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CPLR 3213: Ensuring a Promise for Repayment is Unconditional

A motion for summary judgment *in lieu* of a complaint under CPLR 3213 is a powerful tool in a New York litigator's arsenal. Clients seeking to recover on a promissory note or similar instrument "for the payment of money only" can bypass expensive, time-consuming pleading and discovery stages and file a motion for summary judgment based on the note or contract. But plaintiffs opting to go the CPLR 3213 route must be certain that the debtor's promise to pay was unconditional. Evidence that a promissory note was only used to secure the debtor's obligation or that repayment was conditional can delay an otherwise streamlined procedure to recover monies owed.

The Case: *Gerdis v. Sindhwani*

In *Gerdis v. Sindhwani*, Justice Gretchen Walsh of the Westchester County Supreme Court considered a CPLR 3213 summary judgment motion on a $250,000 promissory note. The plaintiff submitted an affidavit stating that the defendant had signed the promissory note but had failed to pay the amount due by the date specified. In opposition, the defendant submitted affidavits contending that the promissory note was intended as security for the defendant's obligation to resolve tax issues with the plaintiff. In reply, the plaintiff pointed out that the note contained no language suggesting it was meant to be held as security, and that the defendant could not introduce extrinsic evidence to suggest it was security because the note was clear and unambiguous on its face. Justice Walsh acknowledged the general role that parol evidence is inadmissible to create issues of fact when a document is unambiguous. Based on extensive case law, however, the court concluded such evidence *was* admissible to address the defendant's contention of the note as security. Because the parties' affidavits raised genuine issues of fact regarding the purpose of the note and whether the condition precedent to repayment had been satisfied, Justice Walsh held summary judgment was inappropriate under CPLR 3213.

Takeaway

Although the general rule in New York is extrinsic evidence cannot be introduced to create ambiguity in a written instrument, courts will look to such evidence on a CPLR 3213 motion to determine whether a promise of repayment was truly unconditional. Attorneys planning to file a motion for summary judgment *in lieu* of a complaint should discuss these issues with their clients to ensure that a 3213 motion is appropriate under the facts of their case.