SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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FEENIX VENTURE PARTNERS OPPORTUNITY FUND II, LP, FVP OPPORTUNITY FUND III, LP, and FVP SERVICING, LLC,

Plaintiff,

- v -

GALAXY MANAGEMENT COMPANY, LLC, JAGMOHAN SINGH DHILLON, AMANDEEP KAUR DHILLON, RAJDEEPH DHILLON, PARAM JIT KAUR, SURENDAR KEET SINGH, NARINDER KAUR DHILLON, and MANDEEP KAUR DHILLON,

Defendants.

INDEX NO. 652472/2025

MOTION DATE --

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27

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

In motion sequence number 001, plaintiffs Feenix Venture Partners Opportunity Fund II, LP (FVPOF II), FVP Opportunity Fund III, LP (FVPOF III), and FVP Servicing, LLC (FVP) move pursuant to CPLR 3213 for summary judgment in lieu of complaint against defendants Galaxy Management Company, LLC (Galaxy) and Jagmohan Singh Dhillon, Amandeep Kaur Dhillon, Rajdeep Dhillon, Param Jit Kaur, Surendar Jeet Singh, Narinder Kaur Dhillon, and Mandeep Kaur Dhillon (collectively, individual guarantors), on the basis that defendants defaulted on a promissory note and guaranty.

Background

On September 25, 2020, plaintiffs FVPOF II and FVP entered into a loan agreement with defendant Galaxy, in which they agreed to provide Galaxy with a term

loan in the principal amount of $3,500,000 (Loan Agreement). (NYSCEF 3, Lee[1] aff ¶ 4; NYCEF 4, Loan Agreement and Promissory Note.) The parties executed, contemporaneously with the Loan Agreement, a promissory note (Note) for the same principal amount. (NYSCEF 3, Lee aff ¶ 5; NYSCEF 4, Loan Agreement and Promissory Note.) The Loan Agreement was guaranteed by the individual guarantors, whom each executed a guaranty agreement on September 25, 2020 (Guaranty Agreement). (NYSCEF 3, Lee aff ¶ 6; NYSCEF 5, Guaranty Agreement.)

Following the execution of the Loan Agreement on September 25, 2020, the parties amended the Loan Agreement six times[2]. (NYSCEF 3, Lee aff ¶¶ 9-17.) The amendments provided for additional advances and included plaintiff FVPOF III as an additional lender. The sixth and final amendment to the Loan Agreement, executed on September 29, 2023, established the maturity date for all advances as November 10, 2023, with the exception of the advance granted pursuant to the fifth amendment to the Loan Agreement, which was given the maturity date of November 1, 2024. (NYSCEF 3, Lee aff ¶ 18; NYSCEF 11, Sixth Amendment to Loan Agreement § 2.) On the maturity date, Galaxy was required to pay "the outstanding principal balance of the Loan, all accrued unpaid interest thereon and all other fees, costs, expenses and other Obligations then outstanding." (NYSCEF 4, Loan Agreement § 2.2 [a].)

When defendants failed to remit payments for the advances due on November 10, 2023, plaintiffs served, on October 25, 2024, a notice of default (Default Notice).

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[1] Keith Lee is the Managing Partner of FVPOF II, FVPOF III, and FVP. (NYSCEF 3, Lee aff ¶ 1.)

[2] The Loan Agreement was amended on November 30, 2021 (NYSCEF 6), March 14, 2022 (NYSCEF 7), June 16, 2022 (NYSCEF 8), July 21, 2022 (NYSCEF 9), April 13, 2023 (NYSCEF 10), and September 29, 2023 (NYSCEF 11).

(NYSCEF 3, Lee aff ¶¶ 24-26; NYSCEF 12, Default Notice.) Pursuant to the Default Notice, plaintiffs demanded that Galaxy and each of the individual guarantors, make immediate payment of the amounts outstanding. (NYSCEF 3, Lee aff ¶ 26; NYSCEF 12, Default Notice.) Defendants failed to make such payments. (NYSCEF 3, Lee aff ¶ 27.) Defendants, subsequently, defaulted on the advance due on November 1, 2024. (*Id.* ¶ 28.) As of April 10, 2025, defendants owe plaintiffs the total sum of $9,515,538.75.[3] (*Id.* ¶ 31.) Accordingly, plaintiffs bring this motion for summary judgment in lieu of complaint in the amount of $9,515,538.75, plus interest, attorneys' fees and costs of collection. (*Id.* ¶ 33; NYSCEF 2, Notice of Motion at 1-2.)

Discussion

"CPLR 3213 affords a speedy and efficient remedy to secure a judgment in certain cases where service of formal papers would be unnecessary for the expeditious resolution of the dispute between the parties." (*Tech. Tape, Inc. v Spray Tuck, Inc.*, 131 AD2d 404, 405-406 [1st Dept 1987].) "In order to qualify for CPLR 3213 treatment, plaintiff must be able to establish a prima facie case by proof of the agreement and a failure to make the payments called for thereunder." (*SCP, Inc. v Bermudatel Ltd.*, 224 AD2d 214, 216 [1st Dept 1996] [citations omitted].) "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].) Once the plaintiff makes a prima facie showing, "the burden shifts to the defendant to establish, by admissible evidence, the existence of a triable issue with respect to a bona fide

[3] This amount is comprised of $9,127,095.49 in principal, $108,983.88 in ordinary interest, $277,431.13 in default interest, and $2,028.25 in administrative fees. (NYSCEF 3, Lee aff ¶ 31.)

defense." (*Cooperative Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro*, 25 NY3d 485, 492 [2015] [internal quotation marks and citation omitted].)

Here, plaintiffs have made out its prima facie case for summary judgment pursuant to CPLR 3213 by submitting (1) the Loan Agreement and Note (NYSCEF 4, Loan Agreement and Promissory Note), (2) the Guaranty Agreement (NYSCEF 5, Guaranty Agreement), and (3) the Default Notice (NYSCEF 12, Default Notice). (*See DB 232 Seigel Mezz LLC v Moskovits*, 223 AD3d 610, 611 [1st Dept 2024] ["[p]laintiff 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, the burden shifts to defendants.

Proper Service

Defendants assert that this court lacks jurisdiction over defendants Rajdeep Dhillon, Param Jit Kaur, Surendar Jeet Singh, Narinder Kaur Dhillon, and Mandeep Kaur Dhillon (collectively, Outside Defendants) due to plaintiffs' failure to properly serve these defendants at their actual place of business.

CPLR 308(2) requires that the summons be delivered "to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to . . . [their] last known residence or . . . [their] actual place of business." (CPLR 308[2].) If the requirements of CPLR 308(2) are not satisfied, the court fails to acquire personal jurisdiction over the defendants. (*See Adames v New York City Transit Auth.*, 126

AD2d 462, 462 [1st Dept 1987].) "[A] proper affidavit of a process server attesting to personal delivery upon a defendant constitutes prima facie evidence of proper service." *NYCTL 1998-1 Trust v Rabinowitz*, 7 AD3d 459, 460 [1st Dept 2004].) "To rebut this prima facie showing, defendant [must] submit a sworn, nonconclusory denial of service or swear to specific facts to rebut the process server's affidavit." (*JP Morgan Chase Bank v Dennis*, 166 AD3d 530, 531 [1st Dept 2018].) Where a defendant swears to specific facts to rebut the statements in the process server's affidavit, a traverse hearing is warranted. (*See e.g. Ananda Capital Partners, Inc. v Stav Elec. Sys. (1994) Ltd.*, 301 AD2d 430, 430 [1st Dept 2003]; *NYCTL 1998-1 Trust*, 7 AD3d at 460.)

Here, plaintiffs have submitted affirmations of service evidencing that each of the Outside Defendants were served with the summons, notice of motion for summary judgment in lieu of complaint, and supporting papers by delivery to Carlos Cue Vas at 8762 Preston Trace Boulevard, Frisco, Texas 75033 (8762 Preston). (NYSCEF 17, Aff of Service.) The affirmations also verify that copies of the same documents were mailed to 8762 Preston within twenty days of such delivery. (*Id.*) Defendants challenge the validity of service arguing that 8762 Preston was not their "actual place of business." (NYSCEF 19-23, Affirmations of the Outside Defendants ¶ 6.)

A defendant's "actual place of business" includes "any location that the defendant, through regular solicitation or advertisement, has held out as its place of business." (CPLR 308[6].) Here, the Outside Defendants held out 8762 Preston as their actual place of business when they designated 8762 Preston as their address for receipt of notice in the Loan Agreement and the Guaranty Agreement. (NYSCEF 4, Loan Agreement § 10.1[a]; NYSCEF 5, Guaranty Agreement § 6.2.) Accordingly, the

Outside Defendants may not now claim that they were not properly served because 8762 Preston was not their actual place of business. (*See Amcojor Realty Corp. v Butter Mgt. LLC*, 232 AD3d 404, 405 [1st Dept 2024] ["because defendant designated the nightclub address as his business address for notice purposes under the guaranty, he may not now reasonably claim he was not properly served." (internal quotation marks and citations omitted)]; *Gibson, Dunn & Crutcher LLP v Global Nuclear Servs. & Supply, Ltd.*, 280 AD2d 360, 361 [1st Dept 2001] ["[h]aving thus effectively held out 485 Madison Avenue as his business address, and induced plaintiff's reliance thereon, this defendant cannot disclaim it as his actual place of business." (internal quotation marks and citation omitted)].)

Proper Authentication of Business Documents

Defendants further argue that the April 21, 2025 affidavit of Keith Lee (NYSCEF 3) fails to lay an adequate foundation for the admissibility of plaintiffs' supporting documents as business records because Lee did not sufficiently attest to his familiarity with plaintiffs' record-keeping practices and procedures and the affidavit was, further, not accompanied by a CPLR 2309(c) certification.

On a motion for summary judgment, the movant must establish its prima facie case "by tender of evidentiary proof in admissible form." (*Zuckerman v New York*, 49 NY2d 557, 562 [1980].) Evidence must be authenticated to be admissible and serve as "an appropriate basis on which to grant summary judgment." (*Clarke v American Truck & Trailer, Inc.*, 171 AD3d 405, 406 [1st Dept 2019]; *see also Doe v Intercontinental Hotels Group, PLC*, 193 AD3d 410, 410 [1st Dept 2021] [provided that an affidavit which "was not sworn to have been made on [affiant's] own personal knowledge" is "of no

probative value as to the issues of fact that [affiant] addresse[s].”].) For a business record to be admissible, a party must show that “(1) it was produced in the ordinary course of business; (2) it was the regular course of business to make such record; and (3) it was made at the time of the act, transaction, occurrence or event or within a reasonable time thereafter.” (*Knight v New York & Presbyt. Hosp.*, 219 AD3d 75, 79 [1st Dept 2023].)

Here, the insufficient attestation defendants complain of with regards to Lee’s April 21, 2025 affidavit is cured by plaintiffs’ submission of Lee’s June 18, 2025 affidavit (NYSCEF 26). In the second affidavit, Lee provides, with respect to the Loan Agreement and its amendments, that he “personally executed each of the foregoing documents on behalf of [p]laintiffs and therefore personally observed their execution.” (NYSCEF 26, June 18, 2025 Lee aff ¶ 3.) Furthermore, the lack of the CPLR 2309(c) certification is not detrimental. (*See* (*Midfirst Bank v Agho*, 121 AD3d 343, 351 [2d Dept 2014] [“the absence of a certificate of conformity is not, in and of itself, a fatal defect”]; *Matapos Tech. Ltd. v Compania Andina de Comercio Ltda*, 68 AD3d 672, 673 [1st Dept 2009] [“[t]he absence of such a certificate is a mere irregularity, and not a fatal defect.”].) Because the second affidavit cures the deficiencies of the first, and the lack of a certification is not fatal, the court finds that the Loan Agreement and its amendments have been properly authenticated.

As to the Guaranty Agreement (NYSCEF 5) and the Default Notice (NYSCEF 12), “[i]t is well settled that a business entity may admit a business record through a person without personal knowledge of the document, its history or its specific contents where that person is sufficiently familiar with the corporate records to aver that the

record is what it purports to be and that it came out of the entity's files." (*DeLeon v Port Auth.*, 306 AD2d 146, 146 [1st Dept 2003].) Here, both of Lee's affidavits provide that Lee, as the managing partner of plaintiffs, is "fully familiar with the matters" underlying this action. (NYSCEF 3, April 21, 2025 Lee aff ¶ 1; NYSCEF 26, June 18, 2025 Lee aff ¶ 1.) Furthermore, Lee personally signed the Guaranty Agreement. (*See* NYSCEF 5, Guaranty Agreement at 13/13 [NYSCEF pagination].) For these reasons, the court finds that the Guaranty Agreement and the Default Notice have been properly authenticated. Accordingly, defendants fail to establish an issue of fact regarding proper authentication.

Instrument for the Payment of Monies Only

Finally, defendants argue that plaintiffs have failed to make out its prima facie case for summary judgement in lieu of complaint because the Guaranty Agreement executed by each of the individual guarantors is not an instrument for the payment of money only.

"While a guarantee of both payment and performance does not qualify as an instrument for the payment of money only under CPLR 3213," a guaranty agreement qualifies as one for the payment of money only when it "require[s] no additional performance by plaintiff as a condition precedent to payment or otherwise ma[ke] defendants' promise to pay something other than unconditional." (*iPayment, Inc. v Silverman*, 192 AD3d 586, 587 [1st Dept 2021] [internal quotation marks and citation omitted]; *see also Park Union Condominium v 910 Union St., LLC*, 140 AD3d 673, 673-74 [1st Dept 2016].) Here, defendants argue that the Guaranty Agreement's language

of "payment and performance," brings the Agreement outside the scope of CPLR 3213. This is incorrect.

"The mere addition of the words 'and performance' does not remove [a] guaranty from the category of instruments for the payment of money only, particularly when the sentence ends with **'as and when due and payable.'**" (*Museum Bldg. Holdings, LLC v Schreiber*, 236 AD3d 526, 527 [1st Dept 2025] [emphasis added].) As long as the guarantor's obligations under the agreement are limited to paying money, a guaranty qualifies as an instrument for the payment of money only. (*See 27 W. 72nd St. Note Buyer LLC v Terzi*, 194 AD3d 630, 632 [1st Dept 2021].) Here, the Guaranty Agreement sets forth that "[e]ach Guarantor hereby irrevocably and unconditionally jointly and severally guarantees to [FVP] and [FVPOF II and FVPOF III] and each of their respective successors and assigns the payment and performance of the Guaranteed Obligations (as defined below) **as and when the same shall be due and payable**." (NYSCEF 5, Guaranty Agreement § 1.1 [a] [emphasis added].) Further, the Agreement defines 'Guaranteed Obligations' as

> "the aggregate principal amount of all of the Obligations . . . as may be due and owing under the Loan Agreement . . . together with interest, fees, costs, expenses and any other sums owing under the Loan Agreement . . . and all costs or expenses incurred . . . in the enforcement or collection of this Guaranty." (NYSCEF 4, Guaranty Agreement § 1.1 [b].)

Accordingly, it is clear from the language of the Guaranty Agreement that the guarantors' obligations are limited to the payment of money only, and, therefore, the instrument falls within the definition of CPLR 3213.

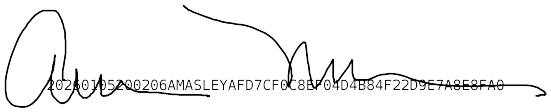
Defendants further argues that CPLR 3213 relief is improper because "the instruments at issue have confusing, conflicting terms that purport to define the

individual defendants' Guaranty Obligations but are unclear as to precisely which obligations (or which definition in the various documents) apply." (NYSCEF 18, Defendants' MOL at 17.) This argument is unconvincing. The Loan Document defines 'Obligations' as the "monetary amounts owing by [Galaxy and the individual guarantors] to [plaintiffs]." (NYSCEF 4, Loan Agreement at 5.) Meanwhile, the Guaranty Agreement defines 'Guaranteed Obligations' as "the aggregate principal amount of all of the Obligations . . . as may be due and owing under the Loan Agreement." (NYSCEF 5, Guaranty Agreement § 1.1 [b].) There is no conflict between the two definitions. Indeed, they set forth the same definition in slightly different terms.

Moreover, there is no ambiguity as to the defendants' respective obligations. The Loan Agreement provides that "[o]n the Maturity Date, [**Galaxy**] shall pay to [plaintiffs] the outstanding principal balance of the Loan, all accrued unpaid interest thereon and all other fees, costs, expenses and other Obligations then outstanding." (NYSCEF 4, Loan Agreement § 2.2 [a] [emphasis added].) Meanwhile, the Guaranty Agreement provides that "[i]f all or any part of the Guaranteed Obligations shall not be punctually paid when due . . . **each Guarantor** shall, immediately upon demand by [FVP] . . . [pay] the amount due on the Guaranteed Obligations to [FVPOF II and FVPOF III]." (NYSCEF 5, Guaranty Agreement § 1.4 [emphasis added].) Accordingly, the agreements unambiguously provide that defendant Galaxy's obligation is repayment of the loan amount to plaintiffs and the individual guarantors' obligation is the assumption of Galaxy's obligation in the event Galaxy fails to repay the loan amount. For these reasons, defendants raise an issue of fact as to whether that the instruments underlying this CPLR 3213 motion are for the payment of monies only.

Accordingly, it is

ORDERED that the motion for summary judgment on the complaint is granted and the Clerk is directed to enter judgment in favor of plaintiffs and against defendants in the amount of $9,515,538.75, together with interest at the statutory rate from the date of April 10, 2025, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.



1/5/2026
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED		DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE