

**Krigsman v Ranta**

2023 NY Slip Op 30336(U)

January 30, 2023

Supreme Court, New York County

Docket Number: Index No. 656669/2022

Judge: Barry Ostrager

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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. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

Table with 2 columns: Case details (Plaintiffs, Defendant) and Motion details (INDEX NO., MOTION DATE, MOTION SEQ. NO.). Includes 'DECISION + ORDER ON MOTION' label.

HON. BARRY R. OSTRAGER

The Court heard oral argument via Microsoft Teams on January 30, 2023, on plaintiffs' motion for summary judgment in lieu of complaint, pursuant to CPLR 3213, seeking a judgment for a total sum of approximately five million dollars. Plaintiffs, who are Lenders, appeared by counsel, and defendant Curt Ranta, the Borrower, appeared representing himself. In accordance with the January 30, 2023, transcript of proceedings, the motion is granted in part and denied in part as follows.

In support of the motion, plaintiffs have submitted affidavits from Lenders Marc Krigsman and Annaliese Kambour (Rubin) (NYSCEF Doc. Nos. 3 and 6). As explained in those affidavits, Ranta, a real estate developer based in Southern California, operates through various companies including Rantaman Properties, Inc. Plaintiffs Marc and Lisa Krigsman, as Lenders, entered into a Promissory Note with Rantaman Properties, Inc. dated May 30, 2018, for the sum of \$2,196,058.35 plus interest at 12% per annum, with a Maturity Date of March 1, 2019 (NYSCEF Doc. No. 9). The Note increased the interest rate to 16.25 % upon Default (¶6) and also provided for late charges and attorneys' fees (¶3 and 9). In addition to an Individual

Guaranty by Ranta on the signature page of the Note, an additional Personal Guaranty was executed, dated June 1, 2018 (NYSCEF Doc. No. 4).

According to the Krigsman Affidavit, the additional Guaranty was executed as part of an Additional Funding Agreement for an additional loan of up to \$430,000 at the Lender's discretion, with the expectation that those funds would enable Ranta to complete the redevelopment of the Property by March 1, 2019. Krigsman has provided a chart in his affidavit asserting that Ranta received the entire \$2,196,058.35 on the face amount of the Note as of May 5, 2019, and failed to pay the sums due as of March 1, 2019, or thereafter. When Rantaman Properties filed for bankruptcy, Krigsman included the additional discretionary amounts in its Proof of Claim. No amounts were paid to Krigsman through the bankruptcy because a senior lender foreclosed on the Property and sold the Property for less than its claim. Krigsman therefore seeks to recover the sums here.

Ranta made a similar arrangement with differing amounts with plaintiffs Annaliese Kambour (Rubin) and Lawrence Rubin, as confirmed in the affidavit from Ms. Kambour (NYSCEF Doc. No. 6). The Rubin Promissory Note, dated May 30, 2018, was for a face amount of \$1,515,132.58, with the same Maturity Date and provisions for interest, default interest, late charges and attorneys' fees (NYSCEF Doc. No. 8). As with the Krigsman loan, additional discretionary funding in the amount of \$430,000.00 was referenced in the Note. The Note contained an Individual Guaranty from Ranta. In addition, An Additional Funding Guaranty, dated June 1, 2018, was entered into jointly by all the Lenders with Rantaman Properties, Inc. and Ranta (NYSCEF Doc. No. 7). A separate Personal Guaranty was signed by Ranta on June 1, 2018 (NYSCEF Doc. No. 10). Similar to the Krigsman Affidavit, the Rubin Affidavit contains a chart asserting that the entire principal amount of the Rubin Note, \$1,515,132.58, was paid out to

Ranta by May 9, 2019, and that no principal or interest was paid by Ranta on March 1, 2019, or at any point thereafter. As with the Krigsmans, the Rubins filed a proof of claim that included the amounts due on the Note plus the discretionary funding, but they received no payments.

Plaintiffs have established a prima facie case for judgment in their favor based on the Promissory Notes reflecting loans to defendant Ranta's company and the Personal Guaranties executed by defendant Ranta individually. It is well established that an unconditional Guaranty related to an unambiguous Promissory Note constitutes an "instrument for the payment of money only" within the meaning of CPLR 3213. Plaintiffs' affidavits authenticated the documents based on their own personal knowledge and have confirmed defendant's default. Plaintiffs have confirmed their willingness to waive default interest and late charges and the sums due under the Additional Funding Agreements to avail themselves of the accelerated proceedings under CPLR 3213, but they seek interest at the contractual rate on the Note's principal plus attorney's fees.

Significantly, and as discussed at length in the transcript of proceedings, each Promissory Note consists of two components. The first is a sum based on an earlier loan ("the Current Debt Amount"), and the second sum is for the Additional Funding. Thus, as to the Krigsmans, the Current Debt Amount stated in the Note is \$1,766,058.35, and Additional Funding in the sum of \$430,000.00 is also included, for the total amount of \$2,196,058.35 stated on the face of the Note. As to the Rubins, the Current Debt Amount stated in the Note is \$1,085,132.58, and Additional Funding in the sum of \$430,000.00 is also included, for the total amount of \$1,515,132.58.

In the Answer he filed representing himself, defendant Ranta does not dispute the validity of the Promissory Notes or the Guaranties. Nor does he dispute that he received funds reflecting the Current Debt Amounts and failed to pay them. His arguments appear to challenge the

additional \$430,000.00 in monies loaned pursuant to the Additional Funding Agreements. But the Court would in any event deny plaintiffs a judgment on the Additional Funding Agreements as those claims require proof beyond the face of the Agreements and therefore do not qualify for the expedited treatment under CPLR 3213.

To the extent Ranta suggests he has counterclaims, he has failed to state a sufficiently specific counterclaim in proper form. Therefore, defendant Ranta may either commence a separate suit, if he has a valid claim for breach of contract, or file a counterclaim should plaintiffs commence another action to enforce the Additional Funding Agreements. However, nothing in defendant's Answer defeats plaintiffs' claims on the Current Debt Amounts referenced in the Promissory Notes and the Guaranties.

Accordingly, plaintiffs' motion for summary judgment in lieu of complaint is granted in part, and the Clerk is directed to enter judgment in favor of plaintiffs Marc Krigsman and Lisa Krigsman, jointly and severally, against defendant Curt Ranta, in the sum of \$1,766,058.35 plus contractual interest at the rate of 12% per annum from May 9, 2019, the date of the last funding, through the entry of judgment, plus costs and disbursements as taxed by the Clerk of the Court. The Clerk shall also enter judgment in favor of plaintiffs Annaliese Kambour and Lawrence Rubin, jointly and severally, against defendant Curt Ranta, in the sum of \$1,085.132.58, plus contractual interest at the rate of 12% per annum from May 9, 2019, the date of the last funding, through the entry of judgment, plus costs and disbursements as taxed by the Clerk of the Court.

Additionally, plaintiffs are entitled to an award of reasonable attorneys' fees pursuant to paragraph 9 of the Promissory Notes. The Court awards \$15,000.00 in attorneys' fees for the enforcement of each Note, which amount shall be added to each judgment in favor of each set of plaintiffs. Should additional fees be requested, plaintiffs may move by Notice of Motion

supported by attorney affirmations of services rendered and invoices. Any request for judgment based on the Additional Funding Agreements is denied without prejudice and dismissed on consent in favor of a plenary action. Plaintiffs shall efile a Proposed Judgment directed to the County Clerk with a Bill of Costs consistent with the terms of this Decision.

Dated: January 30, 2023

  
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BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION				
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" 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		