

170 A.D.3d 447
Supreme Court, Appellate Division,
First Department, New York.

Norma LOREN, Plaintiff–Appellant,

v.

Joseph E. SARACHEK, et al.,
Defendants–Respondents.

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Index 651052/15

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ENTERED: MARCH 7, 2019

Attorneys and Law Firms

Law Office of Ethan A. Brecher, LLC, New York ([Ethan A. Brecher](#) of counsel), for appellant.

Izower Feldman, LLC, New York ([Dennis Villasana](#) of counsel), for respondents.

[Renwick](#), J.P., [Manzanet–Daniels](#), [Tom](#), [Kahn](#), [Gesmer](#), JJ.

Opinion

*447 Order, Supreme Court, New York County (Charles E. Ramos, J.), entered on or about July 10, 2018, which denied

plaintiff's motion for summary judgment, unanimously reversed, on the law, with costs, and the motion granted. The Clerk is directed to enter judgment accordingly.

The provisions of the note which required defendant Triax *448 Capital Advisors, LLC (Triax) to make monthly interest payments to plaintiff, and the terms of the individual defendant's personal guarantee of payment were clear and unambiguous (*see Banco Espírito Santo, S.A. v. Concessionária Do Rodoanel Oeste S.A.*, 100 A.D.3d 100, 106, 951 N.Y.S.2d 19 [1st Dept. 2012]). Moreover, the note unambiguously provided that in the event of a default, which occurred, and upon notice from **836 plaintiff, which was provided, Triax was required to repay the entire balance of the principal plus interest accrued within 90 days (*id.*).

Plaintiff's failure to demand interest payments between the due date and the date of declaring a default did not constitute a waiver of plaintiff's right to declare a default (*see EchoStar Satellite L.L.C. v. ESPN, Inc.*, 79 A.D.3d 614, 617–18, 914 N.Y.S.2d 35 [1st Dept. 2010]).

All Citations

170 A.D.3d 447, 93 N.Y.S.3d 835 (Mem), 2019 N.Y. Slip Op. 01649