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Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964 (HDH)

(Jointly Administered)

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (3098), Think Finance SPV, LLC (4522), Financial U, LLC (1850), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), TC Decision Sciences, LLC (8949), and TC Loan Service, LLC (3103).

**THINK FINANCE, LLC, THINK FINANCE
SPV, LLC, and TC ADMINISTRATIVE
SERVICES, LLC,**

Plaintiffs/Counter-Defendants,

v.

**VICTORY PARK CAPITAL ADVISORS,
LLC, VICTORY PARK MANAGEMENT,
LLC, GPL SERVICING, LTD., GPL
SERVICING AGENT, LLC,**

**Defendants/Counter-Plaintiffs/Third-Party
Plaintiffs,**

v.

**CORTEX HOLDINGS, LLC, CORTEX
MANAGEMENT, LLC, CORTEX
SERVICES, LLC, CORTEX SOVEREIGN,
LLC, TF INVESTMENT SERVICES, LLC,
TF HOLDINGS, LLC, AND JORA CREDIT
HOLDINGS, LLC,**

Third-Party Defendants.

Adv. Pro. No. 17-03106 (HDH)

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs Think Finance, LLC (“Think Finance”), Think Finance SPV, LLC (“Think SPV”), and TC Administrative Services, LLC (“TCAS” or “Agent”; and together with Think Finance and Think SPV, “Plaintiffs”), by and through their undersigned counsel, file this *Motion for Partial Summary Judgment* (the “Motion”), against Victory Park Capital Advisors, LLC (“Victory Park”), Victory Park Management, LLC (“VP Management”), GPL Servicing, Ltd. (“GPLS”), and GPL Servicing Agent, LLC (the “Collateral Agent”; and together with Victory Park, VP Management, and GPLS, “Defendants”).

SUMMARY

In accordance with Rule 7056-1(c)(1)(A) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”), Plaintiffs submit the following concerning the elements of each of the Counts on which Plaintiffs seek summary judgment.

Count I – Turnover under §542(a). The elements of Count I are: (1) that the property is or was in the possession, custody or control of an entity during the pendency of the case, (2) that the property may be used by the trustee in accordance with § 363 or exempted by the debtor under § 522; and (3) that the property has more than inconsequential value or benefit to the estate.

Count II – Turnover under §542(b). The elements of Count II are: (1) that the entity at issue qualifies as an “entity” as the term is used in §542(b); and (2) that the entity owes a debt that is property of the estate and that is matured, payable on demand, or payable on order.

Count IV – Turnover under §542(e). The elements of Count III are: (1) an attorney, accountant, or other person holds recorded information; (2) the information is recorded; and (3) the information relates to the debtor’s property or financial affairs.

Count XI – Breach of Contract – AAA. The elements of Count XI are: (1) the existence of the contract whether express or implied; (2) the breach of an obligation imposed by that contract; and (3) damages to the plaintiff.

Count XII – Breach of Contract – Articles of Association. The elements of Count XII are (1) the existence of the contract whether express or implied; (2) the breach of an obligation imposed by that contract; and (3) damages to the plaintiff.

In accordance with Local Rule 7056-1(c)(2), Plaintiffs submit that the matters required under Local Rule 7056-1(c)(1)(B) and (C) are set forth in Plaintiffs' Brief in Support of Motion for Partial Summary Judgment (the "Brief").

MOTION

In accordance with Local Rule 7007-1, contemporaneously herewith and in support of this Motion, Plaintiffs are filing (a) the Brief; and (b) the Appendix in Support of Plaintiffs' Motion for Partial Summary Judgment (the "Appendix").

Plaintiffs seek summary judgment on the turnover claims in the Complaint—Counts I, II and IV—and certain of the breach of contract claims—Counts XI and XII. The turnover and breach of contract claims are ripe for summary judgment because there is no genuine issue as to any material fact and Plaintiffs are entitled to judgment as a matter of law. More particularly, as explained in the Brief, Defendants have conceded that the funds in question are property of the estate by admitting that the funds are collateral. Thus, summary judgment is appropriate on Count I under section 542(a) in accordance with the Supreme Court's decision in *Whiting Pools*. Alternatively, were the Court to conclude at this stage that any of the funds are not collateral, summary judgment is appropriate on Count II under section 542(b) because Defendants have raised no other valid defense to payment of such funds. For these same reasons, were the Court to conclude at this stage that any of the funds are not collateral, summary judgment is appropriate on the breach of contract claims in Counts XI and XII. Defendants also have not disputed the facts that support granting summary judgment on Count IV, which seeks turnover of financial and other records concerning Plaintiffs' property and financial affairs. Summary judgement is therefore appropriate on Count IV as well.

Notice of this Motion has been provided to Defendants. Plaintiffs submit that no other or further notice need be provided.

WHEREFORE, Plaintiffs respectfully request that the Court enter summary judgment as to Counts I, II, IV, XI and XII in the form of the proposed order attached hereto as Exhibit A and grant to Plaintiffs such other and further relief as the Court may deem proper.

Dated: December 22, 2017

Respectfully submitted,

/s/ Gregory G. Hesse

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EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

THINK FINANCE, LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 17-33964-11 (HDH)

(Jointly Administered)

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Think Finance, LLC (3098), Think Finance SPV, LLC (4522), Financial U, LLC (1850), Tailwind Marketing, LLC (1602), TC Administrative Services, LLC (4558), TC Decision Sciences, LLC (8949), and TC Loan Service, LLC (3103).

**THINK FINANCE, LLC, THINK FINANCE
SPV, LLC, and TC ADMINISTRATIVE
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Plaintiffs/Counter-Defendants,

v.

**VICTORY PARK CAPITAL ADVISORS,
LLC, VICTORY PARK MANAGEMENT,
LLC, GPL SERVICING, LTD., GPL
SERVICING AGENT, LLC,**

**Defendants/Counter-Plaintiffs/Third-Party
Plaintiffs,**

v.

**CORTEX HOLDINGS, LLC, CORTEX
MANAGEMENT, LLC, CORTEX
SERVICES, LLC, CORTEX SOVEREIGN,
LLC, TF INVESTMENT SERVICES, LLC,
TF HOLDINGS, LLC, AND JORA CREDIT
HOLDINGS, LLC,**

Third-Party Defendants.

**Adversary Proceeding No. 17-
03106(HDH)**

**ORDER GRANTING PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

This matter came before the Court on the motion (the "Motion") of Plaintiffs Think Finance, LLC ("Think Finance"), Think Finance SPV, LLC ("Think SPV"), and TC Administrative Services, LLC ("TCAS"; and together with Think Finance and Think SPV, "Plaintiffs"), for partial summary judgment as to Counts I, II, IV, XI and XII of the Complaint filed against Victory Park Capital Advisors, LLC ("Victory Park"), Victory Park Management, LLC ("VP Management"), GPL Servicing, Ltd. ("GPLS"), and GPL Servicing Agent, LLC (the "Collateral Agent"; and together with Victory Park, VP Management, and GPLS, "Defendants").

It is hereby

FOUND AND DETERMINED THAT:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (E), and (O).
- C. Notice of the Motion was sufficient under the circumstances.
- D. Based on this Court's review of the pleadings, the affidavits submitted in connection with the Motion, discovery materials on file, and exhibits admitted into evidence in the course of this adversary proceeding, there is no genuine issue as to any material fact in respect of the relief sought in Counts I, II, IV, XI and XII of the Complaint.

Accordingly, the Court having determined that Plaintiffs are entitled to judgment as a matter of law as to Counts I, II, IV, XI and XII of the Complaint based on the legal and factual bases set forth in the Motion and the arguments of counsel at the hearing on the Motion,

It is hereby ORDERED that:

- 1. The Motion is **GRANTED**.
- 2. Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.
- 3. Judgement shall enter in favor of Plaintiffs on Counts I, II, IV, XI and XII of the Complaint.
- 4. The Escrow Agent (as defined in the Agreed Order) is hereby directed to transfer all funds in the Escrow Account to Plaintiffs via wire transfer within three (3) business days after the entry of this Order. Plaintiffs' use of such transferred funds is subject to the terms and conditions of the Cash Collateral Order in all respects.

5. Defendants shall cause GPLS to transfer to Plaintiffs all funds in its bank accounts in excess of the GPLS Holdback (as defined in below) commencing on January 26, 2017, and every fourteen (14) days thereafter (each date, a “Sweep Date”). In the event a Sweep Date falls on a holiday or other non-business day, Defendants shall cause the transfer to occur on the next business day following the applicable Sweep Date.

6. For the purposes of this Order, the “GPLS Holdback” shall be the sum of (i) \$800,000 and (ii) the amount of all expenses submitted by the GPLS Secured Parties (as defined in the *Order Authorizing the Debtors to Use Cash Collateral, Granting Adequate Protection and Related Relief, and Scheduling a Final Hearing* (and any other order entered by the Court concerning the use of cash collateral, the “Cash Collateral Order”)) pursuant to paragraph 7 of the Cash Collateral Order that have not been paid or determined to be disallowed or to the extent reduced.

7. Defendants shall turn over any recorded information related to the Debtors’ financial affairs that Defendants have, including without limitation books, documents, records, papers, and all financial records of GPLS.

8. The terms of this Order supersede the terms of the Agreed Order [Adv. Proc. No. 22] and the Order Granting Preliminary Injunction [Adv. Proc. No. 73] to the extent of any inconsistencies.

9. Nothing in this Order shall modify the terms of the Cash Collateral Order, which remains valid in all respects.

10. This Order shall be effective immediately upon entry by the Court.

11. Plaintiffs shall serve a copy of this Order on counsel to the Defendants, by electronic mail and overnight mail, immediately upon its entry, and file a notice of such service with the Court.

###END OF ORDER###

Submitted by:

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