

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

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R [REDACTED] INC.,  
Plaintiff,

DECISION, ORDER  
& JUDGMENT  
Index [REDACTED]

vs.

A [REDACTED],  
Defendant.

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Special Term [REDACTED] 2019

**Appearances:**

Kamran F. Hashmi, Esq. for Plaintiff  
Anthony P. Lafay, Esq., for Defendant

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Taylor, J.,

Before the Court is Plaintiff's motion for an order granting summary judgment in lieu of complaint pursuant to CPLR 3213. Plaintiff seeks recovery on a promissory note in the amount of \$53,857.90, plus attorneys fees in the amount of \$2,440.00, and costs and disbursements in the amount of \$610.00.

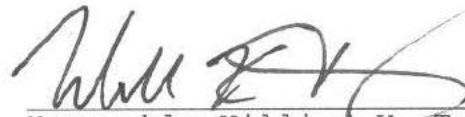
Plaintiff has offered proof in admissible form that Defendant and Plaintiff executed a balloon note and mortgage, that Defendant has defaulted under that agreement, and that Plaintiff has suffered damages reflected above as a result of Defendant's breach. With the burden shifted, Defendant admits he has defaulted under the note but argues that Plaintiff recorded a

deed in lieu of foreclosure on the subject property and Plaintiff has sold the property at a profit over and above the amount of the principal mortgage. Essentially, Defendant argues that Plaintiff has elected its remedy to take the property and is therefore precluded from seeking a remedy under the defaulted note. Defendant, however, has failed to offer any evidentiary support to buttress these assertions and thus fails to raise a triable issue of fact.

In reply, Plaintiff correctly notes that RPAPL 1301 prohibits simultaneous actions on the note while a mortgage foreclosure action is pending. See also e.g., Hometown Bank of Hudson Valley v Belardinelli, 127 AD3d 700, 701 (2d Dept 2015) ("Pursuant to RPAPL 1301 '[t]he holder of a note and mortgage may proceed at law to recover on the note or proceed in equity to foreclose on the mortgage, but must only elect one of these alternate remedies.'") (internal citation omitted). Here, there is no mortgage foreclosure action; Plaintiff has elected its remedy to sue on the note. Indeed, at Special Term Plaintiff's counsel acknowledged that should summary judgment be granted upon the defaulted note then it conceded the deed in lieu of foreclosure is null and void. Defendant's counsel agreed and so does the Court.

Accordingly, Plaintiff's motion for an order granting summary judgment in lieu of complaint pursuant to CPLR 3213 is hereby GRANTED in its entirety. Plaintiff shall have judgment on the promissory note in the amount of \$53,857.90, plus attorneys fees in the amount of \$2,440.00, and costs and disbursements in the amount of \$610.00. Based upon the consent of the parties and in light of this judgment, it is further ORDERED, ADJUDGED and DECREED that the deed in lieu of foreclosure concerning [REDACTED] Street, Rochester, New York, is deemed NULL AND VOID.

This constitutes the decision, order and judgment of the Court.

  
 Honorable William K. Taylor  
 Supreme Court Justice  
 [REDACTED] 2019