Hoppe v Gibson & Dehn LLC
2026 NY Slip Op 31105(U)
March 19, 2026
Supreme Court, New York County
Docket Number: Index No. 654383/2025
Judge: Paul A. Goetz
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

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GORDON HOPPE,

Plaintiff,

- v -

GIBSON & DEHN LLC,JAL EQUITY CORP.

Defendants.

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INDEX NO. 654383/2025

MOTION DATE 07/24/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

Upon the foregoing documents, it is

Plaintiff moves pursuant to CPLR § 3213, for summary judgment in lieu of a complaint arguing that he has satisfied his burden demonstrating that defendants defaulted on their payments on an instrument for money only, entitling him to an accelerated judgment.

DISCUSSION

CPLR § 3213

"CPLR 3213 provides a means of obtaining an accelerated judgment where a defendant's liability is premised upon an instrument for the payment of money only, such as an unconditional guaranty" (*Whitestone Plaza, LLC v Shen*, 231 AD3d 1001, 1002 [2d Dept 2024]). An agreement is an "instrument[] for the payment of money only, [when] repayment of the amounts owed is not conditional, and is required at a fixed maturity date" (*Machidera Inc. v Toms*, 258 AD2d 418 [1st Dept 1999]). An "instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document" (*Kitchen*

Winners NY, Inc. v Triptow, 226 AD3d 989, 991 [2d Dept 2024]). "A defendant can defeat a CPLR 3213 motion by offering evidentiary proof sufficient to raise a triable issue of fact" (*Whitestone*, 231 AD3d at 1002). However, "unsupported, conclusory assertions [of affirmative defenses are] … not sufficient to defeat the motion" (*Bennell Hanover Assoc. v Neilson*, 215 AD2d 710, 711 [2d Dept 1995]).

Choice of Law

As a preliminary matter, defendants argues that because the parties agreed in the Promissory Note (NYSCEF Doc No 15) and the Guaranty (NYSCEF Doc No 16) that Delaware law would govern any claims arising from the transactions, that plaintiff cannot avail itself of CPLR § 3213 since no similar mechanism available in Delaware law. "New York courts will generally enforce a clear and unambiguous choice-of-law clause contained in an agreement [however] this rule applies to matters of substantive law, procedural matters are governed by the law of the forum" (*Nestor v Putney Twombly Hall & Hirson, LLP*, 153 AD3d 840, 842 [2d Dept 2017] [internal quotation marks omitted]). In general, statutes are considered procedural when they pertain to the remedy, rather than the right (*id.*).

Here, CPLR § 3213 is a procedural remedy "to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless" (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 443 [1996] [internal quotation marks omitted] [referring to CPLR § 3213 as a "procedural reform"]). The parties are still afforded all the defenses available under Delaware law, but CPLR § 3213 merely provides a procedure to adjudicate these claims efficiently. Therefore, plaintiff may avail himself of CPLR § 3213 and the motion will not be denied on these grounds.

Instrument for the Payment of Money Only

Defendants argue that CPLR § 3213 is an inappropriate mechanism here because the Promissory Note and Guaranty require performance beyond payment, and therefore are not instruments for the payment of money only. Defendants note that the Guaranty obligates JAL Equity Corp ("JAL") to "guarentee[], as primary obligor and not merely as surety, the full and punctual payment and performance of all present and future obligations, liabilities, covenants and agreements required to observed and performed or paid or reimbursed by [Gibson & Dehn, LLC ("G&B")] under the Note" (NYSCEF Doc No 16).

However, the promissory note JAL guarantees, does not include any additional obligations that must be performed by either party (*see* NYSCEF Doc No 15). Indeed "the mere addition of the words '[obligations] and performance' does not necessarily remove the guaranty from the category of instruments for the payment of money" particularly when the obligations are identified elsewhere as the obligation to pay money (*27 W. 72nd St. Note Buyer LLC v Terzi*, 194 AD3d 630, 632 [1st Dept 2021]; *see* NYSCEF Doc No 16 [Parent Guranty states "W[hereas] … [G&D] … is issuing a Promissory Note to [plaintiff] evidencing [G&D]'s obligation to pay [plaintiff] the principal amount of six hundred twelve thousand dollars ($612,000.00)"]).

Defendants have failed to identify any other obligations outside the payment of money that would take the agreements outside the scope of a CPLR § 3213 motion and therefore, the motion will not be denied on these grounds.

Issues of Fact

Defendants further argue that plaintiff is not entitled to summary judgment pursuant to CPLR § 3213, because there are issues of fact as to whether the agreements were procured through fraudulent inducement. They argue that pursuant to Delaware law, when a party

demonstrates fraud in the inducement, they may either void the entire agreement or affirm the contract and pursue a counterclaim for fraud. Pursuant to the choice of law provisions, Delaware law will be applied to substantive issues, such as whether the defendants have asserted the elements for fraudulent inducement, however the procedural matters are still subject to New York law, that is whether defendants have sufficiently raised an issue of triable fact to defeat the CPLR § 3213 motion.

Under Delaware law, the elements of fraudulent inducement are: "1) a false statement or misrepresentation; 2) that the defendant knew was false or made with reckless indifference to the truth; 3) the statement induced the plaintiff to enter the agreement; 4) the plaintiff's reliance was reasonable; and 5) the plaintiff was injured as a result" (*ITW Glob. Investments Inc. v Am. Indus. Partners Capital Fund IV, L.P.*, CVN14C10236JRJCCLD, 2017 WL 1040711, at *6 [Del Super Ct Mar. 6, 2017]). The first element can also be satisfied through a material omission of fact (*Mitsubishi Power Sys. Americas, Inc. v Babcock & Brown Infrastructure Group US, LLC*, CIV.A. 4499-VCL, 2010 WL 275221 [Del Ch Jan. 22, 2010]).

Here, defendants argue that plaintiff withheld material information from them, which induced JAL to purchase G&D and guarantee the Note. Specifically, defendants allege that plaintiff failed to inform them that G&D had just lost American Express as a client, a relationship which accounted for 80% of G&D's revenue. Defendants further argue that plaintiff failed to disclose that he was aware of a threat of litigation against G&D, plaintiff, and plaintiff's late husband's estate based on allegations that plaintiff and his late husband, transferred investor funds from G&D to their personal accounts. Defendants allege that plaintiff was aware of this threat of litigation as he received a letter from the investors accusing him and his late husband of "clear securities fraud" and demanding a return of their investment to avoid litigation (NYSCEF

Doc No 37). Defendants note that despite receiving this letter on June 27, 2022, G&D's voting members, including the Decedent's Estate, with plaintiff as Administrator, entered into a Membership Interest Purchase Agreement ("MIPA") with JAL to acquire G&D on August 19, 2022 (NYSCEF Doc No 19). Article III of the MIPA states that "[G&D] represents and warrants to [JAL] as follows:

> SECTION 3.13 LITIGATION. There is no legal, administrative, arbitration or other proceeding, or any governmental investigation, pending or, to the knowledge of [G&D], threatened against or otherwise affecting [G&D], or its Membership Interest, and no executive or key employee of [G&D] is aware of any fact that might reasonably be expected to form the basis for any such proceeding or investigation relating in any way to [G&D]

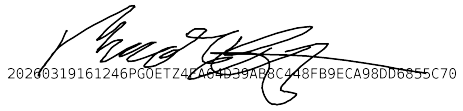
(*id*.).

While plaintiff notes that Section 2.8 of the MIPA has an acknowledgment of "certain communications on the part of one of the holders of aforementioned Third Party Notes (each, a Third-Party Noteholder"), Whitney Lasky, including a demand claiming wages resulting from her alleged employment by the Company, which employment Company vigorously denies," it does not mention the allegedly stolen investment funds (*id*.). Plaintiff argues that because the Investors stated in the letter, "we do not believe this is a matter in which the company would be allowed or permitted to defend or indemnify you or the Estate," that he was not under a duty to disclose this information to JAL as it concerned a claim against him and his husband's estate, rather than G&D itself. However, considering "Delaware's public policy is intolerant of fraud, [and] the intent to preclude reliance on extra-contractual statements must emerge clearly and unambiguously from the contract" (*Kronenberg v Katz*, 872 A2d 568, 593 [Del Ch 2004]), defendants have raised a triable issue of fact as to whether they were fraudulently induced into

entering into the Promissory Note and Guaranty.[1] Accordingly, summary judgment in lieu of a complaint must be denied.

Based on the foregoing it is,

ORDERED that the motion for summary judgment in lieu of a complaint is denied, and the matter is converted to an action and pursuant to CPLR § 3213, "the moving and answering papers shall be deemed the complaint and answer."



3/19/2026
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE

[1] To note, while the claims here involve the Promissory Note and the Guaranty, misrepresentations regarding the MIPA are relevant to the fraudulent inducement defense as these transactions are deeply interconnected (*see McKenna v Singer*, 11371-VCMR, 2017 WL 3500241, at *14 [Del Ch July 31, 2017] ["fraudulent misrepresentations can constitute inequitable conduct … when the misrepresentations have an immediate and necessary connection to the claims asserted"]).