

Summary Judgment Granted to Revenue Purchase Funder in Hotly Contested Litigation

April 14, 2025

On March 7, 2025, Kings County Commercial Division Justice Reginald A. Boddie granted summary judgment to Carter Ledyard client, FinTap, a merchant cash advance (MCA)/revenue purchase agreement funder, against its merchant customer and its owner and dismissing the merchant's criminal usury, fraud and unconscionability defenses and counterclaim for a reconciliation of alleged overpayment. On April 11, 2025, judgment was entered granting FinTap an award of the balance of undelivered receivables under the merchant agreement, as well as the full value of Carter Ledyard's attorneys' fees and costs incurred in the action.

While MCA/usury disputes have become increasingly common in New York courts, most cases are resolved on papers with limited discovery. Here, given the defendants' engagement of sophisticated defense counsel and their presentation of sharply disputed factual issues in their answer and counterclaim at the outset of the case, more extensive discovery was required. Therefore, the parties engaged in early depositions of each of the sides' representatives. Through its answer and deposition, the defense attempted to paint a false narrative about the FinTap's business practices.

Following depositions, Carter Ledyard filed its motion for summary judgment laying bare FinTap's evidence concerning the lawfulness of the transaction, FinTap's above board business practices, and multiple merchant breaches of the MCA agreement. Carter Ledyard also established that the undisputed facts required dismissal of the defendants' assertions of the funder's wrongdoing or that a reconciliation payment was owed to the merchant. The merchant vigorously opposed with both well-worn and novel legal arguments about why the court should recharacterize the MCA agreement as a loan rather than a purchase of receivables.

Justice Boddie agreed with Carter Ledyard's arguments and held that FinTap established the merchant's breach and presented evidence refuting all the affirmative defenses, including whether the MCA agreement may have been a criminally usurious loan. It was not. The court further held that defendants themselves admitted the breach, which precluded their right to seek a reconciliation for alleged overpayment.

Carter Ledyard partner **Jacob H. Nemon** represented FinTap in the litigation.

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