EXHIBIT E

Fill in this information to identify the case:

Debtor 1 Panthera Enterprises, LLC

Debtor 2
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of West Virginia

Case number 2:19-bk-00787

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. Who is the current creditor?

Azadian Group LLC
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor ______

2. Has this claim been acquired from someone else?

☑ No
☐ Yes. From whom? ______

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Name: Azadian Group LLC	Name:
Number Street: 600 Madison Ave 18th Fl	Number Street:
City: New York State: NY ZIP Code: 10022	City State ZIP Code
Contact phone 646-849-4205	Contact phone
Contact email raffi@azadiangroup.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. Does this claim amend one already filed?

☑ No
☐ Yes. Claim number on court claims registry (if known) ______ Filed on ______ MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☑ No
☐ Yes. Who made the earlier filing? ______

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**

☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

7. **How much is the claim?** $ 86,829.00. **Does this amount include interest or other charges?**

☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Judgment entered in the Superior Court of the State of Delaware
(Stemming from breach of Settlement Agreement)

9. **Is all or part of the claim secured?**

☐ No
☑ Yes. The claim is secured by a lien on property.

Nature of property:

☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☑ Other. Describe: All assets of debtor

Basis for perfection: UCC-1 Financing Statement (as amended)

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $ 86,829.00

Amount of the claim that is secured: $ 86,829.00

Amount of the claim that is unsecured: $ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $ 86,829.00

Annual Interest Rate (when case was filed) 6.75 %

☐ Fixed
☑ Variable

10. **Is this claim based on a lease?**

☑ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. $ ________

11. **Is this claim subject to a right of setoff?**

☑ No
☐ Yes. Identify the property: ________

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No
☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$________
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$________
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$________
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$________
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$________
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$________

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10/12/2020
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Raffi Azadian
First name / Middle name / Last name

Title: CEO

Company: Azadian Group LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 600 Madison Ave 18th Fl
Number Street
New York (City) NY (State) 10022 (ZIP Code)

Contact phone: 646-849-4205
Email: raffi@azadiangroup.com

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE ("**Settlement Agreement**") is entered into as of this 20th day of December, 2018 by and between Azadian Group LLC ("**AG**"), TenX Group LLC ("**TenX**"), James V. Punelli ("**Punelli**") and Raymond C. Jones ("**Jones**") (AG, TenX, Punelli, and Jones are collectively referred to as the "**Parties**" and, at times, individually referred to as a "**Party**").

RECITALS

WHEREAS, on August 18, 2017 and October 24, 2017 the Parties entered into three *Merchant Receivables Purchase and Security Agreements* (the "**Agreements**");

WHEREAS, under the terms of the Agreements, AG agreed to purchase TenX's Future Receivables (as defined under the Agreements);

WHEREAS, Punelli and Jones guaranteed TenX's obligations under the Agreements in their individual capacity;

WHEREAS, Punelli and Jones are Managing Members of TenX;

WHEREAS, AG fully satisfied its obligations under the Agreements;

WHEREAS, under the terms of the Agreements, TenX had a duty to transfer $673,188.00 in Purchased Receivables (as defined under the Agreements) to AG;

WHEREAS, TenX, Punelli and Jones have failed to transfer at least $126,829.00 of AG's property, the Purchased Receivables (as defined under the Agreements), and TenX, Punelli and Jones are therefore in default of the Agreements;

WHEREAS, due to their default of the Agreements, TenX, Punelli and Jones are liable to AG for at least $25,000.00 in default fees as well as interest and all reasonable attorneys' fees and costs associated with collecting the defaulted amount;

WHEREAS, to avoid the expense and inconvenience of legal proceedings, and to achieve finality, the Parties desire to settle, extinguish and release all claims and/or disputes that they have, may have, or could have had regarding the Agreements; and

WHEREAS, the Parties agree that payment of the Settlement Amount (as defined below) does not render TenX, Punelli and Jones insolvent, the Settlement Amount constitutes return to AG of property rightfully belonging to AG pursuant to the Agreements and the Purchase Price (as defined in the Agreements) paid thereunder, and that the Settlement Amount provides for new value to TenX, Punelli and Jones, including, but not limited to, the provision of new value in the form of credit.

NOW, THEREFORE, in consideration of the promises, covenants and undertakings contained herein, the Parties, intending to be legally bound, hereby agree as follows:

PROVISIONS

1. Conditions to Effectiveness. Notwithstanding anything to the contrary herein, this Settlement Agreement shall not be effective until the date that this Settlement Agreement has been executed by the Parties (the "**Effective Date**"). The Parties' obligations with respect to this Settlement Agreement are expressly subject to the occurrence of the Effective Date.

2. Payment by TenX, Punelli and Jones to AG. TenX, Punelli and Jones shall cause to be paid to AG the total amount of One Hundred Twenty Six Thousand Eight Hundred Twenty Nine Dollars and Zero Cents ($126,829.00) (the "**Settlement Amount**"), in the following manner:

a. Forty Thousand Dollars ($40,000.00) on or before December 24, 2018, by wire transfer of funds to AG's designated bank account without setoff or recoupment (the "**First Payment**");
b. Eighty Six Thousand Eight Hundred Twenty Nine Dollars ($86,829.00) or or before January 30, 2019 by wire transfer of funds to AG's designated bank account without setoff or recoupment (the "**Second Payment**");

3. Events of Default/Failure to Make a Payment.

a. The Settlement Amount, less any payments made under Paragraph 2, plus default fees of $25,000.00 plus interest at the rate of ten percent (10) percent per week calculated beginning on the Effective Date, shall become immediately due and payable at the option of AG upon the happening of any one or more of the following events of default (each an "**Event of Default**"):

i. the nonpayment by TenX, Punelli and/or Jones to AG when due of the First Payment and/or the **Second Payment** as set forth in Paragraph 2;

ii. violation of the waiver and prohibitions set forth in Paragraph 9; or

iii. if without the further possibility of appeal or review:

1. TenX, Punelli and/or Jones and/or any entity of which TenX, Punelli and/or Jones is a majority owner, member, majority shareholder or officer is adjudicated as bankrupt or insolvent;

2. a receiver is appointed for all or substantially all of any of TenX's, Punelli's and/or Jones's assets as a result of TenX, Punelli and/or Jones insolvency;

3. a trustee is appointed for TenX, Punelli and/or Jones and/or any entity of which TenX, Punelli and/or Jones is a majority owner, member, majority shareholder or officer after a petition has been filed for TenX's reorganization and/or the reorganization of any entity of which TenX, Punelli and/or Jones is a majority owner, member, majority

shareholder or officer, under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), or any future law of the United States of America having the same general purpose; or

4. TenX, Punelli and/or Jones shall make an assignment for the benefit of TenX's, Punelli's and/or Jones' creditors.

4. Attorneys' Fees. If any action, matter or proceeding is brought for the enforcement of this Settlement Agreement, and if AG shall recover judgment in any sum, AG shall also recover reasonable attorneys' fees and expenses, which said attorneys' fees and expenses shall be entered, allowed and paid as part of the decree of judgment in said action, suit or proceeding.

5. Warranty. As an inducement to enter into this Settlement Agreement, TenX, Punelli and Jones represent that, as of the time of execution of this Settlement Agreement, TenX, Punelli and Jones have no plans to file a petition for bankruptcy protection and have no knowledge that any of its creditors are seeking to require TenX, Punelli and Jones to pursue involuntary bankruptcy protection. The Parties acknowledge that AG has reasonably relied upon the foregoing representations by TenX, Punelli and Jones in deciding to enter into this Settlement Agreement and that such representations were a material inducement in AG entering into this Settlement Agreement. AG further expressly reserves the right to bring an action contesting the dischargeability of TenX's and/or Punelli's and/or Jones' obligations to AG should TenX and/or Punelli and/or Jones seek voluntary or involuntary bankruptcy protection during the pendency of the Payment and, to the extent permitted by law, TenX, Punelli and Jones agree not to oppose any such action.

6. Acceptance of Service. Punelli and Jones agree to accept service of the Complaint and all supporting documents filed in any action by AG on behalf of themselves and TenX. TenX, Punelli and Jones waive any and all available defenses with regard to service of process. Should TenX, Punelli and/or Jones fail to make the Payment as set forth in Paragraph 2, AG may exercise all rights and remedies available to it to obtain a judgment against TenX, Punelli and/or Jones for the full amount owed to AG under the Agreements.

7. Defenses Waived. TenX, Punelli and Jones hereby waive any defenses that may be available to them at law or equity as to any action filed against them by AG. TenX, Punelli and Jones agree not to contest, dispute or otherwise oppose or seek dismissal of any such action.

8. Mutual Releases and Covenants Not to Sue.

a. In consideration for the promises made by TenX, Punelli and Jones in the Settlement Agreement, AG, on behalf of itself, and all of its current or former subsidiaries, parents, partners, partnerships, divisions, affiliates, insurers, members, dealers, officers, directors, managers, employees, shareholders, assigns, attorneys, agents, and successors in interest (collectively, the "**AG Releasors**"), hereby release and forever discharge TenX, Punelli and Jones, and all of their current or former subsidiaries, parents, partners, partnerships, divisions, affiliates, insurers, members, dealers, officers, directors, managers, employees, shareholders, assigns, attorneys, agents, and successors in interest, and Dreyer from any and all claims, defenses, demands, actions, allegations, causes of action, debts, dues, accounts, agreements, judgments, settlements, obligations, damages (whether incidental, consequential, liquidated, ensuing or resulting), losses, costs, attorneys' fees and expenses of every kind and nature whatsoever, known or unknown, fixed or contingent, alleged to have arisen, or related to occurrences, under the Agreements. The Parties expressly agree and understand that the terms of this release are not meant to release or limit any right of any AG Releasor to pursue claims, if any, against TenX, Punelli and Jones other than those alleged to have arisen, or related to occurrences, under the Agreements prior to the Effective Date. If any claim is ever made upon AG for the repayment or return of any part of the Settlement Amount, and AG repays or returns all or part of said Settlement Amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over AG or (b) any settlement or compromise of any such claim between AG and such claimant, then in such event the release given by AG to TenX, Punelli and Jones herein shall be automatically null and void and the Parties shall be returned to their pre-Settlement Agreements positions, except that AG may retain any portion of the Settlement Amount not repaid or returned, crediting same against the amount claimed by AG. As of December 20, 2018, the total amount claimed by AG against TenX, Punelli and Jones arising under the Agreements was $126,829.00, which includes the amount of Future Receivables (as defined in the Agreements) owed under the Agreements, related fees pursuant to the Agreements and attorneys' fees and related costs as allowed under the Agreements.

