

**Perez v Morillo**

2021 NY Slip Op 32399(U)

September 14, 2021

Supreme Court, New York County

Docket Number: 657165/2020

Judge: Frank P. Nervo

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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. FRANK NERVO PART 04

*Justice*

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EDWIN PEREZ, EDWARD SHEEN

Plaintiff,

- v -

MARIO MORILLO,

Defendant.

-----X

INDEX NO. 657165/2020

MOTION DATE 12/22/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 13 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Plaintiffs move for summary judgment in lieu of complaint. Following submission of this motion, plaintiffs sought to withdraw the motion, as defendant executed an affidavit for judgment by confession (NYSCEF Doc. Nos. 9 & 10). Plaintiffs' judgment by confession was rejected by the Clerk's office, as judgments by confession must stand on their own and require the purchasing of a separate index number. Thereafter, plaintiffs sought to revoke their request to withdraw the motion and now seek decision on their summary judgment motion (NYSCEF Doc. No. 13). Defendant has not opposed the motion.

On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter

of law and demonstrate the absence of any material issues of fact (*Friends of Thayer lake, LLC v. Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v. Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]). “When a plaintiff moves for summary judgment, it is proper for the court to ... deny summary judgment if facts are alleged in opposition to the motion which, if true, constitute a meritorious defense” (*Nassau Trust Co. v. Montrose Concrete Products Corp.*, 56 NY2d 175 [1982]).

Here, plaintiffs have submitted affidavits attesting to the loan agreement they entered into with defendant, and have submitted the promissory note executed by the parties. Plaintiffs aver that defendant made two monthly payments in the required amount of \$2,000, in February and September of 2020, before defaulting on the agreement. Accordingly, a balance of \$28,000 remains.

The parties’ agreement requires defendant repay the principal balance by August 29, 2020, and further provides for default interest at 16 percent, should defendant fail to repay the principal by this date. Consequently, plaintiffs have met their burden establishing their entitlement, as a matter of law, to judgment

in their favor. Defendant, having failed to oppose this motion, has not raised a question of fact requiring trial.

Finally, the parties' agreement provides for reasonable attorney's fees at an agreed upon rate of \$350 per hour, as well as associated collection costs. Plaintiffs seek to sever that portion of their claim for these fees and costs.

Accordingly, it is

ORDERED that the motion is granted; and it is further

ORDERED that plaintiffs shall have judgment in the amount of \$28,000, with interest at 16 percent from August 29, 2020, as taxed by the Clerk of the Court; and it is further


ORDERED that such judgment shall be submitted to the Clerk of the Court, not to chambers or the Part; and it is further

ORDERED that plaintiffs' claims for attorney's fees and costs is served and such claims shall proceed to inquest before this Court on **October 12, 2021 at 2:30pm** via Microsoft Teams; and it is further

ORDERED that should defendant wish to appear at said inquest, defendant shall contact the Part Clerk at [SFC-Part4-Clerk@nycourts.gov](mailto:SFC-Part4-Clerk@nycourts.gov) or via letter, so as to be received prior to the inquest date, to New York Supreme Court, Part IV, 80 Centre Street New York, NY 10013; and it is further

ORDERED that plaintiffs shall submit courtesy electronic copies of exhibits they intend to introduce at the inquest to [SFC-Part4-Clerk@nycourts.gov](mailto:SFC-Part4-Clerk@nycourts.gov) by October 8, 2021.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

<u>September 14, 2021</u>					
DATE			FRANK NERVO	J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE