SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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PFP VII SUB VIII LLC,

Plaintiff,

- v -

MONTE LEE-WEN,

Defendant.

INDEX NO. 653233/2025

MOTION DATE 5/27/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2–16, 19–21, 26–27, 29–37, 39–47 were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Plaintiff PFP VII SUB VIII LLC ("PFP" or "Lender") moves pursuant to CPLR § 3213 for summary judgment in lieu of complaint against Defendant Monte Lee-Wen ("Lee-Wen" or "Guarantor") in the amount of $52,501,980.01, calculated as of April 25, 2025, when Plaintiff sent Defendant a Demand Under Guaranty of Recourse Obligations. NYSCEF Doc. No. 13 ("Demand Letter"). Plaintiff also seeks default interest from the date of the Demand Letter; all costs, charges, and expenses incurred by Plaintiff; and reasonable attorneys' fees and disbursements. NYSCEF Doc. No. 3 at 6–7 (Pl. Mem. of Law); Demand Letter at ¶ 4.

Relevant Factual and Procedural History

On December 15, 2021, Prime Finance Short Duration Holding Company VII LLC[1] entered into a non-recourse loan for a residential development in Florida in the amount of $51,100,000 to Shoreview Holding LLC, MDW Shoreview LLC, and PLF Shoreview LLC (collectively, the "Borrowers"). Pl. Mem. of Law at 5, 8; Lehman Aff. at ¶ 8; NYSCEF Doc. No. 8 ("Loan Agreement"). Although the loan was non-recourse, the Loan Agreement enumerated specific "Borrowers' Recourse Liabilities" in Section 10.1, whereby upon the occurrence of specific listed event(s) ("Springing Recourse Event(s)"), the Borrowers would assume liability for the full amount of the debt. Pl. Mem. of Law at 5; Loan Agreement at § 10.1.

Simultaneous with the execution of the loan documents, Defendant Lee-Wen entered into a Guaranty of Recourse Obligations with the Lender whereby he "irrevocably, absolutely and

[1] Plaintiff PFP VII SUB VIII LLC became successor-in-interest to Prime Finance Short Duration Holding Company VII LLC. NYSCEF Doc. No. 6 at ¶ 1 (Lehman Aff.).

unconditionally guarantee[d] to Lender the full, prompt and complete payment when due of the Guaranteed Obligations." NYSCEF Doc. No. 7 at § 2(a) (the "Guaranty"). The Guaranty defines the term "Guaranteed Obligations" as "Borrower's Recourse Liabilities [ ] from and after the date that any Springing Recourse Event occurs, [and] payment of all the Debt . . . ." Guaranty at § 1(b). On April 25, 2025, the Borrowers and the sole member of each Borrower filed voluntary petitions of bankruptcy in the Western District of Texas.[2] NYSCEF Doc. No. 12 ("Bankruptcy Petitions"); NYSCEF Doc. No. 6 at ¶ 23 (Lehman Aff.). Section 10.1(j)(iii) of the Loan Agreement identifies the "filing of a voluntary petition under the Bankruptcy Code" by "any Borrower, [or] any Sole Member" as a "Springing Recourse Event" "resulting in the Debt becoming fully recourse to Borrowers." Lehman Aff. at ¶ 11.

Subsequent to the bankruptcy filing, PFP, through its loan servicer Situs Asset Management LLC, sent a demand statement to Lee-Wen, as Guarantor, for the immediate and full payment of $52,501,980.01 in outstanding debt. NYSCEF Doc. No. 14 ("Demand Statement"). PFP also sent a Demand Letter to Lee-Wen on April 25, 2025, that reserved all rights, demanded full payment of the debt, and advised that the default interest rate was in effect. Lehman Aff. at ¶ 24, 25. Despite the demand, Lee-Wen has not remitted any payments. *Id*. at ¶ 26.

Defendant states that in addition to the existing term loan, a related entity of the Plaintiff, PMRP V Holdings LLC ("Pearlmark"), made a $13,500,000 loan governed by a Mezzanine Loan Agreement to Shoreview Apartments LLC, PLF Shoreview Mezz LLC, and MDW Shoreview Mezz LLC (collectively, the "Borrowers' Sole Members" or "Mezz Borrowers"). NYSCEF Doc. 29 at 6 (Def. Mem. in Opp'n); NYSCEF Doc. No. 41 at ¶ 5 (Lehman Reply Aff.). On April 11, 2025, PFP and Pearlmark amended an existing intercreditor agreement because the parties anticipated a near-term UCC sale of the limited liability company interests held by the sole member of each Borrower with Pearlmark providing the winning bid at the auction. Pl. Reply at 6, 10; Lehman Reply Aff. at ¶ 7–8. Pursuant to the intercreditor agreement, Pearlmark deposited $3,000,000 in an escrow account to reduce the principal balance of Plaintiff's loan if Pearlmark acquired the right through the UCC sale to "step into the shoes" of each Borrower and sell the subject property. *Id.* at 10.

In his Sur-Reply, Defendant advised the Court that Pearlmark successfully acquired the Borrowers' equity interests in the UCC sale (held on September 25, 2025), which may subsequently modify certain loan documents. NYSCEF Doc. No. 44 at 2–3 ("Sur-Reply"). In Plaintiff's response letter, it acknowledges the UCC sale, and the adoption of a second amended intercreditor agreement on September 24, 2025, between Plaintiff and Pearlmark. NYSCEF Doc. No. 45 at 1–2 (Pl. Response). Plaintiff also, for the first time, advises the Court that the new amended intercreditor agreement contains a $7,000,000 pre-payment provision, increased from the original $3,000,000 agreed-upon pre-payment. *Id*. at 3. Plaintiff also acknowledges receiving the $7,000,000 from Pearlmark.[3] *Id.* Plaintiff also submits a "Sur-Reply Affidavit of Jon W. Brayshaw", a Founding Partner at Prime Finance Advisor, L.P., that has numerous subsidiaries and affiliates including Plaintiff. NYSCEF Doc. No. 46 ("Brayshaw Aff."). Brayshaw confirms

[2] *In re Shoreview Holding LLC, et al.* (Case Nos. 25-10566-smr, 25-10567-smr, 25-10568-smr, 25-10569-smr, 25-10570-smr, and 25-10571-smr). Pl. Mem. of Law at 10.

[3] Plaintiff does not address why these facts were not provided to this Court until prompted by Defendant's Sur-Reply.

the execution of the second amendment to the intercreditor agreement, the UCC sale, the agreed-upon $7,000,000 principal reduction, the additional $4,000,000 added by Pearlmark to the escrow account prior to the UCC sale, and the subsequent release of the $7,000,000 to Plaintiff after the successful Pearlmark UCC bid. Brayshaw Aff. ¶¶ 3–4.

Plaintiff commenced this action on May 27, 2025, by filing the Summons and the present Motion for Summary Judgment in Lieu of Complaint. NYSCEF Doc Nos. 1–2. Plaintiff seeks damages based on the total aggregate loan balance outstanding of $52,501,980.01 in addition to interest, attorneys' fees, and costs. Pl. Mem. of Law at 14–15.

Defendant filed his Opposition on August 15, 2025, and Plaintiff filed its Reply on September 12, 2025. NYSCEF Doc. No. 40 (Pl. Reply). The Court granted Defendant's request to file a Sur-Reply, based upon new facts, and permitted Plaintiff to file a responsive letter.

Legal Discussion

CPLR § 3213 provides an expedited path to resolution when an action is based upon "documentary claims so presumptively meritorious that a formal complaint is superfluous." *Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 443 (1996) (internal quotations omitted). 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 resorting to extrinsic evidence, other than simple proof of nonpayment, or a similarly *de minimis* deviation from the instrument itself. *Arbor-Myrtle Beach PE LLC v. Frydman*, No. 657133/2019, 2021 WL 240540 at *2 (N.Y. Sup. Ct., N.Y. Cnty, 2021), *aff'd* 202 A.D.3d 464 (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 N.Y.2d 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 N.Y.2d 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 Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d 485, 492 (2015). 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 A.D.2d 231, 233 (1st Dept. 1997), *lv dismissed* 90 N.Y.2d 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 A.D.2d 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).

Defendant proffers various arguments as to why Plaintiff is not entitled to summary judgment under CPLR § 3213, including that the Guaranty is not an instrument for the payment of money only, enforcement of the Guaranty requires the Court to consider and rely upon extrinsic documents beyond the Guaranty and proof of nonpayment, and the amount of damages presents an issue of fact that cannot be resolved on the instant motion.

Plaintiff has submitted the underlying Loan Agreement, pursuant to which the Guaranty was executed and which defines a "Springing Recourse Event" to include, *inter alia*, the filing of an involuntary petition by any Borrower or any Sole Member under the Bankruptcy Code or an involuntary petition for bankruptcy, reorganization or similar proceeding pursuant to any other Federal or state bankruptcy, insolvency or similar law." Loan Agreement at § 10.1(j)(iii). There is no dispute that each of the Borrowers and their sole members filed a voluntary petition for bankruptcy on April 24, 2025, and Plaintiff sent Defendant a written demand for payment under the Guaranty thereafter. Def. Opp'n at 5. Further, the Guaranty provides that "Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Lender the full, prompt and complete payment when due of the Guaranteed Obligations . . . ." Guaranty at § 2(a). "Guaranteed Obligations" are defined as "(i) Borrower's Recourse Liabilities, (ii) from and after the date that any Springing Recourse Event occurs, payment of all the Debt . . . ." *Id*. at § 1(b). The recitation in the Guaranty "of payment and performance" at Section 5(a) is of no consequence because the language of the Guaranty is clear that it is an unconditional promise to pay monies due upon the occurrence of a Springing Recourse Event. "The definition of 'Guaranteed Obligations' shows that the obligations are to pay money." *27 W. 72nd St. Note Buyer LLC v. Terzi*, 194 A.D.3d 630, 632, 150 N.Y.S.3d 34 (2021). Further the Guaranty is for "full, prompt and complete payment." Guaranty at § 2(a). These submissions satisfy Plaintiff's *prima facie* burden to establish an unconditional payment obligation triggered by defined contractual events. *See DB 232 Seigel Mezz LLC v. Moskovits*, 223 A.D.3d 610, 611 (1st Dept. 2024). As such, Plaintiff has established its *prima facie* case on liability and CPLR § 3213 relief.

However, the Court determines that there remains a material dispute of fact as to the amount due and owing under the Loan Agreement. Plaintiff originally claimed $52,501,980.01 due and owing by Defendant. Pl. Mem. of Law at 6; Lehman Aff. at ¶ 24. In its Reply, Plaintiff acknowledged that $3,000,000 is in escrow and would be released to Plaintiff to pay down loan principal if Pearlmark provided the winning UCC equity bid. Pl. Reply at 13. Plaintiff, however, argues in its Reply that there is no basis to change the amount due and owing by Defendant "unless and until the conditions permitting release of the pre-payment to Lender have occurred." *Id.* at 13. Plaintiff states that "[e]ven if all those future conditional events occur, Guarantor remains fully liable [ ], subject only to a $3,000,000 reduction if Lender receives the prepayment from Pearlmark." *Id.* at 14; Lehman Reply Aff. at ¶ 11. Plaintiff subsequently provides a third calculation of outstanding debt after the UCC auction reflecting a $7,000,000 principal paydown, as confirmed in Plaintiff's response letter. Pl. Response at 1. Plaintiff argues that the $7,000,000 decrease in the amount due and owing "has no effect on Guarantor's obligation to pay the Guaranteed Obligations under the Guaranty, other than to reduce the amount of the Debt owed to Plaintiff." *Id.* Defendant counters that this fact pattern unequivocally demonstrates the inability

of Plaintiff to provide a "sum certain" on the face of the loan documents as required under *Arbor-Myrtle Beach PE LLC*.

New York courts require consideration of "the parties' complex arrangements and circumstances, and the inability to determine by simple reference to the guaranties whether defendants remained liable by their terms to pay a sum certain." *PDL Biopharma, Inc.* 147 A.D.3d at 496. A court must therefore deny a summary judgment motion under CPLR § 3213 if "extrinsic evidence is required to determine the amount [ ] due." *Ian Woodner Fam. Collection, Inc. v. Abaris Brooks, Ltd.*, 284 A.D.2d 163, 164 (1st Dept. 2001) (summary judgment is inappropriate where extrinsic evidence is required to determine the amount of quarterly payments on a note because the court's reliance on same "exceeds the permissible role of extrinsic proof on a CPLR 3213 motion").

The record demonstrates that Plaintiff provided three distinct sums due and owing from Defendant during the pendency of this motion as the UCC auction, and negotiations surrounding the auction, progressed. Plaintiff states that the final figure provided, including the loan paydown of $7,000,000, is the direct result of a revision on September 24, 2025 to its intercreditor agreement with Pearlmark. Brayshaw Aff. at ¶ 3–4. The intercreditor agreement, and any amendments or revisions thereto, are outside the Guaranty or original loan documents, and therefore are extrinsic documents that the Court cannot consider on a CPLR § 3213 motion. *Kerin v. Kaufman*, 296 A.D.2d 336, 337 (1st Dept. 2002). Defendant correctly argues that the sum of the debt owed is a "moving target" and cannot be determined absent discovery. Sur-Reply at 4.

Thus, while liability has been established, the issue of damages requires further proceedings, making this motion outside the scope of CPLR § 3213. The motion is therefore granted solely as to liability, the action is converted to a plenary action, and the parties shall proceed to discovery on the issue of damages.

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 (Motion Seq. No. 001) is GRANTED in part solely to the extent of establishing Defendant's liability under the Guaranty; and it is further

ORDERED that the action is converted to a plenary action pursuant to CPLR § 3213, and Defendant shall serve an Answer within twenty days after service of this Decision and Order with notice of entry; and it is further

ORDERED that the issue of damages shall proceed to discovery and further proceedings in the ordinary course; and it is further

ORDERED that the parties shall appear for a Preliminary Conference on **January 21, 2026 at 12:00 p.m.** in Courtroom 428 and comply with this Court's Part Practices at Section X.A. regarding submissions in advance of the Preliminary Conference.

The foregoing constitutes the Decision and Order of the Court.

January 8, 2026
DATE

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

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