

Propellus, Inc. v Royal Sovereign Group

2023 NY Slip Op 32361(U)

July 6, 2023

Supreme Court, New York County

Docket Number: Index No. 652295/2022

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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 Propellus, Inc.

INDEX NO. 652295/2022

Plaintiff,

MOTION DATE 07/13/2022

- v -

Royal Sovereign Group et al

MOTION SEQ. NO. 001

Defendants.

**DECISION + ORDER ON
 MOTION**

-----X
 HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT

In this action, plaintiff Propellus, Inc. seeks to recover payment on a series of promissory notes for loans that non-party American Growth Funding, LLC (AGF) made to defendants Royal Sovereign Group LLC (RSG), Royal Sovereign Costino S.A. (RSC), and Minera Ranala S.A.C. (Minera). AGF subsequently assigned these notes to plaintiff. Because defendants defaulted on the notes, plaintiff now moves, pursuant to CPLR 3213, for summary judgment in lieu of complaint. Defendants RSG and its principal, Anthony Cappaze (together, the RSG defendants) oppose the motion for lack of personal jurisdiction and attack the purported notes as fraudulent and the interest on the loans as usurious. Neither RSC nor Minera has appeared in this action.

For the reasons below, plaintiff's motion for summary judgment in lieu of complaint is denied.

Personal Jurisdiction

As a threshold matter, the RSG defendants claim that this court does not have personal jurisdiction of them. Plaintiff's President and Chief Executive Officer, who is also the Managing Member of AGF, Ralph Johnson, avers that, "upon information and belief, [RSG is] a corporation organized under the laws of New Jersey¹ and maintains a business address at 33 Holly Drive, Short Hills, New Jersey 07078. During the relevant time period, RSG also maintained an office at 14 Wall Street, New York, New York." (NYSCEF # 16 – Johnson Amended Aff, ¶'s 2,

¹ Cappaze states that RSG is a Delaware limited liability company (NYSCEF # 27 – Cappaze aff, ¶ 1).

5). Johnson also believes that both RSC and Minera are incorporated in Peru and have an office in Peru, and also maintained an office at 14 Wall Street at the relevant time period (*id.* ¶'s 6, 7). And Johnson believes that Anthony Cappaze, a resident of New Jersey, is the President, CEO and/or the senior executive officer of RSG, RSC, and Minera, and the personal guarantor on the RSG loans (*id.*, ¶'s 8, 9). Plaintiff served the summons and motion for summary judgment in lieu of complaint and Amended Affidavit to each of the defendant companies and Cappaze at 233 Colby Pl., Morganville, NJ, after a service attempt at 33 Holly Drive, Short Hills, NJ failed as the person at that address informed the process server that the former resident had moved to Morganville, NJ. (NYSCEF #'s 17-20).

Cappaze explains that he is the Managing Member of RSG, a Delaware limited liability company, which he ran from Short Hills, NJ, where he also resides (NYSCEF # 27 – Cappaze Aff, ¶'s 1-2). Cappaze adds that RSG has been inactive since 2013 (*id.*, ¶ 2).

According to Cappaze, Johnson's allegation that the RSG defendants had an office at 14 Wall Street office is a fabrication; 14 Wall Street was Johnson's and AGF's office, which Johnson rented from Regus, a short-term rental company (NYSCEF # 34 – MOL in Opp at 7). The RSG defendants deny engaging in any business transactions at issue in New York or conducting any activities that would invoke the benefits or protections of New York law (*id.* at 6-7).

In reply, plaintiff maintains that this court has personal jurisdiction over the RSG defendants as Cappaze used "the 14 Wall Street address, and a New York telephone number in his dealings for Royal Sovereign Group" (NYSCEF # 42 – Pltf's Reply MOL at 17). Plaintiff further asserts that Cappaze used this address on his business card and email signature block for all of the defendant entities; however, plaintiff fails to submit evidence of such business card or emails (*id.* at 17; NYSCEF # 43 – Johnson Reply Aff, ¶ 16). According to plaintiff, it was in New York, at AGF and RSG's offices, that the parties signed some of the notes at issue (NYSCEF # 42 at 11, NYSCEF # 43, ¶ 13). Also, plaintiff alleged that Cappaze continuously updated plaintiff on Cappaze's business activities when parties discussed loan repayment terms (NYSCEF # 16, ¶'s 36, 43-45, 47-49).

