

Phillips Auctioneers LLC v Mimran
2025 NY Slip Op 33773(U)
October 3, 2025
Supreme Court, New York County
Docket Number: Index No. 653994/2025
Judge: Melissa A. Crane
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. MELISSA A. CRANE</u>	PART	60M
-----X <i>Justice</i>	INDEX NO.	<u>653994/2025</u>
PHILLIPS AUCTIONEERS LLC	MOTION DATE	<u>07/02/2025</u>
Plaintiff,	MOTION SEQ. NO.	<u>001</u>
- v -		
DAVID MIMRAN,	DECISION + ORDER ON MOTION	
Defendant.		
-----X		

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 17, 18
were read on this motion to/for JUDGMENT - SUMMARY IN LIEU OF COMPLAINT.

In motion sequence No. 01 plaintiff—Phillips Auctioneers LLC (“Phillips Auctioneers”)—moved for summary judgment in lieu of complaint pursuant to CPLR 3213. Defendant, David Mimran (“Mimran”), opposed the motion, alleging that summary judgment is inappropriate because there are purported issues of material fact. Defendant’s contention is incorrect, and the court now grants plaintiff’s motion.

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]).

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 Dep’t 2000]). “An unconditional guaranty is an instrument for the payment of

‘money only’ within the meaning of CPLR § 3213” (*Cooperatieve Centrale*, 25 N.Y.3d at 492 [citations omitted]).

Here, plaintiff and defendant entered a third-party guarantee (the “TPG”) (EDOC. 5) pertaining to Jackson Pollock’s Untitled, 31 x 23 inches, executed circa 1948 (the “Work”) (*see* EDOC. 4 [Affirmation of Hartley Waltman, affirmed on July 2nd, 2025] [the “Waltman Aff.”], ¶ 3). Pursuant to the TPG, Mimran was required to purchase the Work for \$14,500,000 if certain Conditions of Sale were not met at Phillips’ Modern & Contemporary Art Sale occurring on November 19, 2024 (TPG, ¶ 1). These conditions were not met and Mimran failed to pay for the Work, thereby breaching the TPG (Waltman Aff., ¶ 4).

To rectify this breach, plaintiff and defendant entered into a subsequent agreement that extended the deadline to pay to June 30, 2025 (*id.*, ¶ 6; *see also* EDOC. 6 [the “Agreement”], ¶ 1). Concurrently, defendant admitted that he breached the TPG and acknowledged his obligation to pay the money owed thereunder (*see* EDOC. 7 [Affidavit of David Mimran for Confession of Judgement sworn to on April 26, 2025] [the “Confession of Judgment”]).

Plaintiff establishes, *prima facie*, that defendant owes \$14,957,448.38 (comprising of \$14,500,000, plus interest at the contractual rate of 10% per annum from March 19, 2025 through June 30, 2025).

Considering the foregoing, plaintiff has made its *prima facie* showing of entitlement to summary judgment. That is, plaintiff submitted the TPG and the Confession of Judgment, that are both instruments for the payment of money only, and defendant’s admission demonstrates his failure to make the required payments thereunder.

Purported Issues of Fact

Upon plaintiff establishing its *prima facie* case, “the burden shifts to the Defendant to establish, by admissible evidence, the existence of a triable issue with respect to a bona fide defense” (*Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d 485, 492 [2015] [internal quotation marks and citation omitted]; *Boland v. Indah Kiat Fin. (IV) Mauritius Ltd.*, 291 A.D.2d 342, 343 [1st Dep’t 2002] [granting summary judgment in lieu of

complaint where plaintiff established prima facie case and “defendants raised no issue of fact as to defenses to the note”]).

Here, defendant does not contest that the amounts due and owing under the TPG nor the Agreement. Instead, Mimran contends that there are issues of material fact that preclude summary judgement. Specifically, Mimran contends that plaintiff’s motion should be denied because he alleges that there is a genuine issue of material fact as to whether Phillips attempted to mitigate its damages (Def. Opp. Br. 3- 5.). This argument is unavailing.

First, defendant fails to establish that plaintiff was required to mitigate damages after Mimran breached the TPG. Even assuming, arguendo, that plaintiff was required to do so, defendant proffered zero evidence to bolster this contention. Indeed, the only support that defendant presented are his conclusory assertions based upon his own speculation that plaintiff could not have tried to mitigate his damages because Phillips commenced this action so quickly. Defendant’s speculative assertions are not sufficient to raise an issue of material fact to preclude summary judgement (*see Sterling Nat. Bank as Assignee of Parimist Funding Corp v. American Elite Properties Inc.*, No. 1018502010, 2011 WL 11070087 at *4 [Sup. Ct., NY County Feb. 18, 2011]). In any event, defendant’s argument would fail even if it were substantiated because Mimran waived any affirmative defenses under the plain language of the TPG (Doc 5, para 15 [waiving any defense or objection]; *see e.g. Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v. Navarro*, 25 N.Y.3d 485, 493 [2015] “[G]uaranties that are absolute and unconditional[] have been consistently upheld by New York courts. Absolute and unconditional guaranties have in fact been found to preclude guarantors from asserting a broad range of defenses.”) [quotation marks and citations omitted]).

Finally, although plaintiff may be entitled to attorneys’ fees and other enforcement costs under the relevant agreements, the court denies plaintiff’s motion to the extent plaintiff seeks to recover attorneys’ fees. Plaintiff failed to provide proof of its fees and other costs incurred, so the court cannot determine whether the amounts are reasonable.

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 \$14,957,448.38, together with interest at the contractual rate of 10% per annum from June 30, 2025 until the date of this decision, 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 that part of the motion seeking attorneys' fees is denied without prejudice; and it is further

ORDERED that there shall be no further motion practice without a pre-motion conference with the court; and it is further

ORDERED that the Clerk shall mark this case disposed.

<u>10/3/2025</u>			
DATE		MELISSA A. CRANE, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☐ GRANTED ☐ DENIED	☒ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE