

CMTG Lender 10 LLC v Chetrit

2025 NY Slip Op 33986(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 650072/2025

Judge: Nancy M. Bannon

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

PRESENT: HON. NANCY M. BANNON PART 61M

Justice

-----X

CMTG LENDER 10 LLC, CMTG LENDER 99 LLC

Plaintiffs,

- v -

MEYER CHETRIT, JOSEPH CHETRIT,

Defendants.

-----X

INDEX NO. 650072/2025

MOTION DATE 05/13/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

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

In this action seeking damages for breach of three carry guaranties, the lender and administrative agents CMTG Lender 10 LLC and CMTG Lender 99 LLC move pursuant to CPLR 3213 for summary judgment in lieu of complaint against defendant guarantors Meyer Chetrit and Joseph Chetrit. The defendants oppose the motion. The motion is denied and the matter is converted to a plenary action.

A plaintiff may seek relief under CPLR 3213 “[w]hen [the] action is based upon an instrument for the payment of money only.” See HSBC Bank USA v Community Parking Inc., 108 AD3d 487 (1st Dept. 2013); Allied Irish Banks, P.L.C. v Young Men’s Christian Assn. of Greenwich, 105 AD3d 516 (1st Dept. 2013); German Am. Capital Corp. v Oxley Dev. Co., LLC, 102 AD3d 408 (1st Dept. 2013). “Where the instrument requires something in addition to defendant’s explicit promise to pay a sum of money, CPLR 3213 is unavailable.” Weissman v Sinorm Deli, 88 NY2d 437, 444 (1996). That is, any outside proof “other than simple proof of payment” and default (Goodyear Tire & Rubber Co. v Azzaretto, 103 AD3d 880 [2nd Dept. 2013]) exceeds the permissible use of extrinsic proof on a CPLR 3213 motion.” Ian Woodner Family Collection, Inc. v Abaris Brooks, Ltd., 284 AD2d 163, 164 (1st Dept. 2001). Therefore, “[a] document does not qualify for CPLR 3213 treatment if the court must consult other materials besides the bare document and proof of nonpayment, or if it must make more than a *de*

minimus deviation from the face of the document.” PDL Biopharma, Inc. v Wohlstadter, 147 AD3d 494, 495 (1st Dept. 2017) *citing* Interman Indus. Prods. v R.S.M. Electron Power, 37 NY2d 151, 154-155 (1975). That is the case here.

In support of the motion, the plaintiffs submit three subject guaranties; the Junior Mezzanine Carry Guaranty, the Senior Mezzanine Carry Guaranty, and the Mortgage Borrower Carry Guaranty, which the defendants executed on August 1, 2022. Under Section 1.1(b)(2) of each guaranty, the “Guaranteed Obligations” are defined to include the borrower’s obligations to pay interest at applicable interest rates and to all “carry operating expenses, insurance premiums, impositions, assessments and “other charges.” Further definitions are found in the underlying loan agreements, which define “impositions” as property taxes as well as “governmental assessments, water, sewer or other rents and charges, excises, levies and fees” incurred by the borrower. “Other charges” is defined to include common charges and maintenance charges comprised of “vault charges and license fees for the use of vaults, chutes, and similar areas adjoining the property, now or hereafter levied or assessed against the property by any governmental authority, other than those required to be paid by a tenant pursuant to its respective lease.”

The plaintiffs also submit the three underlying loan agreements –the Junior Mezzanine Loan Agreement, the Senior Mezzanine Loan Agreement, and Mortgage Loan Agreement. Promissory notes executed by the borrowers and plaintiffs for each of these loans, all dated August 1, 2022, are also submitted.

In an affidavit submitted in support of the motion, Priyanka Garg, authorized representative of the plaintiffs, avers that \$83,557,395.93 is outstanding and due under the Junior Mezzanine Carry Guaranty, \$71,230,218.86 is outstanding and due under the Senior Mezzanine Carry Guaranty, and \$68,170,324.38 is outstanding and due under the Mortgage Borrower Carry Guaranty. However, as set forth above, these amounts due are not plain on their face pursuant to the guaranties or loan agreements. See Bank of Am., N.A. v. Solow, 59 AD3d 304, 305 (1st Dept. 2009). All three guaranties require the defendants to pay numerous and quite varied obligations of the borrower which necessarily require outside proof, and much of it, to establish any amount owed, taking the matter outside the scope of CPLR 3213. See P1 Finance v Evergreen Builders & Constr. Svcs., Inc., *supra* [CPLR 3213 relief unavailable where outside proof was required to determine the existence and amount of any deficiency]; Bonds

Fin., Inc. v Kestrel Tech., LLC, 48 AD3d 230 (1st Dept. 2008) [summary judgment under CPLR 3213 found inappropriate where plaintiff's sued upon an acceleration clause in a revolving credit agreement which required resort to external documents to identify a default event]; Ian Woodner Family Collection, Inc. v Abaris Brooks, Ltd., 284 AD2d 163 (1st Dept. 2001) [where amount and date of payments due on a promissory note depended on revenues received by defendants from other sources, if any, expedited relief under CPLR 3213 is improper]; Kolanu Partners LLC v Wu, 42 Misc 3d 1224(A) (Civil Ct, NY County [Bannon. J.]) [CPLR 3213 relief denied where plaintiff, sponsor of a condominium project, had to produce 28 exhibits and lengthy affidavits to establish its breach of contract claim against a unit owner]. Indeed, here, the extrinsic evidence necessary for the plaintiff to establish its claim against the defendant requires much more than a “*de minimus* deviation from the face of the document[s]”. Weissman v Sinorm Deli, Inc., 88 NY2d 437, 444 (1996); see PDL Biopharma, Inc. v Wohlstadter, 147 AD3d 494 (1st Dept. 2017); compare Fiore Fin. Corp. v Gaea N. Am., LLC, 179 AD3d 621 (1st Dept. 2020) [where parties agreed that they had not entered in the management agreement contemplated in the promissory note, “that is the type of *de minimus* information which does not preclude relief under CPLR 3213”]. No reasonable argument can be made that any amounts that may be or become owed by the borrowers for unspecified insurance premiums, accruing water and sewer charges, unpredictable government levies, uncalculated property taxes, hypothetical vault fees or future unpaid obligations of an unidentified tenant all require information to be drawn from sources well outside the guarantees at issue here. As such, relief under CPLR 3213 is unavailable here.

Finally, the court notes the rule that “a guarantee of both payment and performance does not qualify as an instrument for the payment of money only under CPLR 3213” iPayment, Inc. v Silverman, 192 AD3d 586 (1st Dept. 2021) *citing* Punch Fashion, LLC v Merchant Factors Corp., 180 AD3d 52 (1st Dept. 2020) *lv dismissed* 35 NY3d 1124 (2020). However, the defendants do not advance that argument in their opposition papers.

Although the plaintiff may not avail itself of relief under CPLR 3213, its claims are not extinguished as its moving papers are hereby deemed the complaint and the answering papers are deemed the answer. See PDL Biopharma, Inc. v Wohlstadter, *supra*.

Accordingly, upon the foregoing papers, and after oral argument, it is


ORDERED that the plaintiff’s motion for summary judgment in lieu of a complaint (CPLR 3213) is denied, and it is further,

ORDERED that the plaintiff’s moving papers and the defendants’ answering papers are deemed the complaint and answer, respectively, pursuant to CPLR 3213, and it is further

ORDERED that the parties shall commence discovery and appear for a preliminary conference on January 15, 2026, at 12:00 p.m., to be conducted via Microsoft Teams, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

<u>10/10/2025</u> DATE							
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<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