

**Fund-EX Solutions Group, LLC v Elements UES,
LLC**

2026 NY Slip Op 30629(U)

January 10, 2026

Supreme Court, New York County

Docket Number: Index No. 651267/2023

Judge: Gerald Lebovits

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

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FUND-EX SOLUTIONS GROUP, LLC,

Plaintiff,

INDEX NO. 651267/2023

MOTION DATE 09/19/2024

MOTION SEQ. NO. 001

- v -

ELEMENTS UES, LLC, ELEMENTS AND FITNESS
DANCE, LLC, ELEMENTS CORPORATE WELLNESS, LLC,
ELEMENTS FITNESS FRANCHISE, LLC, WLH
CONSULTING SERVICES AND DEVELOPMENT, LLC,
ANDREA FORNOROLA HUNSBERGER, and WILLIAM
HUNSBERGER,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 89, 92

were read on this motion for JUDGMENT - SUMMARY.

Chuhak & Tecson P.C., Chicago, IL (Michele K. Jaspan of counsel), for plaintiff.
Walsh Markus McDougal & DeBellis LLP, Garden City, NY (Samuel K. Walsh of counsel), for defendants.

Gerald Lebovits, J.:

This action arises from a loan. Plaintiff, Fund-Ex Solutions Group, LLC, entered into a promissory-note agreement with defendants Elements UES, LLC, and Elements Fitness and Dance LLC (borrowers), to loan them \$475,000. (*See* NYSCEF No. 2 at 2 [pdf pagination] [note].) Borrowers also executed security agreements under which they pledged collateral to secure the note. (NYSCEF No. 3 at 2; NYSCEF No. 4 at 2.) Plaintiff also entered into five separate guarantee agreements with defendants, Elements Corporate Wellness, LLC; Elements Fitness Franchise, LLC; WLH Consulting Services and Development LLC; Andrea Fornorola Hunsberger; and William Hunsberger (guarantors).

Plaintiff claims that the borrowers defaulted on the loan by failing to keep up with their payment obligations and by defaulting on their lease with their landlord. (*See* NYSCEF No. 12 at 3 [pdf pagination].) As permitted by the note, plaintiff accelerated the balance due on the note. (*See id.*) Plaintiff then brought this action to recover the unpaid balance on the note. Plaintiff asserts causes of action for breach of promissory note, breach of guaranty, turnover order, replevin, and attorney fees.

Plaintiff now moves for summary judgment on its complaint and to dismiss defendants' affirmative defenses. Defendants contend that plaintiff waived acceleration of the loan and therefore that they do not owe the full loan balance. The motion is granted.

DISCUSSION

I. Breach of Promissory Note and Guaranty (First Through Seventh Causes of Action)

In support of its motion, plaintiff provides an affidavit from one of its directors of operation, the borrowers' note, the security agreements; UCC-1 statements reflecting plaintiffs' interest in the collateral; and the five unconditional guarantees. Plaintiff also provides evidence of the borrowers' default. The evidence includes (1) a ledger—indicating borrowers' failure to make payments on the note—and (2) a landlord-tenant petition showing UES Element's default on its lease with its landlord (which would also constitute a default under the note). (*See* NYSCEF No. 26 at 10, 13-16 [ledger for Elements UES only]; NYSCEF No. 33 [petition].) Plaintiff further submits a February 8, 2023 notice of default and demand for payment, under which plaintiff accelerated the note balance and sought payment in full. (NYSCEF No. 26 at ¶ 38; NYSCEF No. 12 at 3 [notice].) According to plaintiff, although defendants made some payments toward the note balance, \$405,795.42 remains due on the principal sum, and \$2,169.78 is due in interest and late charges. (NYSCEF No. 26 at ¶ 40.)

A. Waiver

Defendants argue that plaintiff “is not entitled to summary judgment because the evidence clearly demonstrates that the Defendants were not in default of the Loan when this action was commenced on March 10, 2023” and that plaintiff waived acceleration of the loan. (NYSCEF No. 82 at 5.) According to defendants, the loan was no longer accelerated when plaintiff filed this action in March 2023. (*Id.*) Defendants point to payments plaintiff debited to Elements UES's bank account on February 22, 2023, March 1, 2023, April 3, 2023, May 1, 2023, and July 3, 2023. (*See* NYSCEF No. 26 at 16.) Defendants further point to an April 2023 email from Ms. Rachel Hunsinger, one of plaintiff's directors of operation, to Ms. Hunsberger stating that defendants “are making timely payments, and the loan is current with no outstanding past dues.” (NYSCEF No. 77 at 1.)

Plaintiff contends that it did not waive its acceleration of the loan. Plaintiff argues that it explicitly expressed to defendants that none of its actions may be construed as waiver of any aspect of default remedies or rights under the loan. Plaintiff also argues that discussions between the parties that arose *after* plaintiff filed this action—such as the Hunsinger email—cannot, in good faith, be deemed a waiver of seeking the accelerated balance. (*See* NYSCEF No. 83 at 7-8.) Plaintiff also asserts that it never expressly agreed to waive the default, but that it agreed to *consider* forbearance if defendants complied with certain conditions. (*See id.* at 8; *see* NYSCEF No. 74 at 1.)

This court agrees with plaintiff. On February 13, 2023 and again February 22, 2023, plaintiff communicated to defendant that it would consider forbearing on the accelerated balance

if, in addition to paying off the accrued monthly payments, defendants provide (1) “ACH details and a completed ACH form for future payments”; (2) “[s]atisfactory proof of funds to show that the Borrowers and/or Guarantors are able to make all future payments, including bank statements showing availability of funds”; (3) “[w]ritten proof showing that Elements UES, LLC was not in default as of December 28, 2022 and is currently not in default under its lease with 1164 Third Avenue LLC”; and (4) “[a]n updated Equipment list.” (NYSCEF No. 76 at 1-2 [February 22 email]; *see also* NYSCEF No. 70 [February 13 email].) Although defendants caught up with their payments, they never provided documentation that they were not in default on their lease. (*See* NYSCEF No. 78 at 1.) And indeed, by May 2023, Element UES’s landlord filed an eviction proceeding against it. (*See* NYSCEF No. 33 at 5 [pdf pagination].) Therefore, notwithstanding Hunsinger’s email that defendants were current on loan payments, this court will not interpret that statement to mean that defendants satisfied plaintiff’s conditions for purposes of waiving acceleration.

B. Disbursement of Loan

Defendants argue that summary judgment should also be denied on the basis that the loan was not disbursed as the borrowers requested. According to defendants, plaintiff, in September 2021, imposed additional conditions for giving plaintiff the last \$117,000 of the loan. (*See* NYSCEF No. 61.) But defendant does not demonstrate that defendants’ conduct was impermissible under the terms of the note. Nor does this court see how this conduct would raise an issue of fact about defendants’ later default on the note in 2023.

C. Damages

Plaintiff’s ledger purportedly shows an unpaid balance on the note, as of February 9, 2023, the day after plaintiff accelerated the note. But the ledger, *somehow*, includes entries from March 2023 through July 2023. (NYSCEF No. 26 at 16.) The ledger also reflects that the “Next Payment Due Date” is July 1, 2023, although it also contains an entry for a payment made on July 3, 2023. (*Id.*) Under these circumstances, the current amount defendants owe is unclear. This court declines to award damages here. Plaintiff may move for a supplemental judgment on damages.

The branch of plaintiffs’ motion for summary judgment on its first through seventh causes of action is granted, with the amount of damages to be determined by motion made on notice.

II. Return of Collateral (Eighth Cause of Action) and Writ of Replevin (Ninth Cause of Action)

On its eighth cause of action, plaintiff seeks a turnover order requiring defendants to deliver the collateral pledged on the note to plaintiff. On its ninth cause of action, plaintiff seeks a writ of replevin directing the New York County Sheriff to collect the collateral.

Plaintiff has demonstrated its entitlement to summary judgment on the note and guarantees, and defendants do not oppose this branch of the motion. The branch of plaintiff's motion for summary judgment on the turnover and replevin causes of action is granted.

III. Affirmative Defenses

The branch of plaintiff's motion to dismiss defendants' affirmative defenses is granted as unopposed.

IV. Discovery

Defendants further oppose plaintiff's motion for summary judgment on the basis that they have not had adequate opportunity to conduct discovery. According to defendants, plaintiff filed its summary-judgment motion merely two months after joinder of issue and five months after plaintiff brought the action, and defendants' former counsel withdrew its representation one week after it received plaintiff's discovery responses. (NYSCEF No. 82 at 14-15.) They further contend that plaintiff delayed in responding to defendants' discovery demands. (*Id.* at 14.)

But defendants do not identify what sort of discovery they require or how that discovery might show the existence of a triable issue of fact. Defendants' discovery contention is unavailing.

V. Attorney Fees and Costs (Tenth Cause of Action)

Plaintiff seeks attorney fees incurred on this action. The note provides that plaintiff is entitled to recover attorney fees and costs in collecting amounts due under the note. (NYSCEF No. 2 at 5 [pdf pagination].) And under the guarantees, the guarantors "promise[d] to pay all expenses Lender incurs to enforce this Guarantee, including, but not limited to, attorney's fees and costs." (NYSCEF No. 6 at 3; NYSCEF No. 7 at 3; NYSCEF No. 8 at 3; NYSCEF No. 9 at 3; NYSCEF No. 10 at 3 [guarantees].) This branch of the motion is granted.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment on its first through seventh causes of action is granted, with the amount of damages to be determined by motion made on notice; and it is further

ORDERED that the branch of plaintiff's motion for summary judgment on its eight and ninth causes of action (turnover and replevin) is granted, with plaintiff to settle order; and it is further

ORDERED that the branch of plaintiff's motion for summary judgment dismissing defendants' affirmative defenses is granted, and those defenses are dismissed; and it is further

ORDERED that the branch of plaintiff’s motion for attorney fees and costs is granted, with the amount of those fees and costs to be determined by motion made on notice; and it is further

ORDERED that plaintiff shall serve notice of entry on defendants; and shall serve notice of entry on the office of the County Clerk (using the NYSCEF filing event “Notice to the County Clerk - CPLR § 8019 (c)”), which shall enter judgment accordingly.

1/10/2026
DATE


HON. GERALD LEBOVITZ
J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE