

BLT Fund 9 Dayton's LLC v Karasick

2026 NY Slip Op 30301(U)

January 24, 2026

Supreme Court, New York County

Docket Number: Index No. 655154/2025

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

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

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BLT FUND 9 DAYTON'S LLC,	INDEX NO.	<u>655154/2025</u>
Plaintiff,	MOTION DATE	<u>--</u>
- v -	MOTION SEQ. NO.	<u>001</u>
MARK KARASICK,	DECISION + ORDER ON MOTION	
Defendant.		

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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, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24
 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

In motion sequence number 001, plaintiff BLT Fund 9 Dayton’s LLC (BLT) moves for summary judgment in lieu of complaint pursuant to CPLR 3213 against defendant Mark Karasick on the guaranty. (See NYSCEF Doc. No. [NYSCEF] 2, Notice of Motion.)

Background

On September 1, 2023, BLT and 601 Minnesota Investor LLC (Borrower) executed a promissory note in the principal amount of \$2,750,0000 (Note). (NYSCEF 4, Glasgow¹ aff ¶ 13; NYSCEF 6, Note.) Also on September 1, 2023, BLT and Karasick entered into a guaranty agreement (Guaranty), in which Karasick “irrevocably,

¹ James G. Glasgow, Jr. is the “[m]anager of BLT Green Hollow LLC, the sole member of BLT Green Hollow GP LLC, the manager of BLT.” (NYSCEF 4, Glasgow aff ¶ 1.)
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 Motion No. 001

unconditionally and absolutely” guaranteed to pay all amounts due under the Note. (NYSCEF 4, Glasgow aff ¶ 14; NYSCEF 5, Guaranty §§ 1.1-1.2.)

The Note matured on November 1, 2023. (NYSCEF 4, Glasgow aff ¶ 17, NYSCEF 6, Note § 1.) When Borrower failed to make payment under the Note, BLT filed a motion for summary judgment in lieu of complaint against 601 Minnesota to collect the amounts due.² (NYSCEF 4, Glasgow aff ¶ 17.) The court granted the motion. (*Id.*; NYSCEF 7, Decision and Order at 13.) When the Borrower still failed to pay, BLT served a demand on Karasick on July 29, 2025, for payment of amounts due and payable under the Note. (NYSCEF 4, Glasgow aff ¶ 18; NYSCEF 8, Demand Letter.) Karasick has failed to make any payments. (NYSCEF 4, Glasgow aff ¶ 19.)

Discussion

CPLR 3213 provides that “[w]hen an action is based upon an instrument for the payment of money only or upon any judgment, the plaintiff may serve with the summons a notice of motion for summary judgment and the supporting papers in lieu of a complaint.” (CPLR 3213.) “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].) Once the

² See the action captioned at *BLT Fund 9 Dayton’s LLC v 601 Minnesota Investor LLC* (Index No. 650483/2024). The motion was argued on may 29, 2024.

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 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, BLT has made out its prima facie case for summary judgment pursuant to CPLR 3213 by submitting the Note (NYSCEF 6), the Guaranty (NYSCEF 5), and the Demand Letter (NYSCEF 8). (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 court next considers whether Karasick have met his burden of establishing a bona fide defense.

Subordinate Agreements

On April 8, 2022, BLT executed two Subordination and Recognition Agreements (collectively, Subordinate Agreements) with Fortress Credit Corp. (Fortress) and 601 Minnesota. (NYSCEF 16, Senior Loan Agreement; NYSCEF 17, Mezzanine Loan Agreement.) Karasick argues that the terms of the Subordinate Agreements preclude BLT from suing on the Guaranty. Specifically, he provides that “[b]y agreeing that its right to repayment by Karasick under the Guaranty is subject and subordinate to Fortress’ right to repayment of the mortgage and mezzanine loans, BLT stipulated to

conditions precedent to this lawsuit that have not been met.” (NYSCEF 21, Karasick’s MOL at 5.) Accordingly, Karasick contends that summary judgment must be denied.

Under New York law, “an absolute, unconditional, and irrevocable guarantee of payment” suffices to constitute an instrument for the payment of money only.” (*Museum Bldg. Holdings, LLC v Schreiber*, 236 AD3d 526, 527 [1st Dept 2025].) However, relief pursuant to CPLR 3213 “is foreclosed if the liabilities and obligations can only be ascertained by resort to evidence outside the instrument, or if more than simple proof of nonpayment or a de minimis deviation from the face of the document is involved.” (*Kaplan, Inc. v WebMD Health Corp.*, 236 AD3d 435, 435 [1st Dept 2025] [internal quotation marks and citation omitted].)

Here, the Subordinate Agreements do not preclude BLT ‘s motion for summary judgment in lieu of complaint. First, the Guaranty provides in § 7.1 that “GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS GUARANTY IS AN ‘INSTRUMENT FOR THE PAYMENT OF MONEY ONLY,’ WITHIN THE MEANING OF NEW YORK CIVIL PRACTICE LAW AND RULES SECTION 3213.” (NYSCEF 5, Guaranty § 7.1.) The inclusion of this language evidence the parties’ intent that the Guaranty be an instrument for the payment of money only. Second, the Guaranty includes a merger clause, which sets forth that

“THIS GUARANTY EMBODIES THE FINAL AND ENTIRE AGREEMENT OF GUARANTOR AND LENDER WITH RESPECT TO GUARANTOR’S GUARANTY OF THE GUARANTEED OBLIGATIONS AND SUPERSEDES ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF. THIS GUARANTY IS INTENDED BY GUARANTOR AND LENDER AS A FINAL AND COMPLETE EXPRESSION OF THE TERMS OF THE GUARANTY, AND NO COURSE OF DEALING BETWEEN GUARANTOR AND LENDER, NO COURSE OF PERFORMANCE, NO TRADE PRACTICES, AND NO EVIDENCE OF PRIOR,

CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OR OTHER EXTRINSIC EVIDENCE OF ANY NATURE SHALL BE USED TO CONTRADICT, VARY, SUPPLEMENT OR MODIFY ANY TERM OF THIS GUARANTY.” (NYSCEF 5, Guaranty § 7.10.)

The inclusion of this general merger clause precludes introduction of extrinsic evidence to vary the terms of the Guaranty. (*See Primex Intl. Corp. v Wal-Mart Stores*, 89 NY2d 594, 600 [1997] [“an antecedent agreement has no effect to vary, contradict or supplement the terms of a later agreement containing the general merger clause.”]) Because the Guaranty supersedes any prior agreements between BLT and Karasick, the Subordinate Agreements do not change the character of the Guaranty as an instrument for the payment of money only.³

In any event, the Subordinate Agreements do not preclude summary judgment in this case. The First Department has established that “subordinate agreements can come in two forms: (1) agreements that merely subordinate the debt owed to one creditor to the debt owed to another, and (2) agreements that limit the rights of the subordinate creditor from taking any action against the borrower until the more senior creditor’s debt is repaid.” (*Colfin SNP-1 Funding, LLC v Security Natl. Props. Servicing Co., LLC*, 199 AD3d 406, 406-07 [1st Dept 2021].) Only when the subordinate agreement is in the second form is the court precluded from granting summary judgment in lieu of complaint. (*See J-Bar Reinforcement, Inc. v Crest Hill Capital LLC*, 169 AD3d 499, 499-500 [1st Dept 2019].)

In the recitals, the Subordinate Agreements establish that “[Fortress] and [BLT] desire to enter into this Agreement to provide for the relative priority of the Senior Loan

³ The Subordinate Agreements were executed on April 8, 2022, almost a year and a half prior to the execution of the Guaranty, which is dated September 1, 2023.

Documents . . . and the Preferred Equity Investment Documents . . . on the terms and conditions hereinbelow set forth.” (NYSCEF 16, Senior Loan Agreement at 2; NYSCEF 17, Mezzanine Loan Agreement at 2.) Sections 3(a)(x)⁴, 7(a)⁵-(b)⁶, and 8(a)⁷ subordinate any debt owed to BLT to the Senior Loan Documents and the Preferred Equity Investment Documents. The Subordinate Agreements do not, however, contain any language limiting BLT from taking any action against Karasick. Absent such language, there is nothing in the Subordinate Agreements that precludes summary judgment in lieu of complaint. (See *Colfin SNP-1 Funding*, 199 AD3d at 407 [upheld summary judgment where “the court properly concluded that the subordination agreements only dealt with the matter of subordination, and did not otherwise prevent defendants from filing suit against the debtor to obtain a judgment on their claims.”]; see also *Lipsky v Ajax Elec. Motor Corp.*, 225 AD2d 1055, 1056 [4th Dept 1996] [“CPLR 3213 could apply . . . where subordination agreements merely order the priority of

⁴ Section 3(a)(x) provides that “any guaranties or indemnities . . . given to [BLT] are subordinate to the Senior Loan/Mezzanine Loan.” (NYSCEF 16, Senior Loan Agreement § 3 [a] [x]; NYSCEF 17, Mezzanine Loan Agreement § 3 [a] [x].)

⁵ Section 7(a) provides that “[BLT] hereby subordinates and makes junior the Preferred Equity Investment, the Preferred Equity Investment Documents, and all rights, remedies, terms and covenants contained therein.” (NYSCEF 16, Senior Loan Agreement § 7 [a]; NYSCEF 17, Mezzanine Loan Agreement § 7 [a].)

⁶ Section 7(b) provides that “[e]very document and instrument included within the Preferred Equity Investment Documents shall be subject and subordinate to each and every document and instrument included within the Senior/Mezzanine Loan Documents.” (NYSCEF 16, Senior Loan Agreement § 7 [b]; NYSCEF 17, Mezzanine Loan Agreement § 7 [b].)

⁷ Section 8(a) provides that “all of [BLT’s] rights to payment of the Preferred Equity Investment and the obligations evidenced by the Preferred Equity Investment Documents are hereby subordinated to all of Senior/Mezzanine Lender’s rights to payment by . . . Guarantors of the Senior/Mezzanine Loan and the obligations secured by the Senior/Mezzanine Loan Documents.” (NYSCEF 16, Senior Loan Agreement § 8 [a]; NYSCEF 17, Mezzanine Loan Agreement § 8 [a].)

plaintiffs' rights as against other creditors and have no bearing on plaintiffs' rights against defendant.”]; *Kornfeld v NRX Technologies, Inc.*, 93 AD2d 772, 773 [1s Dept 1983] [granted summary judgment pursuant to CPLR 3213 where “the guarantees state unconditional promises to pay.”].) Because the Subordinate Agreements do not bar BLT’s motion pursuant to CPLR 3213, Karasick fails to meet his burden of establishing a bona fide defense to BLT’s prima facie case.

Accordingly, it is

ORDERED that BLT’s motion for summary judgment in lieu of complaint is granted, and the Clerk of the Court is directed to enter judgment in favor of BLT and against Karasick in the sum of \$2,750,000; and it is further

ORDERED that the issue of the amount of interest and attorneys’ fees owed is severed; and it is further

ORDERED that a Judicial Hearing Officer (JHO) or Special Referee shall be designated to hear and report to this court on the following issues:

- (1) the calculation of interest owed to BLT; and
- (2) the reasonable value of legal services of BLT’s counsel to be reimbursed by Karasick to BLT; and
- (3) costs and expenses under the guaranty

except that, in the event of and upon the filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as Referee, shall determine the aforesaid issues; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that parties shall immediately consult one another and Haynes and Boone LLP shall, within 15 days from the date of this Order, submit to the Special Referee an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

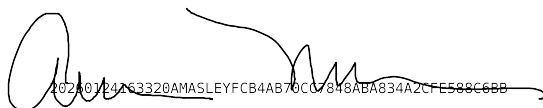
ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the

court’s website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.



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1/24/2026

DATE

ANDREA MASLEY, 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