

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS****INDEX NO.:**-----X
SPECIALTY CAPITAL, LLC,**SUMMONS**

Plaintiff,

Plaintiff designates: KINGS
COUNTY as the place of trial

-against-

BORN AGAIN LANDSCAPING & CONSTRUCTION,
and JESSE J MCNEW,Basis of venue designated:
Pursuant to the agreement
between the parties

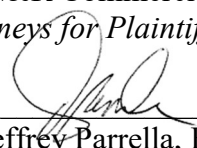
Defendant(s).

Plaintiff's Address:
6860 AUSTIN ST, STE 603
FOREST HILLS, NY 11375

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To the above named Defendants:

You are hereby summoned to answer the complaint in this action and serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on Plaintiff's Attorney within 20 days after the service of this Summons, exclusive of the date 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: New York, New York
December 8, 2023AWN&R Commercial Law Group, PLLC
*Attorneys for Plaintiff***Defendants to be served:**BORN AGAIN LANDSCAPING & CONSTRUCTION
3646 JUNIPER STREET
GROVE CITY, OH 43123By: 
Jeffrey Parrella, Esq.
14 Wall Street, 20th Floor
New York, NY 10005
718-233-2916JESSE J MCNEW
PO BOX 948
GROVE CITY, OH 43123

**SUPREME COURT OF THE STATE OF NEW YORK INDEX NO.:
COUNTY OF KINGS**-----
SPECIALTY CAPITAL, LLC,

Plaintiff,

VERIFIED COMPLAINT

-against-

BORN AGAIN LANDSCAPING & CONSTRUCTION,
and JESSE J MCNEW,Defendant(s).

Plaintiff, SPECIALTY CAPITAL, LLC, by its attorney, Jeffrey Parrella, Esq., for its Complaint herein against BORN AGAIN LANDSCAPING & CONSTRUCTION (“Business Defendant”) and JESSE J MCNEW (“Individual Defendant”) (*collectively* “Defendants”) allege the following:

THE PARTIES

1. At all relevant times, Plaintiff was and is a limited liability company organized and existing under the laws of the State of New York.
2. Upon information and belief, and at all relevant times, Business Defendant was and is a company organized and existing under the laws of the State of Ohio, and is subject to the personal jurisdiction of this court pursuant to the Agreement between the parties.
3. Upon information and belief, at all relevant times herein, the Individual Defendant was and is an individual residing in the State of Ohio, and is subject to the personal jurisdiction of this court pursuant to the Agreement between the parties.
4. Venue is proper in the State of New York pursuant to CPLR §501 pursuant to the Agreement between the parties.

THE FACTS

5. On or about , Plaintiff and Business Defendant entered into a Purchase and Sale of Future Receivables Agreement (*hereinafter referred to as the “Agreement”*) whereby Plaintiff agreed to purchase all rights to Business Defendant’s future account receivables having a face value of \$74,730.00 with an agreed upon purchase price of \$53,000.00. *A copy of the Agreement is annexed hereto as **Exhibit A**.*
6. Pursuant to the aforesaid Agreement, Business Defendant agreed to have one bank account approved by Plaintiff (*hereinafter referred to as the “Bank Account”*) from which Business Defendant authorized Plaintiff to debit 12% of its weekly revenue until the purchased amount of receivables- \$74,730.00 - was paid in full.
7. In addition, Individual Defendant agreed to guarantee any and all amounts owed to Plaintiff from Business Defendant upon a breach in performance by Business Defendant.
8. Plaintiff paid Business Defendant the Purchase Price of \$53,000.00 minus agreed upon fees listed on Plaintiff’s Exhibit “A” page: 2, and a sum of \$16,928.49 for Merchant’s previous open balance on another merchant cash agreement (*Please refer to **Exhibit A, page: 2***), thus fulfilling its obligation on the Agreement.
9. Plaintiff remitted the purchase price for the future receivables to Business Defendant as was agreed upon; and therefore, fully complied with its obligations and duties under the Agreement.
10. Initially, Business Defendant met its obligations under the Agreement.
11. On or about 11/1/2023, Business Defendant stopped making its payments to Plaintiff and otherwise breached the Agreement by intentionally impeding and preventing Plaintiff from making the agreed upon ACH withdrawals from the Bank Account while conducting

regular business operations and still in receipt of accounts-receivable. This constitutes a default under the Agreement.

