

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WARREN

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COCONUT FUNDING CORPORATION,

Plaintiff,

-against-

CHARLES D. THREET D/B/A TEXAS SEPTIC and
CHARLES D. THREET, 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 7, 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:
CHARLES D. THREET D/B/A
TEXAS SEPTIC
9802 Talleyran Drive
Austin, Texas 78750

CHARLES D. THREET
9802 Talleyran Drive
Austin, Texas 78750

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WARREN

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

Plaintiff,
-against- COMPLAINT

CHARLES D. THREET D/B/A TEXAS SEPTIC and
CHARLES D. THREET, individually,

Defendants.

-----X

Plaintiff, Coconut Funding Corporation (hereinafter "Plaintiff" or "Buyer"), by Rhett A. Frimet, P.C., its attorney, complaining of the Defendants, Charles D. Threet d/b/a Texas Septic (hereinafter "TS" or "Seller") and Charles D. Threet, individually (hereinafter "Threet" or "Guarantor") respectfully alleges:

PRELIMINARY STATEMENT

1. By this action, Plaintiff seeks to recover not less than \$ 23,192.00 plus costs and attorney's fees, based upon Seller's default of its payment obligations under a certain Revenue Purchase Agreement and Security Agreement and Guaranty of Performance, effective as of November 13, 2023 (the "Agreement"). Pursuant to the Agreement, TS sold \$ 15,921.00 of future receivables (the "Purchased Amount") to Plaintiff for \$ 9,000.00 (the "Purchase Price"). Threet guaranteed TS's obligations under the Agreement.

2. 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.

3. Upon information and belief, Defendant, Charles D. Threet, is a sole proprietor doing business as Texas Septic existing under and by virtue of the laws of the State of Texas.

4. Upon information and belief, Defendant, Charles D. Threet, is a resident of the State of Texas and is an owner of TS and a guarantor of TS's obligations under the Agreement.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Defendants pursuant to CPLR § 302.

6. Additionally, Defendants agreed to be sued in this Court, and consented to this Court's exercise of personal jurisdiction over them in the Agreement. Indeed, paragraph 4.6 of the Agreement states:

This Agreement, Security Agreement and Guaranty of Performance, and any and all addendums attachments, exhibits, and other documents relating to this Agreement in any way, shall be binding upon and inure to the benefit of Seller and Guarantor(s) on the one hand, and PURCHASER and their respective successors and assigns, except that Seller and Guarantor(s) shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of PURCHASER which consent may be withheld in PURCHASER's sole discretion. PURCHASER reserves the rights to assign this Agreement with or without prior written notice to Seller. This Agreement, Security Agreement and Guaranty of Performance, and any and all addendums, attachments, exhibits, and other documents relating to this Agreement in any way, shall be governed by and construed in accordance with the laws of the state of New York and the federal Arbitration Act, without regard to any applicable principals of conflicts of law. Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if PURCHASER so elects, be instituted in any New York State Supreme Court sitting in the State of New York, (the "Acceptable Forums"). All Parties and signatories to this Agreement, including but not limited to, the Seller and Guarantor(s) agree that the Acceptable Forums are convenient to it, and submit to the jurisdiction of the Acceptable Forums and waive any and all objections to jurisdiction or venue. Should such proceeding be

initiated in any other forum, Seller and Guarantor(s) waives any right to oppose any motion or application made by PURCHASER to transfer such proceeding to an Acceptable Forum. **Seller and Guarantor(s) hereby agree that the mailing of any Summons and Complaint in any proceeding commenced by PURCHASER by certified or registered mail, return receipt requested to the Mailing Address listed on this Agreement (or any other addresses provided in writing to PURCHASER), 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.**

STATEMENT OF FACTS

A. The Agreement and Guaranty

7. Paragraph 4.6 of the Agreement provides: “This Agreement, Security Agreement and Guaranty of Performance, and any and all addendums, attachments, exhibits, and other documents relating to this Agreement in any way, shall be governed by and construed in accordance with the laws of the state of New York and the federal Arbitration Act, without regard to any applicable principals of conflicts of law.”

8. Pursuant to the Agreement, Seller sold \$ 15,921.00 of future receivables to Plaintiff for \$ 9,000.00 (the “Purchase Price”).

9. Pursuant to the Agreement, “Seller hereby sells, assigns and transfers to PURCHASER (making PURCHASER the absolute owner) the Purchased Percentage of all of Seller’s payments, receipts, settlements and funds paid to or received by or for the account of Seller from time to time on and after the date hereof in payment or settlement of Seller’s existing and future accounts, payment intangibles, credit, debit and/or stored value card transactions, contract rights and other entitlements arising from or relating to

the payment of monies from Seller's customers' and/or other payors or obligors (the "Future Receipts" defined as all payments made by cash, check, clearinghouse settlement, electronic transfer or other form of monetary payment), for the payments to Seller as a result of Seller's sale of goods and/or services until the Purchased Amount has been delivered by or on behalf of Seller to PURCHASER." Agreement, p. 1.

10. Pursuant to the Agreement, Seller agreed to pay Purchaser the "Initial Periodic Amount" of \$ 399.00. The Initial Period Amount "is an estimate of the Specified Percentage of your average sales revenue. We will debit the Periodic Amount from your Bank Account each [business day day/week/month], subject to your actual revenue. We based the Initial Periodic Amount on information you provided or made available to us to calculate your average revenue over a period of time prior to the date of this Agreement. Please refer to Section 4 of this Agreement for how you can adjust the Periodic Amount."

11. Here, the Initial Period Amount was \$ 399.00 based on Seller's representation that its sales were a specific amount per year.

12. Pursuant to paragraph 3.1 of the Agreement:

Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" hereunder:

- (a) Seller violates any term or covenant in this Agreement;
- (b) Any representation or warranty by Seller in this Agreement shall prove to have been incorrect, false or misleading in any material respect when made; and
- (c) Seller fails to provide its bank statements, and/or month to date banking activity within five (5) business days after a request by PURCHASER.

13. Further, pursuant to paragraph 3.2 of the Agreement, “[u]pon the occurrence of an Event of Default, the Purchased Percentage shall equal 100% and the full undelivered Purchased Amount plus all fees and charges (including legal fees) assessed under this Agreement will become due and payable in full immediately. Subject to arbitration in Section 5, all rights, powers and remedies of PURCHASER in connection with this Agreement may be exercised at any time by PURCHASER 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.”

14. The Agreement, moreover, makes clear—in bolded lettering—that it is not a loan:

Seller is selling a portion of a future revenue stream to PURCHASER at a discount, and is not borrowing money from PURCHASER, therefore there is no interest rate or payment schedule and no time period during which the Purchased Amount must be collected by PURCHASER. The Initial Remittance is a good faith estimate of PURCHASER’s share of the future revenue stream. Seller going bankrupt or going out of business, or experiencing a slowdown in business, or a delay in collecting its receivables does not constitute a breach of this Agreement. PURCHASER is entering this Agreement knowing the risks that Seller’s business may not perform as expected or fail, and PURCHASER assumes these risks based on Seller’s representations, warranties and covenants in this Agreement, which are designed to give PURCHASER a reasonable and fair opportunity to receive the benefit of its bargain. PURCHASER acknowledges that it may never receive the Purchased Amount in the event that the Seller does not generate sufficient revenue. Seller and Guarantor(s) are only guaranteeing their performance of the terms of this Revenue Purchase Agreement, and are not guaranteeing the payment of the Purchased Amount. The Initial Remittance shall be as described above and is subject to adjustment as set forth in Section 1.3. (Agreement, p. 1-2.)

* * *

Seller and PURCHASER agree that the Purchase Price under this Agreement is in exchange for the Purchased Amount, and that such Purchase Price is not intended to be, nor shall it be construed as a loan from PURCHASER to Seller. Seller agrees that the Purchase Price is in exchange for the Receipts pursuant to this Agreement, and that it equals the fair market value of such Receipts. PURCHASER has purchased and shall own all the Receipts described in this Agreement up to the full Purchased Amount as the Receipts are created. Seller acknowledges that PURCHASER's share of Receipts collected are being held by Seller in trust and are the sole property of PURCHASER until they are remitted to PURCHASER. Payments made to PURCHASER in respect to the full amount of the Receipts shall be conditioned upon Seller's sale of products and services, and the payment by Seller's customers. By this Agreement, Seller transfers to PURCHASER full and complete ownership of the Purchased Amount and Seller retains no legal or equitable interest therein. PURCHASER hereby appoints Seller, and Seller accepts appointment, as servicer for and on behalf of PURCHASER for the purpose of collecting and delivering Receipts to PURCHASER as required by this Agreement. Seller agrees that it will treat the amounts received and the Purchased Receipts delivered to PURCHASER under this Agreement in a manner consistent with a sale in its accounting records and tax returns. (Agreement, ¶ 1.5.)

