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

Diesel Funding, LLC v. Build Retail, Inc.

2026 NY Slip Op 02629 · No. 2024-09041 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order denying defendants' motion to vacate a judgment and stipulation of settlement arising from a receivables-purchase agreement. The court held that defendants failed to establish that the transaction was a usurious loan, emphasizing the agreement's reconciliation provision, variable payment amounts tied to receivables, nonfinite term, and lack of a bankruptcy-default provision. The court also enforced the settlement stipulation and its default-judgment provision.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Linda Christopher, J.; Lillian Wan, J.; Lourdes M. Ventura, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 29, 2026
DOCKET	2024-09041
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order denying their motion to vacate a judgment entered in favor of Diesel Funding, LLC and a stipulation of settlement.
STANDARD OF REVIEW	The Appellate Division reviewed the order denying defendants' motion to vacate the judgment and stipulation of settlement for legal error and affirmed where the defendants' contentions lacked merit or were unpreserved.
PRECEDENTIAL VALUE	published
PARTIES	Build Retail, Inc., James Wesley Cashwell, et al. v. Diesel Funding, LLC

TOPICS

breach of contract | contracts | commercial litigation | appellate procedure | civil procedure

PRACTICE AREAS

contract law | commercial litigation | appellate procedure

QUESTIONS PRESENTED

1. Whether the defendants were entitled to vacatur of the judgment and settlement stipulation because the receivables-purchase agreement was an unenforceable usurious loan.
2. Whether the settlement stipulation was enforceable according to its terms and authorized entry of judgment following defendants' default.
3. Whether defendants' remaining appellate contentions warranted reversal.

HOLDINGS

1. The stipulation of settlement was an enforceable contract, and because defendants undisputedly failed to comply with its terms, Diesel Funding was entitled under the stipulation to enter judgment for the specified settlement amount plus fees, interest, costs, and disbursements without further notice or application to the court.
2. Defendants failed to establish that the transaction was a usurious loan because repayment was contingent on future receivables rather than absolutely due under all circumstances.

KEY QUOTATIONS

> *"A stipulation of settlement is a contract, enforceable according to its terms"* (*1)

> *"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, it must be considered in its totality and judged by its real character, rather than by the name, color, or form which the parties have seen fit to give it"* (*2)

> *"Usually, courts 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"* (*2)

FACTUAL BACKGROUND

Diesel Funding purchased an interest in Build Retail's future receivables for $850,000, with repayment through a percentage of daily sales revenue until Diesel Funding received $1,274,150. Build Retail and James Wesley Cashwell later entered into a settlement stipulation for $1,150,740.12, providing that Diesel Funding could enter judgment upon default without further notice or court application. Defendants made none of the required settlement payments, and a judgment totaling $1,476,330.68 was entered against them.

PROCEDURAL HISTORY

Diesel Funding commenced an action for breach of contract after defendants allegedly defaulted on a receivables-purchase agreement. The parties entered into a stipulation of settlement, but defendants failed to make the required payments; a judgment for $1,476,330.68 was then entered against them. The Supreme Court, Kings County, denied defendants' motion to vacate the judgment and stipulation, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Tagliaferri v. Weiler, 1 N.Y.3d 605
- Corona Fuel Corp. v. Nayci, 140 A.D.3d 1004, 1005
- Principis Capital, LLC v. I Do, Inc., 201 A.D.3d 752, 754
- Davis v. Richmond Capital Group, LLC, 194 A.D.3d 516, 517
- LG Funding, LLC v. United Senior Props. of Olathe, LLC, 181 A.D.3d 664, 665-666
- Apollo Funding Co. v. Dave Reilly Constr., LLC, 241 A.D.3d 1508, 1509

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