

August 15, 2025

VIA NYSCEF AND EMAIL

Hon. Anar Rathod Patel
Supreme Court of the State of New York
Commercial Division
60 Centre Street, Courtroom 428
New York, New York 10007
sfc-part45@nycourts.gov

**Re: *Elisa Wietschner as Trustee v. 9 Vandam JV, LLC*, Index No. 655573/2023
Request for Pre-Motion Conference and Briefing Schedule**

Dear Justice Patel:

We represent plaintiff Elisa Wietschner (“Plaintiff”), as Trustee of the WFIG Trust (the “Trust”) in the above-referenced action. Pursuant to Rule VIII(B) of the Part 45 Practices and Procedures and Rule 24 of the Rules of the Commercial Division, we write to provide the Court with advance notice of Plaintiff’s intention to file a motion for summary judgment under CPLR 3212 and to request a conference to establish a briefing schedule for the motion.

This is an action to recover sums due to the Trust pursuant to three written promissory notes executed by defendant 9 Vandam JV, LLC (“Defendant”) to evidence the aggregate principal indebtedness of Defendant to the Trust in an amount in excess of \$1 million. The Trust advanced these funds to Defendant as emergency “bridge funding” in connection with a real estate project managed at the time by the Arch Companies (“Arch”), a real estate development company of which Defendant is an affiliate. Specifically, the first promissory note provided for a maturity date of April 20, 2024, and the second and third promissory notes provided for a maturity date based upon the satisfaction of a certain loan (the “Maxim Loan”) made by a lender named Maxim Credit Group, LLC to an affiliate of Defendant named 9 Vandam Borrower 2 LLC. As will be set forth in Plaintiff’s forthcoming motion, the irrefutable, publicly-available records demonstrate that the Maxim Loan was satisfied on November 15, 2024, and as such, the second and third promissory notes matured on November 15, 2024. However, Defendant has defaulted on the three promissory notes and, to date, has not made any payments due thereunder.

On November 8, 2023, the Trust commenced this action by filing a summons with a notice of motion for summary judgment in lieu of complaint pursuant to CPLR 3213, which Defendant opposed. By Decision and Order issued on April 5, 2024, Justice Chan denied the Trust’s motion

for summary judgment in lieu of complaint. The Court denied the Trust's CPLR 3213 motion on the basis that (1) the promissory notes were not "instruments for the payment of money only" because they referred to other documents with regard to events of default and therefore the Trust's right to payment could not be ascertained solely from the face of the promissory notes, and (2) an issue of fact existed concerning whether Defendant was in default under the promissory notes.

In the period following this Court's denial of the Trust's CPLR 3213 motion, the real estate project at issue managed by Arch ran out of funds and shut down. Arch's principals have sued each other and are currently engaged in litigation. A temporary receiver has been judicially appointed over Arch's parent entity. In the meantime, Defendant and Arch have kept the Trust in the dark concerning the status of the Project.

This action is ripe for resolution under CPLR 3212. A motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR 3212(b). The movant must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, eliminating the need for trial. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985); *Sheehan v. Gong*, 2 A.D.3d 166, 168 (1st Dep't 2003). Furthermore, the Trust's motion for summary judgment pursuant to CPLR 3212 is timely. Under CPLR 3212(a), "[a]ny party may move for summary judgment in any action, after issue has been joined." Here, issue was joined at least as early as April 5, 2024, when the Court issued its Decision and Order on Motion deeming the parties' CPLR 3213 moving and answering papers as, respectively, the complaint and answer in this action. NYSCEF Doc. No. 24 at p. 7.

At this point, there are no open genuine issues of material fact precluding the Trust from being awarded summary judgment under CPLR 3212 on the Trust's claims against Defendant. The maturity dates on all three promissory notes have passed without any payment from Defendant. Accordingly, as a matter of law, the Trust is entitled to a judgment against Defendant in the aggregate principal amount of \$1,049,089.55, plus applicable contractual and default interest. In addition, pursuant to the terms of the promissory notes, the Trust is entitled to a judgment awarding the costs and expenses incurred by the Trust in connection with the enforcement and collection of the payment obligations under the promissory notes, including attorneys' fees incurred by the Trust, in an amount to be determined at a hearing.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/ Jeffrey Schreiber

Jeffrey Schreiber

cc: Counsel of Record (via NYSCEF and email)