

Oxford Fin. LLC v Mirlis

2026 NY Slip Op 30062(U)

January 9, 2026

Supreme Court, New York County

Docket Number: Index No. 651359/2025

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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OXFORD FINANCE LLC,	INDEX NO.	<u>651359/2025</u>
Plaintiff,	MOTION DATE	<u>03/10/2025</u>
- v -	MOTION SEQ. NO.	<u>001</u>
ELIAYAHU MIRLIS, SCOT R. SANDEL, and AZRIEL Z. LIEBERMAN,	DECISION + ORDER ON MOTION	
Defendants.		

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 27, 38, 39, 41–43, 46, 48, 50–75, 84, 88–94 were read on this Motion for Summary Judgment in Lieu of Complaint.

Relevant Factual and Procedural History

On December 31, 2020, Plaintiff Oxford Finance LLC (“Oxford” or “Plaintiff”), entered into a Term Loan and Security Agreement (“Term Loan Agreement”) with non-parties PC Fall River, LLC, OC Fall River, LLC, PC Monastery, LLC, and OC Monastery, LLC (collectively, the “Borrowers”) for a term loan in the principal amount of \$23,500,000 (the “Term Loan”). NYSCEF Doc. No. 53, Ex. 1 (“Term Loan Agreement”); NYSCEF Doc. No. 52, Am. Aff. of Patrick McLenahan in Supp. of Mot. for Summ. J. in Lieu of Compl. (“McLenahan Aff.”) ¶¶ 1–2. In connection with the Term Loan Agreement, the Borrowers executed and delivered promissory notes, dated December 31, 2020, in the amounts of \$5,850,000, \$1,650,000, \$9,000,000, and \$7,000,000. McLenahan Aff. ¶ 3; NYSCEF Doc. Nos. 54–57. The parties initially agreed that the outstanding balance of the Term Loan would be repaid on the maturity date, December 29, 2023. Term Loan Agreement § 4.2(b)(i); McLenahan Aff. ¶ 5.

As a condition to entering into the Term Loan Agreement and providing the loan, Oxford required Defendants Eliayahu Mirlis, Scot R. Sandel, and Azriel Z. Lieberman (collectively, “Guarantors” or “Defendants”)¹ to execute and deliver individual a Limited Payment Guaranty and Suretyship Agreement (the “Payment Guaranty”), guaranteeing an initial liability limit of up to \$4,700,000 plus enforcement costs. NYSCEF Doc. No. 60, Ex. 8 (“Payment Guar.”); McLenahan Aff. ¶¶ 8–10. Under the Payment Guaranty, Guarantors “unconditionally guarant[eed] (i) the full and prompt payment when due, whether at maturity or earlier . . . of all Obligations (as defined in the [Term] Loan Agreement), including, without limitation, all

¹ The Guarantors “are, directly or indirectly, owners or principals of the Borrowers[.]” McLenahan Aff. ¶ 9.

indebtedness, liabilities and obligations of every kind and nature of [the Borrowers].” Payment Guar. ¶ 1; McLaren Aff. ¶ 10(a). The Payment Guaranty also established Oxford’s entitlement to recover from Guarantors enforcement costs, defined as “all costs and expenses, including, without limitation, all court costs and reasonable attorneys’ and paralegals’ fees, paid or incurred by [Oxford] in endeavoring to collect all or any part of the Obligations from, or in prosecuting any action against, Guarantor[s]” Payment Guar. ¶ 3.

Relevant to this dispute are the notice of default provision, Section 12.2, and the default interest provision, Section 6, of the Term Loan Agreement. Pursuant to Section 12.2:

Upon the occurrence and during the continuance of an Event of Default, [Oxford] may, at its option, and [Oxford] shall, upon the request of the Required Lenders [as defined], (a) declare all Obligations [as defined] immediately due and payable, (b) charge Borrowers the Default Rate of Interest on all then outstanding or thereafter incurred Obligations in lieu of the interest provided for in Section 6.1 of this Agreement, and (c) immediately terminate this Agreement upon notice to Borrowers.

Term Loan Agreement § 12.2; NYSCEF Doc. No. 89, Aff. of Jacques Semmelman in Opp. to Pls. Am. Mot. for Summ. J. in Lieu of Compl. (“Semmelman Aff.”) ¶ 3. Section 6.1 of the Term Loan Agreement provides that the “Term Loan bears interest from the dates on which funds are advanced until the dates on which they are repaid, accruing at the ‘Interest Rate’ as defined in the Term Loan Agreement.” McLaren Aff. ¶ 20; *see* Term Loan Agreement § 6.1. The Interest Rate is defined as “(i) the LIBOR Rate, plus (ii) 6.25% per annum.” Term Loan Agreement § 6.1. Section 6.2 of the Term Loan Agreement states:

Upon the occurrence and during the continuation of an Event of Default, all Obligations may, at the election of [Oxford], bear interest at the Default Rate of Interest until such Event of Default is cured and accepted in writing by [Oxford] or waived in writing by [Oxford].

Id. § 6.2; McLaren Aff. ¶ 22. Under the Term Loan Agreement, the “Default Rate of Interest” is defined as “a rate of interest equal to five percent (5%) per annum greater than the interest rate accruing on the Obligations pursuant to Section 6.1 of this Agreement, which Agent and the Lenders shall be entitled to charge Borrowers in the manner set forth in Section 6.2 of this Agreement.” Term Loan Agreement § 1.1; McLaren Aff. ¶ 23.

Beginning in September 2021, the Borrowers began defaulting under the Term Loan Agreement. McLaren Aff. ¶ 12. Among the events of default identified by Oxford were:

- (a) an Event of Default pursuant to § 12.1(e) as a result of Borrowers’ failure to maintain the required minimum Fixed Charge Coverage Ratio under § 10.1 of the Term Loan Agreement for the Test Period ending as of the last day of September 2021;
- (b) an Event of Default pursuant to § 12.1(e) as a result of Borrowers’ failure to maintain the required minimum Adjusted EBITDAR under § 10.2 of the

Term Loan Agreement for the Test Period ending as of the last day of September, 2021;

...

Id. On February 11, 2022, Oxford and the Borrowers executed a Waiver and First Amendment to the Term Loan and Security Agreement (“First Amendment”).² NYSCEF Doc. No. 61, Ex. 9 (“First Amend.”); McLaren Aff. ¶¶ 10(d), 13. Under the First Amendment, the liability limit for the Guarantors was increased to \$7,050,000 plus enforcement costs. First Amend. § 2(i); McLaren Aff. ¶ 10(d). The First Amendment explicitly stated that “Borrowers have informed [Oxford] that Events of Default have occurred.” First Amend. § B; McLaren Aff. ¶ 13. On February 28, 2023, the parties executed a Second Amendment to the Term Loan and Security Agreement (“Second Amendment”), extending the maturity date of the Term Loan to December 31, 2024. NYSCEF Doc. No. 58, Ex. 6 § 1 (“Second Amend.”); McLaren Aff. ¶ 6.

On October 10, 2023, Oxford notified the Borrowers by letter of the known events of default in existence at that time and informed them of its intent to charge the Default Rate of Interest effective July 1, 2023. NYSCEF Doc. No. 63, Ex. 11; McLaren Aff. ¶¶ 24–25. That same day, Oxford sent the Guarantors a demand notice under the Payment Guaranty for \$491,336.16, the sum of the non-default interest due as of October 2, 2023, plus additional interest accrued at the Default Rate of Interest for the period from July 1 to September 30, 2023. NYSCEF Doc. No. 68, Ex. 16; McLaren Aff. ¶ 33. On February 14, 2024, Oxford again notified the Borrowers by letter of the known and continuing events of default. NYSCEF Doc. No. 64, Ex. 12; McLaren Aff. ¶¶ 27, 29. Oxford also sent Guarantors a demand notice for \$1,377,627.13 on February 14, 2024. NYSCEF Doc. No. 69, Ex. 17; McLaren Aff. ¶ 34. On March 18, 2024, the Borrowers, Guarantors, and Oxford entered into a Forbearance Agreement (“Forbearance Agreement”). NYSCEF Doc. No. 62, Ex. 10 (“Forbearance Agreement”); *see* McLaren Aff. ¶ 14. Under the Forbearance Agreement, Defendants acknowledged that Oxford had given notice to Borrowers that there were “existing and uncured Events of Default.” Forbearance Agreement § B; McLaren Aff. ¶¶ 14, 29.

