

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ADVANTAGE PLATFORM SERVICES
INC. D/B/A ADVANTAGE CAPITAL
FUNDING,

Plaintiff,

-against-

FAIRWAY WINDOWS OF RICHMOND
LLC D/B/A FAIRWAY WINDOWS OF
RICHMOND, GABRIEL ROSARIO A/K/A
GABE ROSARIO,

Defendants.

Index No:

SUMMONS

Plaintiff's Address:

104 East 25th Street, Floor 10
New York, NY 10010

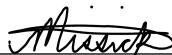
Basis of Venue:

Plaintiff's place of business and residence

To The Above-Named Defendants:

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(s) within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the 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 in the Complaint.

Dated: December 6, 2023
New York, New York



Jackée Missick

Attorney for Plaintiff

**ADVANTAGE PLATFORM SERVICES
INC. D/B/A ADVANTAGE CAPITAL
FUNDING**

104 East 25th Street, 10th Floor
New York, NY 10010

Telephone: (347) 577-9084

E-mail: jmissick@parkavenuerecovery.com

Defendants' Addresses:

FAIRWAY WINDOWS OF RICHMOND LLC D/B/A FAIRWAY WINDOWS OF
RICHMOND
3002 Woodsong Dr,
Midlothian, VA 23112

GABRIEL ROSARIO A/K/A GABE ROSARIO
3002 Woodsong Dr
Midlothian, VA 23112

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VERIFIED COMPLAINT

Plaintiff, ADVANTAGE PLATFORM SERVICES INC. D/B/A ADVANTAGE
CAPITAL FUNDING (“**Plaintiff**” or “**Buyer**”), by its attorney, Jackée Missick, as and for its
Verified Complaint, alleges as follows:

THE PARTIES

1. This action is brought to enforce the contract agreement between the parties.
2. At all times mentioned herein, Plaintiff was and is a limited liability company organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with a place of business located at 104 East 25th Street Floor 10, New York, NY 10010.
3. Upon information and belief, Defendant FAIRWAY WINDOWS OF RICHMOND LLC D/B/A FAIRWAY WINDOWS OF RICHMOND, (“**Company Defendant**” or “**Seller**”) at all times mentioned herein was and is a foreign, organized and existing under the laws of the State of Virginia with a place of business located at 3002 Woodsong Dr, Midlothian, VA 23112.
4. Upon information and belief, Defendant GABRIEL ROSARIO A/K/A GABE ROSARIO (“**Guarantor**” and together with Company Defendant, “**Defendants**”) is the owner,

President, director, and shareholder of Company Defendant, FAIRWAY WINDOWS OF RICHMOND LLC D/B/A FAIRWAY WINDOWS OF RICHMOND. The Guarantor is an individual residing at 3002 Woodsong Dr Midlothian, VA 23112.

5. The Company Defendant and Defendant Personal Guarantor have consented to the jurisdiction of this Court pursuant to the forum selection in the Purchase Agreement referenced below. See ¶27 of the Purchase Agreement and ¶6 of the Personal Guaranty of Performance.

RELEVANT FACTS

The Agreement

6. Plaintiff repeats and realleges each and every allegation contained in Paragraphs numbered “1” through “5” above as if fully set forth at length herein.

7. This action (“**Action**”) is brought to recover all sums due and owing by Defendants to Plaintiff, under a certain Purchase Agreement, dated as of December 1, 2022 (the “**Agreement**”) made by and between Plaintiff and Company Defendant, and a guaranty thereof made by Guarantor in favor of Plaintiff. A copy of the Agreement is annexed hereto as **Exhibit “A”**.

8. More specifically, pursuant to the Agreement, Plaintiff agreed to purchase from Company Defendant for \$25,000.00 (the “**Purchase Price**”) of Company Defendant’s interest of and in certain future sales receipts generated by Company Defendant through all sales channels and payment methods (“**Future Receipts**”).

9. The Plaintiff met its obligations under the Agreement and provided the Purchase Price to the Company Defendant, as required by the Agreement.

10. Under the terms and conditions of the Agreement, Company Defendant agreed to remit certain payments to Plaintiff commencing on or about December 1, 2022, on a weekly

basis, until the specified sum of \$36,000.00 (the “**Amount Sold**”) is paid in full, plus all fees, costs and disbursements.

11. Under the terms and conditions of the Agreement, Plaintiff collected the Future Receipts by debiting every business day a specified amount by calendar month from a bank account owned by Company Defendant (the “**Bank Account**”).

12. Company Defendant agreed, pursuant to §15 of the Agreement, a default shall be defined, inter alia, as follows:

15. Events of Default. The occurrence of any of the following events shall constitute an “Event of Default”: (a) Seller interferes with Buyer’s right to collect the ATA; Seller violates any term of covenant in this Agreement; (c) Seller uses multiple depository accounts without the prior written consent of Buyer; (d) Seller changes its depositing account or its payment card processor without the prior written consent of Buyer; (e) Seller defaults under any of the terms, covenants and conditions of any other agreement with Buyer; or (f) Seller fails to provide timely notice to Buyer such that (i) where Seller is on a daily payment plan, two or more ACH transactions attempted by Buyer within one calendar month are rejected by Seller’s bank, or (ii) where Seller is on a weekly payment plan, one or more ACH transaction attempted by Buyer is rejected by Seller’s bank at any given time that such payment under the payment plan is due.

13. Upon a Default, Defendant agreed to §16 of the Agreement, which provides Plaintiff with the following remedies:

16. Remedies. If any Event of Default occurs, Buyer may proceed to protect and enforce its rights including, but not limited to, the following:

16.1. The Specified Percentage shall equal 100%. The full uncollected Purchased Amount plus all fees and charges (including legal fees) due under this Agreement will become due and payable in full immediately.

16.2. Buyer may enforce the provisions of the Personal Guaranty of Performance against each Owner.

16.3. Buyer may proceed to protect and enforce its rights and remedies by arbitration or lawsuit. In any such arbitration or lawsuit, under which Buyer shall recover Judgment against Seller, Seller shall be liable for all of Buyer’s costs of the lawsuit, including but not limited to all reasonable attorneys’ fees and court costs. However, the rights of Buyer under this provision shall be limited as provided in the arbitration provision set forth below.

16.4. This Agreement shall be deemed Seller's Assignment of Seller's Lease of Seller's business premises to Buyer. Upon an Event of Default, Buyer may exercise its rights under this Assignment of Lease without prior notice to Seller.

16.5. Buyer may debit Seller's depository accounts wherever situated by means of ACH debit or facsimile signature on a computer – generated check drawn on Seller's bank account or otherwise for all sums due to Buyer.

16.6. Seller shall pay to Buyer all reasonable costs associated with the Event of Default and the enforcement of Buyer's remedies, including but not limited to court costs and attorneys' fees.

16.7. Buyer may exercise and enforce its rights as a secured party under the UCC.

16.8. All rights, powers and remedies of Buyer in connection with this Agreement may be exercised at any time by Buyer after the occurrence of an Event of Default, are cumulative and not exclusive, and shall be in addition to any other rights, powers or remedies provided by law or equity.

The Guaranty

14. On December 1, 2022, in consideration of and to induce Plaintiff to enter into the Agreement, Guarantor executed the Personal Guaranty of Performance (the "**Guaranty**") therein, guaranteeing to Plaintiff – irrevocably, absolutely, and unconditionally – Company Defendant's prompt and complete performance of all of Company Defendant's obligations under the Agreement. A copy of the Guaranty is annexed hereto as **Exhibit "B"**.

15. In turn, the Guarantor agreed to pay to Plaintiff all reasonable costs associated with the Event of Default and the enforcement of Buyer's remedies, including but not limited to court costs and attorneys' fees.

16. The Guarantor agreed to pay Plaintiff its costs and expenses, including Plaintiff's collections costs and Plaintiff's reasonable attorney's fees, in enforcing any of the terms of the Agreement.

Defendant's Breach of the Agreement and Guaranty

17. Even though a demand for payment was made, the Defendants have failed and otherwise refused to pay as obligated, pursuant to the Purchase Agreement and Guaranty and has thus, defaulted in payment.

18. On or about January 11, 2023, Company Defendant defaulted when it, inter alia, prevented and/or ceased to deliver the Future Receipts as obligated pursuant to the terms of the Agreement. A copy of Company Defendant's Remittance Report is annexed hereto as **Exhibit "C"**.

19. Thereafter, Guarantor breached the Guaranty by failing to cure Company Defendant's default and became immediately liable to Plaintiff based upon, inter alia, the failure to remit the required payments as set forth herein.

20. By virtue of the foregoing, Defendants are jointly and severally liable to Plaintiff under the Agreement and Guaranty as of January 11, 2023, for the Amount Sold of \$36,000.00, less remittances made by Defendant, pursuant to the Agreement of \$7,500.00 leaving the amount due of \$28,500.00, plus attorneys' fees, other charges, and the costs and expenses of this Action.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT
(Breach of Agreement)

21. Plaintiff repeats and realleges each and every allegation contained in Paragraphs numbered "1" through "20" above as if fully set forth at length herein.

22. The Agreement constitutes a valid and enforceable agreement.

23. Plaintiff has fully complied with and fully performed all of its obligations under the Agreement.

24. As set forth above, Company Defendant defaulted when it, inter alia, prevented and/or ceased to deliver the Future Receipts as obligated pursuant to the terms of the Agreement.

25. By virtue of the foregoing, Company Defendant is liable to Plaintiff under the Agreement as of January 11, 2023, in the amount of \$28,500.00, plus attorneys' fees, other charges and the costs and expenses of this Action.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST GUARANTOR
(Breach of Guaranty)

26. Plaintiff repeats and realleges each and every allegation contained in Paragraphs numbered "1" through "25" above as if fully set forth at length herein.

27. The Guaranty is a valid and enforceable agreement.

28. Guarantor defaulted under the Guaranty by failing to remit the amount owed by Company Defendant to Plaintiff pursuant to the terms of the Agreement.

29. As a result, Guarantor is liable to Plaintiff under the Guaranty as of January 11, 2023, in the amount of \$28,500.00, plus attorneys' fee, other charges, and the costs and expenses of this Action.

WHEREFORE, Plaintiff, respectfully requests this Court grants judgment in its favour, against the Defendant as follows:

As a result of the foregoing, the Defendants, jointly and severally owe to the Plaintiff the sum of \$28,500.00, plus interests, costs and expenses, including attorney's fees, no part of which has been paid, although duly demanded from both Defendants.

I. On its first cause of action:

(1) The Company Defendant and all persons claiming under it, have defaulted,

pursuant to the terms of the Agreement, as of January 11, 2023, is liable to

Plaintiff in the amount of \$28,500.00, plus attorneys' fees, interests, and the costs

and expenses of this Action;

II. On the second cause of action:

- (1) The Guarantor and all persons claiming under him, have defaulted, pursuant to the terms of the agreement, as of January 11, 2023, is liable to Plaintiff in the amount of \$28,500.00, plus attorneys' fees, interests, and the costs and expenses of this Action;
- (2) The Guarantor has failed to honour its obligations under the Guaranty agreement to make or complete payments owed to the Plaintiff by the Company Defendant;

III. Plaintiff further requests any relief the Court deems just and proper.

Dated: December 6, 2023
New York, New York



Jackée Missick
Attorney for Plaintiff
**ADVANTAGE PLATFORM SERVICES
INC. D/B/A ADVANTAGE CAPITAL
FUNDING**
104 East 25th Street, 10th Floor
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E-mail: jmissick@parkavenuerecovery.com

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GABE ROSARIO,

Defendants.

VERIFICATION

STATE OF NEW YORK)

) SS.:

COUNTY OF NEW YORK)

Aaron Greenblott, being duly sworn, deposes and says:

1. I am the Chief Financial Officer of ADVANTAGE PLATFORM SERVICES INC. D/B/A ADVANTAGE CAPITAL FUNDING, the plaintiff in the within action.

2. I have read the annexed Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters thereon which are stated as to be alleged upon information and belief, and as to those matters, I believe them to be true.

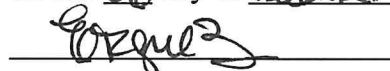
3. I certify that to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the contentions made herein are not frivolous as defined in N.Y. Ct. Rules 130-1.1(c).

4. My belief as to those matters therein not stated upon knowledge, is based upon books and records held in our office.


Aaron Greenblott

Sworn to before me

on this 08 day of December, 2023



Notary Public

ELIZABETH M RODRIGUEZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 01RO6423344

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Defendants.

SUMMONS AND VERIFIED COMPLAINT

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

Jackée Missick
Attorney for Plaintiff
**ADVANTAGE PLATFORM SERVICES
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FUNDING**
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