

<b>Truist Equip. Fin. Corp. v Tebele</b>
2025 NY Slip Op 35031(U)
December 23, 2025
Supreme Court, New York County
Docket Number: Index No. 653557/2025
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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TRUIST EQUIPMENT FINANCE CORP. (on behalf of  
assignee ARBA CREDIT INVESTORS III, I.P.)

Plaintiff,

- v -

CHARLES L TEBELE,

Defendant.

INDEX NO. 653557/2025

MOTION DATE 06/11/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 32, 33, 34

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

Plaintiff Truist Equipment Finance Corp. (“Truist”), acting on behalf of assignee Arba Credit Investors III, L.P. (“Arba”), seeks an award of summary judgment in lieu of complaint under CPLR 3213 against Defendant Charles L Tebele (“Mr. Tebele”) in the amount of \$5,638,791.67 plus per diem interest in the amount of \$1,123.52 per day from June 5, 2025, through and including the date of judgment, enforcement costs in the amount of \$56,054.55, and attorney’s fees based on a guaranty executed by Mr. Tebele as security for various loan documents executed by AC Aviation LLC (“AC Aviation”). Mr. Tebele opposes the motion on several grounds.

For the reasons set forth below, and in consideration of the submissions at oral argument on December 22, 2025, Truist’s motion is granted.

**FACTUAL AND PROCEDURAL BACKGROUND**

On or about April 12, 2022, Truist made a loan to AC Aviation secured by an unconditional guaranty executed by Mr. Tebele (*see* NYSCEF 3 [“Kolody Aff”] ¶¶ 14, 23; NYSCEF 6 [the “Guaranty”]). AC Aviation subsequently defaulted on the loan by failing to make payment for the month of February 2025 on or before March 17, 2025 (*see* Kolody Aff ¶¶ 32-36). In an effort to cure the default and avoid potential litigation, AC Aviation, Truist, and Mr. Tebele entered into a forbearance agreement pursuant to which Truist agreed to temporarily forbear from exercising its rights and remedies subject to AC Aviation and Truist fulfilling their obligations (*see* Kolody Aff ¶¶ 42-44; NYSCEF 8 [“Forbearance Agreement”]). However, once again, AC Aviation and Truist defaulted (*see* Kolody Aff at 54-57), and Truist commenced this action on June 11, 2025 (*see* NYSCEF 1 [Summons]).

On October 1, 2025, prior to any decision being rendered, Truist’s counsel filed a letter informing the Court that Truist and Mr. Tebele had entered into a second forbearance agreement and requesting that the Court refrain from issuing a decision on the instant motion until further notice (*see* NYSCEF 28 [the “Second Forbearance Agreement”]; NYSCEF 23). On October 8, 2025, the Court ordered that the motion be held in abeyance for thirty (30) days (NYSCEF 24).

The Second Forbearance Agreement, Section 6, provides:

“The effectiveness of this Agreement and the Lender’s obligations hereunder are conditioned on the satisfaction by the Obligors of the following conditions precedent unless waived or extended in writing by the Lender (such date when all the conditions are satisfied or waived, the “Effective Date”):

6.3 Rolls-Royce Corporate Care. On or prior to September 25, 2025, the Obligors shall (a) pay or cause to be paid all outstanding amounts owed to Rolls-Royce with respect to RRCC including without limitation the amount that was due on August 31, 2025 and

(b) provide the Lender with evidence satisfactory to the Lender in its reasonable discretion of such payment.”

Section 9.1 provides:

“In consideration of the terms and conditions contained herein, the Guarantor: (i) hereby immediately withdraws his opposition papers to the Summary Judgment Motion [NYSCEF Doc Nos. 19–21], with prejudice, and agrees that the Lender’s attorneys may notify the Court of the withdrawal of his opposition papers in the Letter Requesting Decision; (ii) acknowledges and agrees that the Guarantor has no defenses, claims or counterclaims to the Guarantor Action or the Summary Judgment Motion, which defenses, claims, and counterclaims are voluntarily and irrevocably waived (which the Lender may notify the Court of in the Letter Requesting Decision); and (iii) acknowledges and agrees that the Guarantor consents to the relief sought by the Lender in the Guarantor Action and Summary Judgment Motion, including, but not limited to, consenting to the issuance and entry of a money judgment for damages, in favor of the Lender and against the Guarantor, in the sum of \$5,638,791.67 (exclusive of attorneys’ fees), plus per diem interest, in the amount of \$1,183.18 per day, from June 5, 2025 through the date of entry of judgment (and the Lender may notify the Court of the same in the Letter Requesting Decision).”

On November 7, 2025, Truist’s counsel updated the Court that the Second Forbearance Agreement had been terminated (*see* NYSCEF 25), and the Court proceeded to decide the motion.

## **DISCUSSION**

### **I. Standing**

As an initial matter, Mr. Tebele contends that, until assignee Arba is formally substituted for current plaintiff (and assignor) Truist, neither Arba nor Truist have standing to sue Mr. Tebele under the Guaranty (*see* NYSCEF 32 [“Supplemental Memo Opp”] at 5-8). This is incorrect.

CPLR 1018 provides that “[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.” As the plain language indicates, that statute permits an assignee to “continue an action in the name of the original [party], even in the absence of a formal substitution” (*Central Fed. Sav., F.S.B. v 405 West 45th St., Inc.*, 242 AD2d 512, 512 [1st Dept 1997]). Moreover, the court will only insist on a motion for substitution under CPLR 1021 where the defendant raises “triable issues of fact” as to the validity of the assignment (*B & H Fla. Notes LLC v Ashkenazi*, 149 AD3d 401, 402 [1st Dept 2017]).

Here, the record reflects a bill assigning “all of [Truist’s] right, title, and interest” to Arba under the various loan documents including the Guaranty (*see* NYSCEF 34 [Assignment] at 5-7). While Truist’s counsel previously stated in a letter to the Court that they would file a motion seeking formal substitution (*see* NYSCEF 23 [10/1/2025 Letter]), the Court sees no reason to prevent Truist from pursuing the action on behalf of Arba, as expressly permitted by CPLR 1018.

## **II. Plaintiff is entitled to summary judgment in lieu of complaint**

Turning to the merits, a plaintiff makes out a *prima facie* case for summary judgment in lieu of complaint under CPLR 3213 by submitting proof of an instrument “for the payment of money only” and the defendant’s failure to make payment according to its unconditional terms (*see Seaman-Andwall Corp. v Wright Mach. Corp.*, 31 AD2d 136, 137 [1st Dept 1968]; *Nordea Bank Finland PLC v Holten*, 84 AD3d 589, 589 [1st Dept 2016]).

An “instrument for the payment of money only” is one that “requires the defendant to make a certain payment or payments and nothing else” (*Seaman-Andwall Corp.* at 137). A document falls outside CPLR 3213 only if it contains “something in addition to the defendant’s

explicit promise to pay a sum of money” (*Manchu Trading, Ltd. v Le-Mar International Gentlemen’s Apparel, Ltd.*, 128 AD2d 486, 486 [1st Dept 1987]). It is well settled that a “guarantee qualifies as an ‘instrument for the payment of money only’ under CPLR 3213” (*Torres & Leonard, P.C. v Select Professional Realities, Ltd.*, 118 AD2d 467, 468 [1st Dept 1986]; *State Bank of India, New York Branch v Patel*, 167 AD2d 242, 243 [1st Dept 1990]). Once the plaintiff submits evidence establishing its *prima facie* case, the burden shifts to the defendant to raise a “bona fide and substantial triable issue of fact” (*Edison Stone Corp. v 42nd Street Dev. Corp.*, 145 AD2d 249, 254 [1st Dept 1989]; *SCP (Bermuda) Inc. v Bermudatel Ltd.*, 224 AD2d 214 [1st Dept 1996]).

Here, Plaintiff has established a *prima facie* case for summary judgment under CPLR 3213 by demonstrating that (i) AC Aviation executed a loan, and Mr. Tebele executed a guaranty, both in favor of Truist (*see* NYSCEF 4 [Note]; the Guaranty), (ii) the Guaranty unconditionally guaranteed full and prompt payment and performance of the Loan (*see* the Guaranty § 2[a]), (iii) AC Aviation defaulted on its payment obligations under the Loan (Kolody Aff ¶¶ 32-41), and (iv) following AC Aviation’s default, Mr. Tebele failed to pay to Truist the entire amount due and owing under the Guaranty (Kolody Aff ¶¶ 58-61).

In response, Mr. Tebele does not dispute AC Aviation’s default, his obligations as guarantor, or his failure to pay. Instead, he contends that the Guaranty is not an instrument for the payment of money only because it also guarantees performance obligations in addition to payment obligations (*see* NYSCEF 20 [“Memo Opp”] at 11-12). However, the fact that a defendant guarantees both payment and performance obligations does not preclude the applicability of CPLR 3213, unless the performance obligations constitute a condition precedent to the plaintiff’s right to payment (*see Fortress Credit Corp. v. Cohen*, 235 AD3d 553, 554 [1st

Dept 2025]; *Arena Ltd. SPV, LLC v Goldstein*, 2021 NY Slip Op 32337(U) [Sup Ct, NY County 2021]). Here, the performance obligations were not conditions precedent to payment, nor does Mr. Tebele contend that they were. Accordingly, Mr. Tebele's contention is unavailing.

Mr. Tebele further argues that the Guaranty is not an instrument for the payment of money only because Truist and Mr. Tebele entered into a forbearance agreement pursuant to which Truist agreed to temporarily forbear from exercising its rights and remedies under the Guaranty (*see* NYSCEF 8 ["Forbearance Agreement"]; Memo Opp at 13-14). However, the existence of a related agreement, standing alone, does not preclude application of CPLR 3213, provided the defendant's unconditional obligation to make payment is apparent from the guaranty itself (*see Embraer Finance Ltd v Servicios Aereos Profesionales, S.A.*, 42 AD3d 380, 381 [1st Dept 2007]; *PFNGT LLC v Liquid Capital LLC*, 2025 NY Slip Op 31518(U) [Sup Ct, NY County 2025]; *GLD Legacy Holdings, LLC v Legacy Educ. Alliance, Inc.*, 2023 NY Slip Op 32601(U) at 16 [Sup Ct, NY County 2023] [Crane J] ["The court rejects [the defendant's] argument that the need to refer to the Forbearance Agreement renders CPLR 3213 inapplicable. The Forbearance Agreement merely provides the mechanism for enforcing the [instrument for the payment of money only] and does not [...] alter the [instrument's] terms or monetary nature"]).<sup>1</sup>

Here, the Forbearance Agreement (which terminated on or around April 30, 2025, Kolody Aff ¶¶ 54-57) simply deferred Mr. Tebele's obligations under the Guaranty; it did not

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<sup>1</sup> As the Court noted at oral argument, accepting Mr. Tebele's argument that a forbearance agreement effectively forecloses access to CPLR 3213 would create a potentially significant disincentive for lenders to sign such agreements, which are a useful and common way to forestall or eliminate the need for litigation. There is no support in the statute or the case law for such a result.

transform the Guaranty into an instrument outside the scope of CPLR 3213. Accordingly, Mr. Tebele's argument fails, and Truist has established a *prima facie* case under CPLR 3213.

Because Mr. Tebele failed to raise any triable issues of fact as to liability, damages, enforcement expenses, or attorney's fees under the Guaranty,<sup>2</sup> Plaintiff is entitled to summary judgment in lieu of complaint. The Court has considered Mr. Tebele's remaining arguments and finds them unavailing.<sup>3</sup>

Accordingly, it is

**ORDERED** that Truist Equipment Finance Corp.'s motion for summary judgment in lieu of complaint is **GRANTED**; it is further

**ORDERED** that Truist Equipment Finance Corp. shall submit a proposed judgment including an application for attorney's fees with supporting documentation within twenty-one (21) days of the date of this Order. Charles L. Tebele shall have twenty-one (21) days thereafter to file any objections. Truist Equipment Finance Corp. shall notify the Court via letter filing on NYSCEF and by email when the application is complete and whether it is opposed or unopposed; and it is further

**ORDERED** that the parties upload a copy of the transcript of the proceedings to NYSCEF upon receipt.

This constitutes the Decision and Order of the Court.

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<sup>2</sup> Truist has made an un rebutted showing that, under Sections 2.13 and 5.2 of the Aircraft Security Agreement (NYSCEF 5), it is entitled to recover enforcement costs and that, under Section 7 of the Guaranty, it is entitled to recover attorney's fees (*see* Kolody Aff at 22, 31).

<sup>3</sup> In view of the Court's disposition on the merits of Truist's motion, it need not address Truist's alternative (and credible) argument that under the Second Forbearance Agreement Mr. Tebele waived the right even to oppose the motion.



12/23/2025

DATE

CHECK ONE:

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CASE DISPOSED

X

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

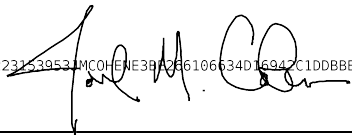
APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

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JOEL M. COHEN, J.S.C.

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE