

**Alleon Capital Partners, LLC v Choudhry**

2020 NY Slip Op 35723(U)

February 26, 2020

Supreme Court, Nassau County

Docket Number: Index No. 610648-18

Judge: Jerome C. Murphy

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT: STATE OF NEW YORK  
COUNTY OF NASSAU**

**PRESENT:**

**HON. JEROME C. MURPHY,  
Justice.**

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**ALLEON CAPITAL PARTNERS, LLC AND  
ACP ALLFAMILY UNIVERSAL, LLC,**

**Plaintiffs,**

**- against -**

**SHERYAR CHOUDHRY, TANGENT EHR, LLC,  
AMSAC, INC a/k/a AMSAC HEALTHCARE  
CONSULTANTS, MANUEL A FARESCAL,  
ALL FAMILY MEDICAL, P.C., and  
UNIVERSAL MEDICAL, P.C.,**

**Defendants.**

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**TRIAL/IAS PART 10**

**Index No.: 610648-18**

**Motion Date: 1/10/20**

**Sequence No.: 004**

*MD*

**DECISION AND ORDER**

The following papers have been read on this motion:

Notice of Motion, Affirmation in Support, and Exhibits.....	1
Memorandum of Law in Support, Affirmation and Exhibits.....	2
Affirmation with Exhibits and Memorandum of Law in Opposition.....	3
Reply Affirmation and Exhibits.....	4

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**PRELIMINARY STATEMENT**

Defendants, Sheryar Choudhry, and Tangent EHR, LLC, bring this application for an Order ; a) Pursuant to and in accordance with CPLR§ 2001 and/or CPLR§ 2221(e) requesting Defendants leave to renew on the merits that portion of Defendants' prior CPLR § 3211(a)(1) motion to dismiss (motion date 6/14/19) based upon new facts. They attach copies of loan disbursement checks, which they claim irrefutably establishes that, after the closing costs, the net loan proceeds, in connection with the alleged usurious loan, totaled less that \$2,500,000.00, thereby avoiding the impact of GOL 5-501(6)(b). Defendants allege that this was justifiably not

offered for good reason on the prior motion and that this information should cause this Court to reverse its prior Order entered 9/16/19. b.) In the event that such leave, pursuant to CPLR §2001 and/or CPLR §2221(e) is granted, then, in such event, that such re-argument and/or renewal should proceed; and/or c.) and for such other further relief as this Court deems just and proper. Opposition and reply have been submitted.

#### DISCUSSION

Defendants move to reargue that portion of the prior motion Decision and Order which determined that the underlying loan was in excess of \$2,500,000, and that the provision of GOL 5-501(6)(b) excludes the loan from the restriction of any law regulating the maximum rate of interest, including Penal Law §§ 190.40 and 190.42. Defendants claim that there is new documentation, in the form of disbursement checks, which reflect actual loan disbursements in the amount of \$2,360,200.75, and thereby subject to the 25% limitation on interest pursuant to the Penal Law.

This is precisely the same argument made in their earlier motion, in which they claimed that a loan fee of \$422,058.27 was deducted from the loan proceeds of \$2,782,259.27, resulting of net distributions of \$2,360,421. They now produce a copy of the First Installment Check for \$506,990, and a Second Installment Letter reflecting a Second Installment in the amount of \$1,853,210.75, corroborating the previously made argument that they received \$2,360,260.75, but that the \$422,058.27 was never distributed. It was retained by the lender prior to distribution of the net proceeds of the loan.

The amount of the loan as stated in the agreement when signed was \$2,782,259.27, which defendants were obligated to repay. Schedule 1 to the Loan and Security Agreement (Exh. "B") defines the Note as a Promissory Note in the amount of the Principal. Principal is defined as \$2,782,259.27. There is no doubt that defendants promised to repay the sum of \$2,782,259.27, but that the distribution to them at or after the closing was reduced by \$422,058.52, thereby producing a net sum of proceeds of \$2,360,200.75.

Defendants contend that this is the true amount of the loan, that it is less than \$2,500,000, and is subject to the prohibitions against usury, since it is less than the provision of GOL 5-501(6)(b). They rely on *Band Realty Co. v. North Brewster Inc.*, 37 N.Y.2d 460 (1975) as

support for this position. Band involved a \$300,000 loan, with lender retaining \$39,000 discount (13%) charging 8% per annum on the face amount of the mortgage in 12 monthly payments of \$2,000, and repaying the principal at the end of one year.

The issue before the Court was whether to use a straight arithmetical calculation to determine whether the interest rate was in excess of 25%, or to calculate the interest rate on a “present value” formula, which calculates interest on the present value of each monthly payment. Under the traditional method, which the Court adopted, the rate of interest was calculated as follows:

Initial Discount	\$39,000
Interest on \$300,000 @ 8%	\$24,000
Total Annual Interest Received	\$63,000
Divided by Net Amount Advanced	\$261,000
Calculated Interest Rate of Net Advance	24.14%

By adding the initial discount to the present value of 12 monthly payments of \$2,000 per month, the interest rate, the total interest payments amount to \$66,999.78, reflecting a 25.67% interest rate on the net advanced. In both cases, the Court included the initial discount in calculating the amount of the loan, but divided the interest payments by the amount received. There was no issue in either case that the initial discount was included as part of the loan. The net amount received was only considered in calculating the interest rate.

In this case, the interest rate was calculated on the Loan Premium, neither the face amount of the loan or the net receipts. Rather, it was calculated on the value of \$0.868 on the balance of receivables after repayment of the principal balance of \$2,782,259.27, on a dollar for dollar balance. Defendants were therefor obligated to pay \$0.868 for each dollar of the remaining receivables, calculated to be \$2,642,468.87 ( $\$5,826,578.24 - \$2,782,259.27 = \$3,044,318.97 \times .868 = \$2,642,468.87$ ). This produces an interest rate of 95%, for a 3-year annualized rate of 31.57%.

The net proceeds received from the loan are not relevant to the calculation of interest in this case. The amount of the loan was \$2,782,259.27, as agreed by the parties to the loan, thus exempting it from a claim of usury in accordance with GOL 5-501(6)(b). The motion to reargue

the prior Decision and Order of this Court dated September 16, 2019 is denied.

To the extent that relief has not been granted, it is expressly denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York  
February 26, 2020

**ENTER:**

  
JEROME C. MURPHY, J.S.C.

**ENTERED**  
MAR 02 2020  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE