

**T.R. Kramer Overseas Ltd. v CGI Merchant Group,
LLC**

2025 NY Slip Op 31923(U)

May 21, 2025

Supreme Court, New York County

Docket Number: Index No. 651442/2025

Judge: Anar R. Patel

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 45

-----X

T.R. KRAMER OVERSEAS LIMITED, Plaintiff, - v - CGI MERCHANT GROUP, LLC, RAOUL THOMAS Defendants.	INDEX NO. <u>651442/2025</u> MOTION DATE <u>03/14/2025</u> MOTION SEQ. NO. <u>001</u> DECISION + ORDER ON MOTION
--	---

-----X

HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2–11, 18 were read on this motion to/for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Upon the foregoing documents, the motion by Plaintiff T.R. Kramer Overseas Limited (“Plaintiff”) for summary judgment in lieu of complaint pursuant to CPLR § 3213 against Defendants CGI Merchant Group, LLC (“CGI”) and Raoul Thomas (“Thomas”) (collectively, “Defendants”) in the amount of \$ 33,535,924.57, plus additional interest, costs, and attorneys’ fees arising from Defendants’ default is GRANTED.

The return date of the motion was May 2, 2025. Defendants have not filed an opposition, or otherwise appeared in this action, despite having been served with the Summons, Notice of Motion, and related documents. *See* NYSCEF Doc. No. 18 (Aff. of Service). As set forth in the Affirmation of Service, service was effectuated pursuant to Sections 2.8(d) and 2.11 of the June 19, 2020 Amended and Restated Promissory Note (“Note”) and Section 13 of the June 19, 2020 Payment Guaranty (“Guaranty”). NYSCEF Doc. Nos. 5 (Note), 7 (Guaranty).

For the reasons discussed below, and even setting aside Defendants’ default, Plaintiff’s motion is granted.

Relevant Factual and Procedural History

Plaintiff executed the Note on June 19, 2020, whereby Plaintiff issued a loan to CGI in the amount of \$19,927,536 (“Loan”). NYSCEF Doc. Nos. 4 (Kramer Aff.) at ¶ 3. Plaintiff funded the full amount of the Loan to CGI pursuant to the terms of the Note. Kramer Aff. at ¶ 15; NYSCEF Doc. No. 6 (June 19, 2020 Letter acknowledging receipt of funds). The Loan has a maturity date of June 18, 2025, and requires quarterly interest payments. Kramer Aff. at ¶ 4; Note at § 1.3(b)(i)-(v). Upon the Loan’s maturation, or acceleration in the event of default, an “Exit

Fee” in the amount of \$398,000¹ becomes due. Note at §§ 1.1(b), 1.3(e). The Note evidences that CGI agreed to the “absolute[] and unconditional[]” promise to pay sums due thereunder. Kramer Aff. at ¶ 7; Note at § 2.5. The Note defines an “Event of Default,” in relevant part, as a failure “to pay any accrued interest on the Loan or any portion of the principal amount of the Loan in accordance with [its] terms,” where such failure “is not cured within five (5) Business Days.” Note at § 1.8(a)(i). The Note further states that CGI had committed a default under a prior agreement between the parties, and therefore should an Event of Default occur under the present Note, \$625,000 (the “Old Default Amount”) would be added to the Loan’s principal balance and would become immediately due and payable. *Id.* at § 1.6. The Note further allows for the recovery of attorneys’ fees and expenses incurred in enforcing its terms. *Id.* at § 2.9.

Also on June 19, 2020, Thomas executed the Guaranty whereby he “unconditionally and irrevocably guarantee[d] . . . the due and punctual payment and performance when due of the Guaranteed Obligations,” defined as the “prompt and unconditional payment of the Loan and the interest thereon” as well as any other sums due under the Note. Guaranty at §§ 1(a), (b). Under the Guaranty, an Event of Default is triggered if Thomas fails to pay any amounts outstanding under the Note within five business days following notice from Kramer. *Id.* at § 2(a). The Guaranty allows for the recovery of attorneys’ fees and expenses incurred in enforcing its terms. *Id.* at § 10.

Plaintiff asserts that CGI breached its payment obligation under the Note by failing to make an interest payment due on March 19, 2022. Kramer Aff. at ¶ 25. Because CGI did not cure this default within five business days, it triggered an Event of Default under the Note. *Id.* Accordingly, the principal, accrued interest, and unpaid fees are due under the Note (despite some partial payments made to date). *Id.* at ¶¶ 25, 26. Plaintiff provided notice to Thomas of the Event of Default on March 25, 2022, as well as subsequent notices. *Id.* at ¶ 27; NYSCEF Doc. Nos. 8 (March 25, 2022 Notice), 9 (March 3, 2025 Notice).

As of March 1, 2025, the amount outstanding on the Note is \$33,535,924.57, comprised of the Loan principal, \$11,374,997.05 in accrued interest payments, \$3,985,496.17 in accrued default interest, \$317,271.35 in late payment charges, the Old Default Amount of \$625,000, and the \$398,000 Exit Fee, less payments received from CGI. Kramer Aff. ¶ 32; NYSCEF Doc. No. 11.

Legal Discussion

CPLR § 3213 provides an expedited path to resolution when an action is based upon “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.” *Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 443 (1996) (internal quotations omitted). “When an action is based upon an instrument for the payment of money only . . . the plaintiff may serve with the summons a motion for summary judgment and the supporting papers in lieu of a complaint.” CPLR § 3213.

¹ The Kramer Affirmation and Memorandum of Law state the Exit Fee is \$389,000, although the Note itself indicates the Exit Fee is \$398,000, which number is consistent with Plaintiff’s calculation of amounts due. *See* NYSCEF Doc. No. 11 (Chart of Outstanding Amounts Due).

To establish *prima facie* entitlement to summary judgment in lieu of complaint under CPLR § 3213 based on the Note and Guaranty, Plaintiff must establish that the agreements are instruments for the payment of money only and proof of Defendants' nonpayment. *See 27 W. 72nd St. Note Buyer LLC v. Terzi*, 194 A.D.3d 630, 631 (1st Dept. 2021); *Valencia Sportswear, Inc. v. D.S.G. Enterprises, Inc.*, 237 A.D.2d 171, 171 (1st Dept. 1997) (internal citations omitted).

Here, Plaintiff has satisfied its *prima facie* burden by submitting the Note executed by CGI and Guaranty executed by Thomas on June 19, 2020, which evidence an unconditional promise to pay the Loan principal, interest amounts, and fees, as well as documentation evidencing Defendants' respective failure to pay in accordance with the Note and Guaranty. *See DB 232 Seigel Mezz LLC v. Moskovits*, 223 A.D.3d 610, 611 (1st Dept. 2024). Specifically, Plaintiff submits the Affirmation of Timothy Kramer, sole owner of Kosa Holdings Ltd., which is the direct shareholder of Plaintiff, and a chart setting forth outstanding amounts due and stating what amounts are due and owing to Plaintiff as obligated under the Note and Guaranty. Accordingly, Plaintiff has established entitlement to recover under the Note and Guaranty.

Moreover, Plaintiff provides support and calculations for the interest and fees due in excess of the Loan principal. NYSCEF Doc. No. 11. In addition, pursuant to Section 2.9 of the Note ("If any legal action is brought by any party to enforce or defend any provision of this Note, or as a consequence of any default under this Note, the prevailing party in such legal action shall be entitled to recover its or their reasonable attorneys' fees and costs of the proceeding.") and Section 10 of the Guaranty ("Guarantor shall pay within ten (10) days of Lender's demand therefor all reasonable attorneys' fees and all other third party costs and expenses actually incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty..."), Plaintiff has established its right to recover reasonable attorneys' fees and expenses in connection with enforcing the obligations under the aforementioned agreements.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment in Lieu of Complaint against Defendants is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff T.R. Kramer Overseas Limited against Defendants CGI Merchant Group, LLC and Raoul Thomas, jointly and severally, in the amount of \$33,535,924.57, plus interest thereon at a fixed per annum Default Interest Rate of 20% from and after March 1, 2025 to the date of repayment, based on CGI's default under the Promissory Note and Thomas's default under the Guaranty, as calculated by the Clerk of the Court, and upon Plaintiff's e-filing of a Proposed Judgment directed to the County Clerk; and it is further

ORDERED Plaintiff is granted judgment against Defendants, jointly and severally, for attorneys' fees and costs; and it is further

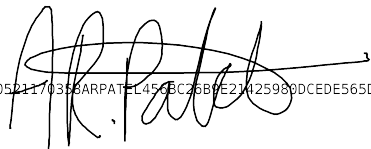
ORDERED that within fourteen (14) days of the entry of this Decision and Order, Plaintiff's counsel shall file an affirmation(s) to the Court on notice to Defendants, not exceeding five (5) pages, setting forth its claimed costs and attorneys' fees, explaining why such fees are reasonable, and attaching documentary proof thereof and a proposed order, and Defendants may

file a five (5) page letter in opposition within seven (7) days of Plaintiff filing its submission; and it is further

ORDERED that if Plaintiff fails to timely file their submission, Plaintiff shall be deemed to have waived its claims for attorneys' fees; and it is further

ORDERED that within seven (7) days of entry of this Order, Plaintiff shall serve a copy of this Order with notice of entry on Defendants by overnight mail.

The foregoing constitutes the decision and order of this Court.


20250521170366ARPATEL450BC26BE27425980DCEDE565D96F4F

ANAR R. PATEL, A.J.S.C.

5/21/2025
DATE

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