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 25th day of November 2025.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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CITIZENS BANK, N.A. successor by merger to Investors Bank,

Plaintiff,

-against-

JOSEPH STEIN and MOLLY LENORE, jointly and severally,

Defendants.

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Index No. 507711/2025

Cal. 4 MS 2

Decision and Order

The following e-filed papers read herein:	NYSCEF Doc Nos.
MS 2	22-32, 39-43

Plaintiff's motion for summary judgment against defendant Molly Lenore is decided as follows:

Background

This action arises out of alleged defaults under two commercial loans and a subsequent forbearance agreement. Plaintiff asserts that defendants Joseph Stein ("Stein") and Molly Lenore ("Lenore") personally guaranteed two business loans made to Moey, Inc. ("Moey") and Hallucigenia LLC ("Hallucigenia"), and later entered into a forbearance agreement after the borrowers defaulted. Plaintiff contends that Stein and Lenore failed to make required payments under the forbearance agreement, failed to cure after written notice of default, and are therefore

liable for the accelerated indebtedness totaling $641,679.32, plus continuing interest, costs, and contractual attorneys' fees.

Plaintiff moves for summary judgment under CPLR 3212 against Lenore, seeking judgment for $653,908.51 plus per diem interest from May 9, 2025, dismissal of Lenore's answer and nineteen affirmative defenses with prejudice, and $20,218.52 in contractual attorneys' fees and costs. Plaintiff argues the key facts are undisputed: Moey and Hallucigenia received $700,000 in commercial loans; Lenore and Stein executed unlimited commercial guaranties; Lenore executed the Forbearance Agreement dated September 6, 2024 (the "Forbearance Agreement") after default; plaintiff agreed to forbear conditioned on payments; payments ceased after December 13, 2024; plaintiff sent a February 4, 2025 written default notice with an opportunity to cure; Lenore failed to cure or pay; and the loan and payment documents establish the outstanding balance and her contractual obligation for fees, while her general denials and boilerplate defenses raise no triable issue.

In opposition, Lenore argues that plaintiff's motion for summary judgment is premature because no discovery has yet been conducted, and key facts are uniquely within plaintiff's possession. Lenore contends that plaintiff has not proven standing, as it has not specific proof that this loan survived the merger or was transferred other than a one-page certificate of merger and an affirmation from an assistant vice president of plaintiff. She argues that as Citizens did not originate the loan, discovery would be needed on plaintiff's treatment of acquired loans and post-merger data integration. Lenore further argues that the acceleration and damages provisions may be an unenforceable penalty because plaintiff has not shown its contractual damages equal its actual, present-value damages; that, at minimum, damages cannot be summarily fixed even if liability is found; and that discovery is needed into the reasonableness and recoverability of the $20,218.52 in alleged attorneys' fees.

In reply, plaintiff asserts that Lenore's opposition raises no genuine issue of fact and that summary judgment should be granted. Plaintiff argues it has made a prima facie showing through the Forbearance Agreement, guaranty, loan documents, and payment/payoff histories, while Lenore offers only counsel's speculative affirmation, not admissible evidence. Plaintiff argues the motion is not premature because CPLR 3214(b) stays discovery once a CPLR 3212 motion is made, and a mere hope that discovery might help cannot defeat summary judgment. On standing, plaintiff reiterates that, as the surviving bank in its 2022 merger with Investors Bank, 12 U.S.C. § 215 automatically vested in it all of Investors' assets, including these loans, so no assignment was required, and it is in any event the holder of the original notes. Plaintiff emphasizes that only three payments were made under the Forbearance Agreement, the last on December 13, 2024; that Lenore is plainly in default; that as of July 7, 2025 its actual damages are $662,927.53, exclusive of fees; and that its now-increased request for $24,214.87 in contractual fees and costs is reasonable.

Discussion

It is well established that summary judgment is granted when "the proponent makes a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [citation omitted]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). Upon a motion for summary judgment, the court's function is one of issue finding rather than issue determination (*Sillman v Twentieth Century-Fox Film*

Corp., 3 NY2d 395, 404 [1957]). "It is not the function of a court . . . to make credibility determinations or findings of fact, but rather to identify material triable issues of fact (or point to the lack thereof)" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505 [2012] [citation omitted]).

The New York Court of Appeals has "repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [citations omitted]). Although "the facts must be viewed in the light most favorable to the non-moving party … bald, conclusory assertions or speculation and [a] shadowy semblance of an issue are insufficient to defeat summary judgment" (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 448 [2016] [citations and internal quotation marks omitted]).

Here, plaintiff has made a prima facie showing of entitlement to judgment as a matter of law. Plaintiff submitted the loan documents, the guaranties, the executed Forbearance Agreement, the default notice, the payment history, and sworn affidavits from a bank officer establishing the debt, the guaranty, the default, and the amount due. The documentary record shows (i) the loans were made, (ii) Lenore executed an unlimited guaranty, (iii) Lenore executed the Forbearance Agreement that expressly identifies Citizens as successor by merger, (iv) payments ceased in December 2024, (v) Citizens issued the contractually required notice of default and cure period, and (vi) the indebtedness was accelerated pursuant to the contract.

Lenore fails to raise any triable issue of fact to rebut plaintiff's prima facia showing. Critically, Lenore does not dispute that she executed the guaranty and the Forbearance Agreement, does not deny receipt of the default notice, does not contest that payments ceased after December

2024, and offers no evidence that the loan was paid, modified, or otherwise brought current. Nor does Lenore submit an affidavit from herself or from any person with personal knowledge contradicting plaintiff's documentary proof. Instead, Lenore's opposition consists solely of her attorney's affirmation, which is not based on personal knowledge but speculative assertions that discovery might uncover issues concerning standing, recordkeeping, or damages. Such conjecture is legally insufficient to defeat summary judgment.

It is well settled that a party is not entitled to denial of summary judgment with leave to renew after further discovery where the party "has failed to show the existence of evidence to which such disclosure might lead and ... failed to take reasonable steps to obtain disclosure earlier" (*Scappaticci v Willet*, 173 AD2d 533, 534 [2d Dept 1991] [citations omitted]). Here, Lenore identifies no document, no factual basis, and no category of evidence that discovery would likely produce; her argument rests entirely on speculation and therefore cannot defeat summary judgment. Lenore's conclusory claim that "it is unlikely that an Assistant Vice President would have sufficient legal knowledge of the details of the merger to know whether this loan was included in the transaction documents," and that discovery is therefore required to determine plaintiff's standing, is unavailing.

Equally unpersuasive is Lenore's argument that, even if liability is established, summary judgment on damages should be denied because defendants "require discovery" into plaintiff's billing practices. Citizens submitted a detailed payment history, payoff statements, and other business records establishing the indebtedness, yet Lenore does not identify a single discrepancy or factual issue concerning the amounts due.

Plaintiff also submitted a twelve-page contemporaneous invoice summary with its motion papers, and an updated invoice summary with its reply, each detailing the attorneys' fees and costs sought pursuant to the Forbearance Agreement. Yet Lenore identifies no inconsistency or

potentially improper entry in any of these records. Instead, she makes the bare assertion that they "require discovery to question plaintiff's law firm about their billing practices and billing amounts and to parse out which of the claimed charges are recoverable," without specifying what information she seeks or explaining how such discovery could generate a material factual dispute. These generalized and unsupported demands fall well short of the evidentiary showing required to defeat summary judgment.

Regarding the calculation of interest, the Court notes that plaintiff did not specify in either its complaint, its moving papers, or its reply papers the precise date from which interest began to accrue. Instead, plaintiff supplied only the accrued-interest totals as of May 9, 2025, and July 7, 2025, without identifying the starting date used in those calculations. Using plaintiff's stated per-diem rate of $152.86 and working backward from the accrued-interest figure reported as of May 9, 2025, the Court determines that plaintiff implicitly calculated interest as accruing from December 1, 2024. This is inconsistent with the record. Plaintiff's own payment history reflects that it received the December 2024 payment on December 13, 2024 (*see* NYSCEF Doc No. 30). Moreover, it is undisputed that plaintiff did not issue its written notice of default until February 4, 2025 (*see* NYSCEF Doc No. 5), and the Forbearance Agreement required plaintiff to provide defendants ten days to cure after such notice (*see* NYSCEF Doc No. 4). Accordingly, the Court finds that interest may properly be awarded only from February 14, 2025, i.e., ten days after the February 4 notice of default, rather than the earlier December 1, 2024 date underlying plaintiff's calculations.

Conclusion

Based on the foregoing, plaintiff's motion for summary judgment is granted in favor of plaintiff and against defendant Molly Lenore in the principal amount of $604,739.76, together with

per-diem interest rate of $152.86 accruing from February 14, 2025, as well as reasonable attorneys' fees and expenses in the amount of $24,214.87. The remainder of plaintiff's motion is denied.

It is further ORDERED that, within twenty (20) days of entry of this Decision and Order, plaintiff shall serve and file a proposed judgment reflecting: (1) the principal amount of $604,739.76; (2) reasonable attorneys' fees and expenses totaling $24,214.87, which shall be itemized in two separate entries, one for attorneys' fees and one for costs and expenses; and (3) per-diem interest of $152.86 accruing from February 14, 2025 through the date of entry of judgment, to be calculated and taxed by the Clerk.

Any argument not explicitly addressed herein was 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.