

2351 Bedford Holding, LLC v Flatbush Funding, LLC
2026 NY Slip Op 31083(U)
March 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 515687/2024
Judge: Reginald A. Boddie
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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 20th day of March 2026.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

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2351 BEDFORD HOLDING, LLC,

Plaintiff,

Index No. 515687/2024

-against-

Cal. No. 1 MS 5

FLATBUSH FUNDING, LLC,

Decision and Order

Defendant.
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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 5

147-165, 167-181

Non-party HPW Holdings, LLC’s motion for leave to amend answer and counterclaims is decided as follows:

Background

HPW Holdings, LLC (“HPW”), individually and derivatively as a member on behalf of defendant Flatbush Funding LLC (“Flatbush”), moves for leave to amend its answer pursuant to CPLR 3025 to add two counterclaims and an affirmative defense. The proposed amendments assert (1) a counterclaim for breach of fiduciary duty, (2) a counterclaim seeking a declaration under New York LLC Law § 411 that the Partnership Loan Agreement dated September 25, 2015 (the “Agreement”) at issue is void or voidable, and (3) an affirmative defense based on plaintiff’s alleged breach of fiduciary duty. HPW argues that testimony from the December 5, 2025

deposition of Rafael Joory (“Joory”), the principal of plaintiff, revealed that plaintiff allegedly borrowed funds from an affiliated source at approximately 6% interest and then lent those funds to Flatbush at roughly 2% per month, 24% per annum, while failing to disclose the source of the funds, the cost of borrowing, or the 18% interest-rate spread. HPW argues that these newly discovered facts support claims of self-dealing and nondisclosure and that the amendment would not prejudice plaintiff.

In opposition, plaintiff argues that the proposed amendment is legally insufficient and prejudicial, as the Agreement expressly disclosed its role and economic interest in the transaction, namely that it could fund HPW’s unpaid capital calls and receive contractually defined fees, and that HPW approved those terms when executing the Agreement. Plaintiff further argues that it had no duty to disclose the source or cost of its own financing and that HPW cannot establish misconduct or damages because Flatbush’s payment obligations were fixed by the contract regardless of how plaintiff obtained the funds.

In reply, HPW reasserts that deposition testimony demonstrates that plaintiff and Joory failed to disclose material facts concerning an insider financing arrangement, that Joory obtained funds from affiliated sources at approximately 6% and caused plaintiff to lend those funds to Flatbush at about 24% annually while concealing the source of the funds, the cost of borrowing, and the resulting profit spread. HPW argues that these omissions defeated any protection under LLC Law § 411, constituted self-dealing and a breach of fiduciary duty, and caused Flatbush substantial damages, and that the proposed amendments merely conform the pleadings to the facts revealed in discovery without unfairly prejudicing Bedford.

Discussion

“Applications for leave to amend pleadings under CPLR 3025(b) should be freely granted unless the proposed amendment (1) would unfairly prejudice or surprise the opposing party, or (2)

is palpably insufficient or patently devoid of merit” (*Favia v Harley-Davidson Motor Co., Inc.*, 119 AD3d 836, 836 [2d Dept 2014] [citations omitted]). “No evidentiary showing of merit is required under CPLR 3025(b)” (*id.*). “The court need only determine whether the proposed amendment is palpably insufficient to state a cause of action or defense, or is patently devoid of merit” (*id.* [internal quotation marks omitted]). “[A] court shall not examine the legal sufficiency or merits of a pleading unless such insufficiency or lack of merit is clear and free from doubt” (*id.*)

Limited Liability Company Law § 411 (The Proposed Fifth Counterclaim)

Pursuant to Limited Liability Company Law § 411, a “contract or other transaction between ... a limited liability company and any other limited liability company or other business entity in which one or more of its managers are managers, directors or officers, or have a substantial financial interest ... may not be avoided” if “the material facts as to such manager’s interest in such contract or transaction and as to any such common managership, directorship, officership or financial interest are disclosed in good faith or known to the members entitled to vote thereon, and such contract or transaction is approved by vote of such members.” Limited Liability Company Law § 411(b) further provides:

“If there was no such disclosure or knowledge, or if the vote of such interested manager was necessary for the approval of such contract or transaction at a meeting of the managers or class of managers at which it was approved, the limited liability company may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the limited liability company at the time it was approved by the managers, a class of managers or the members.”

Here, HPW alleges that plaintiff, while acting as a managing member of Flatbush, failed to disclose the source of the funds used to finance the loans and the alleged 18% difference between the interest rate at which those funds were obtained and the rate charged to Flatbush. Even though plaintiff contends that HPW was on notice of all relevant terms because it executed the Agreement,

it is undisputed that the Agreement itself did not disclose the specific source of the funds or the interest rate at which those funds were obtained.

Whether such information ultimately constitutes “material facts” within the meaning of Limited Liability Company Law § 411, whether HPW had sufficient knowledge of plaintiff’s alleged financial interest, and whether the transaction was “fair and reasonable” to Flatbush within the meaning of Limited Liability Company Law § 411 are issues that cannot be resolved on a motion for leave to amend. At this stage, HPW has satisfied its burden under CPLR 3025(b), and plaintiff has failed to demonstrate that the proposed counterclaim under Limited Liability Company Law § 411 is palpably insufficient or patently devoid of merit.

Breach of Fiduciary Duty (The Proposed Fourth Counterclaim and Twelfth Affirmative Defense)

“The elements of a breach of fiduciary duty cause of action are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct, which elements must be pleaded with the particularity required by CPLR 3016(b)” (*Stinner v Epstein*, 162 AD3d 819, 820 [2d Dept 2018] [citations omitted]).

Here, HPW sufficiently alleges the existence of a fiduciary relationship, as plaintiff was a managing member and 50% member of Flatbush. HPW also sufficiently alleges that plaintiff breached its fiduciary duty by engaging in self-dealing and failing to disclose material facts concerning the financing of loans made to Flatbush, including the alleged difference between the 6% rate at which plaintiff obtained the funds and the approximately 24% rate charged to Flatbush, thereby retaining an undisclosed profit. HPW further sufficiently alleges that Flatbush suffered damages as a result of this conduct, including excessive interest payments.

Applying the liberal standard under CPLR 3025(b), the Court finds that HPW has sufficiently alleged a claim for breach of fiduciary duty, and plaintiff has failed to demonstrate that

the proposed breach of fiduciary duty counterclaim and affirmative defense are palpably insufficient or patently devoid of merit.

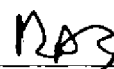
Moreover, plaintiff has failed to demonstrate that it would suffer undue prejudice, as the proposed counterclaims arise from the same Agreement already at issue in this action and are based on facts that have long been known to plaintiff and its principals, and any additional discovery necessary would be limited in scope.

Conclusion

Based on the foregoing, defendant's motion is granted. The proposed Amended Answer with Counterclaims and Affirmative Defenses (NYSCEF Doc No. 162) is hereby deemed served and accepted. It is further ORDERED that within twenty days of entry of this Decision and Order, plaintiff shall serve and file an Answer or otherwise respond to defendant's counterclaims.

Any arguments not expressly addressed herein were considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.