

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Jorge O. Almada Nagy and Woodex v. Retail Capital LLC dba
Credibly; Credibly of Arizona LLC**

Almada Nagy · No. 23cv537-LL-BLM · Decided April 8, 2025

SUMMARY

The United States District Court for the Southern District of California denied Plaintiffs’ motion for summary judgment concerning Defendants’ counterclaims and Plaintiffs’ equitable relief claims. The court held that genuine disputes of material fact remained regarding whether Plaintiff Almada signed the Receivables Purchase Agreement and whether an enforceable contract existed, citing conflicts among his declaration, deposition testimony, and a recorded verification call.

OPINION

Almada Nagy v. Retail Capital LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JORGE O. ALMADA NAGY; Case No.: 23cv537-LL-BLM

WOODEX,

12

ORDER DENYING MOTION FOR

Plaintiffs,

13 SUMMARY JUDGMENT

v. 14 [ECF No. 42] RETAIL CAPITAL LLC dba Credibly; 15

CREDIBLY OF ARIZONA LLC,

16 Defendants. 17

18 19 Before the Court is Plaintiffs and Counter-Defendants Jorge O. Almada Nagy and 20
Woodex (collectively “Plaintiffs”) Motion for Summary Judgment (ECF No. 42) on 21
Defendants and Counterclaimants Retail Capital LLC dba Credibly (“Retail Capital”) and 22
Credibly of Arizona LLC’s (“COA”) (collectively “Defendants”) Counterclaim (ECF No. 23 33)
and on Plaintiffs’ Second Amended Complaint (ECF No. 16). For the following 24 reasons, the
Court DENIES the Motion.

25 I. PROCEDURAL BACKGROUND

26 On March 24, 2023, Plaintiffs filed a Complaint against Defendants alleging that 27

Defendants “tricked Plaintiffs into handing over personal and financial information by 28 pretending to enter into a loan agreement with them, then, posing as Plaintiffs, fraudulently 1 obtained a loan from Defendants for the same amount, but with far less favorable terms 2 than those to which Plaintiffs agreed.” ECF No. 1 ¶ 1. Plaintiffs sought judgment 3 “confirming they owe Defendants no contractual obligations under that forged agreement 4 and prohibiting Defendants from taking any measures to collect from thereon.” Id. ¶ 2. 5 On May 15, 2023, Defendants filed a Motion to Dismiss for failure to state a claim 6 under Federal Rule of Civil Procedure 12(b)(6). ECF No. 8. On June 5, 2023, Plaintiffs 7 filed an Amended Complaint, and on June 26, 2023, Plaintiffs were given leave to file a 8 Second Amended Complaint. ECF Nos. 9, 15. The operative Complaint in this action is 9 Plaintiffs’ Second Amended Complaint (“SAC”), filed on July 3, 2023 which alleges the 10 following causes of action: (1) violation of California Unfair Competition Law against all 11 Defendants; (2) violation of California Commercial Code Filing of Unauthorized 12 Financing Statement by Woodex against Retail Capital; (3) defamation by Woodex against 13 Retail Capital; (4) conspiracy against all Defendants; (5) aiding and abetting tortious 14 conduct against all Defendants. ECF No. 16. Defendants initially filed a Motion to Dismiss 15 Plaintiffs’ SAC, but eventually the parties jointly moved to withdraw it, which the Court 16 granted. ECF Nos. 21, 26, 27. On October 10, 2023, Defendants filed an Answer to the 17 SAC, and also asserted Counterclaims for the following: (1) breach of express contract, (2) 18 breach of implied contract, (3) common count for money had and received; (4) conversion; 19 (5) unjust enrichment. ECF No. 33. 20 On September 13, 2024, Plaintiffs filed the instant Motion for Summary Judgment. 21 ECF No. 42. On October 4, 2024, Defendants filed a Response in Opposition to the Motion 22 for Summary Judgment. ECF No. 45. On October 11, 2024, Plaintiffs filed a Reply to the 23 Motion for Summary Judgment. ECF No. 46.

24 II. FACTUAL BACKGROUND

25 Plaintiff Woodex is an international wood exporting and distributing company and 26 Plaintiff Mr. Alameda is the President of Woodex. ECF No. 46-1 ¶¶ 1, 2, Separate 27 Statement of Material Facts in Support of Plaintiffs’ Motion for Summary Judgment and 28 Plaintiffs’ Responses to Defendants’ Additional Undisputed Facts (hereinafter “Separate 1 Statement of Material Facts”). Plaintiffs allege that they started looking for a small business 2 loan in late 2022. Id. ¶ 4. Plaintiffs further allege they received a proposal from a company 3 named “BG Capital” for a loan for \$380,000, at 4.375% fixed annual interest, with monthly 4 payments of \$7,062.77 for five years, which they accepted. Id. ¶ 7. Defendants dispute this 5 fact and state that Plaintiffs never received a signed agreement from BG Capital. Id. 6 Plaintiffs allege that they provided BG Capital with their personal and financial 7 information, such as tax returns and social security numbers, as part of the loan application. 8 Id. ¶ 8; see also Compl. ¶ 15. Plaintiffs allege that on February 23, 2023, they received a 9 “BG Capital Loan Addendum” through Dropbox Sign and that Plaintiff Nagy 10 electronically signed it within thirty minutes. Separate Statement of Material Facts ¶ 9; see 11 also Compl. ¶ 16. Plaintiffs attach a copy of the BG Loan Capital Addendum as Exhibit A 12 to the

SAC. Plaintiffs allege that BG Capital was not a real company, but rather a fraudster 13 who had some relationship with Defendants. Separate Statement of Material Facts ¶ 13; 14 see also Compl. ¶ 17-19. 15 Plaintiffs allege that BG Capital contacted Defendants and used Plaintiffs' 16 confidential information to negotiate a loan with the same principal as the loan Plaintiffs 17 thought they were getting (\$380,000), but with less favorable terms. Separate Statement of 18 Material Facts ¶ 14; see also Compl. ¶ 19. Plaintiffs allege that the less favorable terms 19 included that Plaintiff had an estimated annual percentage rate of 66.89%, a finance charge 20 of \$149,560, daily payments of \$1,967.65, and a one-year term. Separate Statement of 21 Material Facts ¶ 14; see also Compl. ¶ 19. Plaintiffs allege that a few hours after Plaintiffs 22 electronically signed the "BG Capital Loan Addendum", the fraudsters electronically 23 forged Plaintiffs' signature on the closing document for the fraudulent loan they negotiated 24 with Defendants. Separate Statement of Material Facts ¶ 18; see also Compl. ¶ 19. The 25 loan agreement that Plaintiffs claim was forged with their signature is attached as Exhibit 26 B to the SAC. 27 Plaintiffs further allege that on February 28, 2023, Defendants wired \$380,000 to 28 Plaintiffs' bank account, and that Plaintiffs thought they were receiving the proceeds of the 1 loan agreement that they actually signed. Separate Statement of Material Facts ¶ 34; see 2 also Compl. ¶ 22. Plaintiffs allege that Defendants tried to collect payments from Plaintiffs 3 per the terms of the allegedly forged loan agreement, using an automated clearing house 4 ("ACH") system linked to Plaintiffs' bank account. Separate Statement of Material Facts 5 ¶ 36; see also Compl. ¶ 25. After the first withdrawal, Plaintiff placed a block on the 6 automated payments because Plaintiff suspected they were being defrauded. Separate 7 Statement of Material Facts ¶ 38; see also Compl. ¶ 25. On March 3, 2023, Defendants 8 emailed Plaintiff Almada to request that he remove the block, which Plaintiffs did not do. 9 Separate Statement of Material Facts ¶ 39, 40. Plaintiffs claim that the correspondence that 10 ensued after the March 3, 2023 email with Defendants is when they first learned of and 11 saw the allegedly forged loan agreement executed by the fraudsters. Separate Statement of 12 Material Facts ¶ 40; see also Compl. ¶ 31. Defendants demanded Plaintiffs return the 13 \$380,000 loan principal, but Woodex said they no longer had most of the funds. Separate 14 Statement of Material Facts ¶ 42; see also Compl. ¶ 31. Plaintiffs state that there was no 15 meeting of the minds between the parties, and they brought this action to prevent 16 Defendants from holding Plaintiffs to the allegedly forged agreement. SAC 33. 17 Defendants bring Counterclaims against Plaintiffs for (1) breach of express contract; 18 (2) breach of implied contract; (3) money had and received; (4) conversion; and (5) unjust 19 enrichment. ECF No. 33. Defendants' main argument to support their Counterclaims is that 20 "[a]lthough Nagy on behalf of Cross-defendants specifically acknowledged and agreed to 21 each material term of the Agreement in a recorded pre-funding verification telephone call, 22 and although Counter-defendants admit receiving the purchase price of \$380,000 from 23 Counter-claimants, Counter-defendants have failed and refused to make a single payment 24 under the Agreement or to return the purchase money." ECF No. 33 ¶ 1.

25 III. LEGAL STANDARD

26 Summary judgment is appropriate if, viewing the evidence and drawing all 27 reasonable inferences in the light most favorable to the nonmoving party, “there is no 28 genuine dispute as to any material fact and the movant is entitled to judgment as a matter 1 of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 321 (1986). A fact 2 is “material” if it “might affect the outcome of the suit under the governing law,” and a 3 dispute as to a material fact is “genuine” if there is sufficient evidence for a reasonable trier 4 of fact to decide in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 5 U.S. 242, 248 (1986); *Cline v. Indus. Maint. Eng’g & Contracting Co.*, 200 F.3d 1223, 6 1229 (9th Cir. 2000). “If the evidence [opposing summary judgment] is merely colorable, 7 or is not significantly probative, summary judgment may be granted.” *Anderson*, 477 U.S. 8 at 249–50 (citations omitted). 9 The moving party bears the initial burden of identifying the portions of the pleadings 10 and record that it believes demonstrate the absence of a genuine issue of material fact. 11 *Celotex*, 477 U.S. at 323. “In order to carry its burden of production, the moving party must 12 produce either evidence negating an essential element of the nonmoving party’s claim or 13 defense or show that the nonmoving party does not have enough evidence of an essential 14 element to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. 15 v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). The burden then shifts to the nonmovant 16 to show “there is a genuine issue of material fact.” *Matsushita Elec. Indus. Co. v. Zenith 17 Radio Corp.*, 475 U.S. 574, 585 (1986). The nonmovant must “go beyond the pleadings 18 and by her own affidavits, or by the depositions, answers to interrogatories, and admissions 19 on file, [and] designate specific facts showing that there is a genuine issue for trial.” 20 *Celotex*, 477 U.S. at 324 (internal quotation marks and citation omitted). In carrying their 21 burdens, the parties can either cite to evidence supporting their own position or show the 22 other side’s position is either unsupportable or devoid of any genuine dispute. Fed. R. Civ. 23 P. 56(c)(1). In addition, “[c]redibility determinations, the weighing of the evidence, and 24 the drawing of legitimate inferences from the facts are jury functions, not those of a judge, 25 [when] he is ruling on a motion for summary judgment.” *Anderson*, 477 U.S. at 255.

26 IV. EVIDENTIARY OBJECTIONS

27 On a motion for summary judgment, parties may only object to evidence if it “cannot 28 be presented in a form that would be admissible in evidence.” Fed. R. Civ. P. 56(c)(2). 1 While a party’s objection may be cognizable at trial, on a motion for summary judgment, 2 the court is concerned only with the admissibility of the relevant facts at trial, and not 3 the form of these facts as presented in the motions. See Fed. R. Civ. P. 56(c)(2) advisory 4 committee note to 2010 amendment (“Subdivision (c)(2) provides that a party may object 5 that material cited to support or dispute a fact cannot be presented in a form that would be 6 admissible in evidence. The objection functions much as an objection at trial, adjusted for 7 the pretrial setting.”); *Fraser v. Goodale*, 342 F.3d 1032, 1036–37 (9th Cir. 2003) (“At the 8 summary judgment stage, we do not

focus on the admissibility of the evidence's form. We 9 instead focus on the admissibility of its contents.”); *Block v. City of L.A.*, 253 F.3d 410, 10 418–19 (9th Cir. 2001) (“To survive summary judgment, a party does not necessarily have 11 to produce evidence in a form that would be admissible at trial, as long as the party satisfies 12 the requirements of Federal Rule of Civil Procedure 56.”). 13 Defendants object to portions of the declarations of Plaintiff Almada and Joseph M. 14 Mellano and various exhibits filed in support thereof. ECF No. 45-3. Defendants object 15 based on relevance, hearsay, lack of foundation, speculation, conclusion, improper opinion, 16 and argument. *Id.* While these objections may be cognizable at trial, Defendants have not 17 shown that the facts stated within these exhibits could not be presentable in any form as 18 evidence at trial. See Fed. R. Civ. P. 56(c)(2); *Fraser*, 342 F.3d at 1036–37. Accordingly, 19 to the extent the court relies upon evidence to which Defendants object, the objections are 20 OVERRULED. To the extent the court does not, the objections are DENIED as moot.

21 V. ANALYSIS

22 Plaintiffs state in their Motion for Summary Judgment that they filed this lawsuit 23 against Defendants “chiefly to avoid the Receivables Purchase Agreement (‘RPA’), the 24 forged agreement the fraudster signed, which Defendants maintain is enforceable.” MSJ at 25 5. Plaintiffs argue that “the evidence here conclusively establishes the Parties never entered 26 into a valid contract” and that “Defendants cannot enforce the RPA because Plaintiffs never 27 agreed to it.” *Id.* In support thereof, Plaintiffs argue that “Alameda did not sign the RPA, 28 and Defendants have zero evidence he did.” *Id.* at 13. Plaintiffs further argue that “[i]ndeed, 1 Almada was entirely unaware the RPA existed until Defendants sent him a copy after he 2 blocked their attempts to collect daily payments on it.” *Id.* (citing Separate Statement of 3 Material Facts ¶¶ 21; 30-32, 40). 4 Defendants argue that “there are triable issues of fact as to whether there is an 5 express and/or oral contract.” *Oppo*. at 8. Defendants state that “[a]lthough Plaintiffs now 6 claim that they did not sign the RPA, Almada admitted at his deposition that he had read 7 and signed the contract.” *Id.* Defendants argue that “[w]hether to believe Almada’s 8 declaration in support of this Motion or his deposition testimony is for the jury to determine 9 at trial, not for the judge to decide on summary judgment.” *Id.* 10 Although Plaintiffs assert that there are no genuine issues of material fact as to 11 whether he signed the RPA, the Court disagrees. All three material facts that Plaintiffs rely 12 on in support of their argument that Plaintiff Almada was entirely unaware of the RPA 13 until after his March 3, 2023 correspondence with Defendants are disputed. For example, 14 Plaintiffs’ Material Fact Number 21 is that “[a]s of [March 3, 2023], Almada had no idea 15 the RPA existed.” ECF No. 46-1, Separate Statement of Material Facts. Plaintiffs’ Material 16 Fact Number 30 is “[t]he verifier covered no other provisions in the RPA, nor did he 17 confirm Almada had ever seen the RPA.” *Id.* Plaintiffs’ Material Fact Number 31 is that 18 “the only time the verifier mentioned the RPA by name during the call, Almada had to ask 19 him to repeat the question, in response to which the verifier asked a different question 20 without referring to the RPA.” *Id.* In addition to these three key facts being disputed, the 21 parties also dispute whether

Plaintiffs had a signed agreement with BG Capital. For example, in response to Plaintiffs' Material Fact Number 7, Defendants state that "Plaintiffs never received a signed agreement from BG Capital." Separate Statement of Material Facts ¶ 7. Plaintiffs summarily argue in their Motion for Summary Judgment that the evidence indisputably shows the RPA was forged. For example, Plaintiffs argue as follows: (1) The signature on the [RPA] bears no resemblance to Almada's actual signature on the BGCLA and Almada's driver's license. (2) The audit trail appended to the RPA proves the person who signed it was the same person who sent Almada the BGCLA. (3) Defendants sent the RPA for electronic signature to [an email address Defendants knew did not belong to Almada], and the fraudster used that email address to sign it. Plaintiffs' MSJ at 13. However, upon the Court's review of the record, this issue is not so clear, making it inappropriate for the Court to summarily determine this case on Plaintiffs' Motion for Summary Judgment. For example, Defendants introduce evidence that during Plaintiff Almada's deposition he was asked "[w]hen they asked you if you signed the purchase agreement, you said yes, even though you didn't know what it was; correct?" ECF No. 45-12 at 4 at 19:8-10. Plaintiff Almada answered "[a]t the moment of the conversation, yes." Id. at 13 19:11. Defendants also introduce evidence of a verification call recording from February 14 23, 2023 that Defendants conducted with Plaintiffs, during which Plaintiff Almada was asked by the Verifier: "Okay, so now I'm going to move onto the terms, and I just need you to confirm that you signed the contract on your behalf." Separate Statement of Material Facts ¶ 45 (citing Mellano Decl., Exh. 14 at 8:25-8:30). Plaintiff responded "Sure." Id. This evidence directly conflicts with the Declaration filed by Plaintiff Almada in support of the instant Motion for Summary Judgment that states "I did not sign that document [RPA]" and that "the signatures and initials on it are not mine." ECF No. 42-3 ¶ 4, Declaration of Jorge O. Almada Nagy. Plaintiffs would like the Court to disregard the conflicts between Plaintiff Almada's Declaration, his deposition testimony, and the recording of the verification call. However, the Court finds that there remain genuine issues of material fact regarding whether Plaintiffs signed the RPA. This case hinges on whether Plaintiff Almada signed the RPA, which will determine whether an enforceable contract existed between the parties. Because factual issues remain that cannot be resolved on this record and should be decided by a jury, the Court DENIES Plaintiffs' Motion for Summary Judgment on all of Defendants' Counterclaims, and also on Plaintiffs' equitable relief claims in the SAC.

3 VI. CONCLUSION

4 For the foregoing reasons, the Court DENIES Plaintiffs' Motion for Summary Judgment. The parties are encouraged to reevaluate settlement in light of this Court's Order. The parties are encouraged to contact the Magistrate Chambers assigned to this case to schedule a settlement conference if they believe it would be fruitful. The parties shall submit a joint status report to the Court within ninety (90) days of this order updating the Court on the status of their settlement negotiations, whether they need more time to explore settlement, and proposed

deadlines for the remainder of the case, as needed. 11 IT IS SO ORDERED. 12 ||Dated: April 8,
2025 NO 13 Qe | 14 Honorable Linda Lopez 15 United States District Judge 16 17 18 19 20 21 22
23 24 25 26 27 28

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