15. Further, the Agreement expressly allows the Seller to request changes to the Initial Remittance Amount:

Reconciliation and Changes to the Remittance Amount. The Initial Remittance amount is intended to represent the Purchased Percentage of Seller's daily Future Receipts. At any time, Seller or PURCHASER may request a reconciliation to the Remittance amount to more closely reflect the Seller's actual Future Receipts times the Purchased Percentage. Any reconciliation request by Seller must be: (A) in writing; (B) include a copy of Seller's most recent month's bank statement and Seller's month-to date banking information (the "Reconciliation Documentation"); and (C) be sent to PURCHASER by e-mail at: info@Coconufunding.com. Within four days of PURCHASER's reasonable verification of the Reconciliation Documentation, PURCHASER shall adjust the Remittance amount on a going-forward basis. The adjusted Remittance amount will be based on Seller's actual Future Receipts times the Purchased Percentage. Following this adjustment, the Remittance amount will be in the same amount until a subsequent adjustment. If PURCHASER requests a reconciliation, Seller shall

provide Reconciliation Documentation within seven calendar days of PURCHASER'S request. If Seller fails to provide requested Reconciliation Documentation within seven calendar days, PURCHASER may adjust the Remittance amount to the Initial Remittance amount. (Agreement, ¶ 1.3.)

16. Threet also executed a Guaranty of Performance:

Each Guarantor is an owner of Seller and is involved in the day-to-day business operations of Seller. Each Guarantor agrees to irrevocably, absolutely and unconditionally guarantee to Purchaser prompt and complete performance of the following obligations of Seller (the "Guaranteed Obligations"):

1. Seller's obligation to provide its bank statements, and/or month to date banking activity within five (5) business days after a request by Purchaser,
2. Seller's obligation to not enter into any other agreement for the sale of Future Receipts and/or cash advance agreement or financing or factoring agreement absent Purchaser's advance written consent.
3. Seller's obligation to deposit all Future Receipts in the Account and to not revoke authorization for Purchaser to debit the Account or change the Processor, add processing terminals, change its financial institution or bank account(s), without Purchaser's prior written consent.
4. Seller's obligation to not conduct Seller's businesses under any name other than as disclosed to the Processor and Purchaser or change any of its places of business without prior written consent by Purchaser.
5. Seller's obligation to provide truthful, accurate, and complete information.

**B. Buyer Provides The Purchase Price;
Seller Ultimately Defaults On Its Payment Obligations**

17. Buyer delivered the Purchase Price of \$ 9,000.00 less the agreed upon origination fee of \$ 899.00 on or about November 13, 2023.

18. After receiving the Purchase Price from Buyer, Seller breached the agreement by closing its bank account/placing a stop payment to preclude Buyer from receiving the future receipts it purchased. To date Seller has paid \$ 12,099.00 (subject to ACH reporting) and its last payment was made on or about November 27, 2023 (subject to ACH reporting).

19. Seller also owes Buyer \$ 10,000.00 for the material default charge and \$ 10,000.00 closing its bank account/stop payment charge as set forth in Appendix 1 to the Agreement.

20. Seller never requested a reconciliation.

21. Guarantor has not made any payments.

22. As a result of Seller's default, it owes Buyer the outstanding amount of the Purchased Amount, plus Buyer's attorney's fees and costs incurred in enforcing its rights under the Agreement.

23. As a result of Seller's non-payment of amounts due under the Agreement, Seller and Guarantor owe Plaintiff not less than \$ 23,192.00 plus costs and attorney's fees.

CAUSES OF ACTION**FIRST CAUSE OF ACTION****(As Against Seller and Guarantor -- Breach of Contract)**

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

25. The Agreement is valid, binding and enforceable.

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

27. Seller breached the Agreement by failing to make required payments.

28. Guarantor has breached the Agreement and the Guaranty by, *inter alia*, failing to make the payments required by the Agreement.

29. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial, but in no event less than \$ 23,192.00.

SECOND CAUSE OF ACTION**(As Against Seller and Guarantor -- Attorney's Fees)**

30. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "29" above as though fully set forth herein.

31. The Agreement is valid, binding and enforceable.

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

33. Paragraph 3.3 of the Agreement provides:

Upon the occurrence of an Event of Default, if Purchaser retains an attorney or law firm to enforce this Agreement, Seller and Guarantor(s) agree that Seller shall pay PURCHASER's reasonable attorney's fees in the amount of 30% of Purchased Amount that is undelivered as of the date of the Event of Default.

34. Paragraph 3.4 of the Guaranty of Agreement provides:

Seller shall pay to PURCHASER all reasonable costs associated with (a) an Event or Default, (b) breach by Seller of the Covenants in this Agreement and the enforcement thereof, and(c) the

enforcement of PURCHASER's remedies set forth in this Agreement, including but not limited to collection costs, court costs and reasonable attorneys' fees.

35. 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 7, 2023

Yours, etc.,
RHETT A. FRIMET, P.C.

by: 

Rhett A. Frimet
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