

D'Angelo v DeVito
2025 NY Slip Op 34252(U)
November 5, 2025
Supreme Court, New York County
Docket Number: Index No. 651007/2025
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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STEVEN P. D'ANGELO and STEVELINE, INC.,	INDEX NO. <u>651007/2025</u>
Plaintiffs,	MOTION DATE <u>-</u>
- v -	MOTION SEQ. NO. <u>001</u>
PAUL DEVITO,	
Defendant.	DECISION + ORDER ON MOTION
-----X	

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 18, 19, 20, 21, 22

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

In motion sequence 001, plaintiffs Steven P. D'Angelo and Steveline, Inc. (Steveline) move, pursuant to CPLR 3213, for summary judgment in lieu of complaint against defendant Paul DeVito.¹ Specifically, plaintiffs seek judgment in the amount of \$4,053,563.97, representing the principal sum of \$3,367,000, \$200 statutory costs, and interest at 16% per annum from November 13, 2023. Plaintiffs also seek reasonable attorneys' fees, expenses and costs of collection.

Defendant DeVito cross-moves to dismiss plaintiffs' motion, stay enforcement of the confession of judgment, and direct substitution of plaintiffs' counsel because they are material witnesses.

¹ DeVito is an attorney representing himself in this litigation. (NYSCEF 17, DeVito aff ¶ 2; NYSCEF 4, Settlement Agreement at 1 [identifying defendant as Paul DeVito, Esq].) DeVito is the owner of DeVito & DeVito, P.C. (D&D). (NYSCEF 17, DeVito aff ¶ 2.) DeVito was represented by counsel when he entered into the Settlement Agreement. (See *id.* ¶ 10.)

Background

On February 20, 2023, plaintiffs sued several parties, including DeVito, in the United States District Court for the Eastern District of New York (Underlying Action). (NYSCEF 4, Settlement Agreement at 2 [*D'Angelo, et al. v. Arthur D'Annunzio, et al.*, Case No. 2:23-cv-01322].) In the Underlying Action, plaintiffs alleged that DeVito, along with his co-defendants, orchestrated an investment scheme, defrauding plaintiffs. (NYSCEF 6, Underlying Action Complaint.) On September 7, 2023, the parties to the Underlying Action entered into a Settlement Agreement, Escrow Agreement, and Mutual Releases (Settlement Agreement).

Section 3 (a) of the Settlement Agreement provides, in part, that DeVito

“jointly and severally agree[s] to pay, and D'Angelo and Steveline agree to accept, in full satisfaction of all claims, damages and causes of action asserted (or that could have been asserted) by Plaintiffs in the Action, the sum of Three Million Five Hundred Thousand (\$3,500,000.00) Dollars...The Settlement Amount . . . shall be paid in lawful currency of the United States in installments, per the following schedule (time to be of the essence as to all payments):

- i. Two Hundred Thousand Dollars (\$200,000.00) to be received . . . on or before December 15, 2023;
- ii. One Million One Hundred Thousand Dollars (\$1,100,000.00) to be received . . . on or before January 15, 2024;
- iii. One Million One Hundred Thousand Dollars (\$1,100,000.00) to be received . . . on or before February 15, 2024; and
- iv. One Million One Hundred Thousand Dollars (\$1,100,000.00) to be received . . . on or before March 15, 2024.” (NYSCEF 4, Settlement Agreement § 3[a].)

DeVito also executed an affidavit of confession of judgment (Confession of Judgment) which states

“I, Paul J. DeVito, on behalf of myself and on behalf of D&D, hereby confess judgment in this Court against D&D, and myself, Paul J. DeVito, as an individual, jointly and severally, in the amount of \$3,500,000.00 plus interest at 16% per annum as from November 13, 2023, together with all costs and expenses,

including reasonable attorneys' fees, disbursements, and other costs of collection, incurred in the enforcement of this confession of judgment, together with damages and financial loss suffered, directly or indirectly, by Steven P. D'Angelo and/or Steveline, Inc." (NYSCEF 5, Confession of Judgment ¶ 5.)

On March 19, 2024, plaintiffs' counsel, Cermele & Wood LLP, sent a Letter of Default, claiming that only \$200,000.00 of the overall settlement amount had been paid. (NYSCEF 7, Default Letter at 1.) Counsel demanded payment of the outstanding amount totaling to \$3,367,000.00 by March 26, 2024. (*Id.*) Plaintiffs have not received further payment. (NYSCEF 8, D'Angelo aff ¶ 10.)

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 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. This accelerated procedure applies solely to an action based upon a judgment or an instrument for the payment of money only. In order to succeed on the motion, the cause of action must be proven by the instrument itself and a failure to make payments according to its term. When the instrument itself calls for something more than the payment of money, however, a CPLR 3213 motion will be denied. For purposes of the statute, an instrument for the payment of money only must be a written unconditional instrument. Documents which set forth more than the simple promise by the obligor to pay a sum of money may not be sued upon by way of CPLR 3213." (*Tech. Tape, Inc. v Spray Tuck, Inc.*, 131 AD2d 404, 405-406 [1st Dept 1987] [internal quotation marks and citations omitted].)

A settlement agreement may be an instrument for payment of money only. (See *Express Trade Capital, Inc. v Horowitz*, 198 AD3d 529, 530 [1st Dept 2021] [finding that the lower court correctly concluded that filing a 3213 action was appropriate based on

the settlement agreement and confessions of judgment]; *see also Tongkook Am., Inc. v Bates*, 295 AD2d 202, 202 [1st Dept 2002].) “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. Once plaintiff has met its burden, it is incumbent upon defendant to establish, by admissible evidence, that a triable issue of fact exists.” (*SCP, Inc. v Bermudatel Ltd.*, 224 AD2d 214, 216 [1st Dept 1996] [citations omitted].)

Plaintiffs assert that the Settlement Agreement is an instrument for payment of money only because it represents DeVito’s unconditional promise to pay the sum certain of \$3,500,000 on specified dates without any conditions precedent. Plaintiffs have established a prima facie entitlement to judgment by submitting the Settlement Agreement, the Confession of Judgment, and plaintiff D’Angelo’s affidavit averring that DeVito failed to make the required payments under the Settlement Agreement by the due date. (See *Weissman v Sinorm Deli*, 88 NY2d 437, 444 [1996] [“an instrument within the ambit of the statute is of course a negotiable instrument for the payment of money--an unconditional promise to pay a sum certain, signed by the maker and due on demand or at a definite time” (citation omitted)].) Therefore, the burden shifts to DeVito.

DeVito asserts that there are numerous issues of fact that, at this juncture, prevent judgment pursuant to CPLR 3213.² First, DeVito contends that, in accordance

² DeVito failed to submit a memorandum of law in opposition to plaintiffs’ 3213 motion. Instead, he presents his legal arguments and citations to authority in his affidavit (NYSCEF 17, DeVito aff) contrary to Court Rules and Part 48 Procedures. (See Part 48 Procedures § 5[C] [“counsel’s affirmations containing legal arguments or citation to authority are not permitted.”]; §6 [“every motion or other application, whether brought by order to show cause or notice of motion, shall include a memorandum of law”].) “[A]n affirmation may be filed, under penalties of perjury, not in place of a brief but in place of

with the terms of the Settlement Agreement, he agreed to relinquish his interest in a parcel of unimproved real property located in Richmond County, New York. (NYSCEF 17, DeVito aff ¶ 8.) He asserts that the deed to this property was signed over and improperly released to plaintiffs even though it was supposed to be held in escrow. (*Id.* ¶¶ 11, 20.) Thus, DeVito argues that the Settlement Agreement poses an obligation beyond the simple payment of money.

“Where the instrument requires something in addition to defendant’s explicit promise to pay a sum of money, CPLR 3213 is unavailable. Put another way, a document comes within CPLR 3213 if a prima facie case would be made out by the instrument and a failure to make the payments called for by its terms. The instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document.” (*Weissman*, 88 NY2d 437 at 444 [internal quotation marks and citation omitted].)

However, neither the Settlement Agreement nor the Confession of Judgment include language that references an obligation with respect to real property. (NYSCEF 4, Settlement Agreement; NYSCEF 5, Confession of Judgment.) Neither the Settlement Agreement nor the Confession of Judgment require something more than paying the settlement amount due. (*Id.*)

There is one reference to a parcel of real property included in the Settlement Agreement - “[f]or the avoidance of doubt, this paragraph does not waive or release any claim that may arise for breach of this Agreement, or any claim that relates in any way to . . . 4179 Hylan Boulevard (the ‘Property’).” (NYSCEF 4, Settlement Agreement

an affidavit, by an attorney admitted to practice in New York. CPLR 2106. Affirmations, like affidavits, are reserved for a statement of the relevant facts; a statement of the relevant law and arguments belongs in a brief (i.e., a memorandum of law). 22 NYCRR § 202.8(c).” (*Tripp & Co., Inc. v Bank of N.Y. (Del), Inc.*, 28 Misc 3d 1211 [A], 2010 NY Slip Op 51274[U], *6 [Sup Ct, NY County 2010]; see also *Response Personnel, Inc. v Aschenbrenner*, 2014 NY Slip Op 31948 [Sup Ct, NY County 2014].)

§2[a].) However, the Settlement Agreement plainly does not require DeVito to relinquish an interest in any property. In fact, the language quoted above disclaims the applicability of the Settlement Agreement to any claims concerning the alleged property in question. Pursuant to the Settlement Agreement any claims relating to the specified real property are not released.

Further, the Confession of Judgment explicitly states that DeVito confesses judgment in the specific amount of \$3,500,000 plus 16% interest from November 13, 2023, along with costs and expenses, including reasonable attorneys' fees. (NYSCEF 5, Confession of Judgment ¶ 5.) DeVito's argument that the Settlement Agreement requires more than a payment of money is without merit. The Settlement Agreement and Confession of Judgment are instruments for payment of money only for purposes of this 3213 motion.

Second, DeVito argues that there are triable issues of fact relating to (i) whether the Settlement Agreement and Confession of Judgment were procured under duress, and (ii) whether the Settlement Agreement provides that nonparty Jewelry Designer Showcase, Inc. (JDS) would be solely responsible for paying the settlement amount.

DeVito asserts that he was "forced to sign" the Confession of Judgment despite that there was an understanding that JDS would be responsible for paying the settlement sum owed to plaintiffs. (NYSCEF 17, DeVito aff ¶ 10.)

"A contract is voidable on the ground of duress when it is established that the party making the claim was forced to agree to it by means of a wrongful threat precluding the exercise of his free will." (*Austin Instrument v Loral Corp.*, 29 NY2d 124, 130 [1971].) DeVito fails to provide support indicating a wrongful threat that impeded

his exercise of free will beyond his conclusory statement that he was “forced to sign” the Confession of Judgment. (NYSCEF 17, DeVito aff ¶ 10.) “[A] defendant is required to assemble, lay bare and reveal his proofs in order to show that his defenses are real and capable of being established on trial, and it is insufficient to merely set forth averments of factual or legal conclusions.” (See *Mach. Funding Corp. v Stan Loman Enters., Inc.*, 91 AD2d 528, 528 [1st Dept 1982] [citation omitted] [finding a “bald assertion” that a document resulted from duress to be “patently insufficient to raise an issue of fact” in a 3213 motion].) Without more than a conclusory self-serving statement, DeVito’s defense of duress is insufficient to preclude summary judgment in lieu of complaint.

DeVito further argues that his attorney asked plaintiffs’ counsel to relieve DeVito from signing of the Confession of Judgment because JDS was responsible for paying the settlement amount. (NYSCEF 17, DeVito aff ¶ 10.) DeVito claims that “JDS acknowledged that the balance of the monies owed would be paid by them.” (*Id.* ¶ 9.) In his affidavit, DeVito suggests the parties to the Settlement Agreement had an understanding that JDS would be the party responsible for paying the settlement. However, this assertion is contradicted by the plain language of the Settlement Agreement, which expressly states

“the parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them, and that this Agreement is fully integrated, and supersedes all prior negotiations, warranties, representations, promises, agreements, and understandings.” (NYSCEF 4, Settlement Agreement §17.)

“Where a contract is straightforward and unambiguous, its interpretation presents a question of law for the court, to be determined without resort to extrinsic evidence”. (*Banc of Am. Sec. LLC v Solow Bldg. Co. II, L.L.C.*, 47 AD3d 239, 243 [1st Dept 2007].)

DeVito does not challenge the Settlement Agreement as ambiguous, but even if he did, it is clear on its face and unambiguous. Given the precise terms of the Settlement Agreement, the court will not consider any alleged separate understanding between the parties to the Settlement Agreement. (See *Vermont Teddy Bear Co. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004] ["In the absence of any ambiguity, we look solely to the language used by the parties to discern the contract's meaning."]; see *Domansky v Berkovitch*, 259 AD2d 331, 331 [1st Dept 1999] [finding evidence of a contemporaneous agreement insufficient to raise a triable issue of fact since it contradicted the (document's) clear terms].) Nevertheless, the court notes that DeVito fails to present any evidence of this alleged understanding besides his conclusory statement.

Additionally, the plain terms of the Confession of Judgment specifically acknowledge that DeVito, individually, is responsible for the settlement amount of \$3,500,000.00 plus interest, costs, and expenses, including reasonable attorneys' fees. (NYSCEF 5, Confession of Judgment ¶ 5.)

Therefore, plaintiffs' motion for summary judgment is granted and DeVito's cross-motion for dismissal or stay of enforcement is denied for the reasons stated above.

DeVito asserts that plaintiffs' counsel must be removed as they are "fact witnesses." (NYSCEF 17, DeVito aff ¶ 22.) This issue is moot. The 3213 motion is granted as the terms of the Settlement Agreement and Confession of Judgment are clear on their face. Thus, there is no need for plaintiffs' counsel to be fact witnesses.

Finally, plaintiffs seek to sever the issue of reasonable attorneys' fees and expenses, which are provided for in paragraph 20 of a Settlement Agreement and paragraph 5 of the Confession of Judgment. As both the Settlement Agreement and

Confession of Judgment provide for the recovery of attorneys' fees, this portion of the motion is granted and the issue of attorneys' fees is severed and referred to a referee.

Accordingly, it is

ORDERED that the plaintiffs' motion for summary judgment in lieu of complaint is granted and the Clerk of the Court is directed to enter judgment in favor of plaintiffs and against defendant in the amount of \$3,367,000, together with interest at the rate of 16% per annum from the date of November 13, 2023 until the date of the decision and order on this motion, and thereafter at the statutory rate, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the defendant's cross-motion is denied; and it is further

ORDERED that the issue of the amount 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 issue:

- (1) the amount of the reasonable value of legal services of plaintiffs' counsel to be reimbursed by defendant to plaintiffs 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

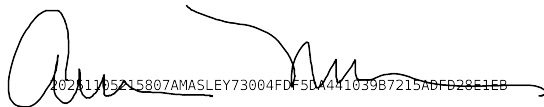
ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

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 counsel 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 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.



11/5/2025

DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

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DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

APPLICATION:

CHECK IF APPROPRIATE:

ANDREA MASLEY, J.S.C.

NON-FINAL DISPOSITION

GRANTED IN PART

☐

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐

REFERENCE

651007/2025 D'ANGELO, STEVEN P. ET AL vs. DEVITO, PAUL
 Motion No. 001

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