

L&M Group v Metals Trading Corp.

2025 NY Slip Op 30857(U)

March 12, 2025

Supreme Court, New York County

Docket Number: Index No. 650569/2024

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

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

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L&M GROUP, AS AGENT FOR MTC HOLDING LLC,
SIBLING STUDIOS LLC, LANDER FAMILY LLC, and L&M
GROUP LLC,

INDEX NO. 650569/2024

MOTION DATE 10/04/2024

Plaintiffs,

MOTION SEQ. NO. 001

- v -

METALS TRADING CORP., MINING DEVELOPMENT,
LLC, and INVESTMENT CAPITAL N.A. LLC,

**DECISION + ORDER ON
MOTION**

Defendants.

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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (MS001) 2, 24, 25, 26, 27, 28,
29, 30

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

In this action, plaintiffs L&M Group, as agent for MTC Holdings LLC, Sibling Studios LLC, Lander Family LLC, and L&M Group LLC (together, plaintiffs) move for summary judgment in lieu of complaint pursuant to CPLR 3213, seeking to recover \$14,731,513 plus interest, costs, and attorneys' fees allegedly owed under three promissory notes issued by defendants Metals Trading Corporation (MTC), Mining Development, LLC (MDLLC), and Investment Capital N.A. LLC (IC, and together with MTC and MDLLC, defendants or Obligors). Defendants oppose plaintiffs' motion and request the court to deny the motion and direct plaintiffs to file a complaint, or in the alternative to stay the action. For the reasons below, plaintiffs' motion is denied.

Background

Promissory Notes' Origination

Lloyd Lander (Lander) was the President and Chief Executive Officer of MTC (NYSCEF # 26 – Lerner aff ¶ 11). By November 16, 2012, when he was terminated for cause by MTC's Board of Directors, Lander was in possession of 12,849 shares of MTC Common Stock (Lander Stock) (*id.* ¶ 12).

On December 13, 2012, MTC's Board of Directors sought to repurchase the Lander Stock, which led to litigation in the Delaware Chancery Court, and

ultimately resulted in a December 21, 2012, settlement agreement (*id.* ¶¶ 16–18). An amendment to the settlement agreement was then executed on November 4, 2013, granting MTC the right to repurchase the Lander Stock (*id.* ¶ 19). Thus, the Notes at issue are a part of a larger transaction and governed by other documents, all of which were executed on November 4, 2013, including a Dividend Notes Undertaking, Tag-Along Acknowledgement Agreement, and certain Redemption Agreements (*id.* ¶ 20). All of the transaction documents, including the Notes, were executed in connection with one transaction, namely, MTC's repurchase of the Lander Stock (*id.* ¶ 24).

On November 4, 2013, Lander signed three notes: a Class A Extendable Note (Note A), a Class B Extendable Note (Note B), and a Class C Extendable Note (Note C and together with Notes A and B, the Notes) on behalf of defendants MTC, MDLLC, and IC (NYSCEF # 3 – Lander aff ¶ 3; NYSCEF #s 5-7 – Notes). Under the Notes, Obligors promised to pay to the order of plaintiff L&M Group LLC or any successor agent for the ratable benefit of the MTC Holding, Sibling Studios LLC, Lander Family LLC, and L&M Group LLC (together, L&M Parties), the principal sum of \$5,027,171.00 for Note A, \$5,027,171.00 for Note B, and \$4,677,171.00 for Note C, thus, a total of \$14,731,513.00 for the Notes (*id.*).

Maturity Date Extension and Payment Conditions

Each Note had an Initial Maturity Date of October 31, 2014 (NYSCEF #s 5-7 – Notes § 1.41). However, the Obligors may extend the Maturity Date provided that (1) there were no Acceleration Notice delivered to the Obligors, and (2) “an Extension Condition exists or would exist upon payment” of the principal and/or interest (*id.* § 3.2). The most salient “Extension Conditions” under § 1.22 are those circumstances in which payment of a Note (principal and interest) would (a) cause or worsen a default on Senior Debt, (b) trigger a demand for payment or termination of an uncommitted credit facility, or (c) exacerbate an existing default/ Another condition depends on whether an obligor is “either not in compliance with, or within the Safety Zone of any Financial Covenant in any Senior Debt” (*id.* § 1.22). The second “Extension Condition” arises when an Obligor's financial condition approaches the predefined thresholds set in the Notes' Financial Covenants (defined as “Safety Zone”), which marks the range where compliance is maintained but nearing its limits; meanwhile, Senior Debt refers to an Obligor's or its Subsidiaries' priority obligations that must be repaid before subordinated debt (*id.* §§ 1.26, 1.76, and 1.82).

Yet another condition specified in the Notes is found in Article V of each Note. It sets forth that each Obligor shall have the right to set off amounts due under the Notes against any amounts owed to them due to a material breach by Lander of his obligations under § 6 of the Settlement Agreement (*id.* Article V). However, the condition in § 13.2 of the Settlement Agreement must be satisfied first, requiring a final determination by a court of competent jurisdiction (*id.*). And,

Lander must have not repaid the severance pay as required by the Settlement Agreement (*id.*).

Finally, the Notes set forth the Final Maturity Date as February 15, 2026 (*id.* §§ 1.25 and 3.2). However, § 3.2 of the Notes also provided for certain conditions upon which this Maturity Date may be modified, including the events of change in control of MTC or MDLLC (*id.*).

On October 31 of 2014 through 2017, defendants exercised their right to extend each of the Notes' Initial Maturity Date by sending plaintiffs Extension Certificates (Lander aff ¶ 5). Each Extension Certificate refers to defendants' compliance with the "Safety Zone" Extension Condition provided in § 1.22(b) of the Notes: "[a]n Obligor or a subsidiary of an Obligor is within the Safety Zone ... of a Senior Debt Financial Covenant calculation" (NYSCEF # 9 – Certificates of Extension). In order to show that such extension condition is satisfied, the Extension Certificates also provided calculations of the assets, liabilities, and liquidity ratio of Obligor's subsidiary (*id.*).

Alleged Default

After executing an extension of the Maturity Date in October 2017, the defendants stopped sending further Extension Certificates to the plaintiffs (Lander aff ¶ 6). Later, in 2018, plaintiffs became aware of certain changed circumstances concerning defendants, including a change in controlling shareholder and a diminution in value (*id.* ¶ 7). Accordingly, plaintiffs, through their Screener,¹ demanded that defendants provide all requisite information, financial or otherwise, relating to these identified changed circumstances as permitted under § 7.1(g) of the Notes (*id.* ¶ 8, NYSCEF # 11 – Letter from the Screener). Neither defendants nor their affiliates complied with that demand (*id.* ¶ 9).

Based on defendants' failure to comply, plaintiffs sent defendants three Notices of Default² on September 9, 2021, September 13, 2021, and April 28, 2023, respectively (NYSCEF #s 14-16 – Notices of Default). The Notices each stated that an "Event of Default ha[d] occurred and was continuing with respect to each Obligor under the Notes by reason of, without limitation, (a) each Obligor's inability to pay its debts as they come due, and (b) each Obligor's failure to provide to the Lander

¹ Pursuant to § 7.2, the "Screener" is an independent third party who receives, reviews and reports on various information, including financial statements (NYSCEF # 5-7 – Notes § 7.1 and 7.2).

² Section 9.1 of each Note provides that Obligor's failure to make any payment in respect of principal and/or interest required to be paid within 10 business days after written notice delivered to the Obligor by Agent shall constitute an "Event of Default" (NYSCEF #s 5-7, Notes §§ 9.1 (a) and (b)). Section 11.5 of each Note further clarifies the proper way to serve these written notices to the specified Obligor's address or fax number (*id.* § 11.5).

