

Court Dismisses Usury and Consumer Fraud Claims Against Carter Ledyard's Merchant Cash Advance Client, Finding Agreement Lawful

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On October 19, 2021, Queens County Supreme Court Justice Robert I. Caloras issued a decision dismissing seven out of ten claims asserted against Carter Ledyard's client, a merchant cash advance (MCA) funder, including all usury and consumer fraud claims. In an MCA transaction, the funder purchases a business's future receivables for a discounted price and receives daily or weekly remittances of the receivables from the merchant (read more [here](#)).

The MCA funder's customer sued to vacate a judgment entered against the customer after the customer blocked the remittances and ceased all communications with the funder. The customer's lawsuit alleged that the MCA agreement was a loan that violated New York's criminal and civil usury laws and therefore constituted a consumer fraud under New York's General Business Law section 349. It also claimed, without evidence, that the funder breached the MCA agreement by not reconciling the amount of the merchant's daily remittances when supposedly requested. The customer asked the court to enjoin the funder's enforcement of the judgement.

The court dismissed all claims against the MCA funder based on usury because "the evidence has sufficiently demonstrated that the agreement was not a loan, [and] it is not subject [] to New York's usury statutes because it is well established that there can be no usury in the absence of a loan." It also dismissed the consumer fraud claim, finding that a provision of the MCA agreement requiring the funding amount be used solely for "business operations" and prohibiting the customer from using the funds for "consumer, personal, family or household purposes" meant that the funder had not engaged in "consumer-oriented" conduct regulated under General Business Law section 349.

The court ruled that customer was not entitled to a preliminary injunction preventing the funder from enforcing its judgment because the customer to show it was likely to succeed on the merits of its claims. The court did not dismiss the breach of contract claim at this time because the court believed the customer's allegation that it requested a reconciliation was procedurally sufficient to survive at the motion to dismiss stage when the court generally must presume the allegations in the complaint are true (despite the claim being factually disputed by the funder).

Carter Ledyard attorneys Jacob H. Nemon and Jeffrey S. Boxer represent the funder in the litigation.

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