On August 1, 2024, Oxford sent further letters to the Borrowers and Guarantors notifying them of the known and ongoing events of default and demanding from Guarantors \$1,692,005.69,

² Defendants signed the First Amendment and subsequent amendments either as Guarantors, or on behalf of the Borrowers in their role as principals of the Borrowers. Defendant Mirlis did not sign the copy of the First Amendment filed by Plaintiff; however, Defendant Mirlis did sign the subsequent amendments. *See* NYSCEF Doc. No. 61, Ex. 9; NYSCEF Doc. No. 58, Ex. 6; NYSCEF Doc. No. 59, Ex. 7. Furthermore, the Second and Third Amendments contain language reaffirming the obligations of the Guarantors with respect to the Payment Guaranty and subsequent amendments. *See* NYSCEF Doc. No. 58, Ex. 6 ¶ A (“Borrowers, Agent and Lender’s predecessor in interest entered into a certain Term Loan and Security Agreement dated as of December 31, 2020, as amended by that certain Waiver and First Amendment . . . dated as of February 11, 2022”) and Consent and Reaffirmation (“Each of the undersigned . . . reaffirms its obligations under each of the Loan Documents to which it is a party (as modified by the Agreement, collectively, the ‘Reaffirmed Loan Documents’) and confirms that such obligations are unconditional. . . .”); NYSCEF Doc. No. 59, Ex. 7 ¶¶ A, 14 (“Guarantors join in the execution of this Agreement to acknowledge their consent to the terms hereof and to acknowledge that the Guaranty Agreements (collectively, as amended and with any and all other loan documentation at any time executed by Guarantor in connection with the Term Loan, the ‘Guaranty Documents’) remain in full force and effect and the Guaranty Documents are hereby ratified and affirmed in all respects by Guarantors.”).

the sum of the non-default interest amount as of August 1, 2024, plus (a) unpaid principal payments and (b) additional interest accrued at the Default Rate of Interest for the period from July 1, 2023 to July 31, 2024. NYSCEF Doc. Nos. 65, 70, Exs. 13 & 18; McLaren Aff. ¶¶ 28, 35. Oxford and the Borrowers subsequently entered into a Forbearance and Third Amendment to Term Loan and Security Agreement (“Third Amendment”) on December 31, 2024, extending the maturity date of the Term Loan to March 31, 2025. NYSCEF Doc. No. 59, Ex. 7 § 4 (“Third Amend.”); McLaren Aff. ¶ 7. The Third Amendment acknowledged that Oxford had given Borrowers notice as to “certain ongoing Events of Default.” Third Amend. § B; McLaren Aff. ¶¶ 15, 29. Furthermore, the Third Amendment specified that:

Borrowers and Guarantors hereby acknowledge and agree that [Oxford has] elected to charge interest at the Default Rate of Interest on the outstanding principal balance of the Term Loan (and other Obligations owing and unpaid from time to time) pursuant to Section 6.2 of the Loan Agreement, retroactive to the occurrence of the first Specified Event of Default on July 1, 2023.

Third Amend. § 9; NYSCEF Doc. No. 93, Reply Aff. of Patrick McLaren in Supp. of Mot. for Summ. J. in Lieu of Compl. ¶ 8 (“McLaren Reply Aff.”).

On March 5, 2025, Oxford sent Borrowers a further letter notifying them of continued and ongoing events of default under the Term Loan Agreement arising from breaches of the Third Amendment. NYSCEF Doc. No. 66, Ex. 14; McLaren Aff. ¶ 30. On March 6, 2025, Oxford notified the Guarantors by letter that the forbearance period under the Third Amendment had terminated, that “the accrued and unpaid principal and interest due and payable on the Term Loan was at least \$23,436,535.80,” and that it was demanding immediate payment of \$7,050,000 plus enforcement costs under the Payment Guaranty. NYSCEF Doc. No. 71, Ex. 19; McLaren Aff. ¶ 36.

On May 7, 2025, Oxford notified the Borrowers and Guarantors that the March 31, 2025, maturity date had passed and that all outstanding obligations were immediately due. NYSCEF Doc. Nos. 67, 72; McLaren Aff. ¶¶ 31, 38. At that time, the accrued and unpaid interest under the Term Loan Agreement totaled at least \$24,403,537.19. NYSCEF Doc. Nos. 67, 72; McLaren Aff. ¶¶ 31, 38. In the May 7, 2025 letter, Oxford again demanded that the Guarantors immediately pay \$7,050,000 plus enforcement costs pursuant to the Payment Guaranty. NYSCEF Doc. No. 72; McLaren Aff. ¶ 38.

Between March 20, 2024, and July 1, 2025, Defendant Mirlis made seven wire transfer payments to Oxford totaling \$1,692,119.59. NYSCEF Doc. No. 90, Aff. of Eliyahu Mirlis in Opp. to Pls. Am. Mot. for Summ. J. in Lieu of Compl. ¶¶ 3–9 (“Mirlis Aff.”); NYSCEF Doc. No. 94, Ex. 1. These payments included: \$800,000 on March 8, 2024; \$372,119.59 on April 1, 2024; \$120,000 on June 7, 2024; \$200,000 on February 4, 2025; \$50,000 on April 24, 2025; \$50,000 on April 28, 2025; and \$100,000 on July 1, 2025. Mirlis Aff. ¶¶ 3–8. There is some ambiguity as to how these payments should have been applied—*i.e.*, whether to the amount due under the Payment Guaranty or to the amount due under the Term Loan Agreement. *Compare id.* ¶ 10 with McLaren Reply Aff. ¶¶ 2–6.

Oxford initiated this action on March 10, 2025, by filing a motion for summary judgment in lieu of complaint pursuant to CPLR § 3213, seeking damages in an amount equal to the \$7,050,000 guaranty, plus enforcement costs. NYSCEF Doc. No. 2. Oxford subsequently filed an amended motion, seeking the same relief, on May 15, 2025. NYSCEF Doc. No. 50. In its moving papers, Oxford argues that the Payment Guaranty constitutes an instrument for the payment of money only and that no triable issues of fact exist. Defendant Mirlis was the only defendant to respond to the motion. *See* NYSCEF Doc. Nos. 88–91. Oxford served the amended motion on Defendant Sandel *via* process server and certified mail on May 19, 2025, but he has not yet appeared in this action or responded to the motion. *See* NYSCEF Doc. Nos. 73–75. On May 23, 2025, counsel for Defendant Lieberman formally moved to withdraw as counsel.³ NYSCEF Doc. No. 76. On June 10, 2023, the Court granted the motion to withdraw and, *inter alia*, directed Defendant Lieberman to either retain replacement counsel or file a letter indicating that he will be proceeding *pro se*, and advised the parties of the briefing schedule on Plaintiff’s motion. NYSCEF Doc. No. 85. Defendant Lieberman’s counsel served him with a copy of this Decision and Order on June 10, 2025. NYSCEF Doc. No. 87. Nevertheless, Defendant Lieberman did not retain new counsel or file the letter as directed, nor did he file any opposition to Plaintiff’s motion.

Legal Discussion

CPLR § 3213 allows a party to move for summary judgment in lieu of a complaint if the action is based upon an instrument for the payment of money only. CPLR § 3213. The purpose of CPLR § 3213 is to provide “provide quick relief on documentary claims so presumptively meritorious that ‘a formal complaint is superfluous.’” *Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 443 (1996) (citation omitted). A plaintiff satisfies its *prima facie* burden under CPLR § 3213 if it “demonstrat[es] the existence of the guaranties and underlying debts, as well as defendant guarantor’s failure to perform under the guaranties[.]” *BBM3, LLC v. Vosotas*, 216 A.D.3d 403, 403 (1st Dept. 2023); *see also 27 W. 72nd St. Note Buyer LLC v. Terzi*, 194 A.D.3d 630, 630–31 (1st Dept. 2021). Relief under CPLR § 3213 is unavailable if any extrinsic evidence is required “other than simple proof of nonpayment or a similar *de minimis* deviation from the face of the document.” *Weissman*, 88 N.Y.2d at 444.

Defendant Mirlis argues that summary judgment is inappropriate because: (1) Oxford failed to properly apply his payments totaling roughly \$1.6 million to the Guarantor’s payment obligations, and so is effectively seeking double recovery; and (2) Section 12.2 of the Term Loan Agreement is ambiguous as to when the Default Rate of Interest could be imposed, creating a factual dispute about the appropriate date for imposing this interest rate (*i.e.*, July 1 or October 10 of 2023) and, therefore, a dispute as to the amount owed under the Term Loan Agreement. *See* NYSCEF Doc. No. 88 (“Def. Mirlis Opp.”). Defendant Mirlis does not dispute that the Payment Guaranty is an instrument for the payment of money only or that it contains a clear and unconditional promise to pay. *See id.*

Plaintiff observes that Defendant Mirlis’s payments were originally applied to the Borrowers’ debt, not to his obligations under the Payment Guaranty. *See* McLenahan Reply Aff.

³ In support of their motion, Defendant Lieberman’s counsel asserted that Defendant Liberman had not communicated with his counsel since April 18, 2025, despite multiple attempts at communication from his counsel. NYSCEF Doc. No. 77, Aff. of Christopher C. LoBosco in Support of Motion to Withdraw as Counsel ¶¶ 4–5, 7–9.

¶ 6. However, Plaintiff stipulates in its reply papers that Defendant Mirlis’s payments will be applied to reduce the Guarantors’ obligations under the Payment Guaranty. *Id.* ¶ 11. After applying these payments, the amount owed by Defendant Mirlis is \$5,357,880.41, plus enforcement costs. *Id.* Plaintiff also asserts that under Section 9 of the Third Amendment, the parties agreed to a July 1, 2023, start date for the Default Rate of Interest. *Id.* ¶ 8. Nevertheless, Plaintiff argues that regardless of which start date was ultimately appropriate (*i.e.*, whether the Default Rate of Interest was appropriately charged between July 1, 2023, and October 10, 2023), this dispute has no effect on Defendant Mirlis’s liability under the Payment Guaranty. *Id.* ¶ 12.

Plaintiff has established that the Payment Guaranty is an instrument for the payment of money only and contains an unconditional promise to pay. As a condition to the Loan Agreement, Plaintiff required Defendants to enter into the Payment Guaranty. Payment Guar. at p. 1; McLaren Aff. ¶¶ 8–10. The Payment Guaranty holds the three Defendants collectively and individually liable for payment under the Payment Guaranty. *See* Payment Guar. at p. 1. The only commitment made by Guarantors under the Payment Guaranty is the “unconditional guarant[y]” of “(i) the full and prompt payment and performance when due, whether at maturity or earlier, by reason of acceleration or otherwise” of all obligations under the Term Loan Agreement. *Id.* § 1. Thus, the Guarantors’ sole liability and obligation pursuant to the Payment Guaranty is the payment of a sum certain. *Id.*; *see also id.* § 2 (“Notwithstanding anything to the contrary above in Section 1, Guarantor’s aggregate liability under, and the aggregate amount of the payments made by Guarantor pursuant to this Guaranty shall not exceed the Liability Limit. The ‘Liability Limit’ is equal to the sum of (i) Four Million Seven Hundred Thousand and No/100 Dollars (\$4,700,000.00), plus (ii) Enforcement Costs.”).

Consequently, the Payment Guaranty constitutes an instrument for the payment of money only and contains an unconditional promise to pay.⁴ *See* *BBM3, LLC*, 216 A.D.3d at 403–04 (holding that CPLR § 3213 relief was properly granted because “the guaranty ‘include[d] an unconditional obligation to pay’ that ‘required no additional performance by plaintiff[] as a condition precedent to payment’” (citation omitted)); *iPayment, Inc. v. Silverman*, 192 A.D.3d 586, 587 (1st Dept. 2021) (plaintiff “established its entitlement to summary judgment by submitting defendants’ guaranty,” which “include[d] an unconditional obligation to pay all rent and additional rent owed under the sublease,” as well as “evidence of [defendants’] failure to pay”). Initially, the Payment Guaranty set the Guarantors’ liability limit at \$4,700,000. Payment Guar. § 2. The First Amendment raised the liability limit to \$7,050,000. First Amend. § 2(i).

Plaintiff has also established the existence of the underlying debt and Defendants’ defaults. As detailed above, in September 2021, Borrowers defaulted on the Term Loan, after which the parties executed the First and Second Amendments, increasing the Guarantors’ own liability and extending the Term Loan’s maturity date. Plaintiff subsequently issued multiple demand letters to Borrowers notifying them of several events of default, which Guarantors subsequently acknowledged in both the Forbearance Agreement and the Third Amendment. In these letters, Plaintiff also demanded from Guarantors payment of their resulting liability under the Payment Guaranty. After the loan matured, Plaintiff demanded full repayment of the Term Loan from

⁴ Furthermore, as observed *supra*, Defendant Mirlis does not contest this point. *See generally* NYSCEF Doc. Nos. 88–91.

Borrowers, and the full amount contemplated under the Payment Guaranty, *i.e.*, \$7,050,000 plus enforcement costs, from Guarantors.

Despite multiple demands from Plaintiff between October 2023 and May 2025, Defendants failed to satisfy the guaranty. Defendant Mirlis does not dispute the debt or defaults. *See* Def. Mirlis Opp. Accordingly, Plaintiff has met its *prima facie* burden under CPLR § 3213 by demonstrating the unconditional Payment Guaranty, the underlying Term Loan debt, and Defendants' failure to pay. *See SpringPrince, LLC v. Elie Tahari, Ltd.*, 173 A.D.3d 544, 545 (1st Dept. 2019) (summary judgment properly granted under CPLR § 3213 because there was a guaranty of the lease, there was no dispute over the guaranty payment obligation, and the tenant defaulted under the lease); *DB 232 Seigel Mezz LLC v. Moskovits*, 223 A.D.3d 610, 611 (1st Dept. 2024) (summary judgment properly granted under CPLR § 3213 where plaintiff submitted executed guaranties, the underlying loan agreement, and demand letters establishing default); *see also Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d 485, 494–95 (2015) (acknowledging that “a guarantor is only liable upon the noncompliance of the principal obligor,” but finding that plaintiff established defendant guarantor’s liability as defendant did not contest the original obligor’s default under the terms of the agreement).

Because Plaintiff has met its burden under CPLR § 3213, “the burden shifts to the defendant to establish, by admissible evidence, the existence of a triable issue with respect to a bona fide defense.” *Navarro*, 25 N.Y.3d at 492 (citation omitted); *Zyskind v. FaceCake Mktg. Tech., Inc.*, 101 A.D.3d 550, 551 (1st Dept. 2012). Defendant Mirlis argues that there are two disputed issues of fact that make summary judgment inappropriate at this juncture. First, Defendant Mirlis argues that there is a disputed issue of fact regarding the \$1,692,119.59 he paid that was not credited to Defendants' liability under the Payment Guaranty. Def. Mirlis Opp. at 7–8. This argument is now moot, following Plaintiff's stipulation that it will credit the \$1,692,119.59 to Defendants' obligations under the Payment Guaranty, reducing their obligations to \$5,357,880.41.

Second, Defendant Mirlis argues that there is a disputed issue of fact regarding the amount of interest due. Def. Mirlis Opp. at 8–10. Defendant Mirlis argues that, properly construing Section 12.2 of the Term Loan Agreement, Plaintiff applied the Default Rate of Interest prematurely. *Id.* Defendant Mirlis argues that, under Section 12.2 of the Term Loan Agreement, Plaintiff could only charge the Default Rate of Interest “upon notice to Borrowers,” which he asserts would have barred the application of this rate before October 10, 2023. *Id.* However, Plaintiff began charging the Default Rate of Interest on July 1, 2023, *i.e.*, the date of the event of default giving rise to the first demand letter. *See id.* Defendant Mirlis argues that because there is a difference of interpretation as to when the Default Rate of Interest should have applied—and, as a result, a factual dispute as to the total amount due under the Term Loan Agreement—this dispute should preclude summary judgment. *Id.* at 9–10. However, under the terms of the agreements at issue, so long as the amount due under the Term Loan Agreement exceeds the liability cap under the Payment Guaranty, the precise amount due under the Term Loan Agreement is irrelevant. *See* Payment Guar. § 2; First Amend. § 2(i).

As Plaintiff points out, there is no dispute, under either interpretation at issue here, that the amount due under the Term Loan Agreement exceeds the liability cap under the Payment

Guaranty. *See* McLaren Reply Aff. ¶ 12 (observing that, even under Defendant Mirlis’s construction of the Term Loan Agreement, the amount due under the Term Loan would be “not less than \$24,094,300.43”—a sum exceeding the \$7,050,000 liability limit under the Payment Guaranty). The issue of when the Default Rate of Interest should apply to the amount due under the Term Loan Agreement is therefore irrelevant to the issue of Defendants’ liability under the Payment Guaranty. Consequently, Plaintiff has established that it is entitled to summary judgment as to Defendants’ liability for the full amount due under the Payment Guaranty, less the \$1,692,119.59 already paid by Defendant Mirlis.

Additionally, under the Payment Guaranty, Defendants agreed to pay “Enforcement Costs,” defined as “all costs and expenses, including, without limitation, all court costs and reasonable attorneys’ and paralegals’ fees, paid or incurred by Agent and Lenders in endeavoring to collect all or any part of the Obligations.” Payment Guar. ¶ 3. The First Amendment reaffirmed Defendants’ obligation to pay these costs. *See* First Amend. ¶ 2(i). Defendant Mirlis does not contest Plaintiff’s entitlement to attorneys’ fees and costs in this action. Accordingly, pursuant to the terms of the Payment Guaranty, Plaintiff is also entitled to attorneys’ fees and costs.

Accordingly, it is hereby

ORDERED that Plaintiff’s Motion for Summary Judgment in Lieu of Complaint (Motion 001) is **GRANTED**; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff Oxford Finance LLC against Defendants Eliyahu Mirlis, Scot R. Sandel, and Azriel Z. Lieberman, jointly and severally, in the amount of \$5,357,880.41; and it is further

ORDERED that Plaintiff’s counsel shall file an affirmation of claimed costs and attorneys’ fees, along with supporting documents, and a proposed order within fourteen (14) days of the e-filing of this Decision and Order, and shall concurrently serve a copy of these papers upon Defendants Scot R. Sandel and Azriel Z. Lieberman and/or counsel for Defendants Scot R. Sandel and Azriel Z. Lieberman *via* First Class Mail with return receipt requested at the last known address and e-mail address (if known), and e-file proof such service with the Court. Defendants may file a five (5) page letter in opposition within fourteen (14) days of Plaintiff filing its submission; and it is further

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ORDERED that Plaintiff's counsel shall serve a copy of this Decision and Order upon Defendants Scot R. Sandel and Azriel Z. Lieberman and/or counsel for Defendants Scot R. Sandel and Azriel Z. Lieberman *via* First Class Mail with return receipt requested at the last known address and e-mail address (if known) within seven (7) days of the e-filing of this Decision and Order, and e-file proof such service with the Court.

The foregoing constitutes the decision and order of this Court.

1/9/2026

DATE



ANAR R. PATEL, A.J.S.C.

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