

SP 1143 Second LLC v Marovic

2024 NY Slip Op 34402(U)

December 3, 2024

Supreme Court, New York County

Docket Number: Index No. 652367/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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SP 1143 SECOND LLC

Plaintiff,

- v -

JUDE DENNIS MAROVIC,

Defendant.

-----X

INDEX NO. 652367/2024

MOTION DATE 05/07/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13 were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

Upon the foregoing documents, it is

Plaintiff, SP 1143 Second LLC (SP), commenced this action against defendant, Jude Dennis Marovic, via summons with notice of motion for summary judgment in lieu of complaint. Plaintiff now moves for an order, pursuant to CPLR § 3213, granting summary judgment in lieu of complaint in favor of plaintiff and against defendant, Marovic, and directing entry of judgment in the amount of \$175,146.09, plus costs.

CPLR § 3213 provides that when an action is based upon an instrument for the payment of money only, the plaintiff may serve, with the summons, a notice of motion for summary judgment and the supporting papers in lieu of a complaint. On May 16, 2024, after multiple unsuccessful attempts to complete personal service on the defendant after being refused entry to the building by the Doorman, SP validly served the summons with notice of motion for summary judgment in lieu of complaint, along with the supporting papers, upon the defendant by delivering and leaving such papers with the Doorman, and mailing the same (NYSCEF Doc. No. 13; *F.I. duPont, Glore Forgan & Co. v. Chen*, 41 NY2d 794 [1977] [a Doorman may be a person

of suitable age and discretion to whom a summons may be properly delivered for the purposes of service under CPLR § 308]; *Nath v Chemtob Moss Forman & Beyda, LLP*, 231 AD3d 546 [1st Dept 2024]).

A plaintiff may commence a CPLR § 3213 action when the action is based upon an instrument for the payment of money only as the purpose of the CPLR § 3213 statute was to provide quick relief on 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, Inc.*, 88 NY2d 437, 443 [1996]). Accordingly, the CPLR § 3213 analysis begins with the seemingly straightforward, through stringent, threshold requirement that the action be based on an instrument for the payment of money only (*Id.*).

SP commenced this action to recover amounts allegedly owed in accordance with the terms of a Guaranty agreement, executed and signed by Marovic, as Guarantor, guaranteeing payment pursuant to a commercial lease agreement entered into by non-party, SBDM Capital LLC d/b/a Vero Wine Bar a/d/b/a Vero Social Wine and Tapas Bar, as Tenant, in which Tenant leased from plaintiff, as Landlord, a portion of the ground floor and basement of the premises for a term of ten (10) years. Within the meaning of the CPLR § 3213 statute, an unconditional guaranty, i.e. a guaranty under which the promise to pay is absolute and unconditional, qualifies as an instrument for the payment of money only (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492 [2015]). However, a document does not qualify for CPLR § 3213 treatment if the court must consult other materials besides the bare document and proof of nonpayment, or if it must make a more than de minimis deviation from the face of the document (*PDL Biopharma, Inc. v Wohlstadter*, 147 AD3d 494, 495 [1st Dept

2017)). Therefore, a guaranty agreement that guarantees both payment and performance does not qualify as a CPLR § 3213 instrument (*Punch Fashion, LLC v Merchant Factors Corp.*, 180 AD3d 520, 521 [1st Dept 2020]).

While the Guaranty and Completion Guaranty agreement(s) in this case include statements providing that they are “an absolute and unconditional guaranty of payment and performance”, the mere addition of the words “and performance” does not necessarily remove the agreement from the category of instruments for the payment of money only (*27 W. 72nd St. Note Buyer LLC v Terzi*, 194 AD3d 630, 632 [1st Dept 2021]). When an agreement guarantees both payment and certain performance obligations, summary judgment in lieu of complaint is not precluded when performance is not a condition precedent to payment (*45-47-49 Eighth Ave. LLC v Conti*, 220 AD3d 473 [1st Dept 2023]).

Here, the first paragraph under the “Terms” portion of the Guaranty expressly includes that the Guarantor, “unconditionally, absolutely and irrevocably guarantee to Landlord and its successors and assigns, the full and prompt (i) performance and observance of all of the terms and conditions of the Lease on Tenant's part to be performed and/or observed, and (ii) payment of Fixed Rent (as same is defined in the Lease) and Additional Rent (as same is defined in the Lease) and all other sums payable by Tenant, its successors and assigns under or in any way relating to the Lease... all to the extent such payment and performance obligations accrue prior to the Vacate Date” (NYSCEF Doc. No. 6). Additionally, the Guaranty contains absolute and unconditional language, including those such as “without exception”, “without limitation”, and waivers of rights and defenses. Therefore, as the language of the Guaranty includes an unconditional obligation by Marovic to pay the Fixed and Additional Rent, and requires no additional performance as a condition precedent to payment, the document falls within the

gambit of an instrument for the payment of money (*see iPayment, Inc. v Silverman*, 192 AD3d 586, 587 [1st Dept 2021]; *DB 232 Seigel Mezz LLC v Moskovits*, 223 AD3d 610, 611 [1st Dept 2024]).

Therefore, “[t]o meet its prima facie burden on its summary judgment motion, [the movant] must prove the existence of the guaranty, the underlying debt and the guarantor's failure to perform under the guaranty” (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492 [2015] [internal citations omitted]). Plaintiff has met its requisite burden, submitting proof in the form of: the Guaranty agreement, signed by Marovic and guaranteeing the payment of rental obligations (NYSCEF Doc. No. 6); the underlying debt, through the 14-Day Notice/Rent Demand and Rent Ledger (NYSCEF Doc. No. 7; 8); and evidence of Marovic’s failure to perform under the terms of the agreement by defaulting on these payment obligations (NYSCEF Doc. No. 3; *BBM3, LLC v Vosotas*, 216 AD3d 403, 404 [1st Dept 2023]). As plaintiff has met its prima facie burden on a CPLR § 3213 motion for summary judgment in lieu of complaint and demonstrated its entitlement to entry of judgment against Marovic, the motion may be granted.

Accordingly, it is hereby

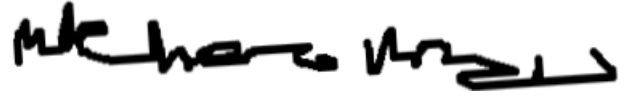
ORDERED that the motion by plaintiff, SP 1143 Second LLC, for summary judgment in lieu of complaint is GRANTED; and it is further

ADJUDGED and ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff, SP 1143 Second LLC, with a principal office at c/o Stonehenge Management LLC, 1675 Broadway, 21st Floor, New York, NY 10019, and against defendant, Jude Dennis Marovic, having an address of 4126 27th Street, Unit 8C, Long Island City, NY 11101, in the principal amount of \$175,146.09, together with statutory interest to the date of this Decision and

Order, as calculated by the Clerk in the amount of \$ _____, together with costs and disbursements as calculated by the Clerk upon submission of an appropriate bill of costs, in the amount of \$ _____, for a total judgment amount of \$ _____, and that the plaintiff have execution thereof.

This constitutes the decision, order, and judgment of the court.

12/3/2024
DATE



NICHOLAS W. MOYNE, J.S.C.

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