

**Ponce Bank v Enjoy Kitchen & Grill Corp.**

2025 NY Slip Op 32571(U)

June 27, 2025

Supreme Court, New York County

Docket Number: Index No. 652903/2024

Judge: Ashlee Crawford

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ASHLEE CRAWFORD**

**PART 38**

*Justice*

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**INDEX NO. 652903/2024**

PONCE BANK,

**MOTION DATE 06/07/2024**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

ENJOY KITCHEN & GRILL CORP. and MARLENY BUENO,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, it is

Plaintiff Ponce Bank commenced this action by summary judgment in lieu of a complaint to enforce a note and guaranty against defendants Enjoy Kitchen & Grill Corp. and Marleny Bueno as borrower and guarantor, respectively. Plaintiff seeks an order granting judgment in the sum of \$25,146.20, plus interest from May 31, 2024 at the default rate provided for in the note, and legal fees and costs. Defendants have not appeared or filed opposition.

“A motion for summary judgment brought in lieu of a complaint (CPLR 3213) is based on an ‘instrument for the payment of money only or upon any judgment’” (Sea Trade Mar. Corp. v Coutsodontis, 111 AD3d 483, 483-484 [1st Dept 2013]). “The statute allows a plaintiff an expedited procedure for entry of a judgment by filing and service of a summons and a set of motion papers that contain sufficient evidentiary detail for the plaintiff to establish entitlement to summary judgment” (*id.* at 484). “The prototypical example of an instrument within the ambit of CPLR 3213 is ... a negotiable instrument for the payment of money – an unconditional promise to pay a sum certain, signed by the maker and due on demand or at a definite time” (P1 Fin. v Evergreen

Builders & Constr. Services, Inc., 232 AD3d 549, 550 [1st Dept 2024]; PDL Biopharma, Inc. v Wohlstadter, 147 AD3d 494, 494 [1st Dept 2017]).

Here, to prevail on its CPLR § 3213 motion, 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” (P1 Fin. v Evergreen Builders & Constr. Services, Inc., 232 AD3d at 550). Plaintiff must also “prove the existence of the guaranty, the underlying debt and the guarantor's failure to perform under the guaranty” (Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro, 25 NY3d 485, 492 [2015][internal citations omitted]). “Guaranties that contain language obligating the guarantor to payment without recourse to any defenses or counterclaims, i.e., guaranties that are ‘absolute and unconditional,’ have been consistently upheld by New York courts” (id. at 493).

The Court finds that proof of service as to defendant Bueno is insufficient (see CPLR § 306). There is no affidavit of service from a process server, only an affirmation from plaintiff's counsel stating that Bueno called to inform him that she had been given the summons and motion papers “by the person who lived at the address where they were served”; that she now resided at a new address; and that plaintiff's counsel sent a confirmation email to Bueno (NYSCEF Doc. 12 ¶¶ 3-4; see also NYSCEF Doc. 10). In addition, plaintiff failed to tender an affidavit of non-military service stating whether defendant is active in any branch of the military, which is required before a judgment may be entered against an individual defendant on default (Matter of Petre v Lucia, 205 AD3d 438, 438 [1st Dept 2022]; 50 USC § 3931 [b]; Military Law § 303). Accordingly, plaintiff's motion is denied as to Bueno.

Concerning defendant Enjoy Kitchen, plaintiff has met its *prima facie* burden for summary judgment in lieu of complaint.<sup>1</sup> Plaintiff provides the affirmation of its asset recovery officer, Paul Granski, who states that Enjoy Kitchen has defaulted under the note; the signed promissory note between plaintiff and defendant Enjoy Kitchen for a loan in the principal sum of \$25,000.00; and a proposed settlement agreement, never consummated by the parties (NYSCEF Docs. 3 [Granski Aff.], 4 [Loan Documents], 6 [Proposed Settlement]). The promissory note provides that upon default, a 24% default interest rate shall apply (NYSCEF Doc. 4 at 2 [Loan Documents]). Granski states in his affirmation that defendants owe principal in the sum of \$18,623.95, plus interest at a default rate of 24% from December 23, 2022 to May 31, 2024, amounting to \$6,520.25, for a total of \$25,246.20 (NYSCEF Doc. 3 ¶ 13 [Granski Aff.]).<sup>2</sup> While reasonable attorneys' fees and legal expenses are provided for in the promissory note (NYSCEF Doc. 4 at 3, 14 [Loan Documents]), plaintiff relies only upon Granski's affirmation that plaintiff has accrued \$1,380.50 in legal fees without providing supporting documentation (NYSCEF Doc. 3 ¶¶ 15-16 [Granski Aff.]). As such, it is hereby

ORDERED that plaintiff's unopposed motion for summary judgment in lieu of complaint is GRANTED IN PART only as against defendant Enjoy Kitchen & Grill Corp.; and is DENIED without prejudice to renewal as against defendant Marleny Bueno upon submission of sufficient proof of service within 30 days of entry of this order; and it is further

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<sup>1</sup> Plaintiff provides proof of service of the summons and motion papers on Enjoy Kitchen by service on the Secretary of State (NYSCEF Doc. 11). Plaintiff's lack of a follow-up mailing in compliance with CPLR 3215(g)(4)(i) is not fatal, because Bueno, as President of Enjoy Kitchen, has acknowledged receipt of the summons (see Rothschild v Finkelstein, 248 AD2d 701, 701 [2d Dept 1998]; see also Crespo v A.D.A. Management, 292 AD2d 5, 10 [1st Dept 2002]).

<sup>2</sup> According to the figures provided by Granski, the correct total is \$25,144.20.

ORDERED that that part of plaintiff's motion seeking to recover legal fees from either defendant is DENIED without prejudice to renewal upon submission of sufficient proof within 45 days of entry of this order; and it is further

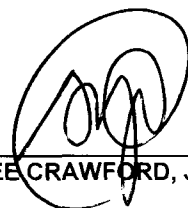
ORDERED, ADJUDGED AND DECREED that plaintiff shall serve a copy of this order with notice of entry on the Clerk of the Court, who shall enter judgment for plaintiff and against defendant Enjoy Kitchen & Grill Corp. only in the sum of \$25,144.20, with interest continuing at the rate of 24% per annum from May 31, 2024 (\$12.42 per day) until judgment, and post-judgment interest at the statutory rate, plus costs and disbursements to be taxed by the Clerk upon presentation of proper papers therefor; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry on defendants by certified mail, return receipt requested, at their last known addresses within 10 days of entry; and it is further

ORDERED that the Clerk of the Court shall calendar a control date on September 5, 2025 (no appearance required by the parties).

This constitutes the decision and order of the Court.

6/27/2025  
DATE

  
ASHLEE CRAWFORD, J.S.C.

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