

Murphy v PHG Funding LLC
2026 NY Slip Op 31135(U)
March 19, 2026
Supreme Court, New York County
Docket Number: Index No. 656158/2021
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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KEVIN MURPHY,

Plaintiff,

- v -

PHG FUNDING LLC, PFIFEBRIDGE INC., JOHN P.
THOMAS, TODD C. JORN, STEVEN NIGRO

Defendant.

INDEX NO.	656158/2021
MOTION DATE	04/30/2025, 10/31/2025
MOTION SEQ. NO.	007 009
DECISION + ORDER ON MOTION	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 194, 195, 196, 197

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 009) 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents and NYSCEF Doc. Nos. 230 and 231, and for the reasons set forth on record (*tr.* 3.13.2026), (i) the Defendants’ motion (Mtn. Seq. No. 009) for leave to reargue is DENIED, and (ii) Kevin Murphy’s motion (Mtn. Seq. No. 007) for summary judgment on the issue of liability is GRANTED.

THE RELEVANT FACTS AND CIRCUMSTANCES

Reference is made to (i) a certain Amended and Restated Consolidated Term Note (the **Amended Note**; NYSCEF Doc. No. 4), dated as of April 1, 2012, by and among Kevin Murphy, PHG Funding LLC (**PHG**), Pfifebridge, Inc. (**PfifeBridge**), John Thomas, Todd Jorn, and Steven Nigro, (ii) a certain Guaranty and Pledge Agreement (the **Guaranty**; NYSCEF Doc. No. 5),

dated as of April 1, 2012, by and among the same parties, and (iii) a certain Limited Liability Company Agreement (the **Operating Agreement**; NYSCEF Doc. No. 141) of Phoenix Asset Recovery Services LLC (**PARS**), dated as of April 1, 2012, by and between PARS and its members, Jorn, Thomas, and Nigro.

By way of background, Murphy had loaned \$750,000 to PHG through the purchase of certain notes in 2009 (NYSCEF Doc. No. 4 at 1). A dispute subsequently arose between the parties regarding the original transactions because PHG failed to pay Murphy in accordance with the terms of the notes (*id.*). To resolve the dispute, the Defendants executed the Amended Note in favor of Murphy for the principal amount of \$1,228,307.42, with a maturity date of December 31, 2017 (*id.*), and the Defendants also entered into the Guaranty and the LLC Agreement on the same day. The Amended Note provided for (i) interest payments in semi-annual installments at a fixed rate of 12% per annum (*id.* § II[A]), (ii) a default rate of 15% per annum (*id.* § V[C]), (iii) certain “Additional Amounts” consisting of “cost or expense incurred by Lender as a result of any payment or prepayment of all or any portion of the principal balance,” due and payable “from the date hereof until payment in full” (*id.* at 1, § II[C]), and (iv) reasonable attorneys’ fees (*id.* at 3). The Guaranty provided that the Defendants “absolutely, unconditionally and irrevocably” guaranteed “the due and punctual performance and payment of the Outstanding Obligations” under the Amended Note (NYSCEF Doc. No. 5 § 1). PARS was established solely as a vehicle for payment of amounts to Murphy under the Amended Note (*tr.* 3.13.26).

Significantly, the Amended Note requires that the Tiger Asset Payment should be paid to Murphy (Lender) to reduce the amount due to him and such that Jorn and Thomas are entitled to a credit as to amounts owed to Murphy for the Tiger Asset Payment:

In addition to the provisions contained in paragraph A, Borrower or PARS, as the case may be, shall pay to Lender, within two (2) Business Days of its receipt of any Tiger Asset Payment or any other payment in respect of any other Collateral, the amount of such Tiger Asset Payment or other payment. Such payment shall be allocated in the following order: (i) the payment of Lender's costs and expenses in accordance with the terms hereof; (ii) the payment of any Interest which is due payable hereunder in accordance with the terms hereof; and (iii) payment of one or more installments of principal, in reverse order.

(NYSCEF Doc. No 4 § II[A]).¹

According to Murphy, on April 5, 2016, the Defendants made a payment of \$1,118,209.00

(NYSCEF Doc. No. 139 ¶ 9). On August 10, 2016, the Defendants made a payment of \$100,000

(*id.*). These amounts came from a Tiger Asset Payment of \$1,618,208.80 that was allocated by

Murphy and Nigro. In fact, Murphy agreed to accept \$1,218,209.00 of the Tiger Asset Payment,

and Murphy allowed Nigro to retain \$400,000 of the Tiger Asset Payment (NYSCEF Doc. No.

187).² The Defendants have made no other payments (NYSCEF Doc. No. 139 ¶ 12).

¹ Collateral is defined as “the collateral held pursuant to the LLC Agreement and the other collateral subject to the Guaranty and Pledge Agreement and any other Security Document” (NYSCEF Doc. No. 4 § I[A]). The LLC Agreement makes clear that Restricted Securities fall under the definition of Collateral (*see* NYSCEF Doc. No. 341 at 3). Per the terms of the Amended Note, the proceeds of the Collateral were supposed to pay down the amounts due Murphy (*see* NYSCEF Doc. No. 4 § II[A]). The Defendants’ letter (NYSCEF Doc. No. 331) indicates that Restricted Securities were sold but have not been accounted for.

² The record does not include any evidence that Murphy or Nigro sought the consent of Jorn or Thomas to permit Nigro keep the \$400,000 without it being applied in accordance with the terms of the Amended Note by reducing the amounts due Murphy or that they waived their right to have the proceeds of the Collateral applied as set forth in the Amended Note. In fact, nothing in the record suggests waiver which requires a “clear manifestation of intent.” (*Fundamental Portfolio Advisors, Inc. v Tocqueville Asset Management, L.P.*, 7 NY3d 96, 105 [2006] [internal citations and quotations omitted]).

Murphy alleges that as of April 30, 2025, and without affording the Defendants the appropriate credit for the \$400,000 of the Tiger Asset Payment which Murphy was required to apply to pay down the amounts due him per the terms of the Amended Note discussed above, the total balance owed was \$1,783,554.61 consisting of a principal amount of \$766,211.70 and interest of \$1,017,342.91 (*id.* at 10; NYSCEF Doc. No. 143). As discussed below, he is not correct.

Murphy commenced this action for breach of contract and attorneys' fees seeking payment under the Amended Note and Guaranty. The Defendants then filed their Answer (NYSCEF Doc. No. 61), alleging counterclaims against Murphy for (i) breach of contract, (ii) breach of fiduciary duty, and (iii) common law indemnification, crossclaims against Nigro for (i) breach of contract, (ii) breach of fiduciary duty, and (iii) common law indemnification, and third-party claims against PARS and Tag Financial Institutions Group, LLC (**TAG**) based on Murphy and Nigro's agreement to allow Nigro to retain \$400,000 from the Tiger Asset Payment. However, the Court, in the Hon. Margaret A. Chan's Decision and Order (**Justice Chan's Decision**; NYSCEF Doc. No. 111), dated April 12, 2024, dismissed all of the Defendants' counterclaims, crossclaims, and third-party claims (*id.*). Soon thereafter, the case was discontinued as to Nigro (NYSCEF Doc. No. 127).

Subsequently, after discovery revealed emails between Murphy and Nigro relating to the \$400,000 (NYSCEF Doc. Nos. 184-187), the Defendants filed a motion (Mtn. Seq. No. 008) for leave to amend their answer and to file a third-party complaint, alleging essentially the same causes of action against Murphy, Nigro, and PARS, but adding fraud claims against Nigro and PARS (NYSCEF Doc. Nos. 180-181). However, in its Amended Decision and Order (the

Amended Decision; NYSCEF Doc. No. 204), dated September 30, 2025, the Court denied the Defendants' motion for leave to amend because the claims asserted in those pleadings (the **Proposed Amendments**) were palpably improper or insufficient as a matter of law (*LDIR, LLC v DB Structured Products, Inc.*, 172 AD3d 1, 4 [1st Dept 2019]):

Simply put, the TPC is predicated on the fact that discovery has revealed emails that substantiate the claim that Steven Nigro and Kevin Murphy entered into a 2016 settlement — the so-called “fourth contract” (NYSCEF Doc. Nos. 184-187) — that was never disclosed and that the third-party plaintiffs were damaged because they too were not released or otherwise did not receive the benefit of \$400,000 of the income stream from the Tiger Capital Asset that Mr. Nigro did as to their obligations to repay Mr. Murphy for which they indisputably are joint and severally liable. As discussed below, this previously asserted theory continues to fail as a matter of law. Indeed, at bottom, their position amounts to little more than they are entitled to a credit against damages due Mr. Murphy for amounts which allegedly remain to be paid to Mr. Murphy.

