

## Money Talks

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### Money, Money, Money, Money... Money: Motion for Summary Judgment in Lieu of Complaint



By **Steven M. Herman**  
Senior Counsel | Real Estate



By **Alexandra Levy**  
Associate | Real Estate

In *TSLA Capitals, S.A.P.I. de C.V. v. ATL Funds, LLC* (“*TSLA Capitals*”), the Court granted summary judgment in lieu of complaint under CPLR 3213 on a partially paid promissory note exceeding \$24MM. The decision offers a useful clarification of what constitutes an “instrument for the payment of money only,” and in particular confirms that the presence of performance-related provisions does not disqualify a note from CPLR 3213 treatment unless those provisions operate as conditions precedent to payment.

CPLR 3213 permits a plaintiff to commence an action by motion for summary judgment where the claim is based upon “an instrument for the payment of money only.” To establish a prima facie case, the plaintiff must submit the instrument and proof of the defendant’s failure to make payment according to its terms. Once that showing is made, the burden shifts to the defendant to raise a triable issue of fact as to a bona fide defense.

In *TSLA Capitals*, the defendant did not dispute execution of the Note, its assignment to the plaintiff, or the failure to pay in accordance with its terms. Instead, it argued that the Note fell outside CPLR 3213 because it formed part of a broader loan transaction. The Court rejected that contention, reiterating that incorporation of related agreements does not defeat CPLR 3213 relief where a defendant’s obligation to pay is established by the note itself. The Note at issue contained an unconditional promise to repay principal together with interest on demand, which was sufficient to satisfy the statutory requirement.

The more significant argument concerned the existence of performance obligations. The defendant contended that because the Note included obligations beyond simple repayment, it was not an instrument for the payment of money only. The Court relied on recent authority to clarify that the presence of performance obligations does not, in and of itself, preclude CPLR 3213 relief. Rather, the critical inquiry is whether such obligations constitute conditions precedent to a plaintiff’s right to payment. If payment is contingent upon a plaintiff’s prior performance of some contractual obligation, the instrument may fall outside CPLR 3213 because the court would be required to resolve issues beyond nonpayment. However, where a borrower’s obligation to repay is unconditional and any performance-related provisions are ancillary to that duty, the instrument remains within the scope of the Statute.

Here, the Court held that the Note satisfied the definition of an instrument for the payment of money only and also rejected the argument that assignment of the Note removed it from CPLR 3213’s ambit. This decision reinforces the principle that CPLR 3213 focuses on the nature of the payment obligation reflected in the instrument itself. So long as the promise to pay is unconditional and a plaintiff need only prove the instrument and nonpayment, the existence of related agreements or additional contractual covenants will not defeat access to the Statute.