JPMDB 2018-C8 Constitution Plaza, LLC v Berger
2025 NY Slip Op 33450(U)
September 12, 2025
Supreme Court, New York County
Docket Number: Index No. 651312/2025
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE, *Justice*	PART 60M
JPMDB 2018-C8 CONSTITUTION PLAZA, LLC, Plaintiff,	INDEX NO. 651312/2025
- v -	MOTION DATE 03/11/2025
AARON BERGER, Defendant.	MOTION SEQ. NO. 001
	DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff JPMDB 2018-C8 Constitution Plaza, LLC ("Plaintiff") moves pursuant to CPLR 3213 for Summary Judgment in Lieu of Complaint against Defendant Aaron Berger ("Defendant" or "Guarantor"), under a Guaranty of Recourse Obligations of Borrower (Doc 9 [Guaranty]). Defendant opposes the motion and cross-moves to dismiss or alternatively to stay it pursuant to CPLR 3211(a)(4) (Doc. 39 [Opp. & Cross-Motion]).

BACKGROUND

In April 2018, nonparty BSPRT Finance, LLC ("Lender") loaned $55,000,000 (the "Loan") to nonparty Constitution Plaza Holding LLC ("Borrower") (Doc 4 [Loan Agreement]; Doc 5 [Note A-1]; Doc 6 [Note A-2]; Doc 7 [Note A-3]). The Loan matured on May 6, 2023 (Doc 4, § 2.5(a), § 2.6(a)-(c). Borrower defaulted by failing to pay the outstanding principal and interest owed on that date (Doc 4, § 10.1(a)). Borrower also filed for bankruptcy, constituting a further default.

In the event of a default, Borrower agreed to pay interest at the default rate [10.99% per annum] (Doc 4 § 2.5(c)). Borrower also agreed to pay certain other fees, costs and expenses, including lender's reasonable attorneys' fees (Doc 4, § 2.6(d), § 15.9).

As security for the loan, Borrower executed an Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated April 18, 2018 (the "Mortgage"), in Lender's favor. (Doc 8 [Mortgage]). Pursuant to the Mortgage, the Borrower granted Lender a security interest in the real property commonly known as 1, 10, 100, 248, 250, 260, 270, 280, 290 and 292 Constitution Plaza, Hartford, CT 06103 (Doc 8 § 1.1).

In consideration of the Loan, Defendant Aaron Berger executed a Guaranty of Recourse Obligations, dated April 18, 2018. Defendant irrevocably and unconditionally guaranteed the payment and performance of all "Guaranteed Obligations" (Doc 9 [Guaranty] § 1.1). The Guaranteed Obligations are defined as "all obligations and liabilities of Borrower for which Borrower shall be personally liable pursuant to Article 12 of the Loan Agreement" (*id.*, § 1.2).

Lender assigned the loan documents to plaintiff pursuant to various allonges and assignments. Thus, plaintiff has standing to maintain this CPLR 3213 action.

<u>The Connecticut Foreclosure Action</u>

After Borrower failed to pay the Loan upon the Maturity Date, Wilmington Trust, in its capacity as the holder of the Note A-1 and the Lead Securitization Note Holder, filed a forecosure action against Borrower in the Connecticut Superior Court. The foreclosure case is captioned *Wilmington Trust, National Association, as Trustee for the Benefit of the Registered Holders of JPMDB Commercial Mortgage Securities Trust 2018-C8, Commercial Mortgage Pass-Through Certificates, Series 2018-C8 v. Constitution Plaza Holding LLC, et al.*, Docket No. HHD-CV24-6178998-S (the "Foreclosure Action") (Doc 3 [Nunez aff.], ¶ 27).

The foreclosure action remains pending. A receiver was appointed to manage the properties. In the foreclosure case, borrower was directed to turn over to receiver the security deposits borrower collected (see Doc 21 [Receiver Order], Doc 22 [security deposit ledger]). Borrower did not turn over the deposits.

Under the Loan Agreement, article 12, borrower is liable for any "loss" (including attorneys' fees) arising from borrower's misapplication, misappropriation or conversion of any security deposits paid by tenants (Doc 4, § 12.1(a)(v)). Likewise, defendant is liable for the same under the guaranty. Borrower collected, but did not turn over to receiver, security deposits amounting to $92,009.44 (Doc 22 [Security Deposits Ledger]).

Now, plaintiff moves for summary judgment in lieu of complaint against defendant-guarantor. Plaintiff seeks: (i) $48,724,834.07 for the unpaid Loan debt as of March 6, 2025, plus interest, and (ii) $92,009.44 for the withheld tenant security deposits. Defendant cross-moves to dismiss or, alternatively, to stay.

DISCUSSION

CPLR 3213 provides for accelerated judgment where the instrument sued upon is for the payment of money only and the right to payment can be ascertained from the face of the document without regard to extrinsic evidence, "other than simple proof of nonpayment or a similar *de minimis* deviation from the face of the document" (*Weissman v Sinorm Deli, Inc.*, 88 NY2d 437, 444 [1996]; *see Arbor-Myrtle Beach PE LLC v Frydman*, 2021 NY Slip Op. 30223[U], 2 [Sup Ct, NY County 2021], *affd* 2022 NY Slip Op. 00806 [1st Dept 2022]). Generally, an action on a guaranty is an action for payment of money only (*see e.g. Cooperative Centrale Raiffesisen-Boerenleenbank, B.A., "Rabobank Intl.," N. Y. Branch v Navarro*, 25 NY3d 485, 492 [2015]) ("*Cooperative Centrale*"). The same standards that apply to motions for summary judgment under CPLR 3212 apply to CPLR 3213 motions. Movant must make a prima facie case by submitting the instrument and evidence of the defendant's failure to make payments in accordance with the instrument's terms (*see Weissman*, 88 NY2d at 444; *Matas v Alpargatas S.A.I.C.*, 274 AD2d 327, 328 [1st Dept 2000]). "A guaranty may be the proper subject of a motion for summary judgment in lieu of complaint whether or not it recites a sum certain, and the need to consult the underlying documents to establish the amount of liability does not affect the availability of CPLR 3213" (*Bank of Am., N.A. v Solow*, 19 Misc 3d 1123(A) [Sup Ct, NY County 2008]).

Here, plaintiff establishes its prima facie entitlement to summary judgment in lieu of complaint under the guaranty and other loan documents. The unconditional guaranty qualifies as an instrument for the payment of money only, and plaintiff establishes that defendant-guarantor is obligated to pay the outstanding loan debt in the amount of $48,724,834.07, together with default rate interest [10.99%] from March 6, 2025 through the date of this decision. This amount is comprised as follows:

> "(a) unpaid principal in the amount of $45,017,121.45; (b) accrued and unpaid interest in the amount of $4,913,355.29; (d) advances in the amount of

> $88,216.68; (e) interest on advances in the amount of $63,984.37; (f) additional fees due under the Loan Documents in the amount of $774,328.14; (g) less a credit for funds on hand in the amount of $2,132,171.86, for a total of $48,724,834.07 owed as of March 6, 2025"

(Nunez aff. [Doc 3], para 48).

Plaintiff also establishes that it is entitled to recover $92,009.44 for the security deposits that borrower has failed to deliver to the Connecticut receiver.

In opposition to the motion, defendant fails to raise a triable issue of fact. The court rejects defendant's contention that the guaranty is not an instrument for the payment of money only. In addition, the court denies defendant's cross motion to dismiss and/or stay. Dismissal under CPLR 3211 (a)(4) is not warranted. The Connecticut foreclosure action does not involve the same defendants nor the same claims. Here, plaintiff sues the guarantor under the guaranty, seeking a money judgment. To the extent that plaintiff recovers amounts that borrower owes in the foreclosure proceeding, guarantor may be entitled to an offset.

However, the court denies the part of plaintiff's motion that seeks an award for attorneys' fees and other expenses. While plaintiff may be entitled to recover these costs and fees under the loan documents, there is no support in the record for plaintiff's actual, reasonable attorneys' fees.

The Court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that the motion for summary judgment in lieu of complaint is granted in part, and the Clerk is directed to enter judgment in favor of Plaintiff and against Defendant in the amount of $48,724,834.07, together with pre-judgment interest at the default rate of 10.99% per annum from 3/6/25 until the date of this decision and order, as calculated the by the Clerk, and with interest thereafter at the statutory rate, 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 Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of $92,009.44, with prejudgment interest at the statutory rate from 9/28/24 until the date of this decision and order, as calculated by the Clerk; and it is further

ORDERED that plaintiff's motion is denied without prejudice as to plaintiff's request for attorneys' fees and other enforcement costs; and it is further

ORDERED that defendant's cross motion is denied in its entirety; and it is further

ORDERED that the Clerk shall mark this case disposed.

9/12/2025
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION	
		GRANTED	☐ DENIED	X	GRANTED IN PART	☐ OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	☐ REFERENCE