

TENTATIVE RULING(S) FOR JANUARY 8, 2025

Department S37 – Judge Corey G. Lee

Tentative Rulings for Department S37, if posted, are on court's website (<https://www.sb-court.org/divisions/civil/civil-tentative-rulings>) by 3:00 p.m. and 7:00 p.m. on the court day before the hearing (in some cases, on a non-court day before the hearing). If no tentative ruling is posted by 3:00 p.m., please check again after 7:00 p.m.

Unless you wish to submit on the tentative ruling, you must appear for the hearing either in person, CourtCall (888-882-6878 or www.courtcall.com), or by ZOOM. Failure to appear is deemed a waiver of oral argument. If you wish to submit to the tentative, please call the Judicial Assistant at (909) 708-8707 in advance of the hearing. If all parties submit on a tentative ruling, the tentative ruling will become final. The tentative ruling may seek input on particular issues and direct appearance. If so directed, attendance at the hearing is mandatory. The party prevailing on a motion or other hearing shall serve written notice of the court's ruling unless all parties waive notice of the ruling.

ATTENTION: Since January 9, 2023, the court no longer provides an official Court Reporter to transcribe proceedings. Parties who wish to have a transcript must retain their own private reporter and must submit a "Stipulation and Order to Use Certified Shorthand Reporter." Please contact the Department if you need this form. Prior to the hearing, you can email the completed Stipulation to Department S37 at AGear@sb-court.org. Parties who do not retain their own reporter have waived the right to one.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

CIVSB2413035: *Wells Fargo Bank, N.A. v. Diversity Business Solutions, Inc., et al.*

Motion(s): Motion for Summary Judgment
Movant: Plaintiff Wells Fargo Bank, N.A.
Respondent: No opposition received.

DISCUSSION AND RULING

This is an action to collect upon an unpaid business line of credit. Plaintiff Wells Fargo Bank, N.A. (Wells Fargo) alleges defendant Diversity Business Solutions, Inc. (Diversity) and its principals and guarantors, defendants Maria Diaz (Diaz) and Sandra Tribby (Tribby) applied for and received a Business Line of Credit but failed to repay it. Defendants allegedly owe \$71,160.80. On September 25, 2024, Wells Fargo filed this motion for summary judgment/summary adjudication. No opposition has been filed.

Wells Fargo has submitted a declaration from William Ocampo (Ocampo), a Loan Workout Associate Manager. Ocampo states he is an authorized custodian or records for Wells Fargo. He states he is thoroughly familiar with the methods used by Wells Fargo for maintaining books and records for small business customers and he assists with the workouts of delinquent accounts. He is one of the managers working on Defendants' account file.

Ocampo states Wells Fargo and Defendants entered into the Business Line of Credit Application Agreement and the Personal Guarantee and Customer Agreement on May 24, 2016. He has attached copies of the Agreements as Exhibits 1 and 2 to his declaration. Exhibit 1 shows

that the original line of credit was for \$100,000. Ocampo states Defendants last made a payment on September 29, 2023 and there is currently \$71,160.80 due. Ocampo has attached a copy of the account statement, as of January 14, 2024, as Exhibit 3. He states Wells Fargo is not seeking prejudgment interest after the date of the loan charge off. The amount shown in Exhibit 3 matches the amount sought in the complaint.

Wells Fargo has also submitted a declaration from its attorney, Yvonne Ramirez-Browning. She states she served Diaz and Tribby with special interrogatories and requests for admissions. She further refers to form interrogatories as not being responsive and indicative of no defense, but she has not attached the form interrogatories, special interrogatories, and the responses to that discovery. She has attached copies of Diaz's and Tribby's responses to requests for admissions in which they admit to entering into the Business Line of Credit and Personal Guarantee Agreements, that they failed to make monthly payments due, and the principal amount due is \$71,160.80 and they have failed to pay despite demand. Browning also seeks \$1,723.22 in attorney fees and \$713.68 in costs.

Wells Fargo has met its burden of proof with respect to the contract and common counts causes of action and its damages in the sum of \$71,160.80. It is not plaintiff's burden to disprove affirmative defenses asserted by defendant. (Code Civ. Proc. §437c(p)(1); *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468.) Defendants have not raised a triable issue of material fact with respect to these agreements.

Therefore, the motion for summary judgment is **granted**. With respect to the attorney fees and costs, Wells Fargo should file an appropriate memorandum of costs and/or motion for attorney fees.