

**Renaissance Economic Dev. Corp. v East VII. Pet  
Grooming Salon, Inc.**

2010 NY Slip Op 32687(U)

September 13, 2010

Supreme Court, New York County

Docket Number: 101462/2010

Judge: Lucy Billings

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

PRESENT: LUCY BILLINGS

PART 46

Index Number : 101462/2010  
**RENAISSANCE ECONOMIC**  
 vs.  
**EAST VILLAGE PET GROOMING SALON**  
 SEQUENCE NUMBER : 001  
 SUMMARY JUDGMENT/LIEU COMPLAINT

INDEX NO. \_\_\_\_\_  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1  
 2  
 3

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that ~~this motion~~:

*The court grants plaintiff's motion for summary judgment in lieu of a complaint against defendant East Village Pet Grooming Salon, Inc., but denies plaintiff's motion against defendant Martiney, and grants in part and denies in part Martiney's cross-motion for summary judgment dismissing the action against her, pursuant to the accompanying decision. C.P.L.R. §§ 3212 (b) and (c), 3213.*

**FILED**  
 SEP 28 2010  
 COUNTY CLERK'S OFFICE  
 NEW YORK

Dated: 9/13/10

Lucy Billings  
 LUCY BILLINGS J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

RENAISSANCE ECONOMIC DEVELOPMENT  
CORPORATION,

Index No. 101462/2010

Plaintiff

- against -

DECISION AND ORDER

EAST VILLAGE PET GROOMING SALON, INC.,  
and JANE M. MARTINEZ,

Defendants

**FILED**  
SEP 28 2010  
COUNTY CLERK'S OFFICE  
NEW YORK

-----x  
LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiff moves for summary judgment in lieu of a complaint against defendants for the unpaid balance of a promissory note. C.P.L.R. § 3213. Defendants oppose plaintiff's motion and cross-move for summary judgment dismissing the complaint against defendant Martinez on the ground that she executed the promissory note and related contracts solely in her capacity as President of defendant East Village Pet Grooming Salon, Inc., for the corporation. C.P.L.R. § 3212(b). Upon oral argument, and after attempts to settle the action, the court grants plaintiff's motion against East Village Pet Grooming Salon, but denies plaintiff's motion against Martinez, and grants in part and denies in part Martinez's cross-motion dismissing the action against her, for the reasons explained below.

To be entitled to summary judgment in lieu of a complaint on a promissory note, plaintiff must present evidence of its

execution and delivery, plaintiff's demand for payment, and defendants' nonpayment. C.P.L.R. § 3213; Solomon v. Langer, 66 A.D.3d 508 (1st Dep't 2009); Bonds Fin., Inc. v. Kestrel Tech., LLC, 48 A.D.3d 230, 231 (1st Dep't 2008); Warburg, Pincus Equity Partners, L.P. v. O'Neill, 11 A.D.3d 327 (1st Dep't 2004); Alard, L.L.C. v. Weiss, 1 A.D.3d 131 (1st Dep't 2003). Upon that showing, the burden shifts to defendants to demonstrate factual issues to defeat plaintiff's motion and require a trial. National Bank of N. Am. v. Alizio, 103 A.D.2d 690, 691 (1st Dep't 1984), aff'd, 65 N.Y.2d 788 (1985); Bronsnick v. Brisman, 30 A.D.3d 224 (1st Dep't 2006); Tars Uluslararası Dis Ticaret Turzım ve Sanayi Ltd., Sirketi v. Leonard, 26 A.D.3d 298 (1st Dep't 2006); Korea First Bank of N.Y. v. Noah Enters., Ltd., 12 A.D.3d 321, 322 (1st Dep't 2004).

## II. THE UNDISPUTED CONTRACTS

Plaintiff relies on a Loan Agreement and Promissory Note, both dated January 16, 2008, in which defendant East Village Pet Grooming Salon, Inc., promised to repay a \$30,000.00 loan from plaintiff in monthly installments with interest at 8% per year, and an Amendment dated February 5, 2009, reducing seven monthly payments under the agreement and note. Although none of these contracts on its face, nor plaintiff's witness and Director of Operations, Siu Kwan Chan, indicates he was present when they were executed, the signature of defendant Martinez on each is acknowledged by a notary, which is prima facie evidence that Martinez executed the contracts. C.P.L.R. § 4538; Sirico v.

F.G.G. Prods., Inc., 71 A.D.3d 429, 434 (1st Dep't 2010); Artigas v. Renewal Arts Realty Corp., 22 A.D.3d 327, 328 (1st Dep't 2005); Seaboard Sur. Co. v. Earthline Corp., 262 A.D.2d 253 (1st Dep't 1999); Olympus Servicing, L.P. v. Lee, 56 A.D.3d 537 (2d Dep't 2008).

To rebut plaintiff's evidence of due execution and defeat summary judgment, defendants must present clear and convincing evidence that Martinez's signature was forged. Cicale v. Wachovia Bank N.A., 56 A.D.3d at 392, 393 (1st Dep't 2008); Seaboard Sur. Co. v. Earthline Corp., 262 A.D.2d at 253; Brown Bark I, L.P. v. Imperial Dev. & Constr. Corp., 65 A.D.3d 510, 511-12 (2d Dep't 2009); John Deere Ins. Co. v. GBE/Alasia Corp., 57 A.D.3d 620, 621-22 (2d Dep't 2008). No evidence, however, suggests any relationship between plaintiff and the notary, for example, or any irregularity in the contracts' execution. See McKenna v. Double G Dev. Corp., 251 A.D.2d 202, 203 (1st Dep't 1998); Griffin v. Anslow, 17 A.D.3d 889, 892 (3d Dep't 2004). In fact, the evidence indicates defendant corporation took action consistent with their execution, by making payments according to the contracts' terms. McKenna v. Double G Dev. Corp., 251 A.D.2d at 203; Diplacidi v. Gruder, 135 A.D.2d 395, 396 (1st Dep't 1987); Four Seasons Hotel Ltd. v. Vinnik, 127 A.D.2d 310, 314 (1st Dep't 1987). See Artigas v. Renewal Arts Realty Corp., 22 A.D.3d at 328.

### III. DEFENDANTS' RESPECTIVE LIABILITY

#### A. THE LOAN AGREEMENT, PROMISSORY NOTE, AND AMENDMENT

After June 30, 2009, however, defendants made none of the payments to plaintiff due under the contracts, leaving a \$24,230.36 balance. Under the Promissory Note, this default in payment, without further demand for payment or notice to cure, accelerated the entire principal as due, with accrued interest. Plaintiff's evidence thus demonstrates its entitlement to summary judgment in lieu of a complaint against the promisor. Solomon v. Langer, 66 A.D.3d 508; DDS Partners v. Celenza, 6 A.D.3d 347, 348 (1st Dep't 2004); Alard, L.L.C. v. Weiss, 1 A.D.3d at 132; Boland v. Indah Kiat Fin. (IV) Mauritius, 291 A.D.2d 342 (1st Dep't 2002).

Under the Loan Agreement and Promissory Note, the only borrower is East Village Pet Grooming Salon, Inc. The agreement expressly provides that it is between that entity and plaintiff. The note obligates only that entity to make payments to plaintiff. Neither contract mentions Martinez in the text. Each contract lists her name under the signature line only as signing for the signing party to the contract, the borrower East Village Pet Grooming Salon, Inc.

BORROWER: East Village Pet Grooming Salon, Inc.

BY: \_\_\_\_\_  
Jane M. Martinez, President

Aff. of Siu Kwan Chan, Exs. A at 8 and B at 3. When a signature appears immediately after "By:" it indicates that she "was acting in a representative capacity." JP Morgan Chase Bank, N.A. v.

Cellpoint Inc., 54 A.D.3d 366, 368 (2d Dep't 2008). She also signed her signature on the line as "Jane M. Martinez, President." Chan Aff., Exs. A at 8 and B at 3. She executed the Amendment to the loan similarly:

Jane Martinez, President  
East Village Pet Grooming Salon, Inc.

Id., Ex. E. Nevertheless, the Loan Agreement and Promissory Note, along with the Amendment, absent any evidentiary rebuttal by defendants regarding East Village Pet Grooming Salon's liability, are at minimum grounds to grant plaintiff summary judgment against that defendant, East Village Pet Grooming Salon, Inc., for \$24,230.36, with interest at 8% per year from July 1, 2009. C.P.L.R. § 3213.

Regarding Martinez's individual liability, the Loan Agreement, Promissory Note, and Amendment signed by Martinez and notarized all provide that she is executing the contracts as the President of the corporate defendant and for it. Diaz v. Siegel, 23 A.D.3d 251 (1st Dep't 2005); Korea First Bank of N.Y. v. Noah Enters., Ltd., 12 A.D.3d at 322; Herman v. Ness Apparel Co., 305 A.D.2d 217, 218 (1st Dep't 2003). None of these contracts identifies her as an obligor or a co-obligor with the corporate defendant; otherwise provides that she and the corporation both are obligated under the contract, 150 Broadway Assoc. N.Y. Assoc., L.P. v. Bodner, 14 A.D.3d 1, 3-4 (1st Dep't 2004); see Herman v. Ness Apparel Co., 305 A.D.2d at 218; First Capital Asset Mgt. v. North Am. Consortium, 286 A.D.2d 263 (1st Dep't

2001); or includes her signature in her individual capacity separately from her signature on behalf of the corporation. See 44th-47th Realty Assoc. v. Fuentes, 5 A.D.3d 207, 208 (1st Dep't 2004); First Capital Asset Mgt. v. North Am. Consortium, 286 A.D.2d 263. On this basis, the court denies plaintiff's motion for summary judgment in lieu of a complaint against defendant Martinez and also grants her cross-motion for summary judgment dismissing plaintiff's action against her insofar as the motion and cross-motion are based on the Loan Agreement, Promissory Note, or Amendment. C.P.L.R. §§ 3212(b) and (e), 3213; Diaz v. Siegel, 23 A.D.3d 251; 150 Broadway Assoc. N.Y. Assoc., L.P. v. Bodner, 14 A.D.3d at 8-9.

B. THE PERSONAL GUARANTY

To recover against Martinez, plaintiff also relies on a Personal Guaranty, also dated January 16, 2008, and listing the borrower as East Village Pet Grooming Salon, Inc. While in an introductory description the guaranty is "given by Jane M. Martinez the undersigned (the 'Guarantor'), to induce the agreement of Renaissance Economic Development Corporation . . . to make a loan to East Village Pet Grooming Salon, Inc. (the 'Borrower')," Chan Aff., Ex. C at 1, the text that follows does not mention Martinez further. It continues to refer simply to "the undersigned Guarantor," id. at 1, 3, and "Guarantor." Id. at 2-3. Just like the loan and note, the guaranty lists her name under the signature line as signing for the undersigned party to the guaranty, the borrower East Village Pet Grooming Salon, Inc.

On the signature line she also signed her signature, again before a Notary Public, as "Jane M. Martinez, President."

BORROWER: East Village Pet Grooming Salon, Inc.

BY: Jane M. Martinez, President

Id. at 3. Thus, even the Personal Guaranty signed by Martinez and notarized provides that she is executing the guaranty as the President of the corporate defendant and for it. See PNC Capital Recovery v. Mechanical Parking Sys., 283 A.D.2d 268, 270 (1st Dep't 2001); Marine Midland Bank v. Poulson, 199 A.D.2d 208, 209 (1st Dep't 1993); Republic Natl. Bank of N.Y. v. GSO Inc., 177 A.D.2d 417, 418 (1st Dep't 1991); Chemical Bank v. Masters, 176 A.D.2d 591 (1st Dep't 1991).

Only where the guaranty expresses its purpose as "given by Jane M. Martinez the undersigned (the 'Guarantor'), to induce the agreement of Renaissance Economic Development Corporation . . . to make a loan to East Village Pet Grooming Salon," Chan Aff., Ex. C at 1, does the guaranty identify her as the guarantor. The text of the obligation undertaken nowhere identifies her as a guarantor or co-obligor with the corporate defendant, see Marine Midland Bank v. Poulson, 199 A.D.2d at 209; Republic Natl. Bank of N.Y. v. GSO Inc., 177 A.D.2d at 418; Chemical Bank v. Masters, 176 A.D.2d 591; Gruberg v. McCarthy, 289 A.D.2d 915, 916 (3d Dep't 2001); nor identifies East Village Pet Grooming Salon, Inc., as an obligor whose debt she is guaranteeing; nor provides that both she and the corporation are obligated under the contract. Weissman v. Sinorm Deli, 88 N.Y.2d 437, 447 (1996);

Mathias & Carr, Inc. v. Mangini, 13 A.D.3d 148 (1st Dep't 2004); Caruso v. Northeast Emergency Med. Assoc., P.C., 54 A.D.3d 524, 526-27 (3d Dep't 2008); JP Morgan Chase Bank, N.A. v. Cellpoint Inc., 54 A.D.3d at 367-68. See N.Y. Gen. Oblig. Law § 5-701(2); CIT Group/Bus. Credit, Inc. v. Walentag, 28 A.D.3d 224 (1st Dep't 2006); Bronx Store Equip. Co., Inc. v. Westbury Brooklyn Assoc., L.P., 16 A.D.3d 119, 120 (1st Dep't 2005); 150 Broadway Assoc. N.Y. Assoc., L.P. v. Bodner, 14 A.D.3d at 3, 7-8; PC Ware Intl. v. Jinma Computer Co., 299 A.D.2d 271, 272 (1st Dep't 2002).

Instead, the guaranty provides that: "For valuable consideration, the undersigned Guarantor . . . guarantees the punctual payment when due . . . of the principal of and interest on . . . the Promissory Note . . . ." Chan Aff., Ex. C at 1 (emphases added).

1. Interpreting the Guaranty According to Its Literal Terms

While "agreements are construed in accord with the parties' intent," Greenfield v. Philles Records, 98 N.Y.2d 562, 569 (2002), expressed here as given by Martinez, "the undersigned," to induce plaintiff's agreement "to make a loan to East Village Pet Grooming Salon," Chan Aff., Ex. C at 1, the "best evidence of what parties to a written agreement intend is what they say in their writing." Greenfield v. Philles Records, 98 N.Y.2d at 569; Slamow v. Del Col, 79 N.Y.2d 1016, 1018 (1992); RM 14 FK Corp. v. Bank One Trust Co., N.A., 37 A.D.3d 272, 274 (1st Dep't 2007). See Weissman v. Sinorm Deli, 88 N.Y.2d at 446; Slatt v. Slatt, 64 N.Y.2d 966, 967 (1985). Here, Martinez is not clearly "the

undersigned," who "guarantees the punctual payment." Chan Aff., Ex. C at 1. Instead, "the undersigned" is the "BORROWER: East Village Pet Grooming Salon, Inc. BY: Jane M. Martinez, President," id. at 3, again indicating that she "was acting in a representative capacity." JP Morgan Chase Bank, N.A. v. Cellpoint Inc., 54 A.D.3d at 368.

Moreover, the parties further express "in their writing," Greenfield v. Philles Records, 98 N.Y.2d at 569; Slamow v. Del Col, 79 N.Y.2d at 1018; RM 14 FK Corp. v. Bank One Trust Co., N.A., 37 A.D.3d at 274, that "the undersigned," who "guarantees the punctual payment," was to receive "valuable consideration." Chan Aff., Ex. C at 1. Significantly, neither the Personal Guaranty, nor any of the other contracts, nor any other evidence articulates or otherwise indicates Martinez received any consideration from plaintiff, in contrast to East Village Pet Grooming Salon, Inc., which received the \$30,000.00 loan. See Bronx Store Equip. Co., Inc. v. Westbury Brooklyn Assoc., L.P., 16 A.D.3d at 120; PC Ware Intl. v. Jinma Computer Co., 299 A.D.2d at 272; American Express Bank v. Spire Puerto Rico, 226 A.D.2d 158, 159 (1st Dep't 1996); Atlantic Bank of N.Y. v. Bertolini Indus., 183 A.D.2d 591, 592 (1st Dep't 1992).

Thus the Personal Guaranty does not, completely, plainly, and unambiguously, identify Martinez as the guarantor or express a promise that she individually will pay East Village Pet Grooming Salon's debt under the Promissory Note. Absent explicit contract terms to that effect, enforcement according to such

terms is impossible. Mathias & Carr, Inc. v. Mancini, 13 A.D.3d 148; Lowinger v. Lowinger, 287 A.D.2d 39, 45 (1st Dep't 2001); Ian Woodner Family Collection v. Abaris Books, 284 A.D.2d 163, 164 (1st Dep't 2001); Sound Distrib. Corp. v. Richmond, 213 A.D.2d 178, 179 (1st Dep't 1995). See Vermont Teddy Bear v. 538 Madison Realty Co., 1 N.Y.3d 470, 475 (2004); Greenfield v. Philles Records, 98 N.Y.2d at 569-70; R/S Assoc. v. New York Job Dev. Auth., 98 N.Y.2d 29, 32 (2002); Reiss v. Financial Performance Corp., 97 N.Y.2d 195, 198 (2001). Insofar as the terms create an ambiguity, the court may resort to extrinsic evidence to clarify the ambiguity. Ian Woodner Family Collection v. Abaris Books, 284 A.D.2d at 164; Caruso v. Northeast Emergency Med. Assoc., P.C., 54 A.D.3d at 527; JP Morgan Chase Bank, N.A. v. Cellpoint Inc., 54 A.D.3d at 367-68; United States Fid. & Guar. Co. v. Delmar Dev. Partners, LLC, 14 A.D.3d 836, 838 (3d Dep't 2005). See Burgos v. Metro-North Commuter R.R., 40 A.D.3d 377, 378 (1st Dep't 2007).

2. Interpreting the Guaranty According to Its Purpose and So as to Give the Guaranty Meaning

Silence regarding Martinez's status as a guarantor, on the other hand, would "not equate to contractual ambiguity" and therefore would dictate nonenforcement of the Personal Guaranty against Martinez. Greenfield v. Philles Records, 98 N.Y.2d at 573. Its expression of purpose, however, breaks a total silence on intent: specifically, that she guarantee repayment to induce plaintiff to lend to East Village Pet Grooming Salon. Caruso v. Northeast Emergency Med. Assoc., P.C., 54 A.D.3d at 526. A

guaranty depends on an intent that one party as guarantor is bound to a second party, here plaintiff, "as creditor to pay a debt contracted by a third party," here East Village Pet Grooming Salon, "either immediately upon default of the third party or after attempts to effect collection from the third party have failed." Chemical Bank v. Meltzer, 93 N.Y.2d 296, 302-303 (1999). Guarantor status "depends on the respective roles of the parties and the nature of the underlying transaction" id. at 303; analysis of the transaction "as an integrated whole," id. at 304; and examination of the context in which the guarantee was given. Beal Sav. Bank v. Sommer, 8 N.Y.3d 318, 324 (2007); Caruso v. Northeast Emergency Med. Assoc., P.C., 54 A.D.3d at 527; Bronx Store Equip. Co., Inc. v. Westbury Brooklyn Assoc., L.P., 16 A.D.3d at 120; 150 Broadway Assoc. N.Y. Assoc., L.P. v. Bodner, 14 A.D.3d at 7.

Viewing the guarantee in light of the parties' respective roles and the Promissory Note creating the debt, interpretation of the guaranty such that "the undersigned," Chan Aff., Ex. C at 1, the "BORROWER: East Village Pet Grooming Salon," id. at 3, which received the "valuable consideration," id. at 1, is the guarantor, would position the corporate defendant as the guarantor of its own debt. Such an interpretation would render the guarantee unnecessary, since the promissory note already bound the corporate defendant, Weissman v. Sinorm Deli, 88 N.Y.2d at 447; RM 14 FK Corp. v. Bank One Trust Co., N.A., 37 A.D.3d at 274; 150 Broadway Assoc. N.Y. Assoc., L.P. v. Bodner, 14 A.D.3d

at 3; JP Morgan Chase Bank, N.A. v. Cellpoint Inc., 54 A.D.3d at 368; "superfluous, a view unsupportable under standard principles of contract construction," Lawyers' Fund for Client Protection of State of N.Y. v. Bank Leumi Trust Co. of N.Y., 94 N.Y.2d 398, 404 (2000); see Columbus Park Corp. v. Department of Hous. Preserv. & Dev. of City of N.Y., 80 N.Y.2d 19, 30-31 (1992); Brown v. Business Leadership Group, 57 A.D.3d 212, 213 (1st Dep't 2008); RM 14 FK Corp. v. Bank One Trust Co., N.A., 37 A.D.3d at 274; Suffolk County Water Auth. v. Village of Greenport, 21 A.D.3d 947, 948 (2d Dep't 2005); and "meaningless"--equally contrary to those principles. Beal Sav. Bank v. Sommer, 8 N.Y.3d at 324; Weissman v. Sinorm Deli; 88 N.Y.2d at 447; Reliance Constr. Ltd v. Kennelly, 70 A.D.3d 418, 419 (1st Dep't 2010); Stonebridge Capital, LLC v. Nomura Intl PLC, 68 A.D.3d 546, 548 (1st Dep't 2009); 150 Broadway Assoc. N.Y. Assoc., L.P. v. Bodner, 14 A.D.3d at 6. Such an interpretation therefore "must be rejected." Id. at 8. See Columbus Park Corp. v. Department of Hous. Preserv. & Dev. of City of N.Y., 80 N.Y.2d at 31; Wooster 76 LLC v. Ghatanfard, 58 A.D.3d 440, 481 (1st Dep't 2009); Lehman Bros. Holdings, Inc. v. Matt, 34 A.D.3d 290, 291 (1st Dep't 2006); PNC Capital Recovery v. Mechanical Parking Sys., 283 A.D.2d at 270-71.

