

**Silverview Credit Partners LP v Blackford ATM
Ventures, LLC**

2024 NY Slip Op 34213(U)

November 25, 2024

Supreme Court, New York County

Docket Number: Index No. 654755/2024

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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SILVERVIEW CREDIT PARTNERS LP,
SILVERVIEW SPECIAL SITUATIONS LENDING
LP, SILVERVIEW SPECIAL SITUATIONS
LENDING II LP, SPEARHEAD INSURANCE
SOLUTIONS IDF, LLC – SERIES SCL

Plaintiffs,

- v -

BLACKFORD ATM VENTURES, LLC,
BLACKFORD ATM VENTURES FUND D, LLC,
BLACKFORD ATM VENTURES FUND M, LLC,
BLACKFORD ATM VENTURES FUND M II, LLC,
BLACKFORD ATM VENTURES FUND M IV,
LLC, BLACKFORD ATM VENTURES FUND M V,
LLC, BLACKFORD HOLDINGS, LLC, DARYL
FRED HELLER

Defendants.

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HON. ANAR RATHOD PATEL:

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

Plaintiffs Silverview Credit Partners LP, Silverview Special Situations Lending LP, Silverview Special Situations Lending II LP, and Spearhead Insurance Solutions IDF, LLC – Series SCL (collectively, “Plaintiffs”) move, pursuant to CPLR § 3213, for summary judgment in lieu of complaint against Defendants Blackford ATM Ventures, LLC, Blackford ATM Ventures Fund D, LLC, Blackford ATM Ventures Fund M, LLC, Blackford ATM Ventures Fund M II, LLC, Blackford ATM Ventures Fund M IV, LLC, Blackford ATM Ventures Fund M V, LLC, and Blackford Holdings, LLC (collectively, “Blackford”) and Daryl Fred Heller (“Guarantor” or “Heller”, together with Blackford, “Defendants”) in the amount of \$28,554,186.80, as well as attorneys’ fees, costs, and additional interest arising from Defendants’ default.

The return date of the motion was November 1, 2024. Defendants have not filed an opposition, or otherwise appeared in this action, despite having been served with the Summons, Notice of Motion, and related documents. *See* NYSCEF Doc. Nos. 31–39.

For the reasons discussed below, and even setting aside Defendants’ default, Plaintiffs’ motion is granted.

Relevant Factual and Procedural History

On August 23, 2023, Plaintiffs entered into a loan agreement with Blackford, whereby Plaintiff Silverview Credit Partners LP (“Agent”), as the Loan Agent for Plaintiffs Silverview Special Situations Lending LP, Silverview Special Situations Lending II LP, and Spearhead Insurance Solutions IDF, LLC – Series SCL (“Lenders”), agreed to make two tranches of loans to Blackford totaling up to \$25,000,000. NYSCEF Doc. No. 26 at ¶ 19 (Pls.’ Mem. of Law); NYSCEF Doc. No. 6 at 83 (Loan Agreement). Concurrent with the execution of the Loan Agreement, the parties entered into the Collateral Assignment of Management Service Agreements (“Collateral Assignment”) and the Pledge and Security Agreement (“Pledge Agreement”) (together with the Loan Agreement, the “Loan Documentation”). NYSCEF Doc. No. 7 (Collateral Assignment); NYSCEF Doc. No. 8 (“Pledge Agreement”). Plaintiffs agreed to make the Tranche 1 term loan for \$18,000,000 and the Tranche 2 term loan for up to \$7,000,000. *Id.* Also on August 23, 2023, to induce Lenders to extend credit and make loans under the Loan Agreement, Defendant Daryl Fred Heller entered into a Guaranty Agreement, which guaranteed Blackford’s obligations related to the loans made by Plaintiffs. NYSCEF Doc. No. 9 at 2–3; NYSCEF Doc. No. 6 (Guaranty Agreement); NYSCEF Doc. No. 26 at ¶ 22. The Guaranty Agreement states that the Guarantor

unconditionally and irrevocably guarantees to the Agent, for the benefit of the Lenders, the full and punctual payment and performance when due of all the Obligations, whether such Obligations would have risen at maturity or earlier by reason of acceleration or otherwise and whether denominated as damages, principal, interest, fees or otherwise, together with all pre- and post- maturity interest thereon

Id.

Pursuant to the Loan Agreement, on August 23, 2023, Plaintiffs made wire transfers to Blackford totaling \$17,211,440, constituting the Tranche 1 Loan after deducting applicable fees and expenses. NYSCEF Doc. No. 11 (SSL2 Confirmation of Tranche 1 Wire Transfers); NYSCEF Doc No. 12 (Spearhead Confirmation of Tranche 1 Wire Transfers); NYSCEF Doc No. 3 at ¶ 10 (Kumar Aff.); NYCEF Doc No. 26 at ¶ 23. Additionally, pursuant to the Loan Agreement, on December 22, 2023, Plaintiffs made wire transfers to Blackford totaling \$4,875,500, constituting the Tranche 2 Loan after deducting applicable fees and expenses. NYSCEF Doc. No. 14 (SSL1 Confirmation of Tranche 2 Wire Transfers); NYSCEF Doc. No. 15 (SSL2 Confirmation of Tranche 2 Wire Transfers); NYSCEF Doc. No. 3 at ¶ 11; NYSCEF Doc. No. 26 at ¶ 24. In total, Plaintiffs made loans to Blackford in the amount of \$23,000,000. NYSCEF Doc. No. 26 at ¶ 25.

Blackford made two Amortization Payments against the principal amount of \$23,000,000 to leave a remaining principal balance of \$22,475,000. NYSCEF Doc. No. 3 at ¶ 13; NYSCEF Doc. No. 16. An Amortization Payment of \$517,500 under Section 1.2(a)(i) of the Loan Agreement and an Interest Payment of \$319,000 under Section 1.2(a)(i) were both due on June 15, 2024, however Blackford failed to pay these amounts by said date. NYSCEF Doc. No. 26 at ¶¶ 26–29; NYSCEF Doc. No. 3 at ¶¶ 14–16. Blackford’s failure to pay constitutes a default under Section 7.1 of the Loan Agreement. NYSCEF Doc. No. 6 at 29–31. Despite Plaintiffs’ demand

for payment and Heller's promises to pay, no payments pursuant to the Loan Agreement have been made since May 2024. NYSCEF Doc. Nos. 22–25; NYSCEF Doc. No. 26 at ¶¶ 29–42.

Plaintiffs commenced this action on September 11, 2024, by filing a Summons and Motion for Summary Judgment in Lieu of Complaint pursuant to CPLR § 3213. NYSCEF Doc. Nos. 1–26. Plaintiffs seek summary judgment on the aggregate principal balance outstanding on the loans made under the Loan Agreement in the amount of \$22,475,000, in addition to the accrued interest (\$890,259.72), the Prepayment Premium (\$3,773,927), the Exit Fee (\$1,380,000), and the Administrative Fee (\$35,000) totaling \$28,554,186.72. NYSCEF Doc. No. 26 at ¶ 51. Plaintiffs also seek attorneys' fees and court costs related to this action under Section 7.2(a) of the Loan Agreement and Section 7(o) of the Guaranty Agreement. *See* NYSCEF Doc. No. 6 at 31; NYSCEF Doc. No. 9 at 9.

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, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless.” *Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 443 (1996) (internal quotations omitted). “When an action is based upon an instrument for the payment of money only . . . the plaintiff may serve with the summons a motion for summary judgment and the supporting papers in lieu of a complaint.” CPLR § 3213.

To establish *prima facie* entitlement to summary judgment in lieu of complaint under CPLR § 3213 based on the Loan Documentation and Guaranty Agreement, Plaintiffs must establish that the agreements are instruments for the payment of money only and proof of Defendants' nonpayment. *See 27 W. 72nd St. Note Buyer LLC v. Terzi*, 194 A.D.3d 630, 631 (1st Dept. 2021); *Valencia Sportswear, Inc. v. D.S.G. Enterprises, Inc.*, 237 A.D.2d 171, 171 (1st Dept. 1997) (internal citations omitted).

Here, Plaintiffs have satisfied their *prima facie* burden by submitting the Loan Documentation executed by the parties and Guaranty Agreement executed by Heller on August 23, 2023 [*see* NYSCEF Doc. Nos. 6–9], Plaintiffs' demand letters establishing Defendants' default [*see* NYSCEF Doc. Nos. 23, 25], and documentation evidencing Defendants' failure to pay in accordance with the Loan Documentation and Guaranty Agreement [*see* NYSCEF Doc. Nos. 3, 22–25]. *See DB 232 Seigel Mezz LLC v. Moskovits*, 223 A.D.3d 610, 611 (1st Dept. 2024). Specifically, Plaintiffs submit the Affirmation of Vaibhav Kumar, Partner of Silverview Credit Partners LP, setting forth the amounts due and stating that the Defendants have not made any of the payments due and owing to Plaintiffs as obligated under the Loan Documentation and Guaranty Agreement. NYSCEF Doc. No. 3. Accordingly, Plaintiffs have established entitlement to recover under the Loan Documentation and Guaranty Agreement.

Moreover, Plaintiffs provide support and calculations for the interest and fees (including the Administrative Fee, Exit Fee, and Prepayment Premium) in excess of the loan amount. NYSCEF Doc. No. 3 at ¶¶ 24, 25; NYSCEF Doc. No. 6 at § 1.4. In addition, pursuant to Section 7.2(a) of the Loan Agreement and Section 7(o) of the Guaranty Agreement, Plaintiffs have established their right to recover reasonable attorneys' fees and court costs in connection with

enforcing the obligations under the aforementioned agreement. See NYSCEF Doc. No. 6 at 31; NYSCEF Doc. No. 9 at 9.

Accordingly, it is hereby

ORDERED that Plaintiffs’ Motion for Summary Judgment in Lieu of Complaint against Defendants is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiffs Silverview Credit Partners LP, Silverview Special Situations Lending LP, Silverview Special Situations Lending II LP, and Spearhead Insurance Solutions IDF, LLC – Series SCL, and against Defendants Blackford ATM Ventures, LLC, Blackford ATM Ventures Fund D, LLC, Blackford ATM Ventures Fund M, LLC, Blackford ATM Ventures Fund M II, LLC, Blackford ATM Ventures Fund M IV, LLC, Blackford ATM Ventures Fund M V, LLC, Blackford Holdings, LLC, and Daryl Fred Heller, jointly and severally, in the amount of \$28,554,186.72 plus interest at the Default Rate of 17.50% per annum, as calculated by the Clerk of the Court from July 29, 2024 through the entry of judgment, with interest accruing thereafter at the statutory rate of 9% per annum, until the judgment is paid in full, and upon Plaintiffs’ e-filing of a Proposed Judgment directed to the County Clerk; and it is further


ORDERED Plaintiffs are granted judgment against Defendants, jointly and severally, for attorneys’ fees and costs; and it is further

ORDERED that within fourteen (14) days of the entry of this Decision and Order, Plaintiffs’ counsel shall file an affirmation to the Court on notice to Defendants, not exceeding five (5) pages, setting forth its claimed costs and attorneys’ fees, explaining why such fees are reasonable, and attaching documentary proof thereof and a proposed order, and Defendants may file a five (5) page letter in opposition within seven (7) days of Plaintiffs filing their submission; and it is further

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

ORDERED that within seven (7) days of entry of this Order, Plaintiffs shall serve a copy of this Order with notice of entry on Defendants by overnight mail.

The foregoing constitutes the decision and order of this Court.

11/25/2024 DATE			 ANAR R. PATEL, A.J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> SUBMIT ORDER
			<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE