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| <b>BankOnBuffalo v Proujansky</b>                                                                                                                                                                                              |
| 2024 NY Slip Op 35379(U)                                                                                                                                                                                                       |
| November 21, 2024                                                                                                                                                                                                              |
| Supreme Court, Erie County                                                                                                                                                                                                     |
| Docket Number: Index No. 812777/2024                                                                                                                                                                                           |
| Judge: Deborah A. Chimes                                                                                                                                                                                                       |
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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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BANKONBUFFALO , a division of CNB BANK,

Plaintiff,

v.

DECISION

Index No. 812777/2024

PHILIP PROUJANSKY,

Defendant.

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Plaintiff, BankOnBuffalo, moved for an Order granting summary judgment in favor of plaintiff and against defendant, Philip Proujansky, in the amount of \$1,613,157.06, under the Promissory Note dated August 3, 2022, with daily per diem interest of \$611.40 from August 27, 2024, up to the time of judgment at the interest rate of 14.75%, along with liability under the Promissory Note for costs and disbursements, as well as reasonable attorneys' fees, (NYSCEF motion 001). Defendant opposed the motion.

CPLR 3213 permits a motion for summary judgment in lieu of complaint when an action is based on an instrument for the payment of money only. "[A] document comes within CPLR 3213 'if a prima facie case would be made out by the instrument and a failure to make the payments called for by its terms' (*Interman*, 37 NY2d at 155, citing *Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, affd 29 [\*\*\*\*14] NY2d 617). The instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document (*see, e.g., Bank Leumi Trust Co. v Rattet & Liebman*, 182 AD2d 541 [readily accessible interest rate])." (*Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 444 [1996]).

In support of the 3213 motion, plaintiff submitted a promissory note; the affidavit of plaintiff's Senior Vice President of Commercial Lending, which established non-payment; and a loan history report which provided an accounting of the amount owed. A note is an instrument "for the payment of money only" (*Counsel Fin. Holdings LLC v. Sullivan Law, L.L.C.*, 208 A.D.3d 1028, 1029 [4th Dept 2022]). Plaintiff therefore met its 3213 burden by submitting the promissory note, evidence of default and a loan history report. (See, *Counsel Fin. Servs., LLC v. David McQuade Leibowitz, P.C.*, 67 A.D.3d 1483, 1484 [4th Dept 2009]).

In opposition to the motion, defendant submitted proof that he wired \$285,847.43 to plaintiff on June 28, 2024, and argues plaintiff's calculation of the amount owed on the note does not account for that amount. However, in reply, plaintiff submitted the Bank's Transaction History Report showing the wired funds were applied to four separate loans held by BankOnBuffalo and the borrowers were Proujansky or entities affiliated with Proujansky, establishing the amount due and owing under the promissory note is accurate.

"CPLR 3213 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. Under the "stringent" requirement that the action be based upon an instrument for the payment of money only, "a document comes within CPLR 3213 if a prima facie case would be made out by the instrument and a failure to make the payments called for by its terms" (*Counsel Fin. II LLC v. Bortnick*, 214 A.D.3d 1388, 1390-1391 [4th Dept. 2023] internal citations omitted). "Conversely, the instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document" (*Id.* Citations omitted). Here, the Bank's reliance on its Transactional History Report is a de minimus

deviation from the face of the document. Such documents merely confirmed the amount owed under the promissory note was accurate.

Plaintiff's 3213 motion is therefore granted. Counsel for plaintiff is to prepare and submit an Order on approval of counsel for plaintiff. The Order shall attach and refer to the Court's decision and be submitted in 30 days.

DATED: November 21, 2024  
Buffalo, New York

  
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Hon. Deborah A. Chimes, J.S.C.