

I.B.I Volcano Invs. LLC v Marcos

2025 NY Slip Op 34182(U)

October 31, 2025

Supreme Court, New York County

Docket Number: Index No. 654740/2025

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

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I.B.I VOLCANO INVESTMENTS LLC

Plaintiff,

- v -

JOSE JUAN MARCOS,

Defendant.

-----X

INDEX NO. 654740/2025

MOTION DATE 10-31-25

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

The plaintiff, I.B.I. Volcano Investments LLC, moves pursuant to CPLR 3213 for summary judgment in lieu of a complaint against the defendant, one of five guarantors on a 2023 promissory note, seeking a money judgment in the principal sum of \$2,457,537.00. No opposition is submitted. The motion is granted.

In a prior action commenced in this court seeking the same relief (*I.B.I. Volcano Investments LLC v Pebble Beach DST Investments, LLC, PB 1205 West Parent, LLC, Clarum Real Estate, LLC, Brian Nelson and Jose Juan Marcos*, Index No. 655625/2024), the court (Schechter, J.), by an order dated January 10, 2025, granted the plaintiff's unopposed motion as against all defendant guarantors save for defendant Marcos as the plaintiff submitted no proof of service as to that defendant. On April 22, 2025, a money judgment was entered against the other defendants in the sum of \$3,223,696.10, consisting of the principal sum of \$2,933,053.00, \$218,170.93 in contractual default interest at the rate of 15%, and \$72,472.17 in attorney's fees and expenses. By a notice filed May 6, 2025, the plaintiff discontinued the action as against defendant Marcos, without prejudice. According to the plaintiff, that judgment has not been satisfied in whole or part. The plaintiff commenced this separate action against defendant Marcos on August 8, 2025, again seeking relief under CPLR 3213.

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). To establish a *prima facie* entitlement to summary judgment in lieu of a complaint, a plaintiff must produce an instrument containing an “unequivocal and unconditional obligation to repay” (Zyskind v FaceCake Mktg. Tech., Inc., 101 AD3d 550, 551 [1st Dept. 2012]), one which by its terms is for the payment of money only over a stated period of time (see Bloom v Lugli, 81 AD3d 579,580 [2nd Dept. 2011]), and establish that the defendant failed to pay in accordance with those terms. See Zyskind v FaceCake Mktg. Tech., Inc., *supra*; Rhee v Meyers, 162 AD2d 397 (1st Dept. 1990). Furthermore, “where a guaranty is clear and unambiguous on its face and, by its language, absolute and unconditional, the signer is conclusively bound by its terms absent a showing of fraud, duress or other wrongful act in its inducement.” Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444, 446–47 (1st Dept. 2012) [internal citation omitted].

The plaintiff has met its burden on this motion as against Marcos submitting, among other things, the subject guaranty, the underlying promissory note and security and pledge agreement, two default notices sent to all guarantors and the affidavit of Ziv Sapir, its principal. Sapir states that the borrower, PB 1205 West Depositor, LLC, ceased making regular interest payments on the note in March 2024, but recent made a payment of \$760,550.00 in February 2025, leaving, as of August 7, 2025, an outstanding unpaid principal amount of \$2,268,403.00, plus contractual default interest of 15% totaling \$258,135.00, and late charges of \$35,539.00. The plaintiff also submitted a stipulation by all parties dated December 31, 2024, allowing full payment to be made in January 2025, thereby extending the note’s maturity date of January 3, 2024, by a year. No payment was made save for the February 2025 payment by the borrower.

By signing the guaranty and stipulation, Marcos agreed to joint and several liability with his co-guarantors and to broad language waiving any defenses to the debt and further waived any jurisdictional defense in the stipulation to extend his time to pay. By this proof, the plaintiff has established an “unequivocal and unconditional obligation to repay” (Zyskind v FaceCake Mktg. Tech., Inc., *supra*) a sum over a stated period of time (see Bloom v Lugli, *supra*) and the defendant’s failure to pay in accordance with the terms of the agreement. See Bonds Financial, Inc. v Kestrel Technologies, LLC, 48 AD3d 230 (1st Dept. 2008); Zyskind v FaceCake Mktg.

Tech., Inc., supra. The plaintiff further establishes that the guaranty is “clear and unambiguous” and includes language that conclusively binds the defendant to its terms (see Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., 97 AD3d 444, 446-447 [1st Dept. 2012]) such that enforcement of the guaranty is warranted. Since Marcos did not oppose this motion, he has not shown any “fraud, duress or other wrongful act in its inducement” (Citibank, N.A. v Uri Schwartz & Sons Diamonds Ltd., supra at 446–47) and has failed to raise any issue of triable fact (see Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]) or any other basis to deny the motion.

Moreover, although not asserted by the plaintiff here, it may be argued that the doctrine of collateral estoppel applies. Even though he did not appear in the prior action, defendant Marcos signed the same guaranty, based on the same documents and non-payment as the other guarantors, the plaintiff seeks the same sum from the defendant as in the prior action (plus additional fees and interest) and a Justice of this court has already found that the plaintiff established entitlement to relief under CPLR 3213 as against the other guarantors.

The plaintiff requests that the application for contractual attorney’s fees and costs be granted and that an inquest be held to determine those amounts. That application is granted to the extent that the plaintiff, who is entitled to attorney’s fees under the terms of the subject guaranty, may, within 60 days, submit supplemental papers to this court to establish the amount of fees and costs incurred in this action, or attorney’s fees and costs will be deemed waived.

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff’s motion for summary judgment in lieu of complaint pursuant to CPLR 3213 is granted, and it is further,

ORDERED that the Clerk shall enter judgment in favor of the plaintiff, I.B.I. Volcano Investments LLC, and against the defendant, Jose Juan Marcos, in the principal sum of \$2,457,537.00, plus statutory interest from August 8, 2025, and it is further,

ORDERED that the plaintiff’s application for contractual attorney’s fees and costs is granted on liability and the plaintiff may, within 60 days of the date of this order, submit supplemental papers to establish the amount of fees and costs incurred in this action, and notify the Part 61 Clerk of any such filing.

This constitutes the Decision and Order of the court.



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

10/31/2025
DATE

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
			OTHER