

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. ARTHUR F. ENGORON

PART

IAS MOTION 37EFM

Justice-----X
CAROLYN RUSIN,

Plaintiff,

- v -

MANNA MADISON AVENUE LLC, MANNA LEXINGTON AVENUE
LLC, MANNA PARC 61 LLC, MAMEXICANA LLC, MAMERICANA
92 LLC, and WEST D & P LLC,Defendants.

-----XINDEX NO. 654143/2018MOTION DATE 09/27/2018MOTION SEQ. NO. 001DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11, 12, 13

were read on this motion to/for

JUDGMENT - SUMMARY IN LIEU OF
COMPLAINT

Upon the foregoing documents, plaintiff's motion for summary judgment in lieu of complaint is granted.

On August 20, 2018, pursuant to CPLR 3213, plaintiff Carolyn Rusin ("Rusin") commenced this action to recover the sum of \$255,000, plus interest, costs and disbursements, due on a promissory note given to Rusin by non-party Paola Pedrignani and guaranteed by defendants Manna Madison Avenue LLC, Manna Lexington Avenue LLC, Manna Parc 61 LLC, Mamexicana LLC, Mamericana 92 LLC, and West D & P LLC (collectively "Defendants"), by filing a summons with notice of motion for summary judgment in lieu of complaint. Rusin supported the motion by, inter alia, the promissory note; the guaranty; and Rusin's own affidavit attesting to the terms of the promissory note and guaranty and Defendants' default thereunder. On September 5, 2018, Rusin caused the summons and motion to be served upon Defendants by serving Paola Pedrignani, manager of each Defendant, making each Defendants answer due on or before September 25, 2018, twenty days after Defendants were served. See CPLR 311-a; 320. Defendants have failed to answer, appear, or oppose the motion and their time to do so has expired.

Rusin has demonstrated entitlement to summary judgment in lieu of complaint against Defendants in the sum of \$255,000, plus interest from April 6, 2018, plus costs and disbursements. CPLR 3213. Rusin has made out her prima facie case by submitting: (1) the promissory note, which is an instrument for the payment of money only; (2) the guaranty, which is an instrument for the payment of money only; and (3) Rusin's affidavit attesting to Defendants' default. See *Blumenstein v Wasnit Grp. Inc.*, 140 AD3d 620, 620 (1st Dept 2016).

1996) ("In order to qualify for CPLR 3213 treatment, plaintiff must be able to establish a prima facie case by proof of the agreement and a failure to make the payments called for thereunder"). Accordingly, Rusin's motion for summary judgment in lieu of complaint is granted.

Conclusion

Motion granted. The Clerk is hereby directed to enter judgment in favor of plaintiff Carolyn Rusin and against Defendants Manna Madison Avenue LLC; Manna Lexington Avenue LLC; Manna Parc 61 LLC; Mamexicana LLC; Mamericana 92 LLC; and West D & P LLC, jointly and severally, in the sum of \$255,000, plus statutory interest from April 6, 2018, plus costs and disbursements.

1/2/2019

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE



ARTHUR F. ENGORON, J.S.C.