SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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FORA FINANCIAL ASSET SECURITIZATION 2021, LLC,

Plaintiff,

- v -

TEONA OSTROV PUBLIC RELATIONS, LLC,TEONA OSTROV

Defendant.

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INDEX NO. 155475/2024

MOTION DATE 12/19/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISS DEFENSE.

Upon the foregoing documents, plaintiff's motion is granted in part and denied in part.[1]

Background and Standard of Review

Fora Financial Asset Securitization 2021, LLC ("Plaintiff") filed the underlying suit in June of 2024, pleading breach of contract, breach of guaranty, and conversion pursuant to a receivables purchase agreement with Teona Ostrov Public Relations, LLC ("Business Defendant") and Teona Ostrov as guarantor ("Individual Defendant", collectively with Business Defendant the "Defendants"). Defendants answered, pleading eighteen affirmative defenses. Now Plaintiff brings the present motion seeking to dismiss the affirmative defenses. Defendants oppose on the grounds that such a pre-discovery motion is premature.

[1] The Court notes that in Defendant's reply papers, there were problems with several citations leading to different or non-existent cases and a quotation that did not appear in any cases cited. The Court considers these citations and the propositions they stand for stricken from the papers, although this does not change the ultimate outcome on this motion for the reasons given below. The Court would also like to note that if this continues to be an issue in the future with Defendants' counsel, there would likely be sanctions issued.

Pursuant to CPLR § 3211(b), a party may move to dismiss "one or more defenses, on the ground that a defense is not stated or has no merit." When reviewing such a motion, "the court must liberally construe the pleadings in favor of the party asserting the defense and give that party the benefit of every reasonable inference." *Fireman's Fund Ins. Co. v. Farrell*, 57 A.D.3d 721, 723 (2nd Dept. 2008). But affirmative defenses that simply "pleaded conclusions of law without supporting facts, [are] properly stricken as insufficient." *170 Vil. Assoc. v. G & E Realty, Inc.*, 59 A.D.3d 372, 373 (1st Dept. 2008). Furthermore, when the affirmative defenses in an answer are "mere titles of such defenses and [are] not sufficiently particular to give the court and parties notice of the grounds for the defenses as required by CPLR 3013", dismissal is proper. *Bel Paese Sales Co. v. Macri*, 99 A.D.2d 740, 741 (1st Dept. 1984).

Discussion

Here, Defendants' affirmative defenses one through nine simply recite a legal title and therefore are patently insufficient. Defenses 10 and 11 briefly argue that the Individual Defendant was not a valid guarantor to the agreement with the Business Defendant. There is a clear guaranty provision in the agreement whereby the guarantor agreed to "personally and unconditionally guarantee[] the performance by Seller." And the signature page of the agreement states that it is signed "as a duly authorized agent of Seller and in my capacity as Guarantor." While the actual name of the signatory is redacted, in their Answer Defendants admit that "the parties entered into an agreement." Therefore, these two affirmative defenses are without merit.

Defenses 12 and 13 are based on the argument that the agreement in question was a usurious loan and not a receivables purchase agreement. There are three factors that distinguish a receivables purchase agreement from a usurious loan, 1) a reconciliation provision, 2) a finite term, and 3) lack of recourse in bankruptcy. *See Principis Capital, LLC v. I Do, Inc.*, 201 A.D.3d

752, 754 (2nd Dept. 2022). All three are present in the agreement, and Plaintiff cites to a host of other Supreme Court cases upholding the same agreement as a valid receivables purchase agreement. Defense 16 alleges that the reconciliation provision is illusory. But this is nothing more than a mere conclusory allegation without any facts pled, and therefore is insufficient.

Defenses 14, 15, and 17 allege that slowdowns in revenue was part of the potential risk addressed in the agreement and therefore does not give rise to a claim for breach of the agreement. Plaintiff alleges that Defendants did not make use of the reconciliation provision in the agreement. But this raises issues of fact and therefore, dismissal of these affirmative defenses would be premature at this time. The 18th and final affirmative defense alleges that the default and NSF fees are an unenforceable penalty and not a reasonable liquidated damages provision. Plaintiff responds that the fees are reasonable according to the agreement. But this too raises issues of fact and law that would make dismissal of this defense premature, given the requirement to liberally construe the pleadings in favor of the Defendants. Accordingly, it is hereby

ADJUDGED that plaintiff's motion is granted as to the first through the thirteenth and the sixteenth affirmative defenses and these defenses are stricken; and it is further

ADJUDGED that plaintiff's motion is denied as to the fourteenth, fifteenth, and eighteenth affirmative defenses.

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1/24/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	**X**	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**