12. Business Defendant made payments totaling \$6,638.30 leaving a balance of \$68,091.70.

13. Additionally, pursuant to the Agreement, Business Defendant incurred a “Default Fee” in the amount of \$5,000.00 and a “Rejected ACH / Blocked ACH Fee” in the amount of \$50.00.

14. Pursuant to the Agreement, the aforesaid fees have to be applied to Business Defendant’s outstanding balance in the event Business Defendant altered or stopped depositing receivables into the Bank Account. *Please refer to Exhibit A, page: 10.*

15. The combined sum of the balance due to Plaintiff and fees provide for a total balance of \$73,141.70 due and owing to the Plaintiff.

16. Pursuant to the terms of the Agreement, Defendants further owe Plaintiff a total of \$17,022.93 representing reasonable attorney’s fees, or twenty five percent (25%), incurred in the collection of the underlying balance. *Please refer to Exhibit A, page: 4 at ¶ 1.13(5); page: 6 at ¶ 3.4.*

17. By reason of the foregoing, the Plaintiff has been damaged in the sum of \$73,141.70, together with attorney’s fees of \$17,022.93, resulting in a sum total of \$90,164.63.

18. Despite due demand, Business Defendant has failed to pay the amounts due and owing by Business Defendant to Plaintiff under the Agreement.

19. Additionally, Individual Defendant is responsible for all amounts incurred as a result of any default by Business Defendant.

20. There remains a total balance due and owing to Plaintiff on the Agreement in the amount of \$90,164.63 with interest thereon from 11/1/2023, plus costs and disbursements.

AS AND FOR A FIRST CAUSE OF ACTION

(BREACH OF CONTRACT)

21. Plaintiff repeats and realleges each and every allegation contained in Paragraphs “1” through “20” of this Complaint as though fully set herein at length.

22. Plaintiff gave fair consideration to Business Defendant which was tendered for the right to receive the aforementioned receivables. Thus, Plaintiff fully performed under the Merchant Agreement.

23. Upon information and belief, Business Defendant is still conducting regular business operations and still collecting receivables.

24. Business Defendant breached the Agreement by defaulting on its representations and warranties to Plaintiff by blocking Plaintiff’s access to the designated Bank Account from which Business Defendant agreed to permit Plaintiff to withdraw receivables, by failing to deposit receivables into the Bank Account, by disposing of Plaintiff’s assets without Plaintiff’s prior written express consent, and/or by depositing receivables into a bank account other than the Bank Account, all while still conducting regular business operations.

25. As a result, Plaintiff has been unable to collect its weekly percentage of receivables purchased from Business Defendant since the date of the aforesaid default.

26. By reason of the foregoing, Plaintiff is entitled to judgment against Business Defendant for the breach of contract in the total sum of \$73,141.70 of future receivables and all the amounts incurred as a result of the default, with interest thereon from 11/1/2023, plus costs, disbursements, and attorney’s fees.

AS AND FOR A SECOND CAUSE OF ACTION

(BREACH OF PERSONAL GUARANTEE)

27. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "26" of this Complaint as though fully set forth at length herein.
28. Pursuant to the Agreement, Individual Defendant personally guaranteed that Business Defendant would perform its obligations under the Agreement and that Individual Defendant would be personally liable for any loss suffered by Plaintiff because of a breach by the Business Defendant.
29. Business Defendant has breached the Agreement as detailed above.
30. By reason of the foregoing, Plaintiff is entitled to a judgment against the Individual Defendant based on the personal guarantee in the sum of \$73,141.70, with interest thereon from 11/1/2023, plus costs, disbursements, and attorney's fees.

AS AND FOR A THIRD CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(ATTORNEY'S FEES)


31. Plaintiff repeats and reaffirms the allegations contained in Paragraphs "1" through "30" above as though fully set forth herein.
32. Pursuant to the terms of the Agreement, Defendants further owe Plaintiff a total of \$17,022.93 representing reasonable attorney's fees, or twenty five percent (25%), incurred in the collection of the underlying balance. *Please refer to Exhibit A, page: 4 at ¶ 1.13(5); page: 6 at ¶ 3.4.*
33. By reason of the foregoing, the Plaintiff has been damaged in the sum of \$73,141.70, together with attorney's fees of \$17,022.93, resulting in a sum total of \$90,164.63.

WHEREFORE, Plaintiff, SPECIALTY CAPITAL, LLC, requests Judgment against the Business Defendant, BORN AGAIN LANDSCAPING & CONSTRUCTION, and Individual Defendant, JESSE J MCNEW, jointly and severally, as follows:

- a. On the First Cause of Action of the Complaint, Plaintiff requests Judgment against Business Defendant in the amount of \$73,141.70, plus interest, costs, disbursements, and attorney's fees; and
- b. On the Second Cause of Action of the Complaint, Plaintiff requests Judgment against Individual Defendant in the amount of \$73,141.70, plus interest, costs, disbursements, and attorney's fees; and
- c. On the Third Cause of Action of the Complaint, Plaintiff requests Judgment against Business Defendant and Individual Defendant in the amount of \$73,141.70, with interest thereon from 11/1/2023, with reasonable attorney's fees of \$17,022.93, resulting in a sum total of \$90,164.63, plus costs and disbursements.
- d. For such other and further relief as this Court deems just and proper.

Dated: New York, New York
December 8, 2023

AWN&R Commercial Law Group, PLLC
Attorneys for Plaintiff

By: 
Jeffrey Parrella, Esq.
14 Wall Street, 20th Floor
New York, NY 10005
718-233-2916

STATE OF Florida)COUNTY OF Broward)

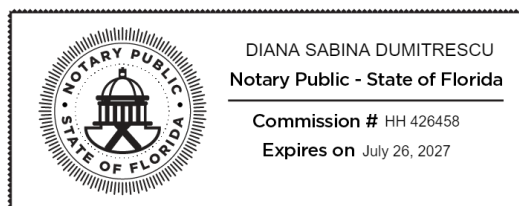
BORIS KALENDAREV, being duly sworn, states:

I am ONE OF THE MANAGING MEMBERS for Plaintiff, SPECIALTY CAPITAL, LLC in the within action. I have read the foregoing Verified Complaint and know the contents thereof; the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true.

The foregoing statements are true under penalties of perjury.

BY: *Boris Kalendarev*
BORIS KALENDAREVSworn to before me this 8th day of December, 2023*Diana Sabina Dumitrescu*

Notary Public



Notarized online using audio-video communication

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS****INDEX NO.:**-----X
SPECIALTY CAPITAL, LLC,

Plaintiffs,

- against -

BORN AGAIN LANDSCAPING & CONSTRUCTION,
and JESSE J MCNEW,Defendant(s).
-----X**NOTICE OF COMMENCEMENT OF ACTION
SUBJECT TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646386-3033 or efile@courts.state.ny.us.

Dated: December 8, 2023

Jeffrey Parrella, Esq.
AWN&R Commercial Law Group, PLLC
Attorneys for Plaintiff
14 Wall Street, 20th Floor
New York, NY 10005
718-233-2916

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

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SPECIALTY CAPITAL, LLC,

Plaintiff,

-against-

BORN AGAIN LANDSCAPING & CONSTRUCTION,
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SUMMONS AND VERIFIED COMPLAINT
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Jeffrey Parrella, Esq.
AWN&R Commercial Law Group, PLLC
Attorneys for Plaintiff
14 Wall Street, 20th Floor
New York, NY 10005
718-233-2916
.....

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for
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