b. In consideration for the promises made by AG in the Settlement Agreement, Punelli and Jones, on behalf of themselves, and TenX, on behalf of itself, and all of their current or former subsidiaries, parents, partners, partnerships, divisions, affiliates, insurers, members, dealers, officers, directors, managers, employees, shareholders, assigns, attorneys, agents, and successors in interest, including any debtor in possession, trustee, receiver, or examiner, whether appointed under state or federal law (collectively, the "**TenX Releasors**"), hereby release and forever discharge AG, as well as each of its subsidiaries, parents, partners, partnerships, divisions, affiliates, insurers, members, dealers, officers, directors, managers, employees, shareholders, assigns, attorneys, agents, and successors in interest, from any and all claims, defenses, demands, actions, allegations, causes of action, debts, dues, accounts, agreements, judgments, settlements, obligations, damages (whether incidental, consequential, liquidated, ensuing or resulting), losses, costs, attorneys' fees and expenses of every kind and nature whatsoever, known or unknown, fixed or contingent, alleged to have arisen, or related to occurrences, under the Agreements. In addition, the TenX Releasors and Punelli and Jones agree to release any action seeking to avoid or clawback the Payment, including but not limited to any future action from TenX and/or Punelli and/or Jones, their successors and assigns, any future bankruptcy representative of TenX's and/or Punelli's and/or Jones', bankruptcy estate or the equivalent under state law, including but not limited to any avoidance actions pursuant to chapter 5 of the Bankruptcy Code, other applicable federal non-bankruptcy law or similar provisions under state law. The Parties expressly agree and understand that the terms of this release are not meant to release or limit any right of the TenX Releasors and/or Punelli and/or Jones to pursue claims, if any, against AG other than those alleged to have arisen, or related to occurrences, under the Agreements prior to the Effective Date. Further, regardless of any assertion to the contrary related to this provision, TenX, Punelli and Jones, hereby fully and forever waive any and all known and existing claims, demands, controversies, actions, causes of action, debts, liabilities, rights, contracts, damages (direct and consequential), interest, finance charges, costs (including attorneys' fees, court and litigation costs), expenses, indemnities, obligations, and losses of every kind or nature whatsoever, directly or indirectly related to, arising from or which could be inferred or implied by or included in connection with the payment of legal fees, which amounts are incorporated into the Settlement Amount.

9. Governing Law. This Settlement Agreement shall be governed exclusively by the laws of the State of Delaware, without regard to its choice-of-law principles.

10. Choice of Forum. The Parties consent to bring any claim or suit arising under the Settlement Agreement exclusively in a court of competent jurisdiction in the State of Delaware.

11. No Setoff or Recoupment. For the avoidance of doubt, no setoff related or unrelated to any alleged claim or occurrence arising under the Agreement can be used by TenX and/or Punelli and/or Jones, for setoff or recoupment of any amounts owed by TenX and/or Punelli and/or Jones to AG under the Settlement Agreement or of any of the Payment or portions of the Payment. Further, setoff and recoupment do not apply in any dispute between the Parties under this Settlement Agreement, including, but not limited to, the payments set forth in Paragraph 2.

12. Compromise. It is understood and agreed by the Parties that this Settlement Agreement is a compromise settlement of disputed claims and potential disputed claims and counterclaims. This Settlement Agreement is solely the result of a good faith compromise and settlement between the Parties. Nothing contained herein is or is to be construed as an admission by any of the Parties of liability, wrongdoing, or responsibility, and the Parties deny any such liability or wrongdoing and continue to disclaim such responsibility.

13. Confidentiality. Except as may be necessary to enforce this Settlement Agreement, the Parties, including each party's respective officers, directors, representatives and attorneys, but specifically excluding accountants, auditors, insurers, reinsurers, officers, directors and employees of AG and TenX, agree and warrant that they shall keep confidential the terms and amount of this Settlement Agreement, and agree not to disclose to any other party, person or entity any of the terms of this Settlement Agreement provided for herein, except (i) pursuant to the written consent of the Parties, (ii) to support a defense based on any theory of claim preclusion or a claim for breach of Settlement Agreement, (iii) as determined by any of the Parties to be necessary in any action involving AG, TenX and/or Punelli and/or Jones,, or (iv) unless required to do so by applicable law or by order of court or to their auditors, tax advisors or as may be required reporting for AG, TenX and/or Punelli and/or Jones, in order to procure future work, bonding or the like. In the event that this Settlement Agreement is subject to requested disclosure by subpoena or other legal process, the party to whom such request is made shall promptly notify the Parties. The Parties agree to take no action which is intended, or would reasonably be expected, to harm any other Party or their reputations, or which is intended, or would reasonably be expected, to lead to unwanted or unfavorable publicity for any other Party. The Parties agree to the following statement governing what the Parties may saw regarding the Settlement Agreement and provisions contained herein: "the parties have reached an amicable resolution."

14. Acknowledgement by Parties. The Parties acknowledge that they enter into this Settlement Agreement with the advice and consent of counsel and that they do so

knowingly and voluntarily, with the complete understanding of the terms and conditions of this Settlement Agreement. The Parties agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement. To the extent that a Party is not represented by counsel with respect to the Settlement Agreement, such Party hereby waives any claim related to the Settlement Agreement due to the fact that they are not represented by counsel with respect thereto.

15. Construction of Settlement Agreement. This Settlement Agreement is the product of negotiations and preparation by and among the Parties hereto and their respective attorneys. The Parties expressly acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.

16. Binding Effect. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, settlors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associations or corporations connected with them, including, without limitation, their insurers, sureties, and attorneys. This Settlement Agreement will also support a defense based on principles of collateral estoppel, release, good faith settlement or any other applicable theory of claim preclusion or issue preclusion with regard to claims arising under the Agreement.

17. Severability. If any provision or any part of any provision of this Settlement Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Settlement Agreement shall not be affected thereby and shall remain valid and fully enforceable, including, but not limited to, Payment (Paragraph 2) and Defenses Waived (Paragraph 7).

18. Counterparts. This Settlement Agreement may be executed in counterparts, delivered by electronic transmission, and all so executed shall constitute an agreement which shall be binding upon all Parties hereto, notwithstanding that the signatures of all Parties' designated representatives may not appear on the same page and/or may be transmitted by electronic or facsimile means.

19. Notices. Any notice, claim, refusal, demand, instructions, process or communication required or permitted hereunder ("**Notices**") shall be given and shall be deemed to have been properly given and served, if mailed by Federal Express, addressed as follows:

Any Notices to AG:
Azadian Group LLC
c/o Raffi Azadian
600 Madison Avenue; 18th Floor
New York, NY 10022

Any Notices to TenX:
215 Depot Court SE
Leesburg, VA 20175

Any Notices to Punelli:
215 Depot Court SE
Leesburg, VA 20175

Any Notices to Jones:
215 Depot Court SE
Leesburg, VA 20175

20. Entire Agreement. This Settlement Agreement, including the Recitals, constitutes the entire understanding between and among the Parties with regard to the claims released referenced herein and supersedes all previous agreements or understandings with respect to the claims released referenced herein. There are no representations, warranties, agreements, arrangements or undertakings, oral or written, between the Parties relating to the subject matter of this Settlement Agreement that are not fully expressed herein. This Settlement Agreement cannot be modified or amended unless said modification or amendment is written and signed by all Parties.

21. Paragraph Headings. Paragraph headings in this Settlement Agreement are for convenience of reference only and shall neither constitute a part of this Settlement Agreement nor affect its interpretation.

22. Service of Process. Each of the Parties irrevocably consents to service of process by Federal Express, to the address at which such Party is to receive Notice in accordance with Paragraph 19 of this Settlement Agreement.

23. No Third-Party Beneficiaries. Except for the Parties that are the subject of the releases set forth herein, nothing in this Settlement Agreement shall be construed to give to any person or entity other than the Parties any legal or equitable right, remedy, interest or claim under or in respect to this Settlement Agreement.

IN WITNESS WHEREOF, intending to be legally bound hereby, the Parties have executed this Settlement Agreement on the date set forth below.

______________________________ Date: Dec. 20, 2018

On Behalf of Azadian Group, LLC
By: Raffi Azadian

On Behalf of TenX Group, LLC
By: James V. Punelli

Date: Dec. 20, 2018

James V. Punelli, Individually

Date: Dec. 20, 2018

Raymond C. Jones, Individually

Date: Dec. 20, 2018

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

AZADIAN GROUP, LLC, a Delaware limited liability company, Plaintiff, v. TENX GROUP, LLC, a Delaware limited liability company, JAMES V. PUNELLI, individually, and RAYMOND C. JONES, individually, Defendants.	)	C.A. No. N19C-04-235 CLS

Date Submitted: September 24, 2019
Date Decided: November 13, 2019

Upon Plaintiff Azadian Group, LLC's Motion for Summary Judgment
Granted.

Samuel L. Moultrie, Esquire, Greenberg Traurig, LLP, Wilmington, Delaware, Attorney for Plaintiff.

Steven T. Margolin, Esquire, Greenberg Traurig, LLP, Wilmington, Delaware, Attorney for Plaintiff.

Rolando Diaz, Esquire, Dunlap, Bennett & Ludwig, PLLC, Wilmington, Delaware, Attorney for Defendants.

Tracy L. Pearson, Esquire, Dunlap, Bennett & Ludwig, PLLC, Wilmington, Delaware, Attorney for Defendants.

SCOTT, J.

On September 20, 2019, Defendant TenX Group, LLC—now known as Panthera Enterprises, LLC—filed a Suggestion of Bankruptcy with this Court. Accordingly, the proceedings against Panthera Enterprises, LLC/TenX Group, LLC have been STAYED.

Before the Court is Plaintiff Azadian Group, LLC's ("Plaintiff") Motion for Summary Judgment. For the following reasons, Plaintiff's motion is GRANTED.

Background

On April 25, 2019, Plaintiff filed this action against Defendants James V. Punnelli and Raymond C. Jones ("Defendants"), alleging breach of contract. On December 20, 2018, the parties entered into a Settlement Agreement. Plaintiff alleges Defendants failed to pay $86,829.00 on or before January 30, 2019, as required by the Settlement Agreement.

Parties' Assertions

On July 23, 2019, Plaintiff filed this motion for summary judgment. Plaintiff argues that summary judgment is proper on all of Defendants' affirmative defenses because Defendants contractually waived their right to defend against any action Plaintiff would file to enforce the Settlement Agreement. Plaintiff points out that Defendants admitted to breaching the terms of the Settlement Agreement. Plaintiff argues that summary judgment in its favor is appropriate because the terms of the Settlement Agreement are unambiguous.

On September 5, 2019, Defendants filed their response. Defendants contend that Plaintiff relies in error on *Great Lakes Chemical Corp. v. Pharmacia Corp.* for the proposition that Defendants waived all defenses. *Pharmacia Corp.*, Defendants argue, concerned express disclaimers in a purchase agreement that prohibited claims for fraud. Defendants further argue that Plaintiff waived its right to assert the waiver-of-defenses clause because Plaintiff served process on Defendants via Federal Express after Defendants moved to dismiss for insufficient service of process.[1] Finally, Defendants argue that the Settlement Agreement is unenforceable based on the doctrine of unconscionability.

Plaintiff filed a letter with the Court on September 16, 2019 making additional arguments in support of its position. Because this Court never gave Plaintiff formal permission to file a reply brief, the Court has not taken into account the arguments Plaintiff raised in the letter of September 16.

Standard of Review

Under Superior Court Rule of Civil Procedure 56, summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[2] Summary judgment will not be granted if material facts are in dispute or if "it seems desirable to inquire more thoroughly into

[1] On November 4, 2019, the Court denied Defendants' motion to dismiss.
[2] Super. Ct. Civ. R. 56(c).

the facts to clarify the application of the law to the circumstances."[3] This Court considers all of the facts in a light most favorable to the non-moving party.[4]

Discussion

A. Defendants' Breach of the Settlement Agreement

Plaintiff sued Defendants for one count: Breach of Agreement.[5] Under Delaware law, the elements of a breach of contract claim are: 1) a contractual obligation; 2) a breach of that obligation; and 3) resulting damages.[6] Plaintiff and Defendants entered into a Settlement Agreement. Pursuant to the terms of this Settlement Agreement, Defendants were obligated to pay Plaintiff $86,829.00 on or before January 30, 2019.[7] Defendants did not make this payment.[8] Defendants' failure to pay constitutes a breach of the Settlement Agreement, as expressly laid out in Paragraph 3(a)(i) of the Agreement.[9]

Plaintiff suffered damages as a result of Defendants' breach. The Settlement Agreement superseded two previous agreements between the parties where Plaintiff

---

[3] *Infante v. Horizon Servs., Inc.*, 2019 WL 3992101, at *1 (Del. Super. Aug. 23, 2019); *Triumph Mortg. Corp. v. Glasgow Citgo, Inc.*, 2018 WL 1935968, at *3 (Del. Super. Apr. 19, 2018).
[4] *Infante*, 2019 WL 3992101, at *1; *Triumph Mortg. Corp.*, 2018 WL 1935968, at *3.
[5] Compl. 4–5.
[6] *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del. Super. 2005).
[7] Compl. Ex. A, ¶ 2(b).
[8] Answer ¶ 15.
[9] Compl. Ex. A, ¶ 3(a)(i).

agreed to buy future receivables from Defendants. Plaintiff paid Defendants for these receivables. Plaintiff did not receive $126,829.00 of these receivables.[10] In order to try to "avoid the expense and inconvenience of legal proceedings," Plaintiff and Defendants entered into the Settlement Agreement.[11] In this Settlement Agreement, Defendants agreed to pay Plaintiff $126,829.00 for the receivables that it never transferred to Plaintiff.[12] Plaintiff has been damaged by Defendants breach; Plaintiff has paid for items which it did not receive from Defendants and has not been repaid for those items.

There is no genuine dispute of material fact regarding Plaintiff's breach of contract claim. Defendants admit that they entered into the Settlement Agreement with Plaintiff and admit that they did not pay $86,829.00 on or before January 30, 2019.[13] It is clear from the terms of the Settlement Agreement that Defendants' failure to make this payment constitutes a breach of the Agreement.

At issue is whether or not Plaintiff is entitled to judgment as a matter of law.

B. Unconscionability of the Settlement Agreement

A contract is unconscionable when "no man in his senses and not under delusion would make [it] on the one hand, and no honest or fair man would accept

[10] Compl. Ex. A.
[11] Compl. Ex. A.
[12] Compl. Ex. A, ¶ 2.
[13] Answer ¶¶ 12, 15.

[it], on the other."[14] Unconscionability is an affirmative defense which must be raised in an answer to a complaint.[15] Defendants did not list unconscionability as one of their affirmative defenses in their Answer. Accordingly, Defendants are precluded from raising the doctrine of unconscionability now.

C. Plaintiff's Waiver of the Waiver-of-Defenses Clause

Although waiver is an equitable defense, it "has been, for some time, used at law as a valid defense to contract suits."[16] Waiver is the voluntary and intentional relinquishment of a known right. The standards for proving waiver are "quite exacting," and the facts relied upon to prove waiver must be unequivocal.[17] Three elements must be satisfied before this Court will conclude a party has waived a contractual provision: 1) there is a requirement or condition to be waived; 2) the waiving party knows of the requirement or condition; and 3) the waiving party intended to waive that requirement or condition.[18]

---

[14] *Tulowitzki v. Atl. Richfield Co.*, 396 A.2d 956, 960 (Del. 1978).
[15] Super. Ct. Civ. R. 8(c); *Jeffery v. Seven Seventeen Corp.*, 461 A.2d 1009, 1011 (Del. 1983); *BAC Home Loans Servicing v. Brooks*, 2012 WL 1405703, at *3 n.10 (Del. Super. Feb. 3, 2012); *see Cannelongo v. Fidelity America Small Bus. Inv. Co.*, 540 A.2d 435, 440 (Del. 1988) ("The failure to timely assert an affirmative defense constitutes waiver of the right to do so.").
[16] *USH Ventures v. Global Telesystems Grp., Inc.*, 796 A.2d 7, 19 (Del. Super. 2000).
[17] *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 444 (Del. 2005).
[18] *Id.*

In the instant case, there is a requirement or condition to be waived—the waiver-of-defenses clause—and Plaintiff had knowledge of this requirement or condition. The waiver-of-defenses clause is found in Paragraph 7 of the Settlement Agreement. In Paragraph 7, Defendants agreed to "waive any defenses that may be available to them at law or equity as to any action filed against them by [Plaintiff]."[19] Plaintiff and Defendants both signed the Settlement Agreement, which evidences Plaintiff's knowledge of Paragraph 7. The crux of Defendants' waiver argument turns on whether or not Plaintiff intended to waive Paragraph 7.

Defendants contend that Plaintiff waived its right to assert Paragraph 7 when Plaintiff served Defendants with process via Federal Express after Defendants filed a motion to dismiss with this Court based on insufficient service of process. In Paragraph 19 of the Settlement Agreement, both parties agreed to send all process via Federal Express. Contrary to that provision, Plaintiff originally served Defendants via certified mail. At its core, Defendants' argument is that: Plaintiff waived its right to assert Paragraph 7 because it re-served Defendants with process instead of relying on Paragraph 7 to dispose of Defendants' motion to dismiss.

The Court finds that Plaintiff did not intend to waive Paragraph 7. "[A]n intention to waive must appear clear from the record evidence before summary

[19] Compl. Ex. A., ¶ 7.

judgment is granted on this issue."[20] At most, Plaintiff's actions *might* reasonably be construed as a waiver of *Paragraph 6*, where Defendants agreed to "waive any and all available defenses with regard to service of process."[21] It is not reasonable to construe Plaintiff's decision to re-serve process on Defendants as a waiver of Paragraph 7. This Court reads a contract as a whole and gives effect to all provisions of the contract.[22] If the Court reads Paragraph 7 to cover defenses regarding service of process, then Paragraph 6 would be rendered superfluous. This Court declines to read Paragraph 7 in such a manner. Plaintiff's act of re-serving process on Defendants does not manifest an intent to waive the provisions of Paragraph 7.

D. Judgment as a Matter of Law

The Court respects the freedom of contract and will uphold clear and unambiguous contracts between sophisticated parties.[23] Paragraph 7 prevents Defendants from raising any defenses to Plaintiff's claim.[24] Thus, Defendants waived their ability to raise all of the affirmative defenses listed in their Answer.

---

[20] *AeroGlobal Capital Mgmt., LLC*, 871 A.2d at 445.
[21] Compl. Ex. A, ¶ 6.
[22] *Sonitrol Holding Co. v. Marceau Investissements*, 607 A.2d 1177, 1184 (Del. 1992); *Troumouhis v. State*, 2006 WL 1579776, at *4 (Del. Super. May 31, 2006).
[23] *NACCO Indus., Inc. v. Applica, Inc.*, 997 A.2d 1, 35 (Del. Ch. 2009).
[24] This Court finds the language used in the waiver-of-defenses clause to be clear and unambiguous. Accordingly, the Court shall give effect to the clause's plain-meaning. *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159–60 (Del. 2010).

Defendants may not assert any of their affirmative defenses. Also, Defendants admitted that they failed to pay $86,829.00 to Plaintiff, as per the terms of the Settlement Agreement. Therefore, Plaintiff is entitled to judgment as a matter of law.

Conclusion

For the aforementioned reasons, there are no genuine disputes of material fact and Plaintiff is entitled to judgment as a matter of law. Accordingly, Plaintiff's Motion for Summary Judgment is **GRANTED.**

IT IS SO ORDERED.

The Honorable Calvin L. Scott, Jr.