### 3. Conclusion

Given the inconsistent terms and interpretations, the Personal Guaranty is ambiguous as to whether Martinez is the guarantor. Sound Distrib. Corp. v. Richmond, 213 A.D.2d at 179;

Keter Publ. v. Shapolsky, 189 A.D.2d 591 (1st Dep't 1993); Caruso v. Northeast Emergency Med. Assoc., P.C., 54 A.D.3d at 526-27; JP Morgan Chase Bank, N.A. v. Cellpoint Inc., 54 A.D.3d at 368. The guaranty on the one hand expresses the parties' intention that she guarantee repayment of the loan, Caruso v. Northeast Emergency Med. Assoc., P.C., 54 A.D.3d at 526, but on the other hand never recites that she does promise to plaintiff to pay the debt East Village Pet Grooming Salon agreed to pay. Id. at 527.

Since the record on this motion for summary judgment in lieu of a complaint is confined mainly to the contract documents and contains little extrinsic evidence, this record does not resolve the issue. JP Morgan Chase Bank, N.A. v. Cellpoint Inc., 54 A.D.3d at 368. See C.P.L.R. § 3213; Weissman v. Sinorm Deli, 88 N.Y.2d at 444; Kerin v. Kaufman, 296 A.D.2d 336, 337-38 (1st Dep't 2002); Ian Woodner Family Collection v. Abaris Books, 284 A.D.2d at 164. While it might be assumed that plaintiff lender and economic development corporation drafted the contracts to use routinely with borrowers and guarantors, including defendants, the record does not disclose even those critical facts, except as to the Amendment, which plaintiff presented to defendants, and Martinez signed for the corporate defendant, on plaintiff's letterhead. Such facts, for example, would bear heavily on resolution of the ambiguity, requiring it to be construed against the drafter. Cowen & Co. v. Anderson, 76 N.Y.2d 318, 323 (1990); Jacobson v. Sassower, 66 N.Y.2d 991, 993 (1985); Burgos v. Metro-North Commuter R.R., 40 A.D.3d at 378; 150 Broadway Assoc. N.Y.

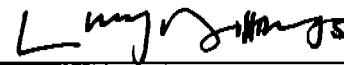
Assoc., L.P. v. Bodner, 14 A.D.3d at 8. On these grounds, the court denies plaintiff's motion for summary judgment in lieu of a complaint against defendant Martinez, Kerin v. Kaufman, 296 A.D.2d at 338; Ian Woodner Family Collection v. Abaris Books, 284 A.D.2d at 164; Keter Publ. v. Shapolsky, 189 A.D.2d at 592, but also denies her cross-motion for summary judgment dismissing plaintiff's action against her insofar as it is based on the Personal Guaranty. C.P.L.R. §§ 3212(b) and (e), 3213; Mathias & Carr, Inc. v. Mangini, 13 A.D.3d 148; Sound Distrib. Corp. v. Richmond, 213 A.D.2d at 179; Caruso v. Northeast Emergency Med. Assoc., P.C., 54 A.D.3d at 529-30.

#### IV. DISPOSITION

In sum, the court grants plaintiff's motion for summary judgment in lieu of a complaint against defendant East Village Pet Grooming Salon, Inc., for the unpaid balance of the Promissory Note dated January 16, 2008, \$24,230.36, with interest at 8% per year from July 1, 2008. C.P.L.R. § 3213. The Clerk shall calculate the interest up to the date the judgment is entered and enter the total judgment forthwith. The court otherwise denies plaintiff's motion for summary judgment in lieu of a complaint. Id. The court grants defendant Martinez's cross-motion for summary judgment and dismisses plaintiff's action against her insofar as it is based on the Loan Agreement, Promissory Note, or Amendment, but denies her cross-motion for summary judgment insofar as plaintiff's claim against her is based on the Personal Guaranty. C.P.L.R. § 3212(b) and (e).

Within 20 days after service of this order with notice of entry, plaintiff shall serve and file a complaint against Martinez. Within 20 days after service of a complaint, she shall serve and file an answer. Weissman v. Sinorm Deli, 88 N.Y.2d at 445; Cherlin v. Epstein, 261 A.D.2d 345 (1st Dep't 1999); Concord Assets Fin. Corp. v. Radebaugh, 172 A.D.2d 446, 447 (1st Dep't 1991); Combine Intl. v. Berkley, 141 A.D.2d 465, 468 (1st Dep't 1988). See Schulz v. Barrows, 94 N.Y.2d 624, 628 (2000). This decision constitutes the court's order and judgment. The court will mail copies to the parties' attorneys.

DATED: September 13, 2010



LUCY BILLINGS, J.S.C.

