

**Sandton Credit Opportunities Special Holdings, LLC
v Nastasi**

2025 NY Slip Op 33524(U)

September 17, 2025

Supreme Court, New York County

Docket Number: Index No. 652748/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

Sandton Credit Opportunities Special Holdings, LLC

Plaintiff,

- v -

Nastasi, Anthony

Defendant.

-----X

INDEX NO. 652748/2025

MOTION DATE 06/26/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is denied.

Background

In 2013, defendant Anthony Nastasi, together with his former business partner, non-party Christopher Black, executed a promissory note wherein they agreed to pay plaintiff Sandton Credit Opportunities Special Holdings, LLC the sum of \$1,522,867.87. This was part of a debt restructure package that also involved a family trust, Defendant’s business, and the mortgages on two properties. The maturity date on the Promissory Note was extended through various purported modifications (the “Note Modifications”) to 2018. The Note Modifications were signed by Defendant in both his personal capacity and on behalf of the family trust and the business. Plaintiff alleges that the principal and accrued interest and fees were not paid upon the 2018 maturity date.

In July of 2018, Plaintiff instituted a foreclosure action on the mortgages in Greene County. That action was ultimately dismissed in an order issued by Justice Mott in December of

2023 (the “Greene County Order”). Plaintiff filed an appeal of that order but later withdrew it. In 2024, Plaintiff filed an action in New York County, which was dismissed by Justice Lebovits without prejudice on the grounds that the appeal of the Green County Order was still pending. Plaintiff then filed the present action in May of 2025, pleading a single claim of breach of contract against Defendant for breach of the Promissory Note.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, “the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference.” *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

Discussion

Defendant brings the present motion to dismiss on the grounds of statute of limitations and that Plaintiff is precluded from enforcing the Note Modifications due to the Greene County Order. Plaintiff opposes. The three main issues raised for this motion are 1) are the Loan Modifications enforceable, thus extending the maturity date of the Promissory Note and the relevant statute of limitations; 2) if the Promissory Note was unenforceable due to statute of limitations issues, did Defendant revive the otherwise-unenforceable debt by statements made during a deposition in 2022; and 3) was the statute of limitations tolled during the pendency of the foreclosure action. For the reasons that follow, the motion is denied.

The Statute of Limitations Was Revived in 2022

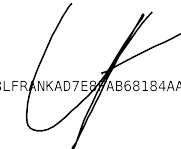
One of Plaintiff's arguments as to why the present action is not untimely is that the Defendant revived the debt pursuant to General Obligations Law § 17-101. This provision states that an action can be taken out of the operation of the statute of limitations when there is an "acknowledgement or promise contained in a writing signed by the party to be charged thereby." If a writing "recognizes an existing debt and contains nothing inconsistent with an intention on the part of the debtor to pay it", the § 17-101 requirements are satisfied. *Hon Fui Hui v. East Broadway Mall, Inc.*, 4 N.Y.3d 790, 791 [2005]; *see also Lew Morris Demolition Co. v. Board of Education*, 40 N.Y.2d 516, 521 [1976] (noting that the rule is that the writing must "recognize an existing debt and must contain nothing inconsistent with an intention on the part of the debtor to pay"). Defendant did not address this argument in their reply brief.

During the pendency of the Greene County Action, there are several statements that Plaintiff contends satisfy the GOL § 17-101. The first are statements made during a June 29, 2022, deposition. Defendant testified that he was aware of the original Promissory Note and that he still intended to pay it. Because the transcript of the deposition was sent to Defendant and he failed to sign and return it within sixty days, under CPLR § 3116 it "may be used as fully as though signed." Additionally, Defendant's response to Plaintiff's statement of uncontested facts in the Greene County action included a statement that there were amounts owed under the Note. These writings, both considered to be signed by the Defendant, clearly recognize an existing debt and do not contain anything inconsistent with an intention on the part of Defendant to pay it. This is sufficient to satisfy the requirements of GOL § 17-101. *See, e.g., Banco de Brasil S.A. v. State of Antigua & Barbuda*, 268 A.D.2d 75, 77 [1st Dept. 2000]. This written and signed acknowledgment revived the Statute of Limitations in 2022, thus making this present suit to collect on the original Promissory Note timely. Therefore, the Court need not address the issues

of whether the Loan Modifications are still enforceable as against Defendant (thus extending the statute of limitations), or whether the Green County Action tolled the statute of limitations despite the Foreclosure Abuse Prevention Act. Accordingly, it is hereby

ADJUDGED that the motion to dismiss is denied; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.


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LYLE E. FRANK, J.S.C.

9/17/2025

DATE

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