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A Look At Recent Case Law On Expedited Judgment In NY

By **Alexander Lycoyannis** (October 2, 2024, 5:57 PM EDT)

Ordinarily, a New York State Supreme Court action begins with the plaintiff filing and serving a complaint, followed by the defendants serving an answer responding to the complaint's allegations.

Once all pleadings have been responded to, joinder of issue has occurred and the next step is often a long and expensive discovery process.

However, for a small subset of straightforward monetary claims, New York state provides plaintiffs with an accelerated procedure: a motion for summary judgment in lieu of complaint pursuant to Civil Practice Law and Rules Section 3213. This procedure has been examined in several cases this past year.



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By this procedural device, landlords, lenders and others who are payees pursuant to "instruments for the payment of money only" can seek an accelerated judgment for monies due in lieu of the usual, more time-consuming litigation process outlined above.

CPLR 3213's opening sentence provides: "When 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."

For "the limited matters within its embrace," CPLR 3213 "meld[s] pleading and motion practice into one step, allowing a summary judgment motion to be made before issue [is] joined," according to the New York Court of Appeals' 1996 decision in *Weissman v. Sinorm Deli*.^[1]

The purpose of the accelerated procedure under CPLR 3213 — a staple of New York commercial litigation practice — is "to provide quick relief on documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delays incident upon waiting for an answer and then moving for summary judgment is needless," according to the *Weissman* court.^[2]

An ever-present question in evaluating CPLR 3213 motions is whether the document at issue qualifies as an "instrument for the payment of money only."

The *Weissman* court also stated that the prototypical example of an "instrument for the payment of money only" is "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," often applicable in practice to promissory notes and unconditional guaranties.^[3]

The Appellate Division, Fourth Department's 2023 decision in *Counsel Financial II v. Bortnick* stated, "Under the stringent requirement that the action be based upon an instrument for the payment of money only, 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."^[4]

However, according to *Weissman*:

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, 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.^[5]

The statute further provides that if the motion is denied, all is not lost and the action continues: "If the motion is denied, the moving and answering papers shall be deemed the complaint and answer, respectively, unless the court orders otherwise."

There is a long line of case law that tests the statute's scope and reach, including, without limitation, whether agreements qualify as instruments for the payment of money only.

A number of decisions have been issued over the past several months that further clarify and refine the contours of the law surrounding CPLR 3213. These decisions are discussed below.

Parties May Agree to CPLR 3213 Treatment by Contract

A March decision from the Appellate Division, First Department, provides critical guidance to lenders, landlords and other payees on how to avoid disputes over whether a document is an "instrument for the payment of money only": require the obligor to so agree in writing.

In *Marjan International Corp. v Lillian August Designs Inc.*,^[6] the note and guaranty at issue provided that the defendants "acknowledge[] and agree[]" that each such document "is an instrument for the payment of money only within the meaning of the CPLR 3213 and expressly waive[] any right and hereby agree[] not to assert that [the document] is not such an instrument."^[7]

By reason of this express written acknowledgment and waiver, the court concluded that it "need not determine whether the note and guaranty would be considered instruments for the payment of money only under applicable case law" and that "[a]bsent any contention that the waivers were not valid, the note and guaranty are subject to collection pursuant to the expedited procedure provided by CPLR 3213."^[8]

Accordingly, beneficiaries of notes, guaranties and other similar instruments should ensure that their documents contain the above-referenced terms.

Given that agreements negotiated at arm's length between sophisticated, counseled businesspeople will generally be enforced according to their terms, including any waiver language in those agreements,^[9] such language will almost always cut off a defense that the agreement falls outside of CPLR 3213's scope.

CPLR 3213 Applies to Any Qualifying Agreement, Not Only Financial Instruments

Another Appellate Division, First Department decision from last year should remind practitioners not to have tunnel vision as to what constitutes an instrument for the payment of money only.

While CPLR 3213 is most frequently invoked in the context of financial instruments, other types of written agreements can also qualify for CPLR 3213 treatment.

In *Alessina v. El Gauchito II Corp.*,^[10] the parties orally agreed to the settlement of an employment dispute by the payment of a stipulated amount by a date certain.

Thereafter, the parties' attorneys exchanged emails concerning the settlement, and when the plaintiffs' attorney sought confirmation of the settlement terms, the defendant's attorney responded, "Yes, confirmed."^[11]

Thereafter, however, the defendant refused to make the payment required by the settlement. As a result, the plaintiff commenced an action under CPLR 3213 and moved for summary judgment in lieu of complaint in reliance on the email exchange. The defendant argued that the email exchange did not constitute a binding agreement, which the court rejected.

The defendant also argued that the email agreement did not qualify for CPLR 3213 treatment. The Appellate Division rejected this argument as well, holding that "[t]he plaintiffs established, prima facie, that the defendants failed to make the payment required by the settlement agreement, which was an 'instrument for the payment of money only' within the meaning of CPLR 3213."^[12]

Alessina serves as a reminder to parties and practitioners that CPLR 3213 is not reserved exclusively for notes, guaranties and other financial instruments.

As the Appellate Division found, binding agreements falling outside of these categories — even agreements reached via email — can qualify for expedited treatment so long as they seek only the payment of money as required by the statute.

Other Decisions Reinforce That CPLR 3213 Remains Applicable to a Limited Class of Cases

While the aforesaid cases concerned situations in which plaintiffs may invoke CPLR 3213, other recent cases reinforce that entitlement to the statute's expedited procedure has strict limits.

As noted, an instrument does not qualify for CPLR 3213 treatment if outside proof is needed to establish the plaintiff's case other than simple proof of nonpayment or a similar de minimis deviation from the face of the document.

In *Kitchen Winners NY Inc. v. Triptow*, decided by the Appellate Division, Second Department in April,[13] however, the guaranty at issue "reference[d] a deposit amount which differs from the amount demanded by the plaintiff in this proceeding, and, moreover, the guaranty [did] not establish the date upon which the defendants' repayment obligation [was] triggered." [14]

Moreover, the contract submitted with the motion "set[] forth a different deposit amount than the one set forth in the guaranty and, therefore, also [did] not conclusively establish the defendants' repayment obligation." [15]

Thus, because "outside proof beyond simple proof of nonpayment is required to determine the defendants' obligation to the plaintiff, relief pursuant to CPLR 3213 is unavailable." [16]

And in *Payoneer Early Payments Inc. v. Elimelech Sperber and E&S Journey Inc.*, decided by the Supreme Court, New York County in January,[17] the court denied the plaintiff summary judgment pursuant to CPLR 3213 because the "plaintiff's own form agreement" did not confer "an absolute right to repayment." [18]

Specifically, the plaintiff filed a motion for summary judgment in lieu of complaint seeking to collect on sums allegedly due pursuant to a merchant cash advance agreement.

Pursuant to the agreement, the plaintiff had a right to receive a contractually specified percentage of the defendant's future receivables until all purchased receivables were delivered.

However, if the defendant had no future receivables to deliver and did not otherwise default under the agreement, the plaintiff had no further recourse or right to payment.

Based on these factors, the court denied the plaintiff's 3213 motion because the need to reference outside information to determine whether the plaintiff was entitled to relief "far exceeds a de minimis deviation from the face of the document, as CPLR 3213 envisions." [19]

In particular, determining the plaintiff's right to payment from the defendant "entail[ed] looking at whether or not [the defendant] continued to bring in receivables through its business, and whether [the defendant's] actions constituted a default." [20]

Therefore, insofar as the right to repayment did not "appear[] on the face of the Agreement" and "further outside proof [was] required" to decide the motion, CPLR 3213 relief was unavailable to the plaintiff. [21]

Conclusion

Recent case law confirms that (1) in drafting notes, guaranties and other financial agreements to be enforced in New York, practitioners should include language confirming that enforcement may be effected pursuant to CPLR 3213, and (2) the accelerated CPLR 3213 remedy may be available for agreements beyond the financial instruments to which the statute is most frequently applied.

Nevertheless, the recent cases are also clear that CPLR 3213 remains a limited remedy available only to a small subset of agreements, and that the courts will strictly enforce limits on the statute's scope.

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[1] [Weissman v Sinorm Deli, Inc.](#) , 88 NY2d 437, 443 (1996).

[2] Id.

[3] Weissman, 88 NY2d at 443-44.

[4] [Counsel Fin. II LLC v Bortnick](#) , 214 AD3d 1388, 1390.

[5] Weissman, 88 NY2d at 444.

[6] 225 AD3d 408 (1st Dept 2024).

[7] Id. at 408.

[8] Id.

[9] See [159 MP Corp. v Redbridge Bedford, LLC](#) , 33 NY3d 353, 356 (2019) ("In New York, agreements negotiated at arm's length by sophisticated, counseled parties are generally enforced according to their plain language pursuant to our strong public policy favoring freedom of contract. In this case, commercial tenants who unambiguously agreed to waive the right to commence a declaratory judgment action as to the terms of their leases ask us to invalidate that waiver on the rationale that the waiver is void as against public policy. We agree with the courts below that, under the circumstances of this case, the waiver clause is enforceable, requiring dismissal of the complaint").

[10] 220 AD3d 645 (1st Dept 2023).

[11] Id. at 646.

[12] Id. at 647.

[13] 226 AD3d 989 (2d Dept 2024).

[14] Id. at 991.

[15] Id.

[16] Id.

[17] 81 Misc 3d 1236(A) (Sup Ct, New York County 2024).

[18] Id. at *2.

[19] Id.

[20] Id.

[21] Id.

