

Starwood Prop. Mtge. Sub-2, L.L.C. v Stalcup
2026 NY Slip Op 30043(U)
January 5, 2026
Supreme Court, New York County
Docket Number: Index No. 653317/2025
Judge: Anar R. Patel
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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<p>STARWOOD PROPERTY MORTGAGE SUB-2, L.L.C.</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>ALAN STALCUP,</p> <p style="text-align: center;">Defendant.</p>	<p>INDEX NO. <u>653317/2025</u></p> <p>MOTION DATE <u>05/30/2025</u></p> <p>MOTION SEQ. NO. <u>001</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 19, 22-40 were read on this motion to/for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Plaintiff Starwood Property Mortgage Sub-2, L.L.C. (“Plaintiff” or “Starwood”) seeks recovery of \$7,856,016.55, exclusive of additional attorneys’ fees and costs, from Defendant Alan Stalcup (“Defendant” or “Stalcup”) pursuant to CPLR § 3213 due to Defendant’s default on certain mezzanine loans.

Relevant Factual and Procedural Background

On August 1, 2022, non-party 1825 Parker Rd Mez LLC (“Borrower”), a Delaware limited liability company, entered into a Mezzanine Loan Agreement (hereinafter, the “Loan Agreement”) with Starwood Property Mortgage Sub-10-A, L.L.C.¹ (Loan Agreement, NYSCEF Doc. No. 5). The Loan Agreement was secured by a pledge of Borrower’s equity interests and was subordinate to a separate mortgage loan encumbering the underlying real property known as Village at Almand Creek, located at 1825 Parker Road SE, Conyers, Georgia (the “Property”).

The underlying loan had a maximum principal amount of \$6,990,000.00, comprised of two promissory notes: (1) Note A-1, in the original principal amount of \$6,480,000.00, and (2) Note A-2, in the original principal amount of \$510,000.00 (Promissory Notes, NYSCEF Doc. No. 4).

On August 1, 2022, Defendant executed two separate guaranties in connection with the Loan Agreement: (1) the Recourse Guaranty and (2) the Carry Guaranty (collectively, the

¹ Plaintiff became the holder of the Loan Documents (including the Mezz Guaranties) pursuant to executed loan assignment documents (Loan Assignment Documents, NYSCEF Doc. No. 7).

“Guaranties”). Under the Recourse Guaranty, Defendant as guarantor, “irrevocably and unconditionally guarantees to Lender and its successors and assigns the payment and performance of the Guaranteed Obligations as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise” (Recourse Guaranty, NYSCEF Doc. No. 8 at 1.1). Defendant also guaranteed payment of defined “Recourse Liabilities” and, upon the occurrence of specified “Springing Recourse Events”, the full indebtedness under the Loan Agreement (*id.* at 1.2). The Recourse Guaranty is an “irrevocable, absolute, continuing guaranty of payment and performance,” and not merely a “guaranty of collection” (*id.* at 1.3). As relevant here, the Loan Agreement defines a “Springing Recourse Event” to include “the occurrence of a Transfer in violation of this Agreement” (Loan Agreement at § 7.3).

The Loan Agreement broadly defines a “Transfer” to include “any sale, conveyance, transfer, lease, assignment, grant, mortgage, option, encumbrance, hypothecation, pledge, or Lien,” whether voluntary or involuntary and whether by operation of law or otherwise (*id.* at § 1.1). A “Lien” is defined to include “any mortgage, deed of trust, lien (statutory or otherwise) ... or any other encumbrance, charge or transfer of, on or affecting the Property,” including mechanics’ and materialmen’s liens (*id.*). The Loan Agreement prohibits Borrower from creating, incurring, or permitting to exist any Lien or Transfer, except for defined “Permitted Encumbrances” (*id.* at §§ 5.2.10 [a]; 5.2.2). “Permitted Encumbrances” are narrowly defined and include, as relevant here, mechanics’ and materialmen’s liens that are contested and discharged or bonded within thirty days of filing, and in any event prior to any foreclosure or realization thereon, if sooner (*id.* at § 1.1).

Separately, under the Carry Guaranty, Defendant guaranteed Borrower’s obligations to pay ongoing “carry costs,” including interest, operating expenses, taxes, insurance premiums, reserve deposits, and collection costs (Carry Guaranty, NYSCEF Doc. No. 9 at § 1.2). The Carry Guaranty similarly states that it is a guaranty of payment and performance, enforceable without first proceeding against Borrower or collateral.

Starwood alleges that Borrower incurred and failed to timely discharge certain liens against the Property, triggering Springing Recourse Events under the Recourse Guaranty. Plaintiff further alleges that, because of those Springing Recourse Events, Defendant became personally liable for the entire mezzanine indebtedness, which was thereafter demanded and not paid.

Plaintiff alleges that, during the term of the Loan, at least three mechanics’ liens were recorded against the Property:

- (1) A lien filed by TA Contracting, Inc. in the amount of \$30,276.00, recorded on September 3, 2024, and released on December 16, 2024;
- (2) A lien filed by HD Supply Facilities Maintenance, Ltd. in the amount of \$45,137.96, recorded on September 19, 2024, and released on January 7, 2025; and
- (3) A lien filed by Real Floors, Inc. in the amount of \$15,120.89, recorded on January 10, 2025, and released on January 29, 2025.

(Gu Aff., NYSCEF Doc. No. 3 at ¶ 39; *see* Pl. Mem. of Law, NYSCEF Doc. No. 15 at 9).

Plaintiff alleges that the TA Contracting, Inc. and HD Supply Facilities Maintenance Ltd. Liens were not “Permitted Encumbrances” because they were not timely discharged or bonded within the thirty-day period required by the Loan Agreement.

Following the alleged defaults, Plaintiff proceeded with enforcement remedies, including foreclosure of the underlying mortgage loan collateral. Defendant contends that Plaintiff’s actions in connection with the foreclosure, including its handling of liens and enforcement strategy, contributed to or caused the asserted defaults.

Plaintiff alleges that, once the Springing Recourse Events occurred, Defendant became personally liable for the entire mezzanine indebtedness. Following the alleged Springing Recourse Events, Plaintiff issued written notices and demands to Defendant seeking payment of the Guaranteed Obligations, including the full debt, pursuant to the Recourse Guaranty and the Loan-related documents (Demand Letters, NYSCEF Doc. No. 14). Plaintiff alleges that Defendant failed to satisfy those demands.

Thereafter, Plaintiff accelerated the Loan and calculated the total amount of the debt claimed to be due and owing, as reflected in a payoff quote dated May 1, 2025, which Plaintiff asserts represents the outstanding principal, accrued interest, default interest, late charges, and other amounts due under the loan documents. The payoff quote sets forth the following amounts:

Note A-1

- Principal: \$6,480,000.00
- Interest (7/9/24-5/1/25): \$928,719.25
- Default Interest: \$239,400.00
- Late Charges: \$42,923.70

Note A-2

- Principal: \$140,528.88
- Interest (7/9/24-5/1/25): \$18,698.46
- Default Interest: \$4,887.51
- Late Charges: \$858.75

(Payoff Quote, NYSCEF Doc. No. 12).

The total amount demanded was \$7,856,016.55, excluding attorneys’ fees and costs.

Plaintiff now seeks to recover these sums directly from Defendant under the Recourse Guaranty, and in the alternative, under the Carry Guaranty.

Legal Discussion

On a CPLR § 3213 motion, the Court applies the same standards that apply to motions for summary judgment under CPLR § 3212 (*see Cooperative Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492 [2015]). The movant bears the initial burden of establishing entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issues of fact. If that burden is met, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact. As with CPLR § 3212, the Court must view the evidence in the light most favorable to the non-moving party and must deny the motion if any genuine issue of fact exists.

CPLR § 3213 provides a “swift and effective means of securing a judgment on claims presumptively meritorious” where the action is based upon “an instrument for the payment of money only” or upon a judgment (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]). To qualify for accelerated relief under CPLR § 3213, the moving party must demonstrate that the instrument sued upon contains an unconditional promise to pay a sum certain, and that the right to payment can be ascertained from the face of the document without resort to extrinsic evidence, other than simple proof of nonpayment or a similarly de minimis deviation from the instrument itself (*id.*; *Arbor-Myrtle Beach PE LLC v Frydman*, 2021 NY Slip Op 30223[U], *2 [Sup Ct, NY County 2021], *aff’d* 2022 NY Slip Op 00806 [1st Dept 2022]).

The prototypical instrument contemplated by CPLR § 3213 is a negotiable instrument for the payment of money, such as an unconditional promise to pay a sum certain, signed by the obligor and payable on demand or at a definite time (*Weissman*, 88 NY2d at 444). The statute is generally used to enforce “some variety of commercial paper in which the party to be charged has formally and explicitly acknowledged an indebtedness,” such that a *prima facie* case is established by submission of the instrument itself and proof of nonpayment (*Interman Indus. Prods. v R.S.M. Electron Power*, 37 NY2d 151, 154–155 [1975]).

Although an action on a guaranty is generally considered an action for the payment of money only, eligibility for CPLR § 3213 relief depends on the specific terms of the guaranty and whether liability is unconditional and ascertainable without reference to extrinsic evidence (*Cooperative Centrale*, 25 NY3d at 492). As with any contract, courts must examine the actual terms of the guaranty, not merely its label, to determine whether liability is unconditional and whether enforcement requires factual inquiries beyond nonpayment (*see Diversified Investors Corp. v DiversiFax*, 239 AD2d 231, 233 [1st Dept 1997], *lv dismissed* 90 NY2d 935 [1997] [unconditional payment obligation enforceable under CPLR § 3213 where debt automatically reinstated and became due upon borrower’s failure to complete a required registration- an event expressly contemplated in the agreement]). Where a guaranty incorporates performance obligations, conditions liability on external events, or expressly limits recourse based on the conduct of the lender or third parties, CPLR § 3213 relief may be inappropriate (*see Maglich v Saxe, Bacon & Bolan, P.C.*, 97 AD2d 19, 22 [1st Dept 1983] [CPLR § 3213 unavailable where the obligation required additional conditions or performance beyond a simple promise to pay a sum of money]).

Here, Plaintiff establishes its *prima facie* entitlement to summary judgment in lieu of complaint under the Recourse Guaranty and other loan documents. Plaintiff submits the Promissory Notes, the Mezzanine Loan Agreement, and the Affidavit of Tianming “Tommy” Gu, with supporting exhibits (*see* NYSCEF Doc. Nos. 3, 4, 5). Mr. Gu is the asset manager of Plaintiff,

and attests that he has personally worked on the underlying loan made to Borrower (Gu Aff., NYSCEF Doc. No. 3 at ¶¶ 1, 2). Plaintiff also submits evidence of the Springing Recourse Events and has demonstrated that it demanded payment under the Guaranty (Liens, NYSCEF Doc. No. 10; NYSCEF Doc. No. 14). Mr. Gu's Affidavit confirms nonpayment (Gu Aff., NYSCEF Doc. No. 3 at ¶ 53). The unconditional Recourse Guaranty qualifies as an instrument for the payment of money only, and Plaintiff establishes that Defendant as guarantor, is obligated to pay the outstanding loan debt (*see Canon Financial Services v Medico Stationery Services*, 300 AD2d 66 [1st Dept 2002]; *see DB Auraria LLC v Nelson*, 2023 NY Slip Op 31566[U], at *2 [Sup Ct, NY County 2023] *aff'd* 228 AD3d 424, 425 [1st Dept 2024]).

In opposition, Defendant fails to raise a triable issue of material fact sufficient to defeat summary judgment. It is undisputed that the loan was structured as a non-recourse loan subject to clearly defined carve-out provisions. Such provisions are valid and enforceable under New York law (*see First Nationwide Bank v Brookhaven Realty Assoc.*, 223 AD2d 618, 621 [2d Dept 1996]). Contrary to Defendant's contention, the carve-out language in the Loan Agreement and Guaranties is unambiguous and provides for personal liability upon the occurrence of enumerated Springing Recourse Events, including the incurrence of non-permitted liens. Once the liens encumbered the Property and failed to be discharged within thirty days, the Springing Recourse Event was triggered, resulting in acceleration of the debt. The Guaranties themselves clearly define the circumstances under which Defendant became personally liable for the Borrower's debt and even though the Real Floors, Inc. lien was paid within thirty days, the remaining two liens, were not (*see G3-Purves St., LLC v Thomson Purves, LLC*, 101 AD3d 37, 41 [2012]).

Defendant's attempt to assert defenses based on alleged lender misconduct or breach of the covenant of good faith and fair dealing is foreclosed by the express waiver provisions of the Guaranties, which courts have repeatedly enforced (*Fortress Credit Corp. v Hudson Yards LLC*, 78 AD3d 577, 577 [1st Dept 2010]; *Hotel 71 Mezz Lender LLC v Mitchell*, 63 AD3d 447, 448 [1st Dept 2009]; *DB 232 Seigel Mezz LLC v Moskovits*, 223 AD3d 610, 611–612 [1st Dept 2024]). As the Court of Appeals has made clear, where a guaranty is absolute and unconditional, the guarantor may not avoid liability by invoking defenses that have been knowingly and expressly waived (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A.*, 25 NY3d at 493; *see Red Tulip, LLC v Neiva*, 44 AD3d 204, 209 [1st Dept 2007] ["New York courts have consistently upheld broadly worded waiver language [as to defenses and counterclaims].").

Also unavailing is Defendant's contention that they were led to believe that Plaintiff would not enforce its rights with respect to the TA Contracting, Inc. and HD Supply Facilities Maintenance, Ltd. liens. There is no evidence that Plaintiff waived its right to enforce the Recourse Guaranty, even though e-mail correspondences were exchanged regarding the lien in general.

Defendant's contention that Plaintiff is impermissibly "double dipping" by foreclosing on the collateral is without merit. The Recourse Guaranty expressly states that Guarantor's obligations "shall not be released, diminished, impaired, reduced or adversely affected" by any foreclosure-related actions, including any "release, surrender, exchange, subordination, deterioration, waste, loss or impairment" of collateral, and waives any rights or defenses arising therefrom (NYSCEF Doc. No. 8 at §§ 2.1-2.12). Thus, foreclosure does not extinguish or diminish Defendant's independent payment obligation.

Defendant further argues that Plaintiff unilaterally withheld funds when the Loan-related documents “allow[s] Borrower to post 125 percent of the face amount of any liens on the Property with the [plaintiff]” (Def. Mem. of Law in Opp’n, NYSCEF Doc. No. 23 at 4). However, this misconstrues the contract terms. Under Section 5.1.2 of the Loan Agreement, Borrower is required to either bond or discharge any contested lien or, if requested by Lender, furnish security up to 125% of the lien amount as protection for potential interest, penalties, or increases in the lien (NYSCEF Doc. No. 5 at § 5.1.2). Here, Defendant sets forth no evidence that Plaintiff either requested the security funds or withheld funds that it was not contractually authorized as a protective measure to do so. Therefore, even if there was a holdback, it would not constitute improper double recovery.

Finally, because Plaintiff has established entitlement to judgment under the Recourse Guaranty, which provides for recovery of the full indebtedness upon the occurrence of a Springing Recourse Event, the Court declines to address Plaintiff’s alternative claim for recovery under the Carry Guaranty.

The Court has considered the parties’ remaining contentions and finds them to be unavailing.

Accordingly, it is hereby

ORDERED that Plaintiff’s motion for summary judgment in lieu of complaint pursuant to CPLR § 3213 is GRANTED; and it is further

ORDERED that Plaintiff is entitled to judgment as a matter of law against Defendant Alan Stalcup under the Mezzanine Recourse Guaranty; and it is further

ORDERED that judgment shall be entered in favor of Plaintiff Starwood Property Mortgage Sub-2, L.L.C. and against Defendant Alan Stalcup in the principal sum of \$7,856,016.55, together with interest thereon at the contractual rate from May 1, 2025 through the date of entry of judgment; and it is further

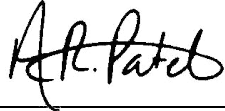
ORDERED that Plaintiff is entitled to recover its reasonable attorneys’ fees, costs, and disbursements as provided for in the Loan Documents; and it is further

ORDERED that within seven (7) days of the e-filing of this Decision and Order, Plaintiff’s counsel shall file an affirmation(s) to the Court on notice to Defendant, not exceeding five (5) pages, setting forth the updated damages calculation, and attaching documentary proof thereof, and Defendant may file a five (5) page letter in opposition within seven (7) days of Plaintiff filing their submission; and it is further

ORDERED that if Plaintiff fail to timely file their submission, Plaintiff shall be deemed to have waived their claims for attorneys’ fees; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff, and against Defendant, in the amount as set forth in this Decision and Order and in the amount of attorneys’ fees and costs to be awarded to Plaintiff as set forth herein.

The foregoing constitutes the decision and order of this Court

1/5/2026 DATE		 ANAR R. PATEL, A.J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<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