NEW YORK COURT OF APPEALS

# Worthy Lending LLC v. New Style Contractors, Inc.

Worthy Lending · No. No. 86 · Decided November 22, 2022

## SUMMARY

The New York Court of Appeals held that, for purposes of UCC §§ 9-406 and 9-607, an assignee includes the holder of a presently exercisable security interest in an assignor's accounts receivable. The court concluded that a secured creditor may direct an account debtor to pay it directly when the security agreement so permits, and that payment to the assignor after receipt of the required notice does not discharge the account debtor's obligation. The court reversed the Appellate Division and denied the defendant's motion to dismiss.

## CASE DETAILS

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| COURT | New York Court of Appeals |
| WRITING FOR THE COURT | Wilson, J.; Cannataro, Acting Chief Judge; Rivera, J.; Garcia, J.; Singas, J.; Troutman, J. |
| JURISDICTION | New York |
| DECIDED | November 22, 2022 |
| DOCKET | No. 86 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | Appeal from an Appellate Division order affirming Supreme Court's dismissal of Worthy Lending's complaint on a motion to dismiss. |
| STANDARD OF REVIEW | On a motion to dismiss, the court accepts the facts alleged as true and affords the plaintiff the benefit of every possible favorable inference. |
| PRECEDENTIAL VALUE | published and binding New York Court of Appeals precedent |
| PARTIES | Worthy Lending LLC v. New Style Contractors, Inc. |

## TOPICS

secured transactions · uniform commercial code · statutory interpretation · commercial litigation · contracts

## PRACTICE AREAS

secured transactions · commercial litigation · uniform commercial code · contract law

## QUESTIONS PRESENTED

1. Whether a secured creditor holding a presently exercisable security interest in an assignor's receivables is an assignee for purposes of UCC 9-406.
2. Whether UCC 9-607(e) prevents a secured creditor from enforcing an account debtor's payment obligation after the secured creditor and debtor have contractually agreed that the creditor may direct payment.
3. Whether the complaint stated a claim against New Style for payments allegedly made to Checkmate after New Style received Worthy's notice of assignment.

## HOLDINGS

1. For purposes of UCC 9-406, an assignee includes the holder of a presently exercisable security interest in an assignor's receivables.
2. UCC 9-607(e) does not bar a secured creditor from enforcing the rights of its debtor against an account debtor when the secured creditor and debtor have contractually agreed that the secured creditor may direct payment.
3. After receiving the requisite notice from Worthy, New Style could not discharge its obligation by paying Checkmate; it was required either to pay Worthy or seek proof of the assignment and withhold payment.

## KEY QUOTATIONS

> *"We hold that it does."* (at 1)

> *"In short, nothing in UCC sections 9-607 or 9-406 prohibits a secured creditor and debtor from agreeing as they did here."* (at 9)

> *"If New Style continued to pay Checkmate after receiving direction from Worthy to pay Worthy instead of Checkmate, the burden of double payment as between Worthy and New Style falls on New Style."* (at 10)

## FACTUAL BACKGROUND

Checkmate Communications LLC entered into a promissory note and security agreement with Worthy Lending that granted Worthy a security interest in substantially all of Checkmate's assets, including its accounts receivable. The agreement authorized Worthy to notify account debtors, including New Style Contractors, to remit payments directly to Worthy, and Worthy sent New Style such a notice. After Checkmate defaulted and filed for bankruptcy, Worthy alleged that New Style may have paid one or more accounts to Checkmate rather than Worthy.

## PROCEDURAL HISTORY

Worthy Lending sued New Style Contractors, alleging that New Style was liable for payments it made to Checkmate after receiving notice that Checkmate's receivables had been assigned to Worthy. Supreme Court dismissed the complaint, and the Appellate Division affirmed, concluding that Worthy lacked an independent cause of action under UCC 9-607 because it held a security interest rather than an outright assignment. The Court of Appeals granted leave, reversed, and directed that New Style's motion to dismiss be denied.

### DISPOSITION

reversed_and_remanded

### REMAND INSTRUCTIONS

Reverse the Appellate Division order, deny New Style's motion to dismiss the complaint, and conduct further proceedings consistent with the opinion.

### CASES CITED

- Maddicks v. Big City Properties, LLC, 34 N.Y.3d 116, 123 (2019)
- Buckeye Retirement Co., LLC, Ltd. v. Meijer, Inc., 2008 WL 4278038, at *2 (Mich. Ct. App. Sept. 18, 2008)
- IIG Capital LLC v. Archipelago, L.L.C., 36 A.D.3d 401, 404 (1st Dep't 2007)
- Chase Manhattan Bank (N.A.) v. State, 40 N.Y.2d 590, 592-93 (1976)
- Septembertide Publ., B.V. v. Stein & Day, Inc., 884 F.2d 675, 682 (2d Cir. 1989)
- Magnolia Financial Group v. Antos, 310 F. Supp. 3d 764, 765-67 (E.D. La. 2018)
- Garber v. TouchStar Software Corp., 2011 WL 12526062, at *4 (Colo. Dist. Ct. Nov. 10, 2011)
- Durham Commercial Capital Corp. v. Ocwen Loan Servicing, LLC, 777 F. App'x 952, 956 (11th Cir. 2019)
- General Motors Acceptance Corp. v. Clifton-Fine Central School District, 85 N.Y.2d 232, 236 (1995)

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