

No Complaints With Cryptocurrency: The Applicability of CPLR 3213's Summary Judgment in Lieu of Complaint to Obligations in Cryptocurrency

By Michael Mix and Vani Upadhyaya

With the increasing prevalence of contracts containing an obligation by one party to pay the other party in cryptocurrency, there will undoubtedly be a concomitant increase in obligors who fail to pay. For contracts involving the payment of fiat currency, New York law provides the non-breaching party with the option to bypass traditional litigation procedure and instead make a motion for “summary judgment in lieu of complaint,” pursuant to CPLR 3213, in an effort to potentially attain a speedy resolution. But it remains an open question as to whether CPLR 3213 applies to obligations in cryptocurrency.

Summary judgment in lieu of complaint under CPLR 3213 is a useful method under New York law where, instead of serving a traditional summons and complaint, a plaintiff can serve a defendant with a summons, a notice of motion for summary judgment, and the supporting papers. Accordingly, instead of having to go through the time-consuming and costly discovery process before moving for summary judgment, CPLR 3213 can streamline the litigation process, conserve the parties’ resources, and result in a more expedient judgment for plaintiffs.

However, a litigant may only utilize CPLR 3213 when the action is “based upon an instrument for the payment of money only or upon any judgment.” Indeed, financial institutions and lenders often take advantage of CPLR 3213 to achieve speedy judgments upon defaults of promissory notes or guarantees.

But what if an instrument is for the payment of cryptocurrency? As yet, we are not aware of any New York court that has determined whether CPLR 3213 would apply to actions for the payment of cryptocurrency.

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The question of whether litigants transacting in cryptocurrency can utilize CPLR 3213 ultimately comes down to whether the instrument would be considered (in the CPLR’s words) “for the payment of money only.” The “prototypical example of an instrument within the ambit of the statute is of course a negotiable instrument for the payment of money—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*, 88 N.Y.2d 437, 444 (1996). The “instrument does not qualify if outside proof is needed, other than simple proof of nonpayment or a similar de minimis deviation from the face of the document.” *Id.* Decisions permitting use of CPLR 3213 have mainly “dealt primarily with some variety of commercial paper in which the party to be charged has formally and explicitly acknowledged an indebtedness.” *Interman Indus. Prod., Ltd. v. R.S.M. Electron Power, Inc.*, 37 N.Y.2d 151, 154–55 (1975) (listing cases).

Courts have also found that mutual release and settlement agreements, put agreements, and interest rate swap agreements qualify as instruments “for the payment of money only.” *See Phoenix Experiential Designs v. Lerner*, 51 Misc. 3d 1207(A) (Sup. Ct. N.Y. Cty. 2016) (settlement agreement); *Nordea Bank Finland PLC v. Holten*, 84 A.D.3d 589 (1st Dept. 2011) (put agreement); *Allied Irish Banks, PLC v. Young Men's Christian Ass'n of Greenwich*, 105 A.D.3d 516 (1st Dept. 2013) (interest rate swap agreement).

Additionally, courts have generally allowed CPLR 3213 to be utilized for the payment of money in a foreign currency. For example, in *Baker & McKenzie Zurich v. Frisone*, 47 Misc. 3d 1227(A) (Sup. Ct. Nassau Cty. 2015), plaintiff law firm sought to utilize CPLR 3213 to domesticate foreign judgments awarded to it by the District Court of Zurich in Switzerland and denominated in Swiss Francs. The court granted in part plaintiff’s motion and entered a judgment converted into U.S. dollars.

We have not found cases granting summary judgment in lieu of complaint where the “money” sought was not fiat currency. With respect to cryptocurrency, it is possible that a court considers cryptocurrency similar enough to foreign currency, or considers cryptocurrency sufficiently akin to “money,” as it often is used to facilitate the purchase of goods and services. However, there are other myriad uses of cryptocurrency that could be considered to be less comparable to “money.” Even further complicating the question is that government regulators sometimes classify (or seek to classify, rightly or wrongly) certain tokens as a commodity or security. While those complicated questions are outside the scope of this article, the multifaceted nature of cryptocurrency raises questions as to whether a court would consider it “money” for purposes of CLPR 3213, even if the other CPLR 3213 requirements are fulfilled.

It is also possible that a court would examine the instrument in question to determine whether a cryptocurrency obligation would qualify “for the payment of money only.” For example, a guaranty of a loan obligation to repay cryptocurrency might be seen more like “an instrument for the payment of money” as compared to other types of cryptocurrency obligations. Additionally, while not binding on a New York Court, the United States Financial Crimes Enforcement Network’s May 2019 guidance that “convertible virtual currencies” (including cryptocurrency) can act as “value that substitutes for currency” under the money transmitter laws could provide a conceptual framework for New York courts to examine whether cryptocurrency is “money” under CPLR 3213. *See Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FinCEN Guidance (May 9, 2019).

Moreover, while the main thrust of this article concerns the phrase “payment of money only,” CPLR 3213 also permits litigants to make a motion for summary judgment in lieu of complaint to enforce “any judgment.” We note that it also remains an open question as to whether

a court can issue a judgment in cryptocurrency. *See* Jason Gottlieb and Michael Mix, *Crypto Judgment Day: Issuing Judgments in Cryptocurrency in New York*, New York Law Journal (Oct. 5, 2022).

Despite the dearth of case law, unconditional obligations to pay in cryptocurrency will surely become more common as the industry continues to grow. If clarified in the courts, summary judgment in lieu of complaint could become a very useful tool for New York state litigants seeking a speedy resolution to enforce those obligations.

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