Parties the information requested in the Request Letters” (*id.*). The April 28, 2023 Notice also demanded immediate payment of the “principal balance of the Notes, together with all accrued but unpaid interest thereon, upon the occurrence of their respective Maturity Dates...in the aggregate for all of the Notes as of the date hereof...not less than \$22,660,249.30” (NYSCEF # 16 – Notice of Default). Finally, on September 29, 2023, plaintiffs sent defendants the Acceleration Notice, informing defendants that Majority Holders accelerated the Obligations following the continued occurrence of one or more Events of Default in regard to the Notes (NYSCEF # 17 – Acceleration Notice). Plaintiffs aver that defendants have not paid the amounts due under the Notes to date (Lander aff ¶ 10).

Procedural History

Plaintiffs now move for summary judgment in lieu of complaint to recover sums allegedly owed by defendants. Plaintiffs argue that they have made a *prima facie* showing of their entitlement to summary judgment under CPLR 3213, as the Notes are the instruments for the payment of money only (NYSCEF # 18 – plaintiffs’ mol at 7), and any remaining details of the underlying transaction are irrelevant for the purposes of relief under CPLR 3213 (*id.* at 2 n 4). Plaintiffs assert that defendants defaulted on the Notes in two ways: (1) by failure to make the payment of the full amount in principal and interest due on October 31, 2018; and (2) by refusing to provide requisite financial information (*id.* at 7-8). Therefore, plaintiffs concludes that the burden shifted to the defendants to submit evidentiary proof sufficient to raise an issue as to any defenses to the instruments and to their default (*id.* at 6).

Defendants counter that the notes are not stand-alone obligations solely for the payment of money but are components of a much larger transaction require performance of additional obligations by both parties (NYSCEF # 25 - opp at 7-10). These obligations include Lander’s performance under the Settlement Agreement, as identified in Article V of the Notes, each defendant’s obligation and promise to provide certain financial information at regular intervals, as identified in § 7.1 of the Notes, and each Credit Party’s³ obligation “to not engage in certain transactions, dispose of certain assets, and/or make payments to certain entities,” as identified in Article VIII (*id.*). Defendants assert that as these notes are not for the payment of money only, that summary judgment in lieu of complaint is not appropriate in this case (*id.* at 7, 9, and 15).

As to the alleged default, defendants next contend that the provisions of the Notes make plaintiffs’ right to payment contingent on proper service of the notices of default because, pursuant to § 9.1 of each Note, defendants have the right to cure any alleged default and/or non-payment (*id.* at 7). They therefore argue that it was a necessary precondition to payment that there be a properly noticed event of

³ Section 1.13 of the Notes defines Credit Party as each of Metal Trading Corp. and Mining Development, LLC (NYSCEF #s 5-7 § 1.13).

default and that plaintiffs give proper notice and time to cure to the defendants (*id.* at 6-7). As defendants put it, although plaintiffs failed to do so here, this is an issue that necessarily requires the consideration of extrinsic evidence regarding any purported default under the Notes (*id.* at 7).

Alternatively, defendants request that the action be stayed pending resolution of plaintiffs' companion action under Index No. 650600/2024 (*id.* at 8). Defendants believe that plaintiffs' concurrent filing of the companion action seeking to recover from the same Notes as in this action, underscores that summary judgment in lieu of complaint is inappropriate for the instant action (*id.* at 8, 15).

Plaintiffs counter that the fact that no extension notices exist extending the Maturity Date, and as such, that the Notes matured remains uncontroverted, and the non-existence of a notice is not extrinsic evidence (NYSCEF # 30 – reply at 2-3). Plaintiffs further argue that the Notes can easily be separated from the transaction from which they arose (*id.* at 4). Regarding the companion action, plaintiffs assert that it raises related but distinct issues, and this action was filed separately specifically because the claims for non-payment under the Notes are susceptible to resolution under CPLR 3213 (*id.* at 10 n 9).

Discussion

To establish *prima facie* entitlement to summary judgment in lieu of complaint under CPLR 3213, a plaintiff must show the existence of a promissory note executed by the defendant containing an unequivocal and unconditional obligation to repay and the failure of the defendant to pay in accordance with the note's terms (*Zyskind*, 101 AD3d at 551). For purposes of the CPLR 3213, "an instrument for the payment of money only" must be a written unconditional instrument. Documents which set forth more than the simple promise by the obligor to pay a sum of money may not be sued upon by way of CPLR 3213 (*Tech. Tape, Inc. v Spray Tuck, Inc.*, 131 AD2d 404, 405 [1st Dept 1987]). To succeed on a CPLR 3213 motion, a plaintiff must prove its right to payment "from the face of a document, without regard to extrinsic evidence" (*Matas v Alpargas S.A.I.C.*, 274 AD2d 327, 328 [1st Dept 2000]). An instrument does not qualify for CPLR 3213 treatment if its payment terms require reference to extrinsic evidence, lack a fixed schedule, or depend on uncertain future events (*Ian Woodner Family Collection, Inc. v Abaris Books, Ltd.*, 284 AD2d 163, 164 [1st Dept 2001]). If the determination of liability requires interpreting additional agreements or resolving preliminary legal issues, the instrument is more than one for the payment of money only (*PDL Biopharma, Inc. v Wohlstadter*, 147 AD3d 494, 494-495 [1st Dept 2017]). When enforcing payment involves analyzing multiple agreements to determine performance, default, or the validity of obligations, the reliance on outside documents exceeds the limited scope permissible under CPLR 3213 (*id.*).

As an initial matter, plaintiffs' motion must be denied because neither plaintiffs' entitlement to the purported payment obligation nor the calculation amount of such obligation can be established without reference to external evidence. Plaintiffs argue that the Notes, as well as the amounts owed thereunder, can easily be separated from the transaction from which they arose, and proof of nonpayment does not require the court to refer to the extrinsic documents (NYSCEF # 30 – Reply at 6). However, the record establishes that a determination of the amount owed under the Notes necessarily requires reference to extraneous documents, rendering CPLR 3213 inapplicable. In particular, as noted above, plaintiffs largely rely on Maturity Date Extension Certificates to calculate principal and interest and assert that defendants are now in default (NYSCEF # 18 – plaintiffs' mol at 1 n 3, 7). But those certificates themselves are conditioned on the prerequisites set forth in § 1.22, specifically, whether any Obligor or its subsidiaries are either non-compliant with or approaching the limits of Safety Zone, or if making a payment under the Notes would cause such non-compliance or bring them within the Safety Zone (NYSCEF # 9 – Certificates of Extension; NYSCEF #s 5-7 – Notes § 1.22).

Moreover, both parties submitted affidavits referencing external agreements governing conversion rights and correspondence discussing potential stock sales (NYSCEF #s 3, 29). And the Notices of Default also cite events of default beyond mere nonpayment and even refer to third-party correspondence regarding the Notes (NYSCEF #s 14-16 – Notices of Default). Put succinctly, the need to submit 13 exhibits and extensive affidavits to explain plaintiffs' claim demonstrates that this motion is not one to enforce standalone instrument with an unequivocal and unconditional obligation but rather relying on extrinsic evidence, which takes the claim outside CPLR 3213 (*Zyskind v FaceCake Mktg. Tech., Inc.*, 101 AD3d 550, 551 [1st Dept 2012]; see also *Kolanu Partners, LLC v Wu*, 42 Misc 3d 1224(A) [Civ Ct, New York County 2014] [Bannon, J.] [holding that the plaintiff's submission of 28 exhibits and extensive affidavits underscores the reliance on extrinsic evidence, which disqualifies the case from meeting the standard of an "independent" instrument with an "unequivocal and unconditional obligation" under CPLR 3213]).

Notably, plaintiffs' reliance on a myriad of exhibits, including Maturity Date Extension Certificates that contain calculations of the new principal and interest, Notices of Default, the parties' correspondence on the change in control, and possibility of conversion and stock sale terms, reveals that the amount owed under the Notes, and whether default occurred cannot be determined from the Notes alone (see *Bonds Fin., Inc. v Kestrel Techs., LLC*, 48 AD3d 230, 231 [1st Dept 2008]) [holding that plaintiffs have not established a prima facie case, where the claim is based on an acceleration clause in a revolving credit agreement, thus requiring resort to an external document to define an event of default under the note]. Plaintiffs' reference to the above documents establishes an interdependence between themselves and the corresponding Notes, which again requires the court to go beyond the face of the Notes to establish the plaintiffs' entitlement to the payment and the amount due (see *PDL Biopharma, Inc.*, 147 AD3d at 494-495

[denying a motion pursuant to CPLR 3213 where the court must make a more than de minimis deviation from the face of the document]). This interdependence between the Notes, Maturity Date Extension Certificates, Notices of Default, and Acceleration Notice necessarily leads to the conclusion about the conditional nature and ambiguity of the Notes.

Further, because § 1.22 of the Notes outlines two alternative sets of requirements that the Obligor must satisfy to extend the maturity date, the ultimate due date for the Notes is not fixed. Rather, it is subject to further contingencies (NYSCEF #s 5-7 - Notes § 1.22). Likewise, the Acceleration Notice references not only the Notes at issue but also additional instruments, including the Dividend Promissory Notes and corporate communications (NYSCEF # 17 – Acceleration Notice at 2) (*see Tech. Tape, Inc.*, 131 AD2d at 405 [denying motion for summary judgment where promissory note was “expressly subject to the terms and conditions of the Agreement of Sale” that “outline[d] a complicated formula for the finalization of the [sales] price” and required “production of documents and records”]; *see also Matter of Estate of Peck*, 191 AD3d 537 [1st Dept 2021] [denying motion for summary judgment where the notes and guaranty set forth more than the simple promise to repay the loans, but referred to other documents with regard to events of default, and imposed other obligations on defendant]).

In addition to the need to refer to the extrinsic evidence, plaintiffs’ motion also fails because the Notes do not qualify as instruments for the payment of money only under CPLR 3213 since they do not impose an unequivocal obligation to pay a fixed sum. Instead, they incorporate provisions that make repayment expressly contingent on external factors including those set forth in Article V (NYSCEF # 26 – Lerner aff ¶¶ 11–19). As noted above, Article V of the Notes grants each Obligor a setoff right against amounts due under the Notes if Lander materially breaches Section 6 of the Settlement Agreement and fails to repay his severance pay following a final judicial determination (NYSCEF #s 5-7 – Notes at Article V). This provision does not merely reference another agreement but conditions the obligation to repay on Lander’s on performance of obligations under the Settlement Agreement. The need to reference Lander’s performance plainly removes the Notes from the ambit of CPLR 3213 (*see P1 Fin. v Evergreen Builders & Constr. Services, Inc.*, 232 AD3d 549, 550 [1st Dept 2024] [holding that an instrument is not considered one for the payment of money only under CPLR 3213 if repayment is contingent on contractual terms and lacks an explicit unconditional obligation]; *see also Bloom v Lugli*, 81 AD3d 579, 581 [2d Dept 2011] [denying motion for summary judgment where outside proof would be required to determine if the plaintiff complied with his obligations pursuant to the agreement]).

In sum, the need to rely on this extensive amount of extrinsic evidence, combined with the ambiguity and contingent nature of the Notes, requires denial of plaintiffs’ motion for summary judgment in lieu of complaint (*see Matas*, 274 AD2d

at 328 [1st Dept 2000] [holding that where the right to repayment cannot be ascertained without regard to extrinsic evidence, the plaintiff's action cannot lend itself to treatment under CPLR 3213]).


Conclusion

For the foregoing reasons, it is hereby

ORDERED that the motion for summary judgment in lieu of complaint made by plaintiffs L&M Group, as agent for MTC Holdings LLC, Sibling Studios LLC, Lander Family LLC, and L&M Group LLC is denied; and it is further

ORDERED that plaintiffs are directed to serve and file a formal complaint within 30 days of this order, and defendants' shall answer within 30 days after the service of the complaint; and it is further

ORDERED that the defendants shall serve a copy of this Decision and Order with notice of entry on the Clerk of the Court in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page and on the court's website at the address www.nycourts.gov/supctmanh).

<u>3/12/2025</u> 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
	<input type="checkbox"/> GRANTED	<input type="checkbox"/>	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/>
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