

**Popular Bank v B.Q.E. Ideas LLC**

2025 NY Slip Op 32603(U)

July 11, 2025

Supreme Court, New York County

Docket Number: Index No. 655254/2024

Judge: Margaret A. Chan

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

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POPULAR BANK,  Plaintiff,  - v -  B.Q.E. IDEAS LLC and YEGHISH POGHOSYAN  Defendants.	<table border="0"> <tr> <td>INDEX NO.</td> <td><u>655254/2024</u></td> </tr> <tr> <td>MOTION DATE</td> <td><u>02/28/2025</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>001</u></td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	INDEX NO.	<u>655254/2024</u>	MOTION DATE	<u>02/28/2025</u>	MOTION SEQ. NO.	<u>001</u>
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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (MS001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 27, 28  
 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

In this action arising out of alleged defaults on two promissory notes, plaintiff Popular Bank (plaintiff) brings this motion, pursuant to CPLR 3213, for summary judgment in lieu of complaint against defendants B.Q.E. Ideas LLC (Borrower) and Yegish Poghosyan (Guarantor, and together with Borrower, defendants) to collect on unpaid principal and interest owed by Borrower to Lender, which was personally guaranteed by Guarantor (NYSCEF #s 1-2). The motion is unopposed.<sup>1</sup>

CPLR 3213 permits “actions based upon an instrument for the payment of money only to be commenced with a motion for summary judgment rather than a complaint” (*Banco Popular N. Am. v Victory Taxi Mgt.*, 1 NY3d 381, 383 [2004]). To

<sup>1</sup> To date, neither defendant has made an appearance in this action. On October 25, 2024, plaintiff filed an affirmation of service, indicating that a copy of the Summons, Notice of Motion for Summary Judgment in Lieu of Complaint, Affirmation in Support of Motion for Summary Judgment in Lieu of Complaint, and E-File Notice was delivered to Borrower’s authorized agent in the Office of the Secretary of State (NYSCEF # 24). Later, by Decision and Order, dated December 23, 2024, the court granted plaintiff leave to serve Guarantor, by certified mail, return receipt requested and first-class mail, at his address listed on his New York’s driver’s license, which is the address plaintiff had on file for Guarantor (NYSCEF # 29). The court also granted plaintiff’s motion to extend the time for service pursuant to CPLR 306-b and directed that plaintiff receive an additional 60 days to effectuate service on Guarantor (*id.*). On December 27, 2024, plaintiff filed an Amended Affidavit of Service indicating that copies of the Summons, Motion for Summary Judgment in Lieu of Complaint including all exhibits, and the Request for Judicial Intervention were served via first-class mail on Guarantor at his address at 50 West 34th Street, Apt. 16A12, New York, NY 10001 (NYSCEF # 31). Later, on January 7, 2025, plaintiff filed an affidavits of additional mailing to Borrower pursuant to CPLR 3215(g)(4) and Guarantor pursuant to CPLR 3215(g)(3), and, on February 11, 2025, plaintiff filed a second affidavit of additional mailing to Guarantor pursuant to CPLR 3215(g)(3).

establish entitlement to summary judgment in lieu of complaint, a plaintiff must make a prima facie showing that the instrument sued upon contains “an unconditional promise to pay a sum certain . . . due on demand or at a definite time” (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]), and that defendant failed to pay in accordance with those terms (*Zyskind v FaceCake Mktg. Tech., Inc.*, 101 AD3d 550, 551 [1st Dept 2012] [“To establish prima facie entitlement to summary judgment in lieu of complaint, 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”]). A guaranty qualifies as an instrument for the payment of money if it unconditionally promises payment (*see Bank of Am., N.A. v Filho*, 203 AD3d 594, 594 [1st Dept 2022]).

Here, plaintiff has established its entitlement to summary judgment in lieu of complaint. In support its motion, plaintiff submits a copy of (1) a Promissory Note, dated December 14, 2023, pursuant to which Borrower promised to pay by the note’s maturity date (December 14, 2028) the principal amount of \$710,000, “together with interest on the unpaid principal balance from December 14, 2023” at an interest rate of 9.5% per annum (Note A); and (2) a Promissory Note, dated December 14, 2023, pursuant to which Borrower promised by the note’s maturity date (December 14, 2024) the principal amount of \$500,000, “together with interest on the unpaid principal balance from December 14, 2023” at a variable interest rate defined in the note<sup>2</sup> (Note B, and together with Note A, the Notes) (NYSCEF #s 4, 9; *see also* NYSCEF # 3, Scotti aff ¶¶ 7, 18). Plaintiff further submits a copy of (1) a Commercial Guaranty, dated December 14, 2023, in which Guarantor “absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to [plaintiff],” which included the principal amount of Note A, accrued unpaid interest, and any collection costs and related legal expenses (Guaranty A); and (2) Commercial Guaranty, dated December 14, 2023, in which Guarantor “absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to [plaintiff],” which included the principal amount of Note B, accrued unpaid interest, and any collection costs and related legal expenses (Guaranty B, and with Guaranty A, the Guaranties).

Under Note A, Borrower agreed to make sixty payments of \$14,960.60 beginning on January 14, 2024, and until the maturity date (NYSCEF # 3, Scotti aff ¶ 9). Meanwhile, Borrower agreed to pay the loan for Note B in “one payment of all outstanding principal plus all accrued interest” on the maturity date, with monthly

<sup>2</sup> The variable interest rate was dependent upon “an independent index which is the Popular Bank Prime Rate” (NYSCEF # 9 at 1). At the time of origination of the loan, this index was set at 8.5% per annum, but “Interest on the unpaid principal balance of” Note B would be calculated “using a rate of 0.500 percentage points over the Index” (*id.*). In other words, the initial interest rate for Note B was 9.0% per annum based on a year of 360 days (*id.*). Note B clarified that “[u]nder no circumstances will the interest rate on this Note be less than 7.250% per annum or more than the maximum rate allowed by applicable law” (*id.*).

payments of all accrued unpaid interest due beginning on January 14, 2024, for Note B (*id.* ¶ 20). Both Notes further provided that a default would occur if “Borrower fails to make any payment when due” and that “[u]pon default, [plaintiff] may declare the entire unpaid principal balance under th[e] Note[s] and all accrued unpaid interest immediately due” (*see* NYSCEF # s 4, 9 at 1-2). As set forth in each of the Notes, upon a default, the applicable interest rate would increase by 5.0% (*id.* at 1). And if a payment were late by 10 or more days, Borrower would be charged a late fee of 5.0% of the regularly scheduled payment (*id.*).

Plaintiff, through its Senior Workout Officer and Vice President, attests that Borrower and Guarantor defaulted on Note A by failing to make a payment due on May 14, 2024, and all subsequent monthly payments thereafter. And they defaulted on Note B by failing to make a payment due on August 14, 2024, and all subsequent monthly payments thereafter (*see* NYSCEF # 3, Scotti aff ¶¶ 10, 21; NYSCEF #s 6, 11). Plaintiff further avers that, as of August 23, 2024, the total amount due under Note A is \$700,496.23, which accounts for unpaid principal in the sum of \$670,233.00, accrued interest in the sum of \$23,244.11, late charges in the sum of \$2,992.12, and attorneys’ fees and costs in the sum of \$4,000.00 (NYSCEF # 3, Scotti aff ¶ 14; NYSCEF # 7), while the total amount due under Note B is \$259,610.00, which accounts for unpaid principal in the sum of \$257,000.00, accrued interest in the sum of \$2,570.00, and a termination fee in the sum of \$40.00 (NYSCEF # 3, Scotti aff ¶ 24; NYSCEF # 12). Plaintiff made demands on Borrower and Guarantor for the payments due on the Notes on October 6, 2024, but to date, the indebtedness remains unpaid (*see* NYSCEF # 3, Scotti aff ¶¶ 15-16, 25-26; NYSCEF #s 8, 13).

Based on this submission, plaintiff has met its prima facie burden of establishing that Notes and Guaranties are for an unconditional promise to pay a sum certain due and that defendants have failed to pay in accordance with the terms of those agreements (*see DB 232 Seigel Mezz LLC v Moskovits*, 223 AD3d 610, 611 [1st Dept 2024] [“Plaintiff satisfied its prima facie burden on its CPLR 3213 motion for summary judgment in lieu of complaint by submitting the guaranties executed by defendants, the underlying loan agreement, and its demand letters establishing the borrower’s default and defendants’ failure to perform under the guaranties”]).

Accordingly, it is hereby

ORDERED that plaintiff Popular Bank’s motion, pursuant to CPLR 3213, for summary judgment in lieu of complaint is granted in its entirety; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff as against defendants B.Q.E. Ideas LLC and Yegish Poghosyan in the amount of (1) \$700,469.23 on Note A, together with pre-judgment interest on the unpaid principal balance at the contractual default rate from the date of August 24,

2024 until the date of this decision and order, and thereafter at the statutory rate, as calculated by the Clerk; and (2) \$259,610.00 on Note B, together with pre-judgment interest on the unpaid principal balance at the contractual default rate from the date of August 24, 2024 until the date of the decision and order, and thereafter at the statutory rate, as calculated by the Clerk; and it is further

ORDERED that the above amounts shall be awarded together with costs and disbursements as taxed by the Clerk of the Court upon submission of an appropriate bill of costs; and it is further

ORDERED that counsel for plaintiff is directed to serve a copy of this order, together with notice of entry, upon defendants and the Clerk of the Court within 20 days of this order.

Submit judgment.

7/11/2025

DATE



MARGARET A. CHAN, 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