STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

ESL FEDERAL CREDIT UNION,

Plaintiff,

v.

CLARK BOVEE and BRENDA CROWE,

Defendant.

DECISION AND ORDER

Index # 2004/11204

The defendants in October 2002 were romantically involved and signed as co-buyers a retail installment contract for the purchase of a 2003 Chevrolet Silverado pick-up truck from O'Connor Chevrolet. Brenda Crowe alleges that she signed the contract because Bovee told her that he would not be able to purchase the truck due to his poor credit rating. The truck was registered in Bovee's name and he was the title owner; no one suggests that she derived any benefit from the transaction. He took the truck to Florida shortly after the purchase. Although Crowe claims that she was never told that she would be responsible for payments if Bovee defaulted in his payments, the retail installment contract she signed clearly provides that she would be liable to make payments.

ESL notified Crowe in June 2003 that Bovee was behind in his payments. Crowe notified ESL that she was a waitress without means; could not afford to make any payments for the truck; and that she did not believe she was responsible for making payments

merely by reason of co-signing the loan. ESL asked her for assistance in repossessing the vehicle. Crowe provided ESL with Bovee's address in Cape Coral, Florida. Armed with that information, ESL repossessed the vehicle.

On August 29, 2003, ESL wrote Crowe, advising that they had repossessed the vehicle and that it would be sold at a private sale. The letter notified Crowe of her right of redemption upon payment of the outstanding balance due on the loan, and told her that she would be responsible "for the difference between the proceeds realized from the sale and the sum of the entire balance due on your obligation, plus the repossession expenses describe above." The sale was to take place on September 8, 2003. Thereafter, when Crowe contacted ESL to make sure that she was released from the loan, she was only told that ESL had released its lien on the truck, and had so notified DMV. ESL gave Crowe a copy of the lien release covering the truck. ESL did not notify her that, in fact, Bovee brought his payments current and that ESL reinstated the loan, which it had previously "charged-off," and permitted Bovee to retain the truck free and clear of any encumbrances.

In January 2004, ESL wrote to Crowe with the news that Bovee was again behind in his payments and that she would be liable as a co-maker on the note. Crowe protested, in a letter dated February 5, 2004, that she was not liable for the reinstated loan

and that she had "no security interest pertaining to 2003 Chevy Silverado." In a conversation with an ESL employee, Crowe said that she was under the impression that ESL had sold the vehicle at a private sale after she helped them to repossess it and that she expected to be released from any obligation under the loan. Thereafter, ESL's attorney threatened collection activity and Crowe retained counsel, who was unsuccessful in forestalling a lawsuit.

ESL's attorney acknowledged in a letter to Crowe's counsel dated April 21, 2004, that "[t]he lien was released by an error on our part." ESL also acknowledged that it, indeed, repossessed the vehicle and that it gave the car back to Bovee after he made up the back payments. ESL does not claim that it notified Crowe of any of these arrangements. Crowe now contends, armed with several credit agency reports, that ESL, in fact, "refinanced" the loan when it gave it back to Bovee without retaining any security interest in the truck.

Crowe also protests that she originally signed the agreement by virtue of a mistake of fact concerning whether she would be responsible for the loan in the event Bovee defaulted, that she is a waitress and cannot afford the payments, and that she has been wrongfully defamed by ESL by its reporting of negative credit information. In particular, Crowe disputes ESL's contention in support of its motion for summary judgment that the

"lien release is not relevant to the instant action." Crowe maintains that ESL's release of its title and interest in the subject vehicle creates a triable issue of fact. In addition, Crowe maintains that ESL allowed Bovee to transfer the vehicle to a third party free and clear of any liens, and that Bovee therefore was enabled to retain the proceeds of the transfer without any offset against any amount that may have been owed to ESL. Crowe further contends that Mr. Follaco of ESL must have been aware of the third party sale because he subsequently informed Crowe that the car was sold in Florida to a Richard Peck.

DISCUSSION

Crowe's papers present a classic case of the surety's defense of impairment or release of collateral. Both at common law, Shutts v. Fingar, 100 N.Y. 539, 544 (1885); Merchants National Bank v. Comstock, 55 N.Y. 24 (1873); Executive Bank of Fort Lauderdale, Florida v. Tighe, 66 A.D.2d 70, 74-75 (2d Dept. 1978), mod. on other gr. on appeal after remand, 54 N.Y.2d 330 (1981); Benderson Dev. Co., Inc. v. Schwab Bros. Trucking, Inc., 64 A.D.2d 447, 455 (4th Dept. 1978), and now by statute, N.Y. UCC §3-606(1)(b), the creditor holds collateral security interests concerning a debt obligation in trust for the surety or guarantor and must preserve its interests therein for the latters' benefit. 63 N.Y. Jur.2d Guaranty and Suretyship §§ 242-244. See also, L &

B 57th Street, Inc. v. E. M. Blanchard, Inc., 143 F.3d 88, 92 (2d Cir. 1998)("long-standing solicitude of New York law for the interests of guarantors"); Port Distributing Corp. v. Pflaumer, 880 F.Supp. 204, 208-09 (S.D.N.Y. 1995)(holding that, under New York law, a "creditor who releases (rather than merely impairs) collateral without the consent of the guarantor discharges the guarantor from his or her obligations under the guarantee"), aff'd, 70 F.3d 8 (2d Cir. 1995)(per curium).[1] Failure to file a purchase money security interest "in itself constitute[s] an unjustifiable impairment of collateral and discharge[s] the guarantor." Port Distributing Corp. v. Pflaumer, 880 F.Supp. at 209-10 (citing Executive Bank of Fort Lauderdale, Florida v. Tighe, 66 A.D.2d at 75)(the common law and UCC §3-606 regard "the creditor's failure to file a lien, as an impairment of the surety's right of subrogation and, therefore, a Pro tanto

[1] Under UCC §3-606(1)(b): "The holder discharges any party to the instrument to the extent that without such party's consent the holder . . . (b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse." Thus, under §3-606(1)(b) a discharge occurs when the holder, ESL, unjustifiably impairs collateral for the instrument given by a person (Bovee) against whom Crowe has a right of recourse without securing the consent of Crowe. It is not necessary under subdivision 1(b) that ESL have knowledge of the right of recourse, but ESL has conceded, in oral argument if not otherwise, that Crowe has a right of recourse against Bovee in this circumstance. Cf., Beneficial Finance Co. of New York, Inc. v. Husner, 82 Misc.2d 550, 551-52 (Sup. Ct. Wayne Co. 1975)(Boomer, J.). See generally, Richard H. Nowaka, The Nonsurety Co-Maker's Right to Discharge Under UCC §3-606: Code and Comment, 10 J. Law and Commerce 75 (1990); 80 N.Y. Jur.2d Negotiable Instruments §567.

discharge of the surety")). See A.L.I., Restatement (Third) of the Law of Suretyship and Guaranty §42(2)(a)-(b) (1996). So Crowe pleads a venerable suretyship defense which, on the facts, is more than viable. If this was all there is to the case, Crowe would easily raise an issue of fact precluding summary judgment, because there are decisions in this state and in others which, upon identical facts, would discharge an accommodation maker or surety. E.g., Security National Bank of Long Island v. Temarantz, 6 UCC Rep. Serv. 157 (1969 WL 11045)(Sup Ct. Nassau Co. 1969)(but remanding for trial of whether defendant was indeed an accommodation maker); Bank of New Jersey v. Pulini, 194 N.J. Super. 163, 166-67, 476 A.2d 797, 798-99 (1984).[2]

In reply, plaintiff does not in so many words plead waiver or consent to the release of ESL's secured interest in the truck. The cases hold that an accommodation maker or surety or guarantor may consent in advance, or waive the impairment of collateral defense, typically in the instrument itself. Executive Bank of Fort Lauderdale, Florida v. Tighe, 54 N.Y.2d at 336-39; Indianapolis Morris Plan Corp. v. Karlen, 28 N.Y.2d 30, 35 (1971)("no public policy protecting necessitous debtors to

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[2] Unquestionably, Crowe is "an accommodation co-maker" because she was "one who simply lends . . . her name to back up the performance of the principal debtor while the latter has some interest in the subject matter of the debt." Florio v. Cross, 194 A.D.2d 136, 138-39 (3d Dept. 1993). As in Florio v. Cross, supra, Crowe presents undisputed evidence that she had no interest in the truck.

prevent this"); N.Y. UCC §3-606 Comment 2. In its moving papers, plaintiff merely says that the Eighth Affirmative Defense ("Plaintiff's release of any interest it may have had in the subject vehicle bars this action") is not supported "in law or logic" because the release of collateral is not a release of a contractual obligation "to repay the amount loaned." Barnash Aff. at ¶36. While this might be held a failure to preserve the waiver or consent issue, plaintiff's counsel's reply affidavit does assert that Crowe is "personally responsible for payment of the loan without condition to whether the security interest on the collateral is released." (¶19). The contract provides that ESL's predecessor in interest's "failure to file a security interest, . . . , release of a security interest or granting extensions of time of payment shall not affect my obligation under this Contract and/or Security Agreement." This language is clear enough to withstand scrutiny under Executive Bank of Fort Lauderdale, Florida v. Tighe, 54 N.Y.2d at 336-39. In the circumstances, the waiver or consent issue must be addressed.

A waiver of the impairment of collateral defense is permitted by the common law and N.Y. UCC §3-606 but was not intended to apply to the post-default context. In this case, ESL concedes that Bovee defaulted and that it repossessed the truck (with Crowe's assistance) in Florida. The debtor's Article 9 rights are triggered by the creditor's possession of the

collateral after a default. N.Y. UCC §9-601, §9-610; Coxall v. Clover Commercial Corp., 4 Misc.3d 654, 658 (N.Y. Cty. Cir. Ct. 2004)(Battaglia, J.)(once creditor takes possession of the collateral, "it was obligated to deal with the vehicle in accordance with the requirements of Article 9"); 96 N.Y. Jur.2d Secured Transactions §307. See also, Transamerica Commercial Finance Corp. v. Rochford, 244 Neb. 802, 806-07, 509 N.W.2d 214, 218-19 (1993)("nothing in the record to indicate that the collateral has been repossessed": hence no "disposition" of collateral by mere assignment); Leighton v. Fleet Bank of Maine, 634 A.2d 453 (1993)("In order for any of the rules regarding the disposition of collateral to come into effect, . . . , the creditor must actually take possession of the collateral."); Connecticut National Bank v. Douglas, 221 Conn. 530, 540, 606 A.2d 684, 688 (1992)("In the absence of either actual or constructive possession by the bank, Nelson cannot prevail on his claim that the bank violated his rights under part 5 of article 9 of the Uniform Commercial Code."); First City Bank - Farmer's Branch, Texas v. Guex, 677 S.W.2d 25, 28 (Tex. 1984)("disposition occurred" when secured party "took possession of the boat"; "[i]f the legislature intended the meaning urged by the bank, they would have omitted 'or otherwise dispose' after 'sell' and 'lease'"); 4A Robert L. Haig, Commercial Litigation in New York State Courts §67:82 at 503 (2d ed. 2004)("Where the holder or

payee is in possession of the collateral or has proceeded to enforce its rights against the collateral, the issue of impairment will be governed by revised UCC Article 9"). ESL, recognizing that it had entered the domain of Article 9 and in accordance with N.Y. UCC §9-611, gave Crowe notice of its intended sale of the truck. If she was incorrect in her then stated position that she was not liable on the contract, she had every reason to believe that ESL would dispose of the truck in a commercially reasonable manner, N.Y. UCC §9-610 (formerly §9-504), and that her exposure would, thereby, be reduced.

Her waiver of suretyship defenses in the purchase money installment sales contract cannot extend to the post-default context. N.Y. UCC §9-602. In New York, the cases hold that a surety or "guarantor is a 'debtor' within the definition set forth in Uniform Commercial Code §9-105(1)(d) [now 9-102(a)(28)(debtor); 9-102(a)(71)(secondary obligor)], and, therefore, a guarantor may not waive the defense of commercial reasonableness, pursuant to Uniform Commercial Code §9-501(3) [now 9-601; 9-610]." Marine Midland Bank, N.A. v. Kristin International, LTD., 141 A.D.2d 259, 161 (4th Dept. 1988). In so holding, the court relied on Ford Motor Credit company v. Lototsky, 549 F.Supp. 996 (E.D. Pa. 1982), in which it was stated that it was not "anomalous that a surety under section 3-606 of the Code can consent to impairment of collateral while upon

default a surety is precluded from waiving the defense of commercial reasonableness in the disposition of collateral" because §3-606 "is applicable only to the pre-default stage, while §9-504 [now 9-601; 9-602; 9-610] specifically governs the disposition of any collateral remaining to secure the debt." Id., 549 F.Supp. at 1005 n.34. See also, Weinstein v. Fleet Factors Corp., 210 A.D.2d 74 (1st Dept. 1994); Marine Midland Bank v. CMR Industries, Inc., 159 A.D.2d 94, 104-07 (2d Dept. 1990); Bank of China v. Chan, 937 F.2d 780, 785-86 (2d Cir. 1991)(canvassing the New York authorities on the subject). Accordingly, the non-waiver rule of N.Y. UCC §9-602(g)(disposition of collateral) applies to this post-default-repossession context. See N.Y. UCC §9-602, Comment 2 ("in the context of rights and duties after default, our legal system traditionally has looked with suspicion on agreements that limit the debtor's rights and free the secured party of his duties. . . . The context of default offers great opportunity for overreaching"); AAA Aircraft & Engine Group, Inc. v. Edwards, 272 F.3d 468, 472-73 (7th Cir. 2001)(non-waiver rule "prevents economic waste and unjust enrichment because creditors who believe that they have obtained a waiver have no incentive to behave in a commercially reasonable manner").[3]

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[3] Even under Revised UCC §3-605(i), not adopted in this state, Donnelly & Donnelly, 2001-2002 Survey of New York Law Commercial Law is a Humanism, 53 Syr. L. Rev. 277, 277-78 (2003); Mclaughlin & Cohen, New York and Revised Articles 3 and 4, 219 N.Y.L.J. #47 p.3 col.1 (March 12, 1998), which arguably expands

The question then is whether ESL's disposition of the truck was commercially reasonable under §9-610.[4] Under §9-609(1) (formerly §9-503), the secured party "may take possession of the collateral," as indeed ESL did here, and then, under §9-610 (a)(formerly §9-504), "may sell, lease, license, or otherwise dispose of any or all of the collateral." However, "[e]very aspect of a disposition of collateral, including method, manner, time, place, and other terms, must be commercially reasonable." N.Y. UCC §9-610(b). Except in the context of waivers obtained from a debtor after default under §9-624, "to the extent that they give rights to a debtor or obligor and impose duties on a

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creditor's rights to obtain waivers or advance consents, "the accommodation party who signed such a waiver could argue, for example, that it was discharged under Article 9 as a 'debtor' who had been injured by the secured creditor's failure to conduct a commercially reasonably resale which constituted an 'impairment of collateral.'" 2 James J. White and Robert S. Summers, Uniform Commercial Code, §16-11 (text at n.27)(4th ed. 1995). See 4A Robert L. Haig, Commercial Litigation in New York State Courts §67:82 at 503 (2d ed. 2004)("if the holder or payee has failed to liquidate the collateral in a commercially reasonable manner, the defendant's consent to the collateral's impairment or waiver of its rights thereby, made at any time before the collateral's liquidation, will not be enforceable").

[4] The standard is the same under the common law: "As to Bankers' postdefault actions, the touchstone of its obligations as a secured party was to dispose of the collateral in a 'commercially reasonable' manner." Bankers Trust Co. v. J.V. Dowler & Co., Inc., 47 N.Y.2d 128, 134 & n.4 (1979)(observing that "this broadly stated standard of conduct evolved long before our adoption of the Uniform Commercial Code in 1964")(citing Matter of Kiamie, 309 N.Y. 325, 330 (1955), in which it was stated that, in the post-default context, the secured party "must do nothing to impair the pledge's value").

secured party, the debtor or obligor may not waive or vary the rules stated . . ." with respect to the disposition of collateral or the redemption of collateral. N.Y. UCC §9-602(g),(k). In this case, ESL decided that it would grant the obligor, Bcvee, possession upon his redemption of the vehicle, as §9-623(formerly §9-506) requires. Such action, which occurred "after default," §9-610(a), and repossession, §9-609(1), is a "disposition of collateral" under §9-610. But it was not, in "[e]very aspect . . . including the method, manner, . . . , and other terms, . . . commercially reasonable." N.Y. UCC §9-610(b). The assumption under §9-623 is that, "[i]f unmatured secured obligations remain, the security interest continues to secure them." Id. Comment 2. That did not happen here. Instead, ESL released its security interest, notified DMV of the same (as well as Crowe when she ultimately inquired), and thereby permitted the redeemer to promptly enrich himself by selling the unencumbered vehicle out of state and, thereafter, default on the loan. As in the pre-default context with no waivers or consent in place, such conduct by the secured party is entirely unreasonable; it is "active rather than passive negligence." Executive Bank of Fort Lauderdale, Florida v. Tighe, 66 A.D.2d at 75. See Leslie Fay, Inc. v. Rich, 478 F.Supp. 1109, 1116 (S.D.N.Y. 1979)("guarantor may assume great risks, but [s]he should be entitled to expect creditors to behave with at least a minimal degree of commercial

reasonableness and care . . . [with respect to an accommodation party;] it seems reasonable for that party to rely on the expectation that a businessman-creditor will act responsibly and make at least a reasonable effort to secure its collateral under the U.C.C., thereby protecting the guarantor's subrogation interest")(quoted in Port Distributing Corp. v. Pflaumer, 880 F.Supp. at 210). Accordingly, Crowe has raised an issue of fact on her Eighth Affirmative Defense.

This is enough to dispose of plaintiff's motion for summary judgment. But in view of Crowe's cross motion to amend the answer to add a counterclaim, the question of the extent of remedy should be addressed, if only to avoid a waste of judicial resources. The loss under §3-606(1)(b) is the extent of the value of the security released or impaired, Mikanis Trading Corp. v. Block, 59 A.D.2d 689, 690 (1st Dept. 1977), and the surety has the burden of proof. In the case of release of security, when the circumstances are such that valuation of a lost security is impossible or speculative, there is one recent case which holds that the pro tanto discharge is 100%. Port Distributing Corp. v. Pflaumer, 880 F.Supp. 204, 208-09 (S.D.N.Y. 1995)(holding that, under New York law, a "creditor who releases (rather than merely impairs) collateral without the consent of the guarantor discharges the guarantor from his or her obligations under the guarantee"), 210 (secured party's "actions resulted in more than

a mere impairment of collateral" because it "released the collateral entirely"), aff'd, 70 F.3d 8 (2d Cir. 1995)(per curium). See Langeveld v. L.R.Z.H. Corp., 74 N.J. 45, 56-57, 376 A.2d 931, 937 (1977)("there are factual situations - this may or may not be one of them - where a surety may be able to establish that he has sustained prejudice, but be unable to measure the extent of the prejudice in terms of monetary loss. Where such a situation is presented the surety will normally be completely discharged.")(quoted in Alcock v. Small Business Administration, 50 F.3d 1456, 1462-63 (9th Cir. 1995)(holding the guarantor completely discharged on the facts)). Cf., Bank of New Jersey v. Pulini, 194 N.J. Super. at 167-68, 476 A.2d at 799-800 (remanding for a determination whether the released vehicle can be valued "as of the date of plaintiff's initial demand against defendant"). Donald J. Rapson, Symposium: The Restatement of Suretyship: History and Background of the Restatement of Suretyship, 34 Wm. & Mary L. Rev. 989, 1009-1011 (1993).

The law is more complicated in this Article 9 context, particularly because this is a consumer transaction. Generally, under §9-625(b), damages for noncompliance with the requirement that the disposition of collateral occur in a commercially reasonable manner shall be "in the amount of any loss caused by a failure to comply with this article." That loss, in an abstract sense, is measured by the loss Crowe would suffer by reason of

not having the collateral available for assignment to her when she may be subrogated to ESL's claim on the collateral upon payment of the loan. In this department, the rule has been, generally under Article 9, that "there is a presumption that the security was equal to the debt and that the secured party has the burden of proof to overcome such presumption." Security Trust Co. of Rochester v. Thomas, 59 A.D.2d 242, 246 (4th Dept. 1977)(Witmer, J.) See also, Matter of Excellus Press, Inc., 890 F.2d 896, 900-01, 902, 903-04 (7th Cir. 1989)(comprehensive discussion of New York authorities); In re Stedman, 264 B.R. 298, 301-03 (W.D.N.Y. 2001)(discussing the contrasting Appellate Division decisions on the subject); Coxall v. Clover Commercial Credit Corp., 4 Misc.3d 654, 664 (N.Y. Cty. Civ. Ct. 2004)(same). As the court's comprehensive opinion in Coxall points out, although Revised Article 9 settled law in this area in accord with the Fourth Department's approach, which is commonly called the "rebuttable presumption" approach, it did so only for non-consumer transactions. Id., 4 Misc.3d at 664; N.Y. UCC §9-626(a)(3); N.Y. UCC §9-626(a)(3)(B). This was, unquestionably, a consumer transaction, and therefore the Code provides that it "intended to leave to the court the determination of the proper rules in consumer transactions. . . [including that the court] may continue to apply established approaches." N.Y. UCC §9-626(b). In Coxall, the court observed that "New York courts have

not distinguished between consumer and non-consumer transactions in fashioning rules" in this area. Coxall, 4 Misc.3d at 664-65. Presumably, a court faced with this broad grant of discretion would wish to consider what other remedies are available to the parties, including the debtor's remedies under N.Y. UCC §9-625(c)(2) providing for statutory damages "in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price." This remedy is available for "every non-compliance with the requirements of Part 6 in a consumer-goods transaction . . . regardless of any injury that may have resulted," N.Y. UCC §9-625, Comment 4, and even though "the deficiency is eliminated or reduced under Section 9-626," either pursuant to the rebuttable presumption rule of that section, or one under the existing "traditional approaches" allowed for consumer transactions. N.Y. UCC §9-625(d).

There is, to be sure, no guidance on the issue from the Court of Appeals. The available cases from other New York courts on the subject generally do not distinguish between consumer and non-consumer contexts, as Judge Battaglia in Coxall has demonstrated. Presumably, the struggle New York courts have had with this issue, compare, Central Budget Corp. v. Garrett, 48 A.D.2d 825 (2d Dept. 1975)(failure to prove commercial reasonableness bars deficiency), with, Security Trust Co. v.

Thomas, supra (such failure creates presumption that the security was equal to the deficiency and placing the burden on the secured party), predicts an impending struggle to find the correct rule to be applied in the consumer context. In the content of inadequate notice of the sale, one court canvassing New York authority observed that "the absolute bar rule has the virtue of predictability, [but] it provides a penalty out of line with the gravity of the omission." Matter of Excello Press, Inc., 890 F.2d at 904. In this case, however, the failure to preserve the collateral upon the obligor's redemption, indeed its outright release, is a much graver act of commercial unreasonableness vis-a-vis the accommodation maker's interests.

Perhaps that is why, in Pflaumer, the court held that, upon release (instead of mere impairment), the pro tanto reduction is 100%. Before Revised UCC §9-626(a)(3) settled on the rebuttable presumption rule for non-consumer cases in New York, the cases within New York did not appear as categorical as the court in Pflaumer would have them, at least by this court's reading. The ultimate issue need not be reached in order to adequately dispose of plaintiff's motion. Although a court may search the record "with respect to a cause of action or issue that is the subject of the motions before the court, "Dunham v. Hilco Constr. Co., 89 N.Y.2d 425, 430 (1996), the issues just raised are not, strictly speaking, the subject of the motion and cross-motion before the

court as presently framed. Plaintiff thought it had summary judgment on a sum certain and so moved. Defendant thought it could avoid the contract on a number of unmeritorious grounds, directed at the car dealership and plaintiff in an amended answer. Neither understood the true issues upon which the case must be resolved. Accordingly, it is enough now simply to deny plaintiff's motion.

If ESL will not stipulate to discontinuance, leave is granted Crowe to file a motion to amend her answer to add a counterclaim for damages under N.Y. UCC §9-625.

CONCLUSION

Plaintiff's motion for summary judgment is denied. Crowe's cross-motion for summary judgment dismissing the complaint on jurisdictional grounds is marked withdrawn. Crowe's motion for leave to amend her answer to add counterclaims and cross claims, and to correct her Sixth Affirmative Defense in some unspecified way, is denied also. The denial of the motion to amend is, for the reasons stated above, without prejudice to the motion to amend described above.

SO ORDERED.

KENNETH R. FISHER
JUSTICE SUPREME COURT

DATED: May 9, 2005
Rochester, New York