Enforcing Guaranties Quickly in New York Courts

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New York law provides creditors with a powerful tool to pursue collection on a written guaranty on an expedited track.

CPLR 3213 allows a creditor to serve a summons along with a motion for summary judgment — bypassing the requirement for a written complaint and asking the court to enter a judgment against the debtor.

The creditor must be seeking to enforce an instrument that is “based upon an instrument for the payment of money only.” CPLR 3213. Courts have varied in interpreting that phrase in that a written guaranty may contain monetary and nonmonetary obligations. Still, if the instrument imposes nonmonetary obligations on the guarantor, a court may conclude that the instrument is not “for the payment of money only” and deny the motion on that basis.

Therefore, it is important that creditors carefully craft their written guaranties. New York courts have held that a prototypical guaranty is “an unconditional promise to pay a sum certain, signed by the maker and due on demand or at a definite time.” *Weissman v. Sinorm Deli, Inc*., 88 N.Y.2d 437, 444 (1996).

In 2021, the First Department Appellate Division held that a guaranty including “an unconditional obligation to pay all rent and additional rent owed under the sublease” qualified as “an instrument for the payment of money only” because “it required no additional performance” of an obligation other than the promise to pay. *iPayment Inc. v. Silverman*, 192 A.D.3d 586, 587 (1st Dept. 2021).

In the creditor’s motion for summary judgment, it must show “the existence of the guaranty, the underlying debt, and the guarantor’s failure to perform under the guaranty.” *Pearl River Campus, LLC v. Readyscrip, LLC*, 240 A.D.3d 610, 611 (2d Dept. 2025).

In that case, the Appellate Division held that the lower court properly denied the creditor’s motion for summary judgment because there was insufficient proof. Specifically, because the Supreme Court “would have been required to examine material outside the lease agreement and make calculations that were not shown by the [creditor]” in its supporting documents, the proof was insufficient to grant summary judgment. *Id.*

In situations like that, when the creditor’s motion is denied, CPLR 3213 states that the papers filed in support of the motion and opposing the motion become the complaint and answer for the case. However, a court could order otherwise — such as requiring the parties to file a separate complaint and answer.

Regardless, when the court denies the motion for summary judgment in lieu of a complaint, the creditor then can only proceed with the case and seek its judgment against the guarantor at a later stage of litigation.

Creditors seeking to maximize collection in New York courts stand to benefit from reviewing and revising their guaranties to conform with the standard that CPLR 3213 imposes and to pursue motions for summary judgment in lieu of complaints when filing collection actions.