SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **IAS MOTION 37EFM**

Justice

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VIRUPAKSHA RAPARTHI, RADHIKA NAGAMPALLI, AMIT GOVIN, RBCA, INC.,AARILR, LLC

Plaintiff,

- v -

MICHAEL CLARKE,

Defendant.

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INDEX NO. 654875/2016

MOTION DATE 08/05/2020

MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 361, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 416, 417, 418, 419, 420, 421

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, defendant's requests (1) for a default judgment on defendant's third counterclaim as against co-plaintiff Virupaksha Raparthi is denied; (2) for summary judgment dismissing the first through fourth causes of action of all plaintiffs, Virupaksha Raparthi; Radhika Nagampalli; Amit Govin; RBCA, Inc.; and AARILR, LLC, is denied; (3) for summary judgment on defendant's third counterclaim as against co-plaintiff Virupaksha Raparthi is denied; and (4) for leave to file an application for attorney's fees is denied without prejudice, for the reasons stated hereinbelow.

Background

The Purported Promissory Note

Between October 2015 and approximately July 6, 2016, the boutique financial services firm and regulated broker dealer, MARV Capital, Inc. ("MARV") of co-plaintiff Virupaksha Raparthi ("Raparthi") apparently employed defendant, Michael Joseph Clarke, as a registered municipal bonds broker (NYSCEF Doc. 16). Until he resigned (or, according to plaintiffs, was fired) on July 6, 2016, defendant received "commissions based upon 62% of commissions earned by MARV and/or Avatar Capital Group, LLC [defendant's present employer, "Avatar"] as a result of [his] brokering activities" (NYSCEF Doc. 16, at 2).

Contemporaneous with his MARV employment, defendant apparently engaged in outside business activities (which he claims to have disclosed to Raparthi), among which was the resale of tickets and/or seat licenses for the World Series and U.S. Open Tennis Championship (NYSCEF Doc. 16, at 3). In November 2015, defendant apparently approached Raparthi about the opportunity for Raparthi to purchase "permanent seat licenses" to the U.S. Open (NYSCEF Doc. 364, at 4). According to Raparthi, defendant asserted that he would place funds that

Raparthi provided for said "permanent seat licenses" in an escrow account "until the tickets were purchased" (NYSCEF Doc. 364, at 4).

Raparthi claims that he entered into an agreement with defendant, pursuant to which he would advance $312,000.00 to defendant in exchange for "a certain amount of U.S. Open Licenses, and if [defendant] failed to secure the U.S. Open Licenses he would return the $312,000 to [Raparthi]" (the "U.S. Open Agreement") (NYSCEF Doc. 364, at 4). According to plaintiffs, the U.S. Open Agreement did not assign an interest rate for said loan (NYSCEF Doc. 364, at 4). Raparthi claims that on November 12, 2015 he advanced $312,000.00 to defendant, who failed to fulfill his agreement to place said funds in an escrow account (NYSCEF Doc. 364, at 4-5).

Defendant alleges that, subsequently, MARV and Raparthi "willfully refused" to pay him commissions that total approximately $103,000.00 that defendant claims he earned from February through June 2016 while he was a MARV employee (NYSCEF Doc. 16, at 1-2). Defendant and David Smith, Chief Compliance Officer and principal of Avatar's High Grade Corporate Bonds Desk, assert that defendant's gross commissions attributable to his municipal bonds desk for MARV from February 1 through July 12, 2016 amount to $220,463.40; sixty-two percent of said gross commissions totals $136,687.31 (NYSCEF Doc. 314 and 315). According to defendant, Raparthi admits that he withheld defendant's commissions "to offset [defendant's] alleged personal debt to him" (under the U.S. Open Agreement) (NYSCEF Doc. 314, at 2). As defendant asserts, New York Labor Law § 198(1-a) provides for payment of liquidated damages of one-hundred percent of wrongfully withheld commissions, unless employer can prove that he/she/it had a good faith basis for believing that its withholding of commissions complied with the law (NYSCEF Doc. 314, at 2). Raparthi counters that it is 'undisputed that [defendant] authorized [MARV] to withhold at least one of these commission payments, totaling $25,000 in writing (Ex. 12)" (NYSCEF Doc. 364, at 5).

The Instant Action

On September 12, 2016, Raparthi commenced the instant action against defendant, seeking to recover $312,000.00 (the amount of principal of a purported promissory note that supposedly became due on February 12, 2016), plus statutory interest from February 12, 2016, plus costs, disbursements, and attorney's fees (NYSCEF Doc. 2).

Defendant asserts that the purported promissory note is a "forgery," that defendant never signed it, that its only dealings were with Raparthi, and that MARV would not have any causes of action against him (NYSCEF Doc. 16, at 3-4).

Defendant claims that Raparthi's submissions to this Court and to the Financial Industry Regulatory Authority Office of Hearing Officers ("FINRA") "clearly show that Raparthi and MARV are alter egos and that Raparthi has used FINRA and MARV as vehicles in a vicious and improper effort to squeeze [defendant] in our personal business dealings" (NYSCEF Doc. 16, at 2).

Procedural History

Motion Seq. 001

On September 12, 2016, Raparthi moved (Motion Seq. 001), pursuant to CPLR 3213, for summary judgment in lieu of complaint, in the amount of $312,000.00, plus interest thereon, plus costs and attorney's fees, against defendant (NYSCEF Doc. 1 and 3). Defendant cross-moved for leave to interpose counterclaims (NYSCEF Doc. 21). This Court found that Raparthi had failed to establish his entitlement to summary judgment in lieu of complaint, as the purported promissory note did not qualify as an instrument for the payment of money only (NYSCEF Doc. 38, at 3). Defendant also raised an issue of fact, namely, whether the subject purported promissory note contained a forgery of defendant's signature (NYSCEF Doc. 38, at 4). Thus, on August 14, 2017, this Court denied co-plaintiff's motion and granted defendant's cross-motion (NYSCEF Doc. 38).

Motion Seq. 002, 003, and 004

On December 18, 2017, Raparthi moved (Motion Seq. 002), (1) pursuant to CPLR 7503(a) to compel arbitration of defendant's counterclaims, or (2) in the alternative, pursuant to CPLR 3211(a)(7), to dismiss defendant's counterclaims (NYSCEF Doc. 55). On January 26, 2018, defendant cross-moved, pursuant to CPLR 3211(a)(10), to dismiss the complaint for plaintiff's failure to join necessary parties Radhika Nagampalli ("Nagampalli"); Amit Govin ("Govin"); RBCA, Inc. ("RBCA"); and AARILR, LLC ("AARILR"), whom the purported promissory note defines as the "Lenders" (NYSCEF Doc. 65).

On February 7, 2018, plaintiff moved (Motion Seq. 003), pursuant to CPLR 3025(b), for leave to file an amended complaint to add Nagampalli; Govin; RBCA; and AARILR as parties to the instant action (NYSCEF Doc. 77 and 79).

On April 5, 2018, this Court [1] granted plaintiff's motion (Motion Seq. 002) to the extent of dismissing defendant's counter-claims; [2] denied defendant's cross-motion to dismiss; and [3] granted plaintiff's motion (Motion Seq. 003) to amend the complaint (NYSCEF Doc. 103). On June 10, 2020, this Court signed an Order to Show Cause (Motion Seq. 004, NYSCEF Doc. 127). On July 2, 2018, defendant cross-moved for an order [1] pursuant to CPLR 3025(b), granting defendant leave to amend his answer to interpose counter-claims; [2] pursuant to CPLR 2221, granting defendant leave to renew his prior cross-motion to dismiss the complaint on the ground that co-plaintiff RBCA "still lacks the capacity to use in New York, despite plaintiff Raparthi's prior sworn statement that RBCA, Inc. was remedying its lack of capacity to sue;" and, (3) upon said renewal and pursuant to CPLR 3211(a)(10), granting defendant's motion to dismiss the complaint (NYSCEF Doc. 129).

On October 30, 2018, this Court (1) dismissed defendant's first and second counterclaims against Raparthi on alter-ego/veil piercing allegations, for failure to state causes of action; and (2) sustained defendant's third counterclaim, for commissions payable by Raparthi under Labor Law §§ 190(a) and 190-1(a), and defendant's fourth counterclaim, for defamation (NYSCEF Doc. 159). On November 21, 2018, plaintiffs appealed said Decision and Order to the Appellate Division, First Department (NYSCEF Doc. 163).

Motion Seq. 005

On November 26, 2018, plaintiff moved (Motion Seq. 005), pursuant to CPLR 7503(a), for an order compelling arbitration of defendant's third counterclaim (NYSCEF Doc. 164). Defendant

then cross-moved, pursuant to CPLR 7503(c), to stay arbitration (NYSCEF Doc. 184). On January 22, 2019, this Court denied plaintiff's motion to compel arbitration and denied defendant's cross-motion solely as moot (NYSCEF Doc. 218). Plaintiffs appealed said Decision and Order (NYSCEF Doc. 221). On May 29, 2019, the Appellate Division reversed this Court's Decision and Order and granted plaintiffs' motion to dismiss defendant's counterclaim for defamation (NYSCEF Doc. 227). On June 17, 2019, plaintiffs e-filed a Note of Issue, demanding $559,000.00 (as FINRA declared in its subject decision) (NYSCEF Doc. 231).

Motion Seq. 006

On July 8, 2019, defendant moved (Motion Seq. 006) [1] pursuant to CPLR 3402 and 22 NYCRR § 202.21(e), to vacate plaintiffs' June 17, 2019 Note of Issue and Certificate of Readiness; [2] to remove the action from the trial calendar pending completion of necessary disclosure; [3] to compel plaintiffs to produce the remaining open discovery items to defendant pursuant to CPLR 3124; and [4] pursuant to CPLR 3025, to grant defendant leave to amend further his Amended Answer to the Amended Complaint with Counterclaims to add a tenth Affirmative Defense arising out of "the usurious interest rate of the purported loans alleged by plaintiffs in the Amended Complaint" (NYSCEF Doc. 232). In opposition, plaintiffs asserted that they had produced various documents and that they were unable to locate an original copy of the purported promissory note (NYSCEF Doc. 253).

On September 24, 2019, this Court granted defendant's motion (Motion Seq. 006) in part, stating as follows:

> Note of issue is hereby vacated. Plaintiff to provide defendant with itemized responses to the 15 outstanding demands in defendant's motion by October 11, 2019. Defendant to provide plaintiff with the following by October 31, 2019: (1) Chase bank records between October 2015 – March 2016 for the transactions at issue (money coming in from plaintiff and money going out from defendant); (2) communications between "PO & JG" regarding monies owed to them; and (3) stipulation of facts between [defendant] and FINRA.

(NYSCEF Doc. 285). In an October 8, 2019 Amended Decision and Order, this Court clarified that it granted defendant leave to file (by October 18, 2019) an amended answer to assert the defense of usury (NYSCEF Doc. 286).

Motion Seq. 007

On October 17, 2019, plaintiffs withdrew, without prejudice, their September 16, 2019 motion (NYSCEF Doc. 268) for summary judgment (NYSCEF Doc. 287).

The Instant Motion – Motion Seq. 008

Defendant's Requests

Defendant now moves [1] pursuant to CPLR 3215, for a default judgment on defendant's third counterclaim, as against Raparthi in the amount of $366,685.59 ($136,687.31 in compensatory damages, plus $136,687.31 in liquidated damages, plus $93,310.97 in prejudgment interest, which defendant tabulates in NYSCEF Doc. 314), plus attorney's fees, pursuant to New York Labor Law § 198(1-a); [2] pursuant to CPLR 3212, for summary judgment dismissing plaintiffs'

first through fourth causes of action in their entirety, as against all plaintiffs; [3] pursuant to CPLR 3212, for summary judgment on defendant's third counterclaim, as against Raparthi in the amount of $366,685.59 (calculated the same way as above); and [4] for a judgment granting defendant leave to file an application seeking an award of reasonable attorney's fees (NYSCEF Doc. 293).

Defendant asserts that Raparthi failed to reply to defendant's Second Amended Answer (e-filed on October 18, 2019) in a timely manner (by November 7, 2019) or at any subsequent time (NYSCEF Doc. 294, at 2). Defendant claims that Raparthi has failed to establish that he complied with New York Labor Law § 198(1-a) when he withheld defendant's commissions (NYSCEF Doc. 314, at 2). Additionally, defendant asserts that plaintiffs "have refused and/or failed" to produce an original copy of the subject purported promissory note "despite numerous Court orders" that required such production (NYSCEF Doc. 317, at 1).

Defendant argues that this Court must dismiss plaintiffs' first cause of action, for breach of contract, because the subject purported loans were usurious as they "imposed an interest rate well in excess of 25% per annum" (NYSCEF Doc. 317, at 11); second cause of action, for unjust enrichment, because plaintiffs cannot seek such relief pursuant to their own unclean hands in the alleged transaction (NYSCEF Doc. 317, at 13); third cause of action, for "money had and received," because the "grossly usurious interest rate of the alleged loan" precludes recovery (NYSCEF Doc. 317, at 13); and fourth cause of action, for fraud, because, "mere expressions of opinion of present or future expectations are not actionable as fraud in the inducement," Woodmere Academy v Steinberg, 41 NY2d 746, 751 (1977) (NYSCEF Doc. 317. at 14). Defendant also asserts that "to the extent that the alleged promise to try to obtain 'permanent personal seat licenses' is also the basis for plaintiffs' claim for breach of contract, the fraud claim cannot be maintained" (NYSCEF Doc. 317, at 14). Additionally, defendant asserts that his alleged agreement to place that money in escrow was contained only in the forged promissory note (NYSCEF Doc. 317).

As for defendant's third counterclaim, for recovery of unpaid commissions, defendant cites Labor Law § 193, which forbids an employer from making "any deduction of wages of an employee unless permitted by law or authorized by the employee for certain payments made for the employee's benefit" and which requires said employee's written consent for said wage deductions (NYSCEF Doc. 317, at 15). Defendant does not dispute his own status as Raparthi's employee and/or Raparthi's status as defendant's employer (NYSCEF Doc. 317 at 15-17). Defendant argues, "*if*, as Raparthi alleges, [defendant] had in fact authorized the retention of his commissions, they could have continued [in] this practice. The fact they did not leads to the inference that, in fact, [defendant] had not authorized Raparthi and/or [MARV] to retain his commissions to repay the debt allegedly owed to Raparthi" (NYSCEF Doc. 317, at 20).

Plaintiffs' Opposition – The Subject FINRA Decision and the U.S. Open Agreement

In opposition, plaintiffs characterize defendant's instant motion as "a masterwork of *chutzpah*" (NYSCEF Doc. 363, at 8).

Plaintiffs emphasize that on May 8, 2019, after a two-year investigation and hearing, FINRA found as follows:

> [Defendant] engaged in unethical conduct by converting $614,000.00 advanced to him for the purpose of purchasing and reselling sports tickets. [Defendant] also engaged in unethical conduct by causing at least 60 bounced checks and failed electronic payments over a three-year period. For his misconduct, [defendant] is barred from associating with any FINRA member in any capacity, ordered to pay restitution, and assessed costs.

(NYSCEF Doc. 370, at 1). FINRA found that defendant wired $25,000.00 that Raparthi advanced to defendant for the subject U.S. Open seat licenses to an individual named Peter, rather than placing said funds in an escrow account as the U.S. Open Agreement purportedly provided (NYSCEF Doc. 370, at 7). FINRA claimed that defendant "kept no meaningful records of his ticket businesses" (NYSCEF Doc. 370, at 11). In summary, FINRA held that defendant obtained the subject loans "through unethical misconduct;" "converted the loan proceeds;" "obtained loans through misrepresentations;" and "acted unethically by passing bad checks" (NYSCEF Doc. 370).

Additionally, plaintiffs claim that defendant told MARV "that it could withhold his commissions to offset some of the money that he had pilfered" (NYSCEF Doc. 363, at 9). They claim that "such wholesale withholding of wages, whether authorized or not, does not constitute a violation of the Labor Law" (emphasis added0. See Parella Weinberg Partners LLC v Kramer, 153 AD3d 443, 449-450 (1st Dept 2017) (NYSCEF Doc. 363, at 9).

Plaintiffs also assert that defendant inflates the sum of commissions withheld; plaintiffs claim that they withheld $82,775.00 and that, when the $25,000.00 that defendant apparently agreed to have withheld is deducted, the total commissions withheld amount to $57,775.00, rather than the $136,687.31 that defendant claims (NYSCEF Doc. 363, at 5).

Raparthi's Opposition Defendant's Request for a Default Judgment as against Raparthi

Raparthi challenges defendant's request for a default judgment as against Raparthi by claiming that on November 21, 2018 he replied to defendant's third counterclaim (NYSCEF Doc. 363, at 6). Raparthi acknowledges that on September 24, 2019 (after plaintiffs replied to the subject counterclaim), defendant submitted a Second Amended Answer to the Amended Complaint, as this Court had granted defendant leave to further amend his pleading solely "to assert the defense of usury." Raparthi thus claims that as the remainder of the Second Amended Answer to the Amended Complaint is identical to that to which plaintiffs answered, "no further response to the second Amended Answer was required" (NYSCEF Doc. 363, at 7). Raparthi further asserts that defendant's "Procedural History" "contains a reference or citation to nearly every pleading filed in this case with the sole exception of plaintiffs' Answer to the Third and Fourth Counterclaims" (NYSCEF Doc. 363, at 8).

Plaintiffs' Opposition Defendant's Requests for Summary Judgment

Plaintiffs emphasize that defendant alleges that Raparthi "withheld" commissions rather than "deducted" wages (NYSCEF Doc. 363, at 11). They assert that it is "undisputed" that defendant here seeks to hold Raparthi personally liable pursuant to the Labor Law for "withheld" commissions from February through July 2016 (NYSCEF Doc. 363, at 10). Thus, plaintiffs

assert that "binding First Department precedent" holds that the "wholesale withholding of payment is not a 'deduction' within the meaning of Labor Law § 193," Parella Weinberg Partners LLC v Kramer, 153 AD3d 443, 449-450 (1st Dept 2017) (NYSCEF Doc. 363, at 9). Plaintiffs further assert that two separate decisions recently reaffirmed this principle: Kolchins v Evolution Markets, Inc., 182 AD3d 408, at 1 (1st Dept, 2020); Stec v Passport Brands, Inc., 182 AD3d 434, 434 (1st Dept, 2020) (NYSCEF Doc. 363, at 10). Therefore, plaintiffs request that this Court dismiss defendant's claim for withheld commissions under Labor Law § 193 and/or under §§ 198 and 198(1-a), as "recovery under these sections is not permitted absent a viable substantive [Labor Law] violation," Kramer, at 16-17 (NYSCEF Doc. 363, at 11).

Plaintiffs assert that defendant has failed to sufficiently establish that he is an "employee" rather than an "independent contractor," entitled to protections pursuant to the Labor Law (NYSCEF Doc. 363, at 12). They thus request that this Court grant summary judgment in favor of Raparthi on defendant's third counterclaim (NYSCEF Doc. 363, at 13). Likewise, plaintiffs assert that if anyone employed defendant, it was MARV rather than Raparthi (NYSCEF Doc. 363, at 15).

In support of their entitlement to judgment, as a matter of law, on their cause of action for fraud, plaintiffs assert that FINRA already found that defendant "knowingly made misstatements of fact to induce plaintiffs to give [defendant] money" (NYSCEF Doc. 262, at 26).

Defendant's Reply

In reply, defendant asserts that plaintiffs characterize the loan as a "joint venture" rather than a loan "in an effort to evade the clearly usurious interest rate set forth in the purported 'Promissory Note'" (NYSCEF Doc. 421, at 1). Defendant cites Blue Wolf Capital Fund II, L.P. v Am. Stevedoring Inc., 105 AD3d 178, 184 (1st Dept 2013), for the proposition that "when a loan transaction is usurious, the associated note, loan agreement, and any collateral agreement are void and unenforceable as a matter of law" (NYSCEF Doc. 421, at 9). Defendant further argues that plaintiffs have failed to explain the absence of the original copy of the purported promissory note (NYSCEF Doc. 421, at 2). Defendant asserts as follows, "even if, for argument's sake, plaintiffs' submission is sufficient to raise material questions of fact about the precise amount of [defendant's] damages, [defendant] is still entitled to summary judgment on liability" (NYSCEF Doc. 421, at 3).

Defendant also asserts that plaintiffs rely on inadmissible materials in opposing defendant's motion. He quotes Paz v Singer Co., 151 AD2d 234, 235 (1st Dept 1989), "[t]he burdens of proving the existence, terms and validity of a contract rests on the party seeking to enforce it" (NYSCEF doc. 421, at 5). For example, defendant notes that plaintiffs repeatedly refer to the purported promissory note; and that plaintiffs' e-filed unsigned affidavits and bank statements contain hearsay (NYSCEF Doc. 321, at 7-8).

In further support of his request for a default judgment as against Raparthi, defendant cites Hoppenfeld v Hoppenfeld, 220 AD2d 302, 303 (1st Dept 1995), which held that "an amended pleading supersedes the original one and requires the filing of a new responsive pleading" (NYSCEF Doc. 421, at 4).

Defendant also asserts that none of the plaintiffs was a party to the subject FINRA proceeding; although defendant acknowledges that Raparthi, allegedly on MARV's behalf, filed the U-5 that precipitated the subject FINRA ethics investigation (NYSCEF Doc. 421, at 25). Additionally. defendant asserts that the FINRA hearing body "employed a different standard of proof and expressly declined to rule on the legal issues in this litigation" (NYSCEF Doc. 421, at 2). He claims that the subject FINRA decision does not constitute res judicata and that it held defendant to a higher standard than is applicable to the instant action (NYSCEF Doc. 421, at 25-26). Defendant asserts that he is not collaterally estopped from asserting his defenses (NYSCEF Doc. 421, at 27).

Defendant's Correspondence to this Court

On July 14, 2020, defendant submitted correspondence to this Court, asserting that late in the evening of July 13, 2020, plaintiffs filed reply papers that contained, inter alia, "a purported Reply to Mr. Clarke's Third Counterclaim, without leave of court" (NYSCEF Doc. 422) almost nine months after defendant filed his Second Amended Answer to Amended Complaint with Counterclaims. Defendant claims, "we presume that plaintiffs submitted [said purported reply among other documents] in an effort to overcome their failure, in their original motion submission, to demonstrate the absence of material issues of fact via trial-admissible evidence." Additionally, defendant asserts that "plaintiffs' failure to set forth their prima facie entitlement to summary judgment cannot be cured by additional factual submissions made for the first time in reply. See Ruland v 130 FG, LLC, 181 AD3d 441 (1st Dept 2020)." Thus, defendant filed a Notice of Rejection (NYSCEF Doc. 441) of said purported reply as untimely and requests that this Court disregard the documents that plaintiffs e-filed on July 13, 2020 "and that it also disregard any legal argument of plaintiff [sic] made in reliance on these documents." (NYSCEF Doc. 442.)

Discussion

Defendant's Request for a Default Judgment as against Raparthi

This request is denied as Raparthi has e-filed an answer to the counterclaim in defendant's Second Amended Answer, which this Court hereby deems timely pursuant to CPLR 2001.

Defendant's Request for Summary Judgment against All Plaintiffs

To prevail on summary judgment, the moving party must tender sufficient evidence to demonstrate the absence of any material issue of fact, and entitlement to judgment in its favor as a matter of law. See Alvarez v Prospect Hosp., 68 NY2d 320, 324 (1986); Ayotte v Gervasio, 81 NY2d 1062 (1993). Once the movant's initial burden has been met, the burden then shifts to the party opposing the motion to submit evidentiary proof sufficient to create material issues of fact requiring a trial; mere conclusions and unsubstantiated allegations are insufficient. See Zuckerman v City of New York, 49 NY2d 557, 562 (1980); see generally American Sav. Bank v Imperato, 159 AD2d 444, 444 (1st Dept 1990) ("The presentation of a shadowy semblance of an issue is insufficient to defeat summary judgment").

Plaintiffs' moving papers raise an issue of fact, at a minimum, whether or not the U.S. Open Agreement contained a usurious interest rate (defendant claims yes, and plaintiffs claim no); whether the purported promissory note contains a forged signature; and whether or not defendant

inflated the sum of "withheld" commissions. Therefore, plaintiffs have defeated defendant's request for summary judgment on plaintiffs' first through fourth causes of action.

Defendant's Request for Summary Judgment as against Raparthi

Defendant prematurely submitted its request for summary judgment on defendant's third counterclaim, as against Raparthi, who had not yet answered at the time defendant moved for this relief. In any event, this Court would deny defendant's request for summary judgment on defendant's third counterclaim as against Raparthi on the merits as Raparthi has created an issue of fact as to whether MARV has "withheld" rather than "deducted" defendant's commissions/wages.

Defendant's Request for Leave to File an Application for Attorney's Fees

Defendant's request for leave to apply for attorney's fees is denied without prejudice solely as premature.

This Court has considered defendant's remaining arguments and finds them unavailing and/or non-dispositive.

Plaintiffs' request to dismiss defendant's claim for withheld commissions is denied without prejudice.

Conclusion

Thus, for the reasons stated herein, defendant Michael Joseph Clarke's requests (1) for a default judgment on defendant's third counterclaim as against co-plaintiff Virupaksha Raparthi is hereby denied; (2) for summary judgment dismissing the first through fourth causes of action of all plaintiffs, Virupaksha Raparthi; Radhika Nagampalli; Amit Govin; RBCA, Inc.; and AARILR, LLC, is hereby denied; (3) for summary judgment on defendant's third counterclaim as against co-plaintiff Virupaksha Raparthi is hereby denied; and (4) for leave to file an application for attorney's fees is hereby denied without prejudice.

9/2/2020
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE