

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

VNUE, INC.,

Plaintiff,

v.

LG CAPITAL FUNDING, LLC, JOSEPH
LERMAN, BORUCH GREENBERG, and
DANIEL GELLMAN,

Defendants.

CIVIL ACTION NO. _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff VNUE, Inc., through counsel, states for its Complaint against Defendants LG Capital Funding, LLC, Joseph Lerman, Boruch Greenberg, and Daniel Gellman¹ as follows.

NATURE OF THE ACTION

1. LG is a “death spiral” or “toxic” lender,² an unregistered securities dealer that engages in convertible market adjustable securities transactions with small public companies—businesses that are often struggling to raise capital. Toxic lenders like LG are not the saviors of microcaps that they purport to be, nor is their business model legal; they are unregistered dealers and, often, as in this case, criminal usurers.

2. LG’s business model is illegal and unlawful under both state usury statutes³ as well as federal securities laws⁴ by contracting to purchase convertible notes, a security, that

¹ The following terms are used herein: VNUE, Inc. (“Plaintiff” or “VNUE”); Defendant LG Capital Funding, LLC (“Defendant” or “LG”); Defendant Joseph Lerman (“Lerman”); Defendant Boruch Greenberg (“Greenberg”); and Daniel Gellman (“Gellman”); Lerman, Greenberg, and Gellman, collectively, the “LG Managers;” and all Defendants, collectively, the “Defendants.”

² See <https://www.investor.gov/introduction-investing/investing-basics/glossary/convertible-securities> (last accessed April 11, 2022); https://en.wikipedia.org/wiki/Death_spiral_financing (last accessed April 11, 2022).

³ See *Adar Bays, LLC v. GeneSYS ID, Inc.*, 179 N.E.3d 612 (N.Y. 2021).

⁴ On June 7, 2022, the SEC filed a lawsuit against LG in this Court for violations of Section 15(a) under the Securities Exchange Act of 1934. See *SEC v LG Capital Funding LLC*, No. 1:22-cv-03353 (S.D.N.Y. Jun. 7, 2022).

charge small public companies criminally usurious rates of interest through hidden interest charges.

3. LG is operating as a securities dealer but is not registered as such with the Securities and Exchange Commission (“SEC”). As reflected in recent SEC prosecutions,⁵ lenders like LG avoid registration so they can evade regulatory oversight, using a business model that not only violates dealer-profit rules, but also constitutes a business of predatory lending that charges more than twice the permissible rate of interest under New York.

4. LG’s business model is simple: unlike an investor or trader, LG uses the loan transaction to acquire the company’s stock at a steep discount⁶ (in addition to formal loan interest), which it then dumps into the public markets as soon as possible in order to reap the spread between the discount and the market price. Invariably, this causes a catastrophic plunge in stock price.

5. LG’s business model is illegal. In recent civil actions, the SEC has sued toxic lenders that use LG’s precise business model for unlawfully operating as unregistered securities dealers in violation of § 15(a) of the Securities Exchange Act of 1934 (the “Act”) (15 U.S.C. § 78o). Every court to address this issue has agreed with the SEC.⁷ The SEC has recently commenced an enforcement action against LG and its control persons for the exact violation claimed herein.

⁵ See, e.g., *SEC v. Almagarby*, 479 F. Supp. 3d 1266 (S.D. Fla. 2020); *SEC v. Keener*, No. 20-cv-21254, 2022 U.S. Dist. LEXIS 11692 (S.D. Fla. Jan. 21, 2022); *SEC v. Fierro*, No. 20-2104, 2020 U.S. Dist. LEXIS 238936 (D.N.J. Dec. 18, 2020).

⁶ The stock is generally obtained via one or more market-adjustable convertible debt products required by the lender for making the loan; this may be the convertible promissory note itself or a warrant.

⁷ See, e.g., *SEC v. Big Apple Consulting USA, Inc.*, 783 F.3d 786 (11th Cir. 2015); *SEC v. Almagarby*, 479 F. Supp. 3d 1266 (S.D. Fla. 2020); *SEC v. Keener*, No. 20-cv-21254 (S.D. Fla. Jan. 21., 2022); *SEC v. Fierro*, No. 20-2104, U.S. Dist. LEXIS 238936 (D.N.J. Dec. 18, 2020); *SEC v. River N. Equity LLC*, 415 F. Supp. 3d 853 (N.D. Ill. 2019); *SEC v. Fife*, 2021 U.S. Dist. LEXIS 242126 (N.D. Ill. Dec. 20, 2021) (the “SEC cases”). For private civil actions seeking rescission based on failure to register, see *Edgepoint Capital Holdings, LLC v. Apothecare Pharmacy*, 6 F.4th 50 (1st Cir. 2021), and [Auctus Fund, LLC v. Players Network, Inc., 20-cv-10766 \(D. Mass. Dec. 10, 2021\)](#).

6. As with recent SEC prosecutions, the Agreements in this case⁸ are unlawful as they were made and required to be performed in violation of Section 15(a) of the Act. Plaintiff seeks rescission of the Agreements, rescissory damages equal to the gross proceeds Defendants received from the sale of Plaintiff's stock (less the amounts advanced by Defendants to Plaintiff), attorneys' fees, and any and all other relief that the Court deems just, proper, and in the interest of justice.

7. LG is an "enterprise" under the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1962, *et seq.*, which engages in the collection of unlawful debts at the direction and control of the LG Managers.

8. The loans created pursuant to the Agreements (the "Loans") are criminally usurious because they reserved and imposed charges in excess of the maximum enforceable rate of interest—25% per annum—allowed by New York state law. *See* N.Y. Penal Law § 190.40.

9. The Agreements charged a stated interest rate of 8% per annum and gave LG a 42% discount at conversion, resulting in a **total annual interest rate of more than double the legal 25% rate permitted under New York usury law**.

10. LG collected from VNUE full repayment of the loan plus usurious interest, which was unlawful under New York law.

11. Accordingly, among other relief, VNUE is entitled to treble damages under RICO because the amount of interest charged by LG is more than double the maximum enforceable rate of interest allowed by New York law.

12. Further, the equitable remedy of voiding and rescinding the Agreements provided

⁸ "Agreements" are defined as the documents executed by Plaintiff in favor of LG. Specifically: on October 23, 2018, LG and VNUE entered into a Convertible Promissory Note ("October 2018 Note"), under which LG purchased from VNUE a note in the amount of \$52,500.00 bearing an 8% stated interest rate, and a Securities Purchase Agreement ("October 2018 SPA"). A true and correct copy of the Note and SPA are attached as **Exhibit 1**.

under § 29(b) of the Act should be effectuated by, among other things, ordering LG to return to VNUE every share of stock it acquired under the Agreements, or its cash equivalent, less the cash value of the net sum provided to VNUE for the purchase of the October 2018 Note.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 because Plaintiff is asserting a claim under the Securities Act.

14. This Court has diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(2). Plaintiff is a citizen of Nevada, Defendant LG is a citizen of New York, upon information and belief Defendants Lerman, Greenberg, and Gellman are citizens of New York, and the amount in controversy exceeds \$75,000.00.

15. The Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

16. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2) because Defendant's principal place of business is located in this District and because a substantial part of the events giving rise to this action occurred in this District.

17. Venue is also proper in this Court because the Agreements each expressly state that any action brought by either party concerning the transactions contemplated by the Agreements must be brought in New York state courts or in federal courts located in the State of New York.

PARTIES

18. Plaintiff VNUE is a Nevada corporation with its principal place of business at 104 W. 29th Street, 11th Floor, New York, New York 10001.

19. VNUE stock trades on the over-the-counter (“OTC”) market, where the stocks of early-stage, developing companies—too small for the major exchanges—are traded.

20. Defendant LG is a New York limited liability company that maintains its principal place of business at 1218 Union Street, Suite 2, Brooklyn, New York 11225.

21. Defendant Lerman is a manager of LG and was the signatory to the SPA. Upon information and belief, Lerman is a resident of the State of New York and resides at 1124 East 32nd Street, Brooklyn, NY 11210.

22. According to the FINRA Broker-Check database, Lerman has never been licensed as a broker.

23. Defendant Greenberg is a manager of LG. Upon information and belief, Greenberg is a resident of the State of New York and resides at 2060 East 22nd Street, Brooklyn, NY 11229.

24. According to the FINRA Broker-Check database, Greenberg has never been licensed as a broker.

25. Defendant Gellman is a manager of LG. Upon information and belief, Gellman is a resident of the State of New York and resides at 99 Overlook Road, Pomona, NY 10970.

26. According to the FINRA Broker-Check database, Gellman has never been licensed as a broker.

27. The SEC’s website⁹ confirms that neither “LG Capital Funding, LLC,” nor Lerman, Greenberg, or Gellman were registered as a securities dealer with the SEC (or a self-regulatory organization, such as FINRA) at all relevant times herein.

⁹ See SEC.gov, *Company Information About Active Broker-Dealers, March 2007 - October 2021*, available at <https://www.sec.gov/help/foiadocsbdfoiahtm.html>.

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