

Cross Riv. Bank v Breadberry Lakewood, LLC

2025 NY Slip Op 34968(U)

December 19, 2025

Supreme Court, Kings County

Docket Number: Index No. 514181/2025

Judge: Reginald A. Boddie

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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 19th day of December 2025.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
CROSS RIVER BANK,

Plaintiff,

Index No. 514181/2025

-against-

Cal. No. 12 MS 2

BREADBERRY LAKEWOOD, LLC, I760 MEAT INC.,
BREADBERRY INC., I760 FOOD INC., SAMUEL
GLUCK and ESTER GLUCK,

Decision and Order

Defendants.
-----X

The following e-filed papers read herein:

MS 2

NYSCEF Doc Nos.

42-46, 50-52

Plaintiff's motion for reargument of its motion resulting in the Court's October 20, 2025 Decision and Order and for leave to amend its verified complaint is decided as follows:

Background

This action arises out of an alleged \$5 million business loan made by plaintiff Cross River Bank to defendant Breadberry Lakewood, LLC, guaranteed by affiliated entities and individuals, including a purported limited guaranty by defendant Ester Gluck ("Ester") secured by her interest in a Brooklyn residence. By Decision and Order dated October 20, 2025, the Court granted defendants' motion, dismissing the second cause of action against Ester and the third cause of action for attorneys' fees, holding that the U.S. Small Business Administration Unconditional

Limited Guarantee dated March 3, 2023 (the “Limited Guaranty”) executed by Ester was unenforceable due to an undefined collateral provision, and that attorneys’ fees do not constitute an independent cause of action.

Plaintiff now moves for leave to reargue and to amend, arguing that the Court misapprehended the law by treating the Limited Guaranty as a standalone document rather than as part of an integrated loan transaction, and arguing that contemporaneous loan documents identify the collateral and render the blank collateral provision a correctable clerical error. Plaintiff also seeks leave under CPLR 3025(b) to amend the verified complaint to plead attorneys’ fees as an element of damages within its substantive claims.

In opposition, defendants argue that the Limited Guaranty is a nullity on its face because it omits a material term, that reargument is an improper attempt to relitigate settled issues, and that neither integration principles, waiver provisions, nor the scrivener’s-error doctrine can supply a missing essential term or revive an unenforceable guaranty. Defendants further contend amendment is unnecessary because attorneys’ fees are already subsumed within damages.

In reply, plaintiff reasserts that the Court’s ruling rests on a misapprehension of the record and governing law, that the Limited Guaranty must be construed with the contemporaneously executed commitment letter and mortgage identifying the collateral, that the omission reflects a clerical error rather than an absence of agreement, and that leave to amend should be granted to clarify its contractual fee claim.

Discussion

Reargument

“A motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include matters of fact not offered on the prior motion” (*Pryor v Commonwealth Land Tit. Ins. Co.*, 17 AD3d 434,

435-36 [2d Dept 2005] [citation and internal quotation marks omitted]; *see* CPLR 2221[d][2]). “The motion does not offer an unsuccessful party ... successive opportunities to present arguments not previously advanced” (*id.*). “It is well settled that a motion to reargue is not an appropriate vehicle for raising new questions ... which were not previously advanced” (*People v D'Alessandro*, 13 NY3d 216, 219 [2009] [citation and internal quotation marks omitted]). “Necessarily, where a new argument is presented on the motion, that argument could not have been overlooked or misapprehended ... in the first instance” (*id.*).

Here, plaintiff identifies that this Court overlooked in its November 13, 2025 Decision and Order that the Limited Guaranty executed by Ester must be construed together with the contemporaneously executed loan documents. It is well settled that “[a] guaranty is a contract, and in interpreting it we look first to the words the parties used. A guaranty must be read in the context of the loan agreement, particularly when executed contemporaneously” (*SMG Automotive Holdings, LLC v Kings Automotive Holdings, LLC*, 229 AD3d 473, 475 [2d Dept 2024] [citations and internal quotation marks omitted]). Plaintiff argues that where, as here, multiple instruments are executed at the same closing and are part of the same transaction, they must be read together and construed as one agreement reflecting the parties’ intent.

The record before the Court on the original motion includes the Conditional Commitment Letter, which was executed by Ester both as president of the entity guarantors and “individually” in her individual capacity, and which expressly and unambiguously provides that “[u]nlimited personal guaranty of Samuel Gluck, secured with a second mortgage lien position on the personal property located at 1760 58th St., Brooklyn, NY 11204, and an assignment of a life insurance policy in the minimum amount of \$1,871,000” is one of the conditions of approval (NYSCEF Doc No. 32). The record further reflects that Ester executed the referenced mortgage at the same closing (*see* NYSCEF Doc No. 2, Ex. K).

When the Limited Guaranty is read together with the Conditional Commitment Letter and the executed mortgage, there is no ambiguity as to the parties' agreement concerning the collateral securing Ester's limited obligation. The provision in the Limited Guaranty stating that "[t]he guarantee is limited to the amount Lender obtains from the following Collateral pledged by Guarantor" reflects a meeting of the minds as to the limitation of liability, while the Conditional Commitment Letter and the executed Mortgage further establish a meeting of the minds as to the specific collateral pledged, as identified in the contemporaneously executed loan documents.

Moreover, "[i]n the absence of a claim for reformation, courts may as a matter of interpretation carry out the intention of a contract by transposing, rejecting, or supplying words to make the meaning of the contract more clear," but only "where some absurdity has been identified or the contract would otherwise be unenforceable either in whole or in part" (*Matter of Wallace v 600 Partners Co.*, 86 NY2d 543, 547-48 [1995] [citations and internal quotation marks omitted]). "It is axiomatic that a contract is to be interpreted so as to give effect to the intention of the parties as expressed in the unequivocal language employed" (*id.* at 548).

Here, the blank collateral line in the Limited Guaranty, when viewed in isolation, rendered the guaranty agreement unenforceable; however, when construed in the context of the integrated loan transaction and the contemporaneously executed documents identifying the collateral, the omission constitutes a clerical defect rather than the absence of an essential term.

Accordingly, the branch of plaintiff's motion seeking leave to reargue is therefore granted, and upon reargument, the branch of the Court's October 20, 2025 Decision and Order dismissing plaintiff's second cause of action is vacated.

Leave to Amend

Pursuant to CPLR 3025(b), "[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court."

“Permission to amend pleadings should be freely given” (*Edenwald Contr. Co., Inc. v City of New York*, 60 NY2d 957, 959 [1983] [citation and internal quotation marks omitted]). “The decision to allow or disallow the amendment is committed to the court's discretion. Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine” (*id.*).

Here, plaintiff seeks leave to amend the verified complaint for the limited purpose of pleading its contractual entitlement to attorneys’ fees as an element of damages within its substantive causes of action, following the Court’s dismissal of plaintiff’s prior attempt to plead attorneys’ fees as a separate claim. The proposed amendment does not allege new facts, assert new causes of action, or expand defendants’ potential liability. Additionally, defendants have not demonstrated, and the Court does not find, any prejudice or surprise resulting from the proposed amendment, particularly given that the loan documents containing the fee-shifting provisions were attached to and incorporated into the original pleading.

Accordingly, the branch of plaintiff’s motion seeking leave to amend the Verified Complaint is granted. Plaintiff shall serve and file the amended Verified Complaint within thirty (30) days of entry of this Decision and Order.

Conclusion

Based on the foregoing, plaintiffs’ motion to reargue is granted and, upon reargument, the branch of the Court’s October 20, 2025 Decision and Order dismissing plaintiff’s second cause of action is hereby vacated.

It is further ORDERED that plaintiff shall serve and file an amended verified complaint within thirty (30) days of the entry of this Decision and Order.

Any arguments not expressly addressed herein were 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.