

<b>Cross Riv. Bank v Haber</b>
2021 NY Slip Op 31547(U)
May 5, 2021
Supreme Court, Kings County
Docket Number: 519258/2020
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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CROSS RIVER BANK,

Plaintiff, Decision and order

- against -

Index No. 519258/2020

MAURICE HABER & ESTHER HABER,

Defendants, May 5, 2021

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved pursuant to CPLR §2221 seeking to reargue a decision and order dated February 25, 2021 which granted plaintiff's motion seeking summary judgement. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior order, on September 24, 2015 the plaintiff loaned two million dollars to an entity called Fragments Holding LLC. Thus, Fragments executed a promissory note which called for monthly payments. The note was guaranteed by four people, Phillip Frankenberg, Claudia Frankenberg, Maurice Haber and Esther Haber. The guarantee stated that "if this Guaranty is signed by more than one person or entity, the obligations hereunder shall be joint and several with respect to all signatories to this Guaranty" (see, Guaranty, page 2). Fragments made payments through December 2018 and defaulted thereafter. Philip Frankenberg and Claudia Frankenberg filed for bankruptcy and the plaintiff sought recovery of the amount owed

from the remaining guarantors. The court granted summary judgement finding there were no questions of fact the defendants owed the plaintiff the balance of the note. The court held an inquest must be held to determine the amount of interest, attorney's fees and other fees sought by the plaintiff.

The defendants now seek to reargue that determination arguing it was made in error and upon such reargument the court should deny summary judgement.

#### Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS2d 617 [2d Dept., 2019]). The defendants present three reasons there are questions of fact concerning the debt which demands a denial of summary judgement. The first is that, after the prior motion was filed, the plaintiff recovered \$190,258.50 from other guarantors. However, this development does not raise any question of fact concerning the fact the defendants owe significant sums to the plaintiff. At most, it merely requires a deduction from the amount recovered. As noted, the parties will appear at an inquest to determine interest and other fees. This reduction can surely be presented to reduce the amount owed and in no event can

the plaintiff recover the same funds twice. The plaintiff asserts this entire argument is irrelevant since in any event the fees owed far exceed \$190,258.50 so there is no reason to disturb the judgement already entered. However, those fees have not yet been confirmed by a referee therefore it is improper to assert such fees will definitely compensate the amount already collected.


Next, the defendants argue that since only interest payments were extended by the plaintiff the guarantors cannot be responsible for such extension. However, the guaranty specifically states that the "guarantors authorize Lender, without notice or demand and without lessening Guarantors' liability under this Guaranty, from time to time...to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term" (see, Guaranty, page 4). Thus, the defendants clearly authorized such extension (see, Gateway State Bank v. Winchester Builders Inc., 248 AD2d 588, 670 NYS2d 518 [2d Dept., 1998]). Thus, the modification did not discharge the guaranty and there are no questions of fact necessitating granting reargument.

Lastly, the defendants argue the plaintiff presented inconsistent evidence the debt has not been repaid. On October 7, 2020 Adam Goller a general manager of the plaintiff signed an affidavit wherein he stated the defendants had not made any payments pursuant to the note since December 2018. That affidavit is sufficient to demonstrate the defendant's default. This is particularly true since the defendants have not presented any evidence to the contrary. Moreover, there is no inconsistency in a further affidavit submitted in reply. That affidavit merely acknowledged receipt of the \$190,258.50 and the fact the interest only period was extended, two issues that do not demand any reconsideration. Therefore, based on the foregoing the motion seeking reargument is denied. The plaintiff is directed to file a new judgement reflecting the amount received of \$190,258.50. Following the inquest the plaintiff will be permitted to enter a new judgement for the fees and interest pursuant to the determination at the inquest.

So ordered.

ENTER:

DATED: May 5, 2021  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC