

<b>Essar Group, LLC. v Mehta</b>
2024 NY Slip Op 35115(U)
October 17, 2024
Supreme Court, Westchester County
Docket Number: Index No. 62088/2023
Judge: Charles D. Wood
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

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**ESSAR GROUP, LLC., RAJ AHUJA and  
SAVITA AHUJA,**

**DECISION & ORDER  
Index No. 62088/2023  
Seq. No. 2**

**Plaintiff,**

**-against-**

**RAMNEET KAUR MEHTA and GURPRIT SINGH,**

**Defendants.**  
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**WOOD, J.**

In this action to recover on two promissory notes made by borrower/defendant Ramneet Kaur Mehta (“Borrower”), and guaranteed by defendant Gurprit Singh (“Guarantor”) for a judgment in favor of plaintiffs (“Lender”) in the amount of \$473,500, the court read NYSCEF Document Numbers 1-30 in connection with Lender’s instant motion for an order granting leave to reargue and/or renew Lender’s motion for default judgment against defendant, and for an order modifying this court’s Decision & Order dated July 9, 2024 (“the Prior Order”). This court had found that said notes have interest rates that exceed the criminal usuary rate of 25% per annum (Penal Law 190.40), and thus cannot be enforced as a usurious contract is void and relieves a borrower of the obligation to repay principal and interest thereon.

It is well-settled that 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 but shall not include any matters of fact not offered on the prior motion” (CPLR 2221[d][2]). While the determination to grant leave to reargue lies within the sound discretion of the court, a motion for leave to reargue “is not designed to provide an unsuccessful party with successive

opportunities to reargue issues previously decided, or to present arguments different from those originally presented” (*Degraw Constr. Grp., Inc. v McGowan Builders, Inc.*, 178 AD3d 772, 773 [2d Dept 2019]).

Here, the court grants leave to reargue, and upon reargument, the court finds that Lender demonstrated its entitlement to a default judgment against Guarantor by submitting proof of service of the summons and complaint, proof of the facts constituting the cause of action, and proof of the defaulting Guarantor’s failure to answer or appear pursuant to CPLR 3215. Since usury is an affirmative defense, which a defendant must either assert in an answer or as a ground to move to dismiss the complaint pursuant to CPLR 3211, and Guarantor has done neither, Guarantor waived the defense of usury (*Power Up Lending Grp., Ltd. v Cardinal Res., Inc.*, 160 AD3d 674, 675 [2d Dept 2018]).

Next, it is well-settled that under CPLR 2221, “a motion for leave to renew must be based upon new or additional facts, which although in existence at the time of the original motion, were not made known to party seeking renewal, and were not known to the court” (*Morrison v Rosenberg*, 278 AD2d 392 [2d Dept 2000]). Yet, the rule is flexible and additional facts known to the party seeking renewal may be offered if the movant first establishes a reasonable excuse as to why the additional facts were not submitted on the original application (*Matter of Gold v Gold*, 53 AD3d 485, 487 [2d Dept 2008]; *Granato v Waldbaum’s, Inc.*, 289 AD2d 289 [2d Dept 2001]).

Plaintiffs’ counsel argues that new facts not offered on the prior motion, would change the prior determination made by this court. Plaintiff in his accompanying affidavit, has explained that he is a retired senior citizen with no experience of personal or commercial lending, and is suffering from advanced stage Parkinson's disease. Moreover, plaintiff was unduly influenced during the COVID 19 Pandemic to part with his life savings and sign a document which was not

prepared or reviewed by him. In addition, Lender and Guarantor had a long term relationship in as much as they were social friends for ten years.

No reasonable justification for the failure to present such facts on the prior motion is presented. However, as no opposition has been interposed, the court in its discretion relaxes this requirement, and in the interest of justice grants Lender leave to renew.

Equity jurisdiction has been the power to mold each decree to the necessities of the particular case and once a court of equity has obtained jurisdiction over the subject matter of the action... it has the power to dispose of all matters at issue and to grant complete relief in accordance with the equities of the case. “Thus, the court may grant any type of relief within its jurisdiction appropriate to the proof whether or not demanded, imposing such terms as may be just’ ”( *generally, Piccirilli v Benjamin*, 226 AD3d 1233, 1237–38 [3<sup>rd</sup> Dept 2024]) [internal quotation marks and citation omitted]). Thus, a perpetrator of fraud should not profit from his or her own wrongdoing, nor retain the benefits derived therefrom (*id.* at 1238).

Notably, a court may consider that while a usurious contract is void and relieves the borrower of the obligation to repay principal and interest thereon, there are situations where it would be inappropriate for defendants to skirt their obligations to pay back a loan on the basis of a usury defense if a finding was made that defendants fraudulently induced Lender into a usurious loan (*id.* at 1238). A balancing test has been utilized when the subject loan was usurious but induced by fraud, such that both parties were at fault, courts have exercised their broad equitable powers in awarding damages to Lender –(*id.*). For instance, the Third Department found in its case that the loan was usurious but induced by fraud, and thus, awarded the principal amount on the loan without interest, while imposing the statutory interest rate of 9% from the time of the jury verdict until payment (*id.*).

The case before this court raises troubling issues of potential fraudulent inducement of an elderly, impaired person. Many questions remain as to who devised the promissory notes, if there was a fiduciary relationship between the parties, and other issues. These questions will be left for another day where the parties will have the opportunity to address them. The court has considered the remainder of the factual and legal contentions of the parties and to the extent not specifically addressed herein, finds them to be either without merit or rendered moot by other aspects of this decision. Accordingly, it is hereby:

ORDERED, that plaintiff/Lender's motion for leave to reargue and renew is granted, and upon renewal and reargument, the court modifies the Prior Order as reflected herein, and grants Lender's motion for a default judgment against defendant/ Guarantor on the issue of liability, and damages as against defendant/Guarantor, shall be determined at trial of this action or other disposition of this matter; and it is further

ORDERED, that within twenty days after this decision and order is uploaded to NYSCEF, counsel for plaintiff Lender shall serve a copy of this decision and order electronically, with notice of entry, upon all parties and file proof of services on NYSCEF within five days of service.

This constitutes the Decision & Order of this court. The Clerk shall mark his records accordingly.

Dated: White Plains, New York  
October 17, 2024



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HON. CHARLES D. WOOD, J.S.C.

To: All Parties by NYSCEF