In the PARS Operating Agreement, the parties agreed to attribute certain assets to serve as collateral for the obligation to pay Mr. Murphy amounts due to him as deemed contributions of certain of the members. To wit, the Operating Agreement indicates that Mr. Nigro is contributing 100% of his interest in the Tiger Capital Asset (*i.e.*, not in fact that he was in fact the sole owner of it). Although not necessarily the case that he previously was the sole owner of the Tiger Capital Asset, significantly, the parties to the PARS Operating Agreement also agreed that “the income stream generated by the Tiger Capital Asset shall be deemed to the capital contribution of Nigro” to PARS and not any other member (NYSCEF Doc. 141 at 2, Schedule A). As to John Thomas, they agreed that his capital contribution was \$100 (*id.* Schedule A). As to Todd Jorn, they agreed that his capital contribution was “subject to the prior and superior interest of Lou Kreisberg, all of his right, title and interest in and to the Restricted Securities; \$100” (*id.*).

(NYSCEF Doc. No. 204 at 2).

The Defendants now move for reargument. Murphy moves for summary judgment.

DISCUSSION

1. The Defendants' motion (Mtn. Seq. No. 009) for leave to reargue is DENIED.

A motion for leave to reargue “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion” (CPLR § 2221[d]). Reargument is not intended “to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted” (*Haque v Daddazio*, 84 AD3d 940, 242 [2d Dept 2011]; *Foley v Roche*, 68 AD2d 558 [1st Dept 1979]).

Although the Court initially misunderstood the *significance* of certain facts set forth in the Operating Agreement and Justice Chan’s Decision, ultimately, the Court did not misapprehend the facts and the law when it issued the Amended Decision. As discussed in the Amended Decision, and above, the Operating Agreement is not ambiguous in that the parties agreed that “the income stream generated by the Tiger Capital Asset will be deemed to be the capital contribution of Nigro” (NYSCEF Doc. No. 141 at 2), and not of any other member, and the obligation set forth in the Note and the Operating Agreement to apply the Tiger Asset Payment to pay down the obligation due Murphy simply served to reduce amounts due him (NYSCEF Doc. No. 141 at 2, § 7.2[c]). It does not serve as the basis for a counter-claim or third-party complaint. Thus, the Court held that the proposed TPC failed to state a claim for:

- (i) breach of contract against Nigro because the Operating Agreement does not contemplate that the Tiger Capital Asset will be paid to the Defendants;
- (ii) unjust enrichment against Nigro because a settlement with Murphy out of the Tiger Capital Asset cannot be said to be against good conscience as it is pursuant to the Operating Agreement (and given that it will reduce amounts due to Murphy, Nigro was not unjustly enriched);

- (iii) breach of fiduciary duty against Nigro because the Operating Agreement specifically contemplates allocation of the Tiger Capital Asset to Nigro;
- (iv) common law indemnification against Nigro because the parties agreed that Nigro's interest in the Tiger Capital Asset was to be credited to his capital account, and the Defendants did not allege that their liability has been caused solely by Nigro, but by their failure to pay the amounts due; and
- (v) conversion against PARS because under Operating Agreement the Defendants did not have a superior right to receive the Tiger Capital Asset.

In addition, the Amended Decision also held that the Proposed Amendments failed to state actionable claims of fraud against Nigro or PARS because the Defendants did not allege any justifiable reliance whatsoever on the supposedly misstated K-1s issued by Murphy and Nigro or otherwise. They did not do anything based on that and they are not entitled to damages – just a credit against the monies due Murphy per the terms of the Amended Note.

Thus, ultimately, to the extent that Murphy elected to permit Nigro to retain \$400,000 of the Tiger Asset Capital Account amount on April 4, 2016, this simply served to reduce the total amount owed to him per the terms of the Amended Note. Thomas and Jorn, who are jointly and severally liable to Murphy, are entitled to rely on the terms of the Amended Note which require the application of all amounts from the Tiger Capital Asset to reduce the amounts due under the Amended Note. Having made the election to permit Nigro to retain \$400,000 that was supposed to reduce the joint and several obligors' Thomas and Jorn's obligation, he can not hold them liable for this amount. This however does not state actionable breach of contract claims, quasi-

contract claims or fraud claims as against Nigro or Murphy. Stated differently, having elected to permit Nigro to retain \$400,000 of the Tiger Capital Asset in accordance with Section 7.2[c] of the Operating Agreement, rather than apply it in accordance with Section II[A] of the Amended Note, the outstanding balance of the Amended Note was reduced as of that date in that amount.

To be clear, this is not an issue of “offset.”³ Offset is a concept of mitigation. This is a matter of contract enforcement. The parties contractually agreed that the Defendants are entitled to all of the Tiger Asset Payments being applied to reduce their joint and several liability.

Thus, and as previously held in the Amended Decision, the Proposed Amendments amount to no more than a claim that the Defendants are entitled to a credit against damages due Murphy for the remaining unpaid amounts due under the Amended Note as of the date that Murphy elected to permit Nigro to retain \$400,000 of the amount due him pursuant to the terms of the Amended Note. Thus, the Defendants have failed to show that the Court misapprehended the facts and the law when it issued its Amended Decision, and the motion for leave to reargue is DENIED.

³ Section V[E] of the Recitals of the Amended Note provides that:

Borrower hereby waives (i) valuation and appraisal, demand, presentment for payment, notice of dishonor, protest and notice of protest with respect to this New Note, (ii) any right to offset any amounts payable hereunder against, or to submit any counterclaims in a proceeding to enforce this New Note in respect of, any obligations of Lender to Borrower, and (iii) any right it may have to demand a trial by jury with respect to the enforcement of, or any controversy arising under or in any way relating to, this New Note.

(NYSCEF Doc. No. 4 § V[E]). The Defendants however are not claiming an offset. They are correctly claiming that pursuant to Section II[A] of the Amended Note discussed above, they are entitled to have the Tiger Asset Payment applied to reduce the monies owed Murphy. They also claim that they are entitled to a credit in the amount of the liquidated shares which pursuant to the Amended Note was also to be applied to reduce the amounts owed Murphy. In both of these regards, as discussed herein, they are correct. The Plaintiff is just wrong that it could ignore the provision of the Amended Note that requires the application of the Tiger Asset Payment and other Collateral to reduce monies owed to him and still claim that those monies are due by other parties that are jointly and severally liable to him.

For the sake of clarity, the Defendants lean in heavily to the fact that the Court initially did not appreciate the significance of Justice Chan's Decision and the interplay between the Amended Note and the Operating Agreement. Upon further consideration (and within 24 hours of its initial indication otherwise), the Court came to understand its error and promptly advised the parties that it would upload a replacement decision (which the Court did shortly thereafter). In any event, and as discussed above, Murphy's election to let Nigro keep \$400,000 of the Tiger Asset Payment can not be used to deprive the Defendants of a reduction of the amounts due as otherwise provided for in the Amended Note.

Lastly, to the extent that the movant indicates that the Court should consider recusal because, over two decades ago, the Court was "Of Counsel" at Arent Fox LLP (now known as ArentFox Schiff LLP), the movant did not make a motion seeking the Court's recusal. In any event, the request is entirely without merit. There simply is no "appearance of impropriety," and the fact that the Court timely corrected its mistake does not suggest otherwise.

2. Murphy's motion (Mtn. Seq. No. 007) for summary judgment is GRANTED as to Liability

On a motion for summary judgment, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish the existence of material issues of fact requiring trial (*id.*).

In a cause of action for breach of contract, a plaintiff must allege that: (i) a contract exists (ii) plaintiff performed in accordance with the contract, (iii) defendant breached its contractual obligations, and (iv) defendant's breach resulted in damages (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).

In his moving papers, the Plaintiff firmly establishes his prima facie burden that he is entitled to judgment as a matter of law (*Alvarez*, 68 NY2d at 324). The Amended Note and Guaranty are valid and enforceable contracts. The Plaintiff performed his obligations by advancing funds to PHG in accordance with the Amended Note's terms (NYSCEF Doc. No. 4 at 1). The Defendants concede that they have not paid all amounts due under the Amended Note (NYSCEF Doc. No. 231).

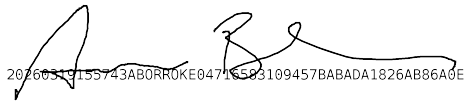
In their opposition papers, the Defendants fail to raise a triable issue of fact on the issue of liability. As discussed above, however, they are correct that the balance due Murphy was reduced by the \$400,000 that should have been applied to reduce the amounts due Murphy per the terms of the Amended Note (but which Nigro was permitted to retain) as of the date that Murphy received a portion of the Tiger Asset Payment. They are also correct that if the liquidated shares were in fact delivered as Jorn indicates, which liquidated shares were part of the Collateral that Murphy does not account for, those proceeds too must be applied to reduce the amounts owed to him pursuant to Section II[A] of the Amended Note (*see* NYSCEF Doc. No. 231) as of the date the amounts were received by Murphy in respect of such liquidation.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby ORDERED that the Defendants' motion for leave to reargue is denied;
and it is further

ORDERED that the Plaintiff's motion for summary judgment is granted on the issue of liability;
and it is further

ORDERED that a pre-trial conference on the issue of damages is scheduled for May 11, 2026 at
12:00 pm.


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3/19/2026
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE