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12-22-2021

**Greensky, LLC v. Wellness Program Services LLC et al., Order on  
Plaintiff Greensky LLC's Motion for Reconsideration**

John J. Goger  
*Senior Judge, Fulton County Superior Court*

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IN THE SUPERIOR COURT OF FULTON COUNTY  
BUSINESS CASE DIVISION  
STATE OF GEORGIA

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GREENSKY, LLC,

Plaintiff,

v.

WELLNESS PROGRAM SERVICES, LLC  
d/b/a TRUSII, and JEFFREY TARADAY,

Defendants.

CIVIL ACTION NO.  
2019CV323886

Bus. Case Div. 4

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**ORDER ON PLAINTIFF GREENSKY LLC'S MOTION FOR RECONSIDERATION**

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Before the Court is Plaintiff GreenSky's Motion for Reconsideration, filed December 9, 2021 ("Motion"). Having reviewed the record and considered Plaintiff's submission, the Court enters the following order.

**I. BACKGROUND**

This factual and procedural history is outlined in the order on Plaintiff's first two motions for summary judgment, entered November 19, 2021 which the Court incorporates herein by reference ("Initial MSJ Order"). Pertinent to the current Motion, GreenSky became aware of noticeable increase in customer complaints in March of 2019, leading it to conduct a survey of Trusii customers which, in turn, revealed a large number of additional customer complaints. (Prior MSJ Order, pp. 7-10.) After it found Trusii was unresponsive to its requests for assistance in resolving their complaints, GreenSky started issuing large numbers of refunds to Trusii customers in June or July of 2019. (Primeaux Dep., pp. 96-97.)

In its Initial MSJ Order, the Court determined GreenSky's Program Agreement constituted

an enforceable contract with Defendant Trusii and that Trusii breached several provisions of that contract. However, the Court denied GreenSky's motion for summary judgment seeking to chargeback against Trusii over \$3 million dollars GreenSky had refunded to Trusii's customers. The Court found questions of fact regarding GreenSky's broad refund policy and whether its communications with customers, together with the broad refund policy, may have spurred bogus refund requests that GreenSky paid without much scrutiny and now seeks to recover from Trusii.<sup>1</sup> See generally Pollard v. Queensborough Nat'l. Bank & Trust Co., 356 Ga. 223, 230 (2020). ("Every contract implies a covenant of good faith and fair dealing in the contract's performance and enforcement.")

In its Motion, GreenSky contends the Court erred in its finding that GreenSky determined that it would refund all loans involving every one of Trusii's complaining customers. GreenSky's Motion only serves to clarify the lack of clear evidence in the record regarding how GreenSky made its refund decisions vis-à-vis individual customers. GreenSky points to snippets of the deposition from its designated representative that refunds were provided to customers who did not receive the Trusii product they financed or the product they received did not work. (Motion, p. 2.) However, that representative did not offer a clear description of just how GreenSky made its refund decisions. Further, an affidavit provided by that same corporate representative indicated that Trusii also received complaints from Trusii customers who had not received merchandise, who received defective merchandise, and who had not received compensation they believed was due under Trusii's Case Study Program. (Primeaux (May 2021) Aff., ¶ 5.) Immediately thereafter, he avers very generally about how GreenSky responded to these customer complaints:

Greensky refunded money to the complaining customers who made payments to pay down their loans, GreenSky forgave the balances due on the loans with respect to the complaining customers, and GreenSky paid its bank partners out of its own pocket with respect to the

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<sup>1</sup> Implied in every contract is an

forgiven loans.

(Id., ¶ 6.) Whether or not every complaining customer received a refund, construing this affidavit testimony in the light most favorable to Trusii, it suggests GreenSky established a broad refund policy. The undisputed fact that 428 of Trusii's 527 customers, over 80%, benefited from some sort of refund or loan forgiveness also supports the inference that the refund policy established by GreenSky was broad. (Sing Aff., ¶ 15.)

Additionally, GreenSky suggests that questions regarding what customers received a refund and why are answered by its damages spreadsheet. (Singh Aff., Ex. A.) The spreadsheet offers only the most cursory description of the customer's complaint and no explanation as to how it was evaluated. (Id.) While this spreadsheet may evidence the amount of money GreenSky paid out in refunds, it was not intended to and does not speak to just how GreenSky determined to grant refunds.

In light of the foregoing, the Court finds questions of fact exist as to the over \$3 million refund amount GreenSky now seeks recover from Trusii under the Program Agreement.

In light of the foregoing, it is hereby ordered and adjudged that Plaintiff's Motion for Reconsideration is **DENIED**.

**IT IS SO ORDERED** this 21 day of December, 2021.

  
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JOHN J. GOGER, SENIOR JUDGE  
Fulton County Superior Court  
Atlanta Judicial Circuit

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