To demonstrate that Cappaze operated RSG from a Wall Street office, plaintiff submits a deposition transcript from Cappaze's testimony before the U.S. Securities and Exchange Commission (SEC) on February 26, 2015 (NYSCEF # 44 – Astarita Aff – Exh. B, Cappaze SEC Tr).² During the deposition, Cappaze was asked whether he recognized the contact information—14 Wall Street, New York and a phone number—on a two-page document purporting to be Johnson's resume. Cappaze answered that the address was Johnson's office and the phone number was for "Royal Sovereign" (*id.* at 94:7-21). Cappaze denied that Royal Sovereign ever had

² Plaintiff obtained the SEC transcript in discovery on a case *U.S. Securities and Exchange Commission v American Growth Funding II, LLC, et. al.*, (16-cv-00828 [SDNY]) (NYSCEF # 44 – Astarita Aff at 1).

a location at 14 Wall Street, claiming that it had only a telephone number there (*id.* at 94:13-17).

Cappaze explained that when Johnson offered him the use of a Wall Street address and a phone number there, Cappaze thought “[it was] a good idea but I bet you I haven’t been there maybe twice in my life” (*id.* at 96:8-24). As to the phone number which had a 212 area code, Cappaze testified that the calls would be picked up at that office, which was “a desk with fifty offices in there . . . and the girl at the desk just picks it up . . . and say[s] ‘Royal Sovereign’ and shoot[s] [Cappaze] the phone call right away” to his cell phone (*id.* at 98:15-99:24). Cappaze stated that Johnson, not Royal Sovereign, paid for the phone service (*id.* at 100:1-5). Cappaze testified to having used the conference room there once for a meeting with a group of potential buyers from China; Johnson was not at that meeting (*id.* at 100:1-24).

As to RSC and Minera, Cappaze disavows any formal affiliation with these two entities. He denies ever “own[ing], hold[ing] any shares in, operat[ing], or work[ing] at or for Defendants Costino or Minera” (NYSCEF # 27, ¶ 12).

However, plaintiff points to the SEC transcript wherein Cappaze stated that he was the 80% owner of RSC while non-party Miguel Salinas was the 20% owner, and that Cappaze, Salinas, and Cappaze’s attorney, Manuel Diego, were the only officers and directors of RSC (NYSCEF # 42 at 16-17; NYSCEF # 44, Exh. B – Cappaze SEC Tr at 53:16-54:20).³ According to Cappaze, Minera was a subsidiary and an operating company of RSC (*id.* at 65:18-20, 14:4-14, 136:2-5). Cappaze represented to the SEC that Salinas, as the General Manager of Minera, was responsible for managing Minera’s routine operational activities, such as mining operations, buying equipment, and hiring employees (*id.* at 14: 4-14). Cappaze also confirmed that “Royal Sovereign Group, which is essentially [Cappaze], owns Royal Sovereign Costino” (*id.* at 18:16-19). Additionally, Cappaze admitted to having received the SEC subpoenas sent to RSG and RSC, care of Cappaze, and having produced documents the subpoenas called for on behalf of RSG and RSC (*id.* at 10:24-11:13).

CPLR 302(a)(1) permits New York courts to exercise specific personal jurisdiction over a non-domiciliary defendant who “transacts any business” in New York if two elements are met: the defendant has “purposefully availed itself of the privilege of conducting activities within the forum State” (*D & R Glob. Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 297 [2017]); and plaintiff’s claim arises from defendant’s business transaction in New York (*McGowan v Smith*, 52 NY2d 268, 272 [1981] [“essential to the maintenance of a suit against a nondomiciliary under CPLR 302(a)(1) is the existence of some articulable nexus between the business transacted and the cause of action sued upon”]).

The court has specific personal jurisdiction over the RSG defendants under CPLR 302(a)(1). While the RSG defendants minimize their contact with New York

³ Miguel Salinas is also known as Mickey Salinas (*id.* at 13:19-14:12).
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to essentially no contact at all, the question is not so much the quantity but rather the quality of the transaction (*see State v Vayu, Inc.*, 39 NY3d 330, 332-333 [2023] [stating that courts must examine the quality of defendant's contacts in New York to ascertain personal jurisdiction under CPLR 302(a)(1)]; *see also Fischburg v Doucet*, 9 NY3d 375, 380 [2007] [finding that California defendants—who hired a New York lawyer over the telephone to represent them in litigation in Oregon and stayed in constant communication with the attorney during the course of litigation—had the “quality of [] New York contacts” to be subjected to New York jurisdiction under CPLR 302(a)(1)]).

New York City, particularly Wall Street, is known as the world's financial center. As Cappaze acknowledged, he believed that to “have a phone number and use a Wall Street address” was a “good idea” (NYSCEF # 44, Exh. B – Cappaze SEC Tr at 96:19-24). To that effect, anyone in the world with an interest in the RSG defendants' business would call the 212 phone number where a receptionist answered by announcing the Royal Sovereign name, and then immediately forwarding the call to Cappaze. Thus, the caller would reasonably believe that the office was in Manhattan. And, although Cappaze states that he was rarely at the Wall Street office, he did admit to holding a business meeting with a group of potential clients from China at 14 Wall Street rather than in New Jersey, where Cappaze claims he conducts his business. Thus, the Wall Street address and a 212 phone number in New York served a beneficial purpose for the RSG defendants' business.

Further, there is an articulable nexus between plaintiff's claim and defendants' activities in New York because plaintiff's claim arises from the RSG Notes, which funded RSG's business operation through about twenty loans under the RSG Notes made between February 14, 2010 and October 15, 2012. Cappaze travelled to New York to negotiate the RSG Notes in addition to maintaining a continuing relationship with AGF and Johnson that spanned over twenty loans; Cappaze also provided ongoing updates on his business to AGF and Johnson (*see 4069 Rosen Assoc., LLC v Tournamentone Corp.*, 206 AD3d 464, 465 [1st Dept 2022] [finding that defendant's travel to New York in relation to the notes it issued to plaintiffs, defendant's progress report to plaintiffs on defendant's business, and defendant's “continuing relationship with plaintiffs that lasted several years and spanned 11 separate loans” are “sufficient to satisfy the statutory test for long-arm jurisdiction”]; *see also D & R Glob. Selections, S.L.*, 29 NY3d at 299 [explaining that the inquiry of “articulable nexus” or “substantial relationship” between a non-domiciliary defendant's transaction of business in New York and a claim is “relatively permissive,” and an articulable nexus or substantial relationship exists where at least one element arises from the New York contacts; it is not required that every element of the cause of action pleaded arise from the New York contacts”]).

In light of the RSG defendants' purposeful actions and the nexus between plaintiff's claim and the RSG defendants' activities in New York, a finding of

personal jurisdiction over the RSG defendants under CPLR 302(a)(1) is warranted (*see Fischbarg*, 9 NY3d at 380 [“CPLR 302(a)(1) jurisdiction is proper ‘even though the defendant never enters New York, so long as the defendant’s activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted”], quoting *Kreutter v McFadden Oil Corp.*, 71 NY2d 460 [1988]).

Similarly, regarding Minera, plaintiff identifies that Cappaze testified to owning 80% of Minera, and Salinas owning the remaining 20% (*id.* at 14:15-20, 55:2-6, 136:10-14). Further, Cappaze admitted to the SEC that his authorization was required for executing the Minera Note and more generally, for Minera to receive capital from AGF or RSG (*id.* at 137:2-20, 138:22-139:13, 140:8-20). Specifically, Salinas needed to consult with Cappaze’s attorney, Diego, before executing loans on behalf of Minera (*id.* at 138:22-139:13). And Diego must get Cappaze’s authorization before consenting to Salinas’ actions (*id.*).

Based on Cappaze’s statements, made under oath, to the SEC, and absent any showing to the contrary except for Cappaze’s self-serving affidavit denying any connection to RSC and Minera, the court finds that RSC and Minera were under Cappaze’s management and control. Thus, service to Cappaze for RSC and Minera was proper, and Cappaze’s failure to answer or appear⁴ on behalf of RSC and Minera caused their default.

CPLR 3213

CPLR 3213 permits “actions based upon an instrument for the payment of money only to be commenced with a motion for summary judgment rather than a complaint” (*Banco Popular N. Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381, 383 [2004]). To establish prima facie entitlement to summary judgment in lieu of complaint on a promissory note, a plaintiff must show that (i) the instrument sued upon is “for the payment of money only”; and (ii) plaintiff’s right to payment is ascertainable from the face of the instrument (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). “The instrument does not qualify [for summary judgment in lieu of complaint] if outside proof is needed” to ascertain the amounts of the obligations (*id.* at 444-445). Once the plaintiff submits evidence establishing these elements, the burden shifts to the defendant to submit evidence that raises a triable issue of fact with respect to a bona fide defense (*Zyskind v FaceCake Marketing Technologies, Inc.*, 101 AD3d 550, 551 [1st Dept 2012]).

In support of its motion, plaintiff submits Johnson’s affidavit along with exhibits of the twenty RSG promissory notes for various loan amounts but all with a 3% non-compounding monthly interest rate, equaling 36% per annum (NYSCEF # 16; NYSCEF # 3 – the RSG Notes). Plaintiff also submits a statement addressed to and acknowledged by Cappaze showing that, as of August 16, 2016, the RSG

⁴ While denying any connection to RSC or Minera, the RSG defendants nonetheless include RSC and Minera in arguing that the interest rates on the loans are usurious and therefore unenforceable.

defendants acknowledged owing AFG \$2,216,000 in unpaid principal and \$2,631,497 in unpaid interest as of December 31, 2015 (NYSCEF # 5). Johnson avers that Cappaze signed each of the RSG Notes both as a borrower on behalf of RSG, and as a guarantor, in his individual capacity (NYSCEF # 16, ¶'s 9, 13). But no guaranty on any of the RSG notes were submitted. Johnson states that upon default of the notes, RSG is obligated to pay the cost of collection including attorney's fees. According to Johnson, as of March 25, 2022, the total amount outstanding is \$8,286,729 plus ongoing interest, costs, and attorney's fees (*id.*, ¶'s 16-20).

Plaintiff additionally presents a master credit agreement between AGF and RSC, dated June 15, 2012, accompanied by eleven promissory notes for various loan amounts that the parties entered into pursuant to the master credit agreement, from September 6, 2012 to August 13, 2013, at an annual interest rate of 36% (NYSCEF # 6 – the RSC Notes). A statement dated August 16, 2016 is also submitted to show that as of December 31, 2015, an outstanding amount of \$2,071,200 in unpaid principal and \$1,925,303.80 in unpaid interest remain (NYSCEF # 8). The statement was addressed to and acknowledged by Anthony Cappaze. Pursuant to the loan agreements of the RSC Notes, on RSC's default, RSC bears the cost of collection (NYSCEF # 6). As of March 25, 2022, plaintiff calculates from its business records that RSC owes \$7,155,016.20 plus ongoing interest, cost, and attorney's fees (NYSCEF # 16, ¶'s 26, 28).

Finally, plaintiff submits a loan agreement between AGF and Minera dated June 1, 2012, under which Minera borrowed \$1,500,000 from AGF at an interest rate of 36% per annum (NYSCEF # 9 – the Minera Note). Along with the Minera Note is a statement dated November 2, 2016, showing an outstanding balance under the Minera Note of \$1,836,000 in unpaid principal and \$1,796,916.50 in unpaid interest, as of December 31, 2015, which was addressed to and acknowledged by Miguel Salinas (NYSCEF # 10). Pursuant to the loan agreement, upon default of the loan, Minera bears the cost of collecting on the note (NYSCEF # 9). As of July 11, 2022, plaintiff calculates that Minera is indebted to plaintiff in the amount of \$6,482,288.50, plus ongoing interest, costs and attorney's fees (NYSCEF # 16, ¶ 34).

But, for plaintiff to arrive at the amounts it did for each of the defendants, plaintiff resorted to calculations of the aggregate amounts from a set of calculation spreadsheets, which break down the amounts due under the notes into sums of principal advanced and interest accrued over time (NYSCEF #'s 4, 7, 11). The numbers in those calculation spreadsheets do not mirror the sums specified in the underlying loan agreements of the RSG Notes, the RSC Notes, or the Minera Note. Specifically, based on the underlying loan agreements, the twenty RSG Notes submitted by plaintiff have an aggregate principal sum of \$2,241,000. However, the calculation spreadsheet shows an aggregate principal amount of \$2,266,000. Further, according to the calculation spreadsheet, the RSG Notes had a principal

sum total of \$2,266,000 as of December 31, 2015, but the confirmation of debt also of the same date indicates a principal balance of \$2,216,000.

Likewise, there are notable discrepancies between the calculation spreadsheets of the RSC Notes and the Minera Note and the amounts shown in the underlying loan agreements. The RSC Notes' calculation spreadsheet is largely illegible. It contains a total principal balance appearing to be around \$2,400,000, while the RSC Notes' eleven loan agreements reflect an aggregate principal balance of \$1,811,200. The Minera Note's calculation spreadsheet is puzzling: it includes a final sum of principal of \$1,836,000, while the principal stated in the Minera Note loan agreement is only \$1,500,000—a figure nowhere to be found in the Minera calculation spreadsheet.

Therefore, the amounts plaintiff seeks to recover cannot be ascertained from the loan agreements plaintiff provides or determined without extrinsic evidence. Failing this threshold requirement for CPLR 3213, the RSG Notes, the RSC Notes, and the Minera Note do not qualify for summary judgment in lieu of complaint (*see Tradition N. Am., Inc. v Sweeney*, 133 AD2d 53, 54 [1st Dept 1987] [“[t]hat it is necessary to resort to extrinsic material to establish the amounts payable on the notes at issue, is a reflection of the fact that they are not instruments for the payment of money only and are, therefore, inappropriate for accelerated judgment pursuant to CPLR 3213”]; *Oak Rock Fin., LLC v Rodriguez*, 148 AD3d 1036, 1039 [2d Dept 2017] [denying summary judgment in lieu of complaint because plaintiff's supporting documents do not contain an unconditional promise to pay “a sum certain” and outside proof is needed to establish the amount of defendant's obligation]).

As to the purported guaranty agreements, plaintiff's summary judgment motion must also be denied. Plaintiff alleges that Cappaze is the guarantor of the RSG Notes. But as a preliminary matter, plaintiff has not submitted any guaranty agreements to that effect. Without evidence of a guaranty agreement, plaintiff fails to establish prima facie entitlement of summary judgment in lieu of complaint (*see HSBC Bank USA v IPO, LLC*, 290 AD2d 246 [1st Dept 2002] [finding that plaintiff failed to make a prima facie case for relief under CPLR 3213 as plaintiff did not present documentary evidence of the indebtedness]).

As plaintiff has failed to establish a prima facie case for summary judgment in lieu of complaint, the burden to raise an issue of fact does not shift to defendants.

In any event, the RSG defendants' two arguments against plaintiff's CPLR 3213 motion will be addressed: Cappaze's signature on the twenty notes are forged, and the interest rates on the loans are usurious.

Forgery

On the forged signature allegation, the RSG defendants submit an “expert report” to dispute the authenticity of signatures at issue. Robert Baier, a Forensic Document Examiner, stated that he was asked by the RSG defendants' attorney to

“review the following documents and determine if possible whether the signatures on the questioned documents are the same signature or if they are different signatures” (NYSCEF # 36 at 1). Baier explained the “cut-and-paste” process and concluded that all of Cappaze’s signatures on the promissory notes and other loan documents were the same (*id.* at 3-4). Notably, the report indicates that the original document bearing Cappaze’s “WET INK” signature was not part of his examination: “If the original questioned documents cannot be produced for any reason, it is further absolute proof that Anthony F. Cappaze did not place his ‘WET INK’ signature on any of the questioned documents. He did not actually sign any of the documents” (*id.* at 4-5).

Baier’s conclusion does not address the fraud claim as there is no dispute that the signatures on the loan documents were electronic signatures, not WET INK signatures. Nor does the report state whether Cappaze’s electronic signatures are based on a forged signature. Indeed, Cappaze admits that the signatures on the RSG Notes are electronic copies of his authentic signature. The forensic report merely confirms that the same electronic signature appears on all RSG Notes, without challenging its authenticity.

The other document that purportedly supports Cappaze’s forged signature claim is Cappaze’s own affidavit. Considering Cappaze’s SEC testimony admitting to the loans from AFG to his various companies, Cappaze’s self-serving affidavit offered to contradict his prior testimony alters nothing (*see LoBianco v Lake*, 62 AD3d 590, 591 [1st Dept 2009] [finding plaintiff’s self-serving affidavits insufficient to defeat defendants’ motion for summary judgment as the affidavits contradicted plaintiff’s deposition testimony and denoted an effort to avoid the consequences of plaintiff’s earlier testimony]; *see also Phillips v Bronx Lebanon Hosp.*, 268 AD2d 318, 320 [1st Dept 2000] [“where, as here, the self-serving affidavits submitted by plaintiff in opposition clearly contradict plaintiff’s own deposition testimony and can only be considered to have been tailored to avoid the consequences of her earlier testimony, they are insufficient to raise a triable issue of fact to defeat defendant’s motion for summary judgment”]). “Something more than a bald assertion of forgery is required to create an issue of fact contesting the authenticity of a signature” (*Banco Popular N. Am.*, 1 NY3d at 384).

Usury

The RSG defendants’ usury argument, however, fares better than the forged signature allegation. The RSG defendants argue that the RSG Notes are void because of its usurious interest rates.⁵ Plaintiff responds that Nevada law—the governing law of the RSG Notes—rather than New York law should apply as to whether the interest rate of the RSG Notes is usurious.

“[New York] courts will generally enforce choice-of-law clauses and that contracts should be interpreted so as to effectuate the parties’ intent” (*Ministers*

⁵ The RSG defendants make the same usury argument for the RSC Notes and the Minera Note, although they do not appear for defendants RSC and Minera.

and Missionaries Ben. Bd. v Snow, 26 NY3d 466, 470 [2015]). However, this freedom of choice is not absolute. New York's usury law is "a matter of serious public concern that qualifies as an exception to enforcement of contractual choice-of-law provisions" (*United States v Moseley*, 980 F3d 9, 21 [2d Cir 2020]).

"New York's present choice-of-law rule, dubbed the center of gravity approach, is that the law of the state having the most significant contacts with the matter in dispute, even where the matter in dispute is usury" (*A. Conner Gen. Contr. Inc. v Rols Capital Co.*, 145 AD2d 452, 453 [2nd Dept 1988] [internal citations omitted]; see *Acorn Partners II v Kiley*, 193 AD2d 397, 398 [1st Dept 1993] [applying Connecticut law to a usury claim "because of the substantial contacts that the debt has with Connecticut"]). Although AGF is a Nevada limited liability company and the RSG Notes are governed by Nevada law, the parties did not conduct substantial activities in Nevada in relation to the RSG Notes: the notes were made to fund RSG's gold mining business in Ecuador and Peru; the parties negotiated the RSG Notes in New York by email and telephone; and both AGF and RSG operated an office at 14 Wall Street, New York. As such, instead of Nevada law, this court applies New York law—the law of the state that has the most significant contacts with the RSG Notes (see *A. Conner Gen. Contr. Inc.*, 145 AD2d at 453).

"New York usury law is composed of General Obligation Law §§ 5-501, . . . Banking Law § 14-a(1) and Penal Law § 190.40. Together, the statutes establish that loans of less than \$250,000 to individuals cannot exceed a 16% annual rate, loans between \$250,000 and \$2.5 million cannot exceed 25% (the criminal usury rate) and loans of \$2.5 million or more are not subject to the usury laws." (*Adar Bays, LLC v GeneSYS ID, Inc.*, 37 NY3d 320, 326 [2021]).

Here, to enforce the RSG Notes' choice-of-law clause and apply Nevada law would violate New York's fundamental public policy against usury. The RSG Notes' 36% annual interest rate, although permitted under Nevada law (NRS § 99.050 [providing that except for consumer credit loans, "parties may agree for the payments of any rate of interest"]), is criminally usurious in New York (Penal Law § 190.40). Under New York law, the interest rate of 36% is usurious and will not be enforced.

CONCLUSION

Based on the foregoing, it is

ORDERED that plaintiff Propellus, Inc.'s motion for summary judgment in lieu of complaint against defendants Royal Sovereign Group LLC, Royal Sovereign Costino S.A., Minera Ranala S.A.C., and Anthony Cappaze is denied; it is further

ORDERED that plaintiff shall serve and file a formal complaint within 20 days after service of this decision and order with notice of entry; and it is further

ORDERED that defendants shall serve their respective answers, including any counterclaims, to be served with 20 days after the service of the complaint.

This constitutes the Decision and Order of the court.

7/6/2023
DATE


MARGARET A. CHAN, J.S.C.

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