

Cross Riv. Bank v Breadberry Lakewood, LLC

2025 NY Slip Op 34069(U)

October 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 514181/2025

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

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 October 2025.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
CROSS RIVER BANK,

Plaintiff,

-against-

BREADBERRY LAKEWOOD, LLC, 1760 MEAT INC.,
BREADBERRY INC., 1760 FOOD INC.,
SAMUEL GLUCK and ESTER GLUCK,

Defendants.
-----X

Index No. 514181/2025

Cal. No. 4 MS 1

Decision and Order

The following e-filed papers read herein:

MS 1

NYSCEF Doc Nos.

22-27, 29-34, 38

Defendants Breadberry Lakewood, LLC, 1760 Meat Inc., Breadberry Inc., 1760 Food Inc., Samuel Gluck and Ester Gluck (collectively, "Defendants") have interposed a motion (motion sequence 1) for an order pursuant to CPLR 3211 dismissing the second and third causes of action in the complaint (*see* NYSCEF Doc No. 22, notice of motion, ¶ [i]).

The instant commercial loan action was instituted by plaintiff Cross River Bank ("Plaintiff") to recover on an alleged business loan in the original principal amount of \$5,000,000.00 extended to Defendants. Defendant Breadberry Lakewood, LLC ("Borrower"), which formerly operated a grocery store and commissary in Lakewood, New Jersey, is alleged to have entered into a United States Small Business Administration promissory note dated March 3,

2023 with Plaintiff, pursuant to which Borrower agreed to repay Plaintiff the original principal amount of \$5,000,000.00 with interest (the “Note”) (*see* NYSCEF Doc No. 2, the Note, Exhibit A). Further documenting Borrower’s obligation to repay the Note, Borrower executed a Business Loan Agreement dated March 3, 2023 (the “Business Loan Agreement”) (*see* NYSCEF Doc No. 2, the Business Loan Agreement, Exhibit B), as well as a Loan Agreement dated March 3, 2023 (the “Loan Agreement”) (*see* NYSCEF Doc No. 2, the Loan Agreement, Exhibit C). Borrower also executed a Security Agreement dated March 3, 2023 (the “Security Agreement”) (*see* NYSCEF Doc No. 2, the Security Agreement, Exhibit D), pursuant to which it granted the lender a security interest in all of Borrower’s equipment, inventory and accounts (the “Collateral”).

Plaintiff alleges in the complaint that, to induce Plaintiff to lend to Borrower the funds referenced in the Note, defendants 1760 Meat Inc., Breadberry Inc., 1760 Food Inc. and Samuel Gluck (collectively, the “Unlimited Guarantors”) each executed Unconditional Guarantees, dated March 3, 2023, pursuant to which each unconditionally guaranteed repayment of all amounts owing under the Note (the “Unlimited Guarantees”) (*see* NYSCEF Doc No. 2, Exhibits F, G, H and I). Plaintiff contends in the complaint that, to induce Plaintiff to lend to the Borrower the funds referenced in the Note, defendant Ester Gluck (the “Limited Guarantor”) executed and delivered to Plaintiff an Unconditional Limited Guarantee dated March 3, 2023 pursuant to which she agreed to guaranty repayment of the Note, but only to the extent of the amount that Plaintiff obtained from collateral she pledged to secure such repayment (*see* NYSCEF Doc No. 2, the Unconditional Limited Guarantee, Exhibit J). Plaintiff avers in the complaint that the collateral in question is the Limited Guarantor’s interest in the residence that she co-owns with defendant Samuel Gluck, located at 1760 58th Street, Brooklyn, New York 11204 (the “Gluck Residence”) (*see* NYSCEF Doc No. 1, complaint, ¶¶ 17-18).

Plaintiff contends in the complaint that, to induce Plaintiff to advance funds to Borrower, defendants Samuel Gluck and Ester Gluck executed and delivered to Plaintiff a Mortgage dated March 3, 2023 in the principal amount of \$1,437,000.00, which Mortgage was recorded in the Office of the City Register of the City of New York on March 10, 2023 (the “Gluck Mortgage”) (see NYSCEF Doc No. 2, the Gluck Mortgage, Exhibit K). Plaintiff asserts that judgment against defendant Ester Gluck is sought only to the extent of her interest in the Gluck Residence and that any such judgment the court may issue against her should specify that it operates as a lien only on her interest in the Gluck Residence, as distinguished from an in personam liability (see NYSCEF Doc No. 1, complaint, ¶ 20). Plaintiff underscores that it is the sole lawful owner of the Note, the Business Loan Agreement, the Loan Agreement, the Security Agreement, the Unlimited Guarantees, the Limited Guarantee and the Gluck Mortgage, and possesses all rights set forth in those documents in favor of the lender or secured party referenced therein (collectively, the “Loan Documents”).

Plaintiff contends that the Borrower defaulted under the terms of the Note by failing to pay the amounts due thereunder when such amounts were due as well as by ceasing its operations, causing damage to Plaintiff by virtue of Borrower’s breach of its duties under the Note (*id.* ¶¶ 30-31). Plaintiff alleges that the Unlimited Guarantors defaulted by failing to pay amounts due to the lender when demanded and that the Unlimited Guarantors’ failure to pay constituted a default under the terms of the Unlimited Guarantees (*id.* ¶¶ 30-31). Plaintiff alleges that it has been damaged by virtue of the Unlimited Guarantors’ breach of their Unlimited Guarantees in the aggregate amount of \$5,520,275.62 (*id.* ¶¶ 35-36).

In Plaintiff’s second cause of action, Plaintiff claims that pursuant to the terms of the Limited Guarantee, it is entitled to judgment against the Limited Guarantor (namely, defendant

Ester Gluck) in the amount of \$5,520,275.62, “but only to operate as a judgment lien to the extent of her interest in the Gluck Residence and not as an in personam liability” (*id.* ¶ 41). In their motion to dismiss the second cause of action, Defendants contend that the Unconditional Limited Guarantee of the Limited Guarantor Ester Gluck is a nullity in that the terms of the guarantee in the subject contract cannot be determined through a reading of the contract language (*see* NYSCEF Doc No. 24, memo. of law, pgs 3-4).

Based on the court’s analysis of the March 3, 2023 Unconditional Limited Guarantee, the operative provisions of the subject purported contract for purposes of the second cause of action are set forth below:

U.S. Small Business Administration
Unconditional Limited Guarantee

SBA Loan name:	Breadberry Lakewood LLC
Guarantor:	Ester Gluck
Borrower:	Breadberry Lakewood LLC
Lender:	Cross River Bank
Date:	03-03-2023
Note Amount:	\$5,000,000.00

1. GUARANTEE:

Guarantor unconditionally guarantees to Lender of [sic] all amounts owing under the Note, as limited below. Guarantor must pay all amounts owing under this Guarantee when Lender makes written demand upon Guarantor. Lender is not required to seek payment from any other source before demanding payment from Guarantor.

2. NOTE:

The “Note” is the promissory note dated 03-03-2023 in the principal amount of Five Million and 00/100 Dollars, from Borrower to

Lender. It includes any assumption, renewal, substitution, or replacement of the Note, and multiple notes under a line of credit.

3. DEFINITIONS:

“Collateral” means any property taken as security for payment of the Note or any guarantee of the Note.

* * *

4. PAYMENT LIMITATION: (Check only one box)

* * *

COLLATERAL/RECOURSE: The guarantee is limited to the amount Lender obtains from the following Collateral pledged by Guarantor: _____

* * *

13. GUARANTOR NAME(S) AND SIGNATURE(S):

By signing below, each individual or entity becomes obligated as Guarantor under this Guarantee.

GUARANTOR:

x _____
Ester Gluck, Individually

(NYSCEF Doc No. 2, Unconditional Limited Guarantee, Exhibit J, ¶¶ [1], [2], [3], [4], [13]).

Based on the above-quoted language of the March 3, 2023 Unconditional Limited Guarantee, said instrument is a nullity as it fails to identify any collateral pledged by the Limited Guarantor Ester Gluck, which collateral is at the core of the Unconditional Limited Guarantee (*id.* ¶ [4]). Indeed, the form used as the Unconditional Limited Guarantee merely provides as follows with respect to the collateral pledged by the Limited Guarantor Ester Gluck: “ COLLATERAL/RECOURSE: The guarantee is limited to the amount Lender obtains from the following Collateral pledged by Guarantor: _____” (*id.* ¶ [4]). In sum, the Unconditional

Limited Guarantee form leaves a blank unfilled section in the pivotal provision of the contract where the parties were to identify the collateral pledged by the Limited Guarantor Ester Gluck (*id.* ¶ [4]), thereby rendering this instrument an unenforceable nullity devoid of requisite definiteness and specifics as to the collateral, if any, pledged by the Limited Guarantor, barring Plaintiff from obtaining relief under said instrument as Plaintiff endeavors to do in the second cause of action (*see* NYSCEF Doc No. 1, complaint, ¶¶ 40-41). As the New York Court of Appeals has held:

Few principles are better settled in the law of contracts than the requirement of definiteness. If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract (*Martin Delicatessen v Schumacher*, 52 NY2d 105, 109; Restatement [Second] of Contracts § 33 [1981]). The doctrine of definiteness serves two related purposes.

First, unless a court can determine what the agreement is, it cannot know whether the contract has been breached, and it cannot fashion a proper remedy (*see, Metro-Goldwyn-Mayer v Scheider*, 40 NY2d 1069, 1070-1071; Restatement [Second] of Contracts § 33 [2] [1981]). This is particularly significant where specific performance is sought. Second, the requirement of definiteness assures that courts will not impose contractual obligations when the parties did not intend to conclude a binding agreement (*see, Restatement [Second] of Contracts § 33 [3] [1981]*).

(*Cobble Hill Nursing Home v Henry & Warren Corp.*, 74 NY2d 475, 482 [1989]). The Appellate Division, Second Department echoed the Court of Appeals' *Cobble Hill* decision, holding that “[i]f an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract” (*see Marder's Nurseries v Hopping*, 171 AD2d 63, 65 [2d Dept 1991] [internal quotation marks omitted]).

Notably, Plaintiff has no alternative but to concede in its opposition papers as to the existence of an “ambiguity established by the blank line in Section 4” (*see* NYSCEF Doc No. 29, *Mendez aff in opp.*, ¶ 16).

In light of the foregoing, the branch of Defendants' motion for an order pursuant to CPLR 3211 dismissing the second cause of action in the complaint (*see* NYSCEF Doc No. 22, notice of motion, ¶ [i]) is hereby granted.

As to Plaintiff's third cause of action, titled "Third Cause of Action – Attorney's Fees, Costs and Expenses" (*see* NYSCEF Doc No. 1, complaint, ¶¶ 43-44), in such cause of action, Plaintiff seeks "judgment against the Defendants, jointly and severally, for CRB's attorney's fees, costs and expenses, in an amount to be determined by the Court" (*id.* ¶ 44). Plaintiff's third cause of action must be dismissed pursuant to CPLR 3211 (a) (7)¹ in that a claim for "Attorney's Fees, Costs and Expenses" (*id.* ¶¶ 43-44) is not a legally cognizable independent cause of action, but, rather, is subsumed within the damages sought in a viable cause of action, such as one for breach of contract in which attorneys' fees are sought (*see Dolphin Holdings, Ltd. v Gander & White Shipping, Inc.*, 122 AD3d 901, 902 [2d Dept 2014] [Second Department held that on a motion to dismiss under CPLR 3211 (a) (7), the court is to determine whether the pleading "state[s] a cause of action"]).

Based on the foregoing, Defendants' motion for an order pursuant to CPLR 3211 dismissing the second and third causes of action in the complaint is hereby granted (motion sequence 1). Any relief not expressly addressed herein has been considered and is denied.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

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

¹ CPLR 3211 (a) (7) provides that a "party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . the pleading fails to state a cause of action."