

**Astea Solutions AD v VNUE Inc.**

2023 NY Slip Op 32505(U)

July 21, 2023

Supreme Court, New York County

Docket Number: Index No. 652035/2023

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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ASTEA SOLUTIONS AD,  Plaintiff,  - v -  VNUE INC., STAGE IT CORP.  Defendants.	<table border="0"> <tr> <td style="padding-right: 10px;"><b>INDEX NO.</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">652035/2023</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION DATE</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">06/15/2023, 06/15/2023</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION SEQ. NO.</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">001 001</td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	<b>INDEX NO.</b>	652035/2023	<b>MOTION DATE</b>	06/15/2023, 06/15/2023	<b>MOTION SEQ. NO.</b>	001 001
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8 were read on this motion for MONEY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8 were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Plaintiff, Astea Solutions AD (“Plaintiff” or “Astea”) seeks an award of summary judgment in lieu of complaint under CPLR § 3213, to recover on a Promissory Note, dated June 30, 2014, entered into by Plaintiff and Defendant Stage It (the “Note”), and on a June 24, 2021 agreement entered into by Plaintiff and Stage It (“2021 Agreement”), in the amount of \$642,836.37, together with interest at 6% per annum on \$272,975.00 of that amount from April 1, 2023, and interest at 9% per annum of \$369,861.37 of that amount from April 30, 2023. Plaintiff’s unopposed motion is granted in part.

Pursuant to CPLR 3213, a party may commence an action by motion for summary judgment in lieu of complaint when the action is “based upon an instrument for the payment of money only or upon any judgment” (*Oak Rock Fin., LLC v Rodriguez*, 148 AD3d 1036, 1039 [2d Dept 2017]). 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]; *Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). “It is well settled that a promissory note, as an instrument for the payment of money only, is entitled to the expedited procedure detailed in CPLR 3213” (*R-H-D Const. Corp. v Miller*, 222 AD2d 802, 803 [3d Dept 1995]).

Plaintiff submitted Affidavits of Service demonstrating service upon Defendants Stage It and VNUE (NYSCEF 9, 10). Further, Plaintiff has submitted evidence that Stage It executed the Note in the sum of \$179,000.00, with 6 percent interest per annum, (NYSCEF 6), and that Stage It failed to repay any part of Note; Plaintiff demanded from Stage It in writing full repayment of the Note with interest (*see* NYSCEF 7); thereafter, Plaintiff and Stage It entered into the 2021 Agreement in which said Stage It acknowledged owing the full amount of the Note and interest thereon, and also acknowledged that “it has no right to any set-offs or deductions,” and agreed to pay Astea the additional sum of \$369,861.37 arising out services provided by plaintiff to said defendant under a different Master Agreement (NYSCEF 8; *see also* NYSCEF 5 [“Pandeff Aff.”] ¶¶3–5).

Plaintiff also asserts that in or about February 2022, defendant VNUE acquired the assets and liabilities of Stage It. VNUE has assumed Stage It’s obligations under the Note and 2021 Agreement, and is bound thereby (Pandeff Aff. at ¶6). However, Plaintiff offers no evidence to support this statement. Without sufficient evidence to establish a prima facie case against VNUE for liability under the Note and 2021 Agreement, summary judgment against VNUE cannot be granted even in the absence of an opposition from VNUE (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444-45 [1996] [“There is no written instrument by which the individual shareholders explicitly obligated themselves to make a required payment of a sum certain. The note at issue

was signed only by [the company]; the individual defendants never signed any commercial paper.”]).

As noted, Stage It has not filed an opposition to Plaintiff’s motion, and therefore fails to raise a fact issue that would avoid enforcement under the Note and 2021 Agreement.

Accordingly, it is:

**ORDERED** that Plaintiff’s motion for summary judgment in lieu of complaint is **GRANTED** as to Stage It and **DENIED** without prejudice as to VNUE; it is further

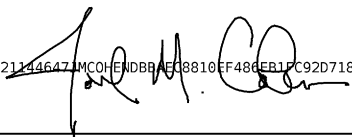
**ORDERED** that the claim against Stage It is severed and the Clerk is directed enter judgment in favor of Plaintiff and against Stage It for the amount of (i) the unpaid principal balance of \$179,000.00 with accrued and unpaid interest totaling \$272,975.00 through April 1, 2023, plus additional interest at the contractual rate of 6% per annum from April 1, 2023 until entry of judgment; (ii) the unpaid additional amount of \$369,861.37 under the 2021 Agreement, together with interest at the statutory rate of 9% interest from April 1, 2013 until entry of judgment; (iii) together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; it is further

**ORDERED** that as to VNUE, Plaintiff’s moving papers (NYSCEF 1-8), are hereby deemed the complaint in this action, and VNUE is directed to file an Answer within twenty (20) days of the date of this Order; and it is further

**ORDERED** that Plaintiff shall serve a copy of this Order with notice of entry upon Stage It and VNUE within five (5) days of the date of this Order.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/21/2023  
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE