to Plaintiff pursuant to an agreement dated October 06, 2023 whereby Plaintiff advanced to Sky Bar & Grill LLC /DBA: Sky Bar & Grill (hereinafter **Sky Bar & Grill**) the sum of \$ 12,000.00 for the purchase of **Sky Bar & Grill's** future accounts receivable.

7. On or about October 06, 2023, in consideration of the sum of \$ 12,000.00, **Sky Bar & Grill** sold, assigned and transferred to Plaintiff eleven (11 %) percent of its future sales proceeds, up to an aggregate amount of \$ 18,000.00. A copy of the Future Receivable Purchase Agreement (the "Agreement") is annexed hereto as **Exhibit "A"**. Pursuant to the Agreement, payment of the future sales proceeds was to be made by daily ACH transfer from **Sky Bar & Grill's** bank account to Plaintiff.

8. As further inducement for Plaintiff to enter into the Agreement, defendants **Ebbie D Herbert and Antjuan D Herbert** executed a personal guaranty of payment in the event that **Sky Bar & Grill** defaults in its obligations under the Agreement.

9. **AD&H LLC, Alpha & Omega Heating And Cooling, LLC, Ara Management, LLC, Virtual Venue, LLC** further agreed to assume the obligations of the Merchant and to be jointly and severally liable to Plaintiff for the total aggregate Purchased Amount pursuant to that certain Cross-Collateral Addendum to the Agreement.

10. In accordance with the Agreement, Plaintiff duly remitted the sum of \$ 12,000.00, less processing fees, to **Sky Bar & Grill** and **Sky Bar & Grill** received same.

11. On or about December 15, 2023, **Sky Bar & Grill** defaulted under the Agreement by failing to remit its sales proceeds to Plaintiff as provided for in the Agreement.
12. Upon information and belief, **Sky Bar & Grill** breached its obligations under the Agreement by placing a stop payment request to its bank for the ACH transfers or it closed the bank account in its entirety.
13. In total, **Sky Bar & Grill** remitted the amount of \$ 5,375.00 in accordance with the Agreement, leaving a balance of \$ 12,625.00 remaining due and owing.
14. In accordance with the Cross-Collateral Agreement, **AD&H LLC, Alpha & Omega Heating And Cooling, LLC, Ara Management, LLC, Virtual Venue, LLC** are jointly and severally liable to Plaintiff for all outstanding amounts under the Agreement.

AS AND FOR A FIRST CAUSE OF ACTION

15. Plaintiff incorporates by reference the allegations set forth in paragraphs "1" to "11" above as if more fully set forth herein.
16. Plaintiff entered into a written contract with Defendants for the purchase of **Sky Bar & Grill's** future sales proceeds.
17. Plaintiff has fully complied with the terms of the Agreement by duly remitting the sale price of \$ 12,000.00 to **Sky Bar & Grill**.
18. Notwithstanding the fact that **Sky Bar & Grill** has received the said sums and has derived a substantial benefit therefrom, **Sky Bar & Grill** has breached the terms of the Agreement by failing to remit its sale proceeds to Plaintiff as it was obligated to do.
19. The Agreement was binding, lawful and fully enforceable.
20. Defendants have defaulted under the Agreement by failing to provide Plaintiff with the accounts receivable that Plaintiff purchased.
21. Accordingly, there is now due and payable to Plaintiff, by the Defendants, the principal balance sum of \$ 12,625.00, contractual default fees and penalties, and nonsufficient fund fees in

the amount of \$ 550.00, together with interest from December 15, 2023, and reasonable attorneys' fees and costs and disbursements of this action.

AS AND FOR A SECOND CAUSE OF ACTION

22. Plaintiff incorporates by reference the allegations set forth in paragraphs "1" to "17" above as if more fully set forth herein.

23. Plaintiff provided to Defendants, and Defendants received from Plaintiff, the sum of \$ 12,000.00.

24. Defendants accepted the monies provided by Plaintiff and derived a substantial benefit therefrom.

25. Defendants will be unjustly enriched if they are permitted to retain the sums that they collected and obtained from Plaintiff.

26. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but not less than \$ 12,000.00.

AS AND FOR A THIRD CAUSE OF ACTION

27. Plaintiff incorporates by reference the allegations set forth in paragraphs "1" to "22" above as if more fully set forth herein.

28. On or about December 15, 2023, Defendants made an express misrepresentation to Plaintiff, who reasonably relied on the misrepresentation to its detriment and was damaged in an amount to be determined at trial but in no event less than \$ 12,625.00.

29. Specifically, Defendants agreed to sell (11 %) percent of their future accounts receivable, up to an aggregate amount of \$ 18,000.00, to Plaintiff for the purchase price of \$ 12,000.00. Defendants further assured Plaintiff that payment would be made through daily ACH withdrawals.

30. In reliance on Defendants' representations, Plaintiff remitted the sum of \$ 12,000.00 to Defendants. Notwithstanding the fact that Defendants received the said amounts from Plaintiff, they failed and/or refused to provide Plaintiff with their future accounts receivable as promised.

31. At all times when the above misrepresentations were made, the Defendants were aware of their falsity.

32. The conduct of the Defendants was fraudulent, intentional and malicious. The Defendants engaged in a "bait and switch" scheme to commit Plaintiff to purchasing their future accounts receivable, which they never intended to provide to Plaintiff.

33. Plaintiff reasonably relied on Defendants' misrepresentation to its detriment and remitted the sum of \$ 12,000.00 to Defendants.

34. By virtue of the foregoing, Defendants are liable to Plaintiff for fraud and Plaintiff is entitled to recover from Counter-claim Defendants, jointly and severally, all of its damages, which are to be determined at trial, but which are in no event less than \$ 12,625.00.

WHEREFORE, Plaintiff demands judgment as follows:

1. Awarding judgment in favor of Plaintiff on the First Cause of Action in an amount to be determined at trial but in no event less than the sum of \$ 44,175.00), together with interest from December 15, 2023, and attorneys' fees and costs and disbursements of this action;
2. Awarding judgment in favor of Plaintiff on the Second Cause of Action in the amount of \$ 12,625.00;
3. Awarding judgment in favor of Plaintiff on the Third Cause of Action in an amount to be determined at trial but in no event less than \$ 12,625.00;
4. Awarding Plaintiff all costs and disbursements of this action, including attorneys' fees; and
5. Such other, further, and different relief as this Court deems just and proper.

Dated: Brooklyn, New York

December 15, 2023



Maksim Leyvi
The Leyvi Law Group, P.C.

Attorneys for Plaintiff
227 Sea Breeze Ave, Suite 2A
Brooklyn, NY 11224
Telephone: 718-676-0900
Email: collection@fenixcapitalfunding.com

VERIFICATION

STATE OF NEW YORK)

) SS.:

COUNTY OF KINGS)

Alexander Ryvkin, being duly sworn, deposes and says:

I am the Collection Manager of Fenix Capital Funding, LLC, the Plaintiff in the above entitled action which is a limited liability company created under and by virtue of the laws of the State of New York; that I have read the foregoing Summons and Verified Complaint and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

Alexander Ryvkin

Alexander Ryvkin
Fenix Capital Funding, LLC

Sworn to be true before me this 15 day of December, 2023



Daniella Albanese
Notary Public

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF Kings

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Plaintiff,

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Defendant(s).

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SUMMONS & VERIFIED COMPLAINT

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The Leyvi Law Group, P.C.

Attorneys for Plaintiff

227 Sea Breeze Ave, Suite 2A

Brooklyn, NY 11224

Telephone: 718-676-0900

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: December 15, 2023 Signature



Print Signer's Name: Maksim Leyvi

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