

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**Hon. Catherine Rizzo  
Acting Justice of the Supreme Court**

**X**

**ME AND MY PAL, INC.,**

**Plaintiff,**

**-against-**

**BRYAN C. BUMPAS, D.D.S., P.C. AND BRYAN  
BUMPAS,**

**Defendants.**

**TRIAL/IAS, PART 43  
NASSAU COUNTY**

**INDEX NO.: 614479/2024**

**X X X**

**MOTION SUBMISSION**

**DATE: 11/15/2024**

**MOTION SEQUENCES  
NO.: 001, 002**

**X**

The following e-filed documents for Motion Sequence 001 and 002 listed by NYSCEF and attachments and exhibits thereto have been read on this motion:

Motion Sequence 001

Notice of Motion and Affidavits/Affirmations.....	<u>  X  </u>
Affidavits/Affirmations in Opposition.....	<u>  X  </u>
Memorandum of Law in Opposition.....	<u>  X  </u>
Reply Affidavit/Affirmation.....	<u>  X  </u>

Motion Sequence 002

Notice of Cross Motion and Affidavits/Affirmations	<u>  X  </u>
Memorandum of Law in Support.....	<u>  X  </u>
Affidavits/Affirmations in Opposition.....	<u>  X  </u>
Reply Affidavit/Affirmation.....	<u>  X  </u>

The plaintiff moves this Court (Motion Sequence 001) for an order granting the plaintiff summary judgment and assessing damages to the plaintiff in the amount of \$199, 010.19 plus attorney’s fees and costs or, in the alternative, setting this matter down for an inquest on the amounts of damages owed to the plaintiff, if any. The defendants oppose the motion and cross-move (Motion Sequence 002) for an order dismissing the instant action on the ground that the plaintiff lacks standing. The plaintiff opposes the motion and submits a reply. The defendants submit a reply.

“Pursuant to CPLR 3213, a party may obtain accelerated relief by moving for summary judgment in lieu of complaint, provided that the action is ‘based upon an instrument for the payment of money only or upon any judgment.’” (*Sun Convenient, Inc. v. Sarasamir Corp.*, 123 A.D.3d 906, 906). “An instrument for the payment of money only is one that contains an unconditional promise to pay a sum certain, signed by the maker and due on demand or at a definite [future] time.” (*Oak Rock Fin., LLC v. Rodriguez*, 148 AD3d 1036, 1039). “However, the instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document.” (*Id.*).

In support of the motion, the plaintiff submits the affidavit of John-Paul Smolenski (“Smolenski”), President of the plaintiff and a copy of the parties’ Equipment Finance Agreement, dated May 22, 2022 (“Agreement”). According to Smolenski’s affidavit, the Agreement provides that the plaintiff provided financing to the defendants in the amount of \$159,35.00 to enable the defendants to obtain certain equipment. Defendants Bryan Bumpas (“Bumpas”) guaranteed the Agreement. Smolenski states that the defendants were required to make three payments in the amount of \$99.00 and sixty payments of \$3,537.33 under the terms of the agreement. The defendants made three payments of \$99.00 and two payments of \$3,537.33 and then defaulted by failing to make the remaining required payments to the plaintiff. Based on Smolenski’s affidavit and the Agreement, the plaintiff has demonstrated that the motion at bar is based on agreements that are for the payment of money that contain an unconditional promise to pay a sum certain that was to be incrementally. (*Id.*). Therefore, the plaintiff has established its *prima facie* entitlement to summary judgment as a matter of law.

In opposition to the motion and in support of the cross-motion the defendants argue that the plaintiff lacks standing to maintain the instant action. Specifically, the defendants assert that plaintiff assigned the Agreement away including “all ... right, title and interest (including the right to receive payments or hereafter owing) in and to th[at] Contract and the subject [e]quipment thereunder” in May 2022, which is two years prior to the commencement of the instant action.

It is well settled that here, “[w]here, as here, the valid assignment of a claim is absolute on its face and the assignor is divested of all control and right to the cause of action, the assignee is the proper party in interest and has the right to commence and prosecute an action in its own name without joining the assignor as a necessary party.” (*Cardtronics, LP v. St. Nicholas Beverage Discount Ctr., Inc.*, 8 AD3d 419, 420). A review of the record before the Court provides that the instant action was initiated in October 2024. According to the Assignment, between the plaintiff and Signature Financial LLC, dated May 22, 2022 and the letter from Smolenski to Bumpas, dated May 27, 2022, the plaintiff assigned all “right, title and interest (including the right to receive payments or hereafter owing) in and to the Contract and the subject [e]quipment” to Signature Financial LLC. Considering the instant action was commenced more than two years after the assignment, Signature Financial LLC is the proper party plaintiff in this action, not the plaintiff herein. (*Id.*). Accordingly, dismissal of the plaintiff’s complaint is warranted under these circumstances.

In light of the foregoing, it is hereby

ORDERED, the plaintiff's motion (Motion Sequence 01) for an order granting summary judgment in lieu of complaint in favor of the plaintiff and against the defendants is denied, and it is further

ORDERED, that the defendants' cross-motion (Motion Sequence 002) for an order dismissing the instant action is granted.

This hereby constitutes the decision and order of this Court.

ENTER :

  
HON. CATHERINE RIZZO, A.J.S.C.

Dated: March 24, 2025