



## Bank of Am., N.A. v Netmarketer Inc.

2024 NY Slip Op 33980(U) (2024) | Cited 0 times | New York Supreme Court | November 6, 2024

Bank of Am., N.A. v Netmarketer Inc. 2024 NY Slip Op 33980(U) November 6, 2024 Supreme Court, Kings County Docket Number: Index No. 508685/2024 Judge: Leon Ruchelsman Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. This opinion is uncorrected and not selected for official publication. --

against

INC ; S his capacity his capacity Trustee Revocable Trust ·Of

Nadine Bissu; and

BISSU, - -. -.-.-. - . . - - -x RUCHELSMAN and order

Index 5D8685/2024

moves §3211 and for

summary judgment. defendants motion arguing

Submitted

arguments this now the

verified complaint, December 2019

the extended a. Line credit defendants in. amount Pursuant to agreement executed

connection with credit line expired 2.02b principal interest .had FILED: KINGS COUNTY CLERK 11/07/2024 02:02 PM INDEX NO. 508685/2024 NYSCEF DOC. NO. 49 RECEIVED NYSCEF: 11/07/2024

1 of 5 SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8 -----x BANK OF AMERICA, N .A.;



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NETMARKETER . ALFRED . Plaintiff,

BISSU, in individual and in as for the Alfred Bis.su; THE REVOCABLE TRUST OF ALFRED BISSU;  
NADINE BISSU, in her individual capacity and in her capacity as Trustee for the Revocable Trust Of  
THE REVOCABLE TRUST OF NADINE

Defendants, - - - - - PRESENT: HON. LEON Decision

No.

November 6, 2024

Motion Seq. #1

The plaintiff pursuant to CPLR seeking to dismiss counterclaims filed by the defendants partial

The oppose the that

the counterclaims have merit. Papers were by all

parties and arguments held. After reviewing the of all parties court makes following determination.

Background

According to the on 12,

plaintiff of to the the of \$700,000. the loan in

the line of extensions, the on D.ecember 12, when all and

[\* 1] 15, 2021 parties lihe

April 2021. reduGed

of loan finally

the was 2024. On 23,

see-ks consisting and Qwed.



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plaintiff

cove:harit a:hd fair and

breach contra-ct and The Seeks

judgement concerning loan

Cohclus~ons

re §3211 (a) the: dismisB "where definitively

motion basecj. -evidence

refute the plaintiff's alleg.ations (Gould ..

Decolator, 121 84.5, NYS2d 368 [2d

ConsE;Jquently, coritract; is \"unambiguous i ahd.

2 FILED: KINGS COUNTY CLERK 11/07/2024 02:02 PM INDEX NO. 508685/2024 NYSCEF DOC.  
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2 of 5 to be paid. On November 20, 2020 and March amended

agreement were executed between the and the of

credit was extended to 11, Further amendments

the amount of the loan extended the terms the and

loan extended to February 10, February 2024

the plaintiff declared the defendants in default based upon non

payment. This action was commenced and the verified complaint recovery of \$342,182.76 of the  
principal amount, plus interest other expenses The defendants

answ.ered and asserted counterclai,ms alleging the

breached the implied of good faith dealing



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of tortious interference. plaintiff has now moved seeking to dismiss those counterclaims and

summary the documents,

of Law

In the van t part, CPLR ( 1) al lows court to a complaint documentary evidence contradicts the plaintiff's factual allegations and conclusively disposes of the plaintiff's claims" (id). Thus, to succeed on a to dismiss upon documentary such evidence

must utterly v

AD3d 994 Dept., 2014)] .

a which authentic

[\* 2] undeniable"" evidence wh.i,.ch can .suppqrt. a ;m\_otion to qismi.\_s~ 120 1281, Dept. Mo-reover, ts are not ctocument.ary

("see, ."Fontanetta Doe, 73 Ati3d t 9-B .569 Dep\_t., 2010)]

is we.11 s.ettied- "Upon a o;f br:each

contract :plaintiff" the of t.he defendant's brea.Ch and

r,esulting damages (\_Harris Park. Housin9 Corp., AD3d 425, NY\$2d 161 [Pt thi:! impl;J..ed. faith de-aling is premised parties

to contract exe--i:-cisirig. good faith while perfo.rming: the- o-f v, Hayden

Ptablishihq NYZd 34, NYS2d [197Z]). plain,tif!

a.greement as gqod faith fair dealihg

by blocked i:::redit in 20231. plaint\_i\_f£ assertE?d credit was

blocked because the "de;fendant fail-ed to maintain Moreo,v.er, th\_e plainttff sought information from th-e

c:iefendant and production such in-formatiqn ciid not co,J;1forrri the guidelirie-s of" line ag\_r.eement. no dispute def12nd.ant m\_p.intaiped



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proper and sought to submit providing FILED: KINGS COUNTY CLERK 11/07/2024 02:02 PM  
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3 of 5 is documentary

(Attias v. Costeria, AD3d 993 NYS2d 59 [2d

t 2014]). Affidavit evidence v. 788 NYS2d [2d

.

. It that to succeed in claim of

the. must establish existence a

contract, plaintiff's performance, the v. Seward 79

913 D\_apt., 2010)). Further,

covenant of good and fair upon

a terms

an agreement (Van Valkenburgh Noor & Neville Co., 3030 329-

The defendants assert that the breached the

well-known as the covenant of and

erroneously the line of August The at that time that the line of adequate

insurance. provided a time frame for the of that to the of

credit There is the

the insurance documents

3

[\* 3] The: Loan Agreement "the or



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default" '111. 5

15)]. mere the

was neeo.ed

all. Thus, the

of credit. any interference well

elements action

interference cont.tact (1) the of

of (3) intentional third-.,.party's that (4)

679 Dept.,

speqifically for'

party's coridli'ct have been FILED: KINGS COUNTY CLERK 11/07/2024 02:02 PM INDEX NO. 508685/2024 NYSCEF DOC. NO. 49 RECEIVED NYSCEF: 11/07/2024

4 of 5 sufficient time in which the ciefendants could furnish such

documents. states that Bank may sus·pend or

cancel the Line of Credit at any time for any reason; whether

not there is a (see, Line of Credit Agreement, (b)

[NYSCEF Doc. No. The fact bank provided erroneous

reasons for the cancellation cannot possibly mean the cancellation improper when in any event no reason to

have been provided at notwithstanding reasons

Offered by the bank, no such prejudice could result therefrom since in any event the bank had the absolute right to cancel the



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line

Furthermore, concerning tortious. it is

settled that the of a cause of alleging tortious

with are: existence a valid

contract between the de.fendant and a third party, ( 2) the

plaintiff's knowledge that contract, the plaintiff's procurement. of a breach of

contract without justification, and damages (Anethsia Associates of Mount Kisco, LLP v. Northern Westchester Hospital

Center, 59 AD3d 473, 873 NYS2d [2d 2009]). Further,

the party must allege that 'but the other there would no breach of the contract

(White Knight of Flatbush. LLC v. Deacons of Dutch Congregations

4

[\* 4] [2d case, closing was

party,

the

the counterclaims

amo:unt

motion jUdgement granted.

So

November Hon. Ruchelsmah JSG

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5 of 5 of Flatbush, 159 AD3d 939, 72 NYS3d 551 Dept., 2018)]. Tn

this the plaintiff's mere of the line of credit

not the intentional procurement of a breach of a third

Therefore, based on foregoing, the motion seeking to dismiss

is granted.

Further, there has been no basis denying the owed.

Therefore, the plaintiff's seeking summary is

ordered.

ENTER:

DATED: 6, 2024 Brooklyn N.Y. Leon

..... -- --. ----- [\* 5]

