

**EA DMG Student Hous. Fund V v DMG Invs. LLC**

2026 NY Slip Op 31740(U)

April 20, 2026

Supreme Court, New York County

Docket Number: Index No. 650971/2026

Judge: Nancy M. Bannon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART 61M

Justice

-----X

EA DMG STUDENT HOUSING FUND V,

Plaintiff,

- v -

DMG INVESTMENTS LLC and DMG BUFFALO LLC,

Defendants.

-----X

INDEX NO. 650971/2026

MOTION DATE 4/20/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

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

In this action seeking recovery of amounts due under three promissory notes and related loan documents, the plaintiff-lender, EA DMG Student Housing Fund V ("EastAlliance"), moves pursuant to CPLR 3213 for summary judgment in lieu of complaint against the defendant-borrower, DMG Investments LLC, and defendant DMG Buffalo LLC, alleged to be jointly and severally liable as guarantor and pledgor. No opposition is submitted. The motion is granted.

A plaintiff may seek relief under CPLR 3213 "[w]hen [the] action is based upon an instrument for the payment of money only." See HSBC Bank USA v Community Parking Inc., 108 AD3d 487 (1st Dept. 2013); Allied Irish Banks, P.L.C. v Young Men's Christian Assn. of Greenwich, 105 AD3d 516 (1st Dept. 2013); German Am. Capital Corp. v Oxley Dev. Co., LLC, 102 AD3d 408 (1st Dept. 2013). In order to establish a prima facie entitlement to summary judgment in lieu of a complaint, a plaintiff must produce an instrument containing an "unequivocal and unconditional obligation to repay" (Zyskind v FaceCake Mktg. Tech., Inc., 101 AD3d 550, 551 [1st Dept. 2012]), one which by its terms is for the payment of money only over a stated period of time (see Bloom v Lugli, 81 AD3d 579,580 [2nd Dept. 2011]), and establish that the defendant failed to pay in accordance with those terms. See Zyskind v FaceCake Mktg. Tech., Inc., supra; Rhee v Meyers, 162 AD2d 397 (1st Dept. 1990). Under these guidelines, a promissory note may qualify as such an instrument, so long as the plaintiff submits proof of the

existence of the note and of the defendant's failure to make payment. See Bonds Financial, Inc. v Kestrel Technologies, LLC, 48 AD3d 230 (1<sup>st</sup> Dept. 2008); Seaman-Andwall Corp. v Wright Machine Corp., 31 AD2d 136 (1<sup>st</sup> Dept. 1968). EastAlliance has met this burden.

In support of its motion, EastAlliance submits, *inter alia*: (1) an affirmation of Andy G. Zhong, dated February 18, 2026, establishing the defendants' defaults and the specific amounts due and owing; (2) three Senior Term Loan Agreements dated June 8, 2022, June 23, 2022, and August 5, 2022, in the aggregate principal amount of \$3,500,000; (3) three corresponding Registered Promissory Notes executed by DMG Investments LLC, evidencing its unconditional promise to repay the principal sums together with accrued interest, fees, and other amounts due thereunder; with interest at 9% *per annum*, increasing to 12% upon an event of default; annual funding fees of 3%, increasing to 6% upon default; and joint and several liability as to any guarantor or other party liable for payment; (4) three Membership Interest Pledge and Security Agreements executed by DMG Buffalo LLC, pursuant to which DMG Buffalo pledged membership interests and related distributions as collateral for the obligations under the Loan Documents; (5) two demand letters dated August 12, 2025 and August 21, 2025, demanding immediate payment in full; and (6) a Forbearance Agreement dated September 15, 2025, executed by EastAlliance, DMG Investments LLC, and DMG Buffalo LLC, in which the defendants acknowledged the debt and waived any offsets, counterclaims, or defenses to payment.

EastAlliance established that DMG Investments defaulted under the notes and related loan agreements. The notes matured on June 8, 2025, June 23, 2025, and August 5, 2025, respectively. The plaintiff's proved that the defendants failed to repay any of the principal sum, accrued interest, fees, or other amounts due at maturity, and that EastAlliance thereafter issued written demands for payment, and that the defendants did not cure the defaults. EastAlliance further established that, notwithstanding the Forbearance Agreement and the expiration of the forbearance period on November 21, 2025, the defendants failed to pay the undisputed outstanding principal of \$3,500,000, accrued funding fees in the amount of \$369,278.67 and other costs in the amount of \$2,840.00 calculated through August 12, 2025, together with ongoing funding fees at 3% *per annum*, increasing to 6% upon default, and default interest at 12% *per annum* accruing from the respective events of default on June 13, 2025, June 28, 2025, and August 10, 2025.

EastAlliance also established that DMG Buffalo LLC is jointly and severally liable with DMG Investments LLC. The Notes provide that “[b]orrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part” are severally liable and waive any requirement that the lender first proceed against the borrower or collateral. In addition, the Pledge Agreements provide that they secure all obligations of the borrower and pledgor under the loan documents, and the Forbearance Agreement expressly identifies DMG Buffalo LLC as “guarantor,” ratifies and reaffirms its obligations, and acknowledges the validity and enforceability of the underlying debt and loan documents. Under these circumstances, EastAlliance has sufficiently demonstrated that DMG Buffalo LLC is liable, jointly and severally with DMG Investments LLC, for the amounts due under the notes and related agreements.

The defendants, by their execution of the Forbearance Agreement, also expressly waived any defenses to repayment. The Forbearance Agreement recites that the debt is “justly due and owing,” that there are no offsets, counterclaims, or defenses to payment, and that any such defenses, to the extent they existed, were waived and released. Having failed to oppose the motion, the defendants proffer no basis for a contrary result.

EastAlliance also seeks contractual attorneys’ fees and costs. Attorneys’ fees are recoverable where there is a specific contractual provision for that relief. See Fleming v Barnwell Nursing Home and Health Facilities, Inc., 15 NY3d 375 (2010). Here, the subject notes entitle the lender to recover attorneys’ fees and expenses incurred in collecting and enforcing the notes and loan Agreements. The Pledge Agreements likewise require the pledgor to pay the reasonable attorneys’ fees and expenses incurred by the secured party in connection with enforcement. Therefore, EastAlliance’s application is granted as to liability, and it may submit an attorney affirmation, billing records or invoices, and any other supplemental proof to establish the proper amount of fees, within thirty 30 days of the date of this order.


Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff’s motion for summary judgment in lieu of complaint pursuant to CPLR 3213 is granted, without opposition; and it is further

ORDERED that the Clerk shall enter judgment in favor of the plaintiff, EA DMG Student Housing Fund V, and against the defendants, DMG Investments LLC and DMG Buffalo LLC, jointly and severally, in the principal sum of \$3,500,000.00, together with accrued funding fees in the amount of \$369,278.67 and other costs in the amount of \$2,840.00 calculated through August 12, 2025, plus default interest accruing at 12% *per annum* and default funding fees accruing at 6% *per annum* to be calculated by the Clerk upon (i) \$1,000,000 from June 13, 2025; (ii) \$1,000,000 from June 28, 2025; and (iii) \$1,500,000 from August 10, 2025, until the date of entry of judgment; and it is further

ORDERED that the plaintiff's application for attorneys' fees is granted on liability, and the plaintiff may submit an attorney's affirmation, billing records or invoices, and any other supplemental papers to establish the proper amount of fees, within thirty (30) days of the date of this order, and shall notify the Part 61 Clerk of any such filing via email at SFC-Part61-Clerk@nycourts.gov, or the application will be deemed waived.

This constitutes the Decision and Order of the Court.

  
NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**

4/20/2026  
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	<input type="checkbox"/> REFERENCE