

<b>Atalaya Asset Income Fund II LLP v Ringel</b>
2020 NY Slip Op 31438(U)
April 27, 2020
Supreme Court, New York County
Docket Number: 654299/2019
Judge: Joel M. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM**

*Justice*

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ATALAYA ASSET INCOME FUND II LLP,

Plaintiff,

- v -

BENJAMIN RINGEL, YAEL RINGEL, BCR REALTY  
INVESTMENT II, LLC, SAGG MAIN INV LLC

Defendants.

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INDEX NO. 654299/2019

MOTION DATE 07/29/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 25

were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT .

Plaintiff Atalaya Asset Income Fund II LP (Plaintiff) seeks an award of Summary Judgment in Lieu of a Complaint under CPLR 3213, based on a Guaranty entered with defendants Benjamin Ringel, Yael Ringel, BCR Realty Investments II, LLC, and Sagg Main Inv LLC (collectively, Defendants). Plaintiff’s unopposed motion is Granted.

CPLR 3213 provides that “[w]hen an action is based upon . . . any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.” This provision “was enacted 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” (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 491-92 [2015] [internal quotation marks and citation omitted]). An “instrument for the payment of money only” is one that “requires the defendant to make a certain payment or payments and nothing else” (*Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, 137 [1st Dept.

1968]; *Ian Woodner Family Collection, Inc. v Abaris Books, Ltd.*, 284 AD2d 163, 164 [1st Dept. 2001] [holding that an “instrument for the payment of money only” is one in which there is “an unconditional promise to pay a sum certain at a given time or over a stated period”]).

An unconditional guaranty falls within the purview of CPLR 3213 (*Jason Trading Corp. v Lason Trading Corp.*, 303 AD2d 180, 180 [1st Dept 2003]; *Dell’Anno v Molinari*, 19 Misc.3d 1117(A) [Sup Ct, New York County 2008]; *see also Bank of America, N.A. v Solow*, 59 AD3d 304 [1st Dept. 2009]).

Plaintiff has established its *prima facie* entitlement to summary judgment in lieu of complaint (*see Davimos v Halle*, 35 AD3d 270, 272 [1st Dept 2006] [*prima facie* case requires plaintiff to prove “the existence of the guaranty, the underlying debt and the guarantor’s failure to perform under the guaranty”]). The Guaranty in this action “irrevocably and unconditionally” guaranteed to Plaintiff “the payment and performance” of certain obligations under the Loan Documents, and Defendants defaulted on these obligations.

As noted, Defendants have failed to oppose this motion (*see Tongkook America, Inc. v Bates*, 295 AD2d 202 [1st Dept. 2002] [defendants failed to raise a triable issue of fact to avoid summary judgment in lieu of complaint where agreement was clear on its face that they owed sums certain to plaintiff]). One Defendant – Sagg Main Inv LLC (the Bankruptcy Defendant) – has filed a petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (*see* NYSCEF 25). The claims in this case against the Bankruptcy Defendant are thus stayed pursuant to the automatic stay provided in 11 U.S.C. § 362 and held in abeyance pending the bankruptcy proceeding. Any party may notify the Court of the resolution of such proceeding, at which time the Court will restore this motion as to Bankruptcy Defendant to the calendar.

Accordingly, it is:

**ORDERED** that Plaintiff's unopposed Motion for Summary Judgment in Lieu of Complaint is Granted as to Defendants Benjamin Ringel, Yael Ringel, and BCR Realty Investments II, LLC; it is further

**ORDERED** that the Court clerk is directed to enter judgment against Defendants Benjamin Ringel, Yael Ringel, and BCR Realty Investments II, LLC in the amount of: (i) \$10,858,190.28, plus interest at the statutory rate from May 31, 2018, and (ii) in addition, \$29,416.86 to reimburse advances; it is further

**ORDERED** Plaintiff's request for costs and fees is Granted as to Defendants Benjamin Ringel, Yael Ringel, and BCR Realty Investments II, LLC, and is referred to a JHO to hear and determine; and it is further

**ORDERED** that the powers of the JHO/Special Referee to determine shall not be limited further than as set forth in the CPLR; and it is further

**ORDERED** that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "Local Rules" link), shall assign this matter to an available Special Referee to determine as specified above; and it is further

**ORDERED** that Plaintiff's counsel shall serve a copy of this order with notice of entry on defendants within five days and that counsel for Plaintiff shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at

http://www.nycourts.gov/courts/1jd/supctmanh/refpart-infosheet-10-09.pdf) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

**ORDERED** that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; it is further

**ORDERED** that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion; and it is further

**ORDERED** that Plaintiff shall serve this Order with Notice of Entry on Defendants within 5 days of the date of this Order.

This constitutes the Decision and Order of the Court.

4/27/2020  
DATE

  
JOEL M. COHEN, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE