SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

Spin Capital, LLC v. Bridgelink Engg., LLC

2026 NY Slip Op 02296 · No. 2024-04928, 2024-06248 · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, affirmed a judgment awarding Spin Capital, LLC $8,234,160.50 against Bridgelink Engineering, LLC and related defendants for breach of a merchant agreement and personal guaranty. The court held that the transaction was a purchase of future receivables rather than a criminally usurious loan, and upheld dismissal of the defendants’ counterclaims and affirmative defenses.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Paul Wooten, J.; Janice A. Taylor, J.; Carl J. Landicino, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2024-04928, 2024-06248
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order granting plaintiff's CPLR 3211(a) motion to dismiss defendants' counterclaims and granting plaintiff summary judgment on breach-of-contract and breach-of-guaranty causes of action, as well as effectively dismissing defendants' affirmative defenses. Defendants also appealed from the ensuing judgment awarding plaintiff $8,234,160.50.
STANDARD OF REVIEW	Summary judgment is proper where the moving party establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact. On the usury issue, the court considered whether plaintiff established prima facie that the transaction was a purchase of future receivables rather than a loan.
PRECEDENTIAL VALUE	published

PARTIES	Bridgelink Engineering, LLC, Cole Wayne Johnson, Cord Johnson v. Spin Capital, LLC

TOPICS

breach of contract · commercial · summary judgment · appellate procedure · civil procedure

PRACTICE AREAS

contract law · commercial litigation · civil procedure

QUESTIONS PRESENTED

1. Whether the merchant agreement was a criminally usurious loan rather than a purchase of future receivables.
2. Whether plaintiff was entitled to summary judgment on its breach-of-contract and breach-of-guaranty causes of action.
3. Whether defendants' counterclaims were properly dismissed under CPLR 3211(a).
4. Whether the appeal from the interlocutory order remained directly appealable after entry of the judgment.

HOLDINGS

1. The transaction was a purchase of future receivables, not a loan subject to usury laws, because plaintiff was not absolutely entitled to repayment under all circumstances. The reconciliation provision, indefinite term, and absence of a bankruptcy-default provision established that repayment was contingent.
2. Plaintiff was entitled to summary judgment on its breach-of-contract and breach-of-guaranty causes of action because it established the agreements and defendants' breach, and defendants failed to raise a triable issue of fact.
3. The Supreme Court properly dismissed defendants' counterclaims under CPLR 3211(a) because the transaction was not a criminally usurious loan and defendants' related RICO theory therefore failed.
4. The appeal from the order had to be dismissed because the right to directly appeal from the order terminated when judgment was entered; issues raised on the order were reviewable on the appeal from the judgment.

KEY QUOTATIONS

> *“"The rudimentary element of usury is the existence of a loan or forbearance of money, and where there is no loan, there can be no usury, however unconscionable the contract may be"”* (*2)

> *“"To determine whether a transaction constitutes a usurious loan: The court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances. Unless a principal sum advanced is repayable absolutely, the transaction is not a loan"”* (*2)

FACTUAL BACKGROUND

On August 15, 2022, Spin Capital and defendants entered into a written merchant agreement under which Spin Capital purchased future receivables valued at $7,500,000 for $5,000,000. Cole Wayne Johnson and Cord Johnson executed a personal guaranty. Defendants paid $210,000, after which authorized ACH debits were rejected because of insufficient funds and closure of the account. The agreement contained a reconciliation provision allowing remittances to be adjusted based on fluctuations in defendants' receipts, had an indefinite term, and did not make bankruptcy an event of default.

PROCEDURAL HISTORY

Spin Capital sued defendants for, among other things, breach of contract after defendants stopped making required payments under a merchant agreement. Defendants asserted counterclaims alleging that the transaction was a criminally usurious loan and violated RICO. Supreme Court, Nassau County, dismissed the counterclaims, granted plaintiff summary judgment on the contract and guaranty claims, effectively dismissed the affirmative defenses, and entered judgment for plaintiff. The Appellate Division dismissed the appeal from the order because that appeal terminated upon entry of judgment, reviewed the order on the appeal from the judgment, and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- Matter of Aho, 39 N.Y.2d 241, 248
- LG Funding, LLC v. United Senior Props. of Olathe, LLC, 181 A.D.3d 664, 665-666
- Crystal Springs Capital, Inc. v. Big Thicket Coin, LLC, 220 A.D.3d 745, 746
- Abir v. Malky, Inc., 59 A.D.3d 646, 649
- Principis Capital, LLC v. I Do, Inc., 201 A.D.3d 752, 754
- True Bus. Funding, LLC v. Guerrero A Constr. Corp., 239 A.D.3d 787-788
- H.L. Realty, LLC v. Edwards, 131 A.D.3d 573, 574

OPINION

PER CURIAM.

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The order, insofar as appealed from, granted the plaintiff's motion pursuant to CPLR 3211(a) to dismiss the defendants' counterclaims and those branches of the plaintiff's separate motion which were for summary judgment on the causes of action alleging breach of contract and breach of guaranty and, in effect, dismissing the defendants' affirmative defenses.

The judgment, upon the order, is in favor of the plaintiff and against the defendants in the total sum of $8,234,160.50.</p> <p>ORDERED that the appeal from the order is dismissed; and it is further,</p> <p>ORDERED that the judgment is affirmed; and it is further,</p> <p>ORDERED that one bill of costs is awarded to the plaintiff.</p> <p>The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action (<i>see</i> <i>Matter of Aho</i>, 39 NY2d 241, 248).

The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (<i>see</i> CPLR 5501[a][1]).</p> <p>On August 15, 2022, the plaintiff and the defendants entered into a written merchant agreement whereby the plaintiff purchased from the defendants future receivables valued at $7,500,000 for a purchase price of $5,000,000.

The defendants Cole Wayne Johnson and Cord Johnson executed a personal guaranty. The defendants made payments to the plaintiff totaling $210,000, but thereafter, the authorized Automated Clearing House debits were rejected for insufficient funds and closure of the account.

The plaintiff commenced this action against the defendants, alleging, among other things, a cause of action to recover damages for breach of contract. The defendants interposed an answer, asserting counterclaims that the transaction at issue was a criminally usurious loan in violation of the Racketeer Influenced and Corrupt Organizations Act (18 USC § 1962).

The plaintiff moved pursuant to CPLR 3211(a) to dismiss the defendants' [*2] counterclaims. Thereafter, the plaintiff moved for summary judgment on the complaint and, in effect, dismissing the defendants' affirmative defenses.</p> <p>In an order dated January 23, 2024, the Supreme Court, inter alia, granted the plaintiff's motion pursuant to CPLR 3211(a) to dismiss the defendants' counterclaims and those branches of the plaintiff's motion which were for summary judgment on the causes of action alleging breach of contract and breach of guaranty and, in effect, dismissing the affirmative defenses.

On February 9, 2024, a judgment was entered, upon the order, in favor of the plaintiff and against the defendants in the total sum of $8,234,160.50. The defendants appeal.</p> <p>"The rudimentary element of usury is the existence of a loan or forbearance of money, and where there is no loan, there can be no usury, however unconscionable the contract may be" (<i>LG Funding, LLC v United Senior Props. of Olathe, LLC</i>, 181 AD3d 664, 665; <i>see</i> <i>Crystal Springs Capital, Inc. v Big Thicket Coin, LLC</i>, 220 AD3d 745, 746).

"When determining whether a transaction constitutes an usurious loan, it must be considered in its totality and judged by its real character, rather than the name, color, or form which the parties have seen fit to give it" (<i>Abir v Malky, Inc.</i>, 59 AD3d 646, 649 [internal quotation marks omitted]; <i>see</i> <i>LG Funding, LLC v United Senior Props. of Olathe, LLC</i>, 181 AD3d at 665).

"To determine whether a transaction constitutes a usurious loan: The court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances. Unless a principal sum advanced is repayable absolutely, the transaction is not a loan" (<i>Principis Capital, LLC v I Do, Inc.</i>, 201 AD3d 752, 754 [internal quotation marks omitted]). Courts generally "weigh three factors when determining whether repayment is absolute or contingent: (1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the merchant declare bankruptcy" (<i>id.</i> [internal quotation marks omitted]; <i>see</i> <i>True Bus.

Funding, LLC v Guerrero A Constr. Corp.</i>, 239 AD3d 787).</p> <p>Here, the plaintiff established, prima facie, that the merchant agreement contained a clause that provided for the adjustment of the defendants' remittances in response to fluctuations in the defendants' receipts (<i>see</i> <i>Principis Capital, LLC v I Do, Inc.</i>, 201 AD3d at 754). This clause rendered the term of the agreement indefinite (<i>see</i> <i>id.</i>).

Moreover, no contractual provision existed establishing that a declaration of bankruptcy would constitute an event of default (<i>cf.</i> <i>True Bus. Funding, LLC v Guerrero A Constr. Corp.

</i>, 239 AD3d at 788; <i>LG Funding, LLC v United Senior Props. of Olathe, LLC</i>, 181 AD3d at 666).</p> <p>Taken together, these factors satisfied the plaintiff's prima facie burden of demonstrating that the transaction at issue was a purchase of future receivables and not a criminally usurious loan (<i>see</i> <i>Principis Capital, LLC v I Do, Inc.</i>, 201 AD3d at 754).

Moreover, the plaintiff established its prima facie entitlement to judgment as a matter of law on the causes of actions alleging breach of contract and breach of guaranty by demonstrating the existence of an agreement and breach (<i>see</i> <i>True Bus. Funding, LLC v Guerrero A Constr. Corp.</i>, 239 AD3d at 788; <i>Principis Capital, LLC v I Do, Inc.</i>, 201 AD3d at 754; <i>H.L.

Realty, LLC v Edwards</i>, 131 AD3d 573, 574). In opposition, the defendants failed to raise a triable issue of fact. Accordingly, the Supreme Court properly granted those branches of the plaintiff's motion which were for summary judgment on its causes of action alleging breach of contract and breach of guaranty.</p> <p>Likewise, the Supreme Court properly granted the plaintiff's motion pursuant to CPLR 3211(a) to dismiss the defendants' counterclaims.</p> <p>The defendants' remaining contentions are without merit.</p> <p>CONNOLLY, J.P., WOOTEN, TAYLOR and LANDICINO, JJ., concur.</p> <p>ENTER:</p> <p>Darrell M. Joseph</p> <p>Clerk of the Court</p> </div> <div> <footer> <div> <p>Court Decisions</p> All Court Decisions Official Reports Service Bound Volumes Decision Search </div> <div> <p>Resources</p> RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index </div> <div> <p>About</p> About the Law Reporting Bureau About our Operations Contact Us Twitter </div> <div> <p>Quick Contact Info</p> <p>17 Lodge Street</p> <p>Albany, NY 12207</p> <p>Phone: (518) 453-6900</p> </div> </footer> </div> <div> <p>Links to or from other sites do not signify endorsement or relationship with them.</p> </div> </div>