

**Universal Protection Serv., LLC v Three Park Ave.
Bldg. Co., LP**

2025 NY Slip Op 32566(U)

July 9, 2025

Supreme Court, New York County

Docket Number: Index No. 652427/2025

Judge: Andrew Borrok

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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 53

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UNIVERSAL PROTECTION SERVICE, LLC	INDEX NO.	<u>652427/2025</u>
Plaintiff,	MOTION DATE	<u>04/17/2025</u>
- v -	MOTION SEQ. NO.	<u>001</u>
THREE PARK AVENUE BUILDING CO., LP,		
Defendant.	DECISION + ORDER ON MOTION	

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HON. ANDREW BORROK:

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

Upon the foregoing documents, Universal Protection Service, LLC d/b/a Allied Universal Security Services (**Allied**)’s motion for summary judgment (Mtn. Seq. No. 001) in lieu of complaint is GRANTED as unopposed.

CPLR § 3213 provides that “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.” As such, summary judgment in lieu of complaint is an accelerated procedure for the adjudication of actions based on instruments for the payment of money only (CPLR § 3213; *see Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d 485, 491 [2015]). To make out a *prima facie* case, a plaintiff must demonstrate there was a suitable instrument and failure to make payments under that instrument (*Weissman v Sinorm Deli*, 88 NY2d 437, 444 [1996]).

This is an action for money owed under (i) a Settlement Agreement (the **Agreement**; NYSCEF Doc. No. 5), which resolved a certain dispute in a case captioned *Universal Protection Services, LLC d/b/a Allied Universal Security Services v. Cohen Brothers Realty Corporation et al*, Index No. 653778/2020, dated April 27, 2022, by and between Universal Protection Service, LP d/b/a Allied Universal Security Services and Cohen Brothers Realty Corporation, Westchester Building Company, LLC, D&D Building Co. LLC, Decorative Center of Houston, L.P., Cohen Quad Cinema, LLC, Cohen Ritz Retail, LLC, 3 East 54th New York, LLC, International Plaza Associates, LP, Fifth Avenue Building Company, LLC, 135 East 57th Street, LLC, 475 Building Company, LLC, 805 Third New York, LLC, 622 Third Avenue Company, LLC, Pacific Red, LLC, Pacific Design Center 1, LLC, and Three Park Avenue Building Co., LP (**Three Park Avenue**) (collectively, the **Cohen Parties**) for payment of security services provided by Allied to the Cohen Parties and (ii) a simultaneously executed Affidavit of Confession of Judgment (the **Confession of Judgment**; NYSCEF Doc. No. 6), dated April 27, 2022, by the Chief Operating Officer for Cohen Brothers Realty Corporation on behalf of Three Park Avenue, which provides:

1. I am the Chief Operating Officer for Cohen Brothers Realty Corporation and am authorized to execute this Confession of Judgment on behalf of Three Park Avenue Building Co., LP ("Property").
2. The above-captioned parties entered into the Settlement Agreement and Mutual Release, dated April 27, 2022 (the "Agreement"), a true and correct copy of which is annexed hereto as Exhibit A and which is incorporated herein by reference, to resolve a certain dispute relating to outstanding balances owed to Plaintiff for security services it rendered to several properties.
3. As inducement for the Agreement, and to secure the performance of obligations sufficiency of which is hereby acknowledged, I am executing this Affidavit of Confession of Judgment in the event of a default by the Property of its obligations under the Agreement.
4. I hereby confess judgment in favor of Plaintiff and authorize entry of judgment thereof against the Property in the sum of \$1,182,647.49, plus costs including, without limitation, reasonable attorney's fees and expenses incurred in connection with the enforcement of the Agreement and the filing and enforcement of this

- Confession of Judgment, less the sum of any portion of the Agreement actually paid by the Property to Plaintiff.
5. This Confession of Judgment may be entered and enforced according to its terms upon default by the Property of its obligations under the Agreement. The Property agrees that his Confession of Judgment may be entered in the appropriate court(s) in New York County, New York. This Confession of Judgment is for a debt justly due to Plaintiff and the sum confessed does not exceed the amount of the Property's liability to Plaintiff.
 6. I hereby represent and warrant to Plaintiff that the Property has granted me full power and authority to enter into, execute, and deliver this Confession of Judgment on the Property's behalf, and that the Property is fully aware of the acknowledgements, conditions, covenants, confessions, representations, and terms made herein on its behalf, as well as the powers and rights granted herein to Plaintiff.
 7. I have knowingly and voluntarily agreed to execute this Confession of Judgment on behalf of the Property. I have also discussed the execution of this Confession of Judgment with my attorneys and understand that the Property is waiving its right to pursue any legal action arising under the Agreement.

(VEC Doc. No. 6).

The Agreement requires, among other things, that the Cohen Parties pay Allied \$7,062,328.26 (the **Settlement Amount**), with the sum of \$383,389.09 to be paid upon execution of the Agreement and the remainder to be paid in monthly installment payments of \$351,523.11 per month for 19 months, beginning on February 25, 2023 and continuing through August 25, 2024.

In connection with the Agreement and the Confession of Judgment, Three Park Avenue agreed that its share of the Settlement Amount was \$1,182,647.49, plus costs including reasonable attorney's fees and expenses incurred in connection with the enforcement of the Agreement and the filing and enforcement of the Confession of Judgment. In the event of default by the Cohen Parties, Three Park Avenue agreed to the entry of the Confession of Judgment for its share of the Settlement Amount.

The Agreement provides that if the Cohen Parties fail to timely remit any individual installment payment, after notice and opportunity to cure as set forth in Paragraph 9¹ of the Agreement, the total obligations and indebtedness of the Cohen Parties will become immediately due and payable in full less any payments already made. Pursuant to the Agreement, Three Park Avenue agreed that it “shall be discharged of its obligations under this Agreement upon Allied’s receipt of Installment Payments which equal the full Settlement Amount, and at such time, the Confession of Judgment that it executes for its share of the Settlement Amount shall be released from Escrow and returned to it by opposing counsel” (NYSCEF Doc. No. 4 ¶ 7).

Following execution of the Agreement, the Cohen Parties made payments totaling \$1,086,435.31 through October 9, 2024 but failed to remit any further installment payments.

On October 9, 2024, in accordance with Paragraph 9 of the Agreement, Allied provided the Cohen Parties with a written ten day notice to cure their default (NYSCEF Doc. No. 7). As set forth above, in accordance with the Agreement and the Confession of Judgment, Three Park Avenue owes Allied the sum of \$1,182,647.49. It is undisputed that the entirety of the Confession of Judgment remains unpaid. This is *prima facie* evidence of entitlement to summary judgment pursuant to CPLR § 3213 (*DDS Partners, LLC v Celenza*, 6 AD3d 347, 348 [1st Dept 2004]). No opposition was filed.

¹ NYSCEF Doc. No. 5 ¶ 9 (“Should the Cohen Parties fail to make any of the individual Installment Payments that comprise the Settlement Amount, as and when required hereby, after email notification to Donald Harwood, Esq., at dharwood@harwoodreiff.com, and Eugene Alkana, Esq., at eugenealkana@yahoo.com, attorneys for the respective Cohen Parties, and a ten day period to cure such default beginning on the day following the date the email to Donald Harwood was sent, after which such default remains unpaid, in whole or in part, Allied shall be entitled to enforce its rights under this Agreement, the Confessions of Judgment, and the Stipulated Judgment to the fullest extent permitted by law less any Installment Payments already made, and except as provided for herein”).

Accordingly, it is hereby

ORDERED that Allied's motion for summary judgment in lieu of complaint pursuant to CPLR § 3213 is GRANTED; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Universal Protection Service, LLC d/b/a Allied Universal Security Services and against Three Park Avenue Building Co., LP in the amount of \$1,182,647.49, plus interest at the rate of 9.00% per annum from the date of this application (April 17, 2025) until the indebtedness owed in connection with the Confession of Judgment is paid in full plus attorneys' fees in the amount of _____, for a total of \$ _____, plus costs and disbursements as allocated by the Clerk, and the plaintiffs shall have execution thereof; and it is further

ORDERED that the portion of the Allied's claim that seeks the recovery of reasonable attorney's fees and costs is severed and the issue of the amount of reasonable attorney's fees and costs that the Allied may recover against Three Park Avenue is referred to a Special Referee to hear and determine; and it is further

ORDERED that counsel for Allied shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet,¹ upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's Part for the earliest convenient date; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made 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 on the court’s website at the address www.nycourts.gov/supctmanh).


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<u>7/9/2025</u> DATE					<u>ANDREW BORROK, J.S.C.</u>		
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"/>	OTHER	
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