Lucky of 195 Madison St. Roofing & Contr. Inc. v CREIF 109 LLC
2026 NY Slip Op 31548(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 595086/2021
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

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INDEX NO. 153437/2017

MOTION DATE 04/06/2026

MOTION SEQ. NO. 035

LUCKY OF 195 MADISON STREET ROOFING & CONTRACTING INC,

Plaintiff,

- v -

CREIF 109 LLC,BIL-MAN ASSET MANAGEMENT, LLC,PROPERTY RESEARCH, GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP, ROBERT LO SCHIAVO, ASK ABSTRACT, BALLON STOLL BADER & NADLER, VANO HAROUTUNIAN, OLD REPUBLIC TITLE INSURANCEE CO., MAIN STREET TITLE AGENCY INC.,SRUN TAING A/K/A SRUNG TAING A/K/A SRUN C. TAIN, ALLAN J. STEVO A/K/A ALLAN JAMES STEVO, DOES 1-100 INCLUSIVE,

Defendant.

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DECISION + ORDER ON MOTION

CREIF 109 LLC

Plaintiff,

-against-

LYNDON CHIN, JOSEPH BARISIC, CLAUDEL JEANNOT, DEAN MASTRANGELO, STEPHEN SEUNG

Defendant.

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Third-Party
Index No. 595086/2021

CREIF 109 LLC

Plaintiff,

-against-

BIL-MAN ASSET MANAGEMENT LLC

Defendant.

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Second Third-Party
Index No. 595686/2022

STEPHEN SEUNG

Plaintiff,

Third Third-Party
Index No. 595001/2024

-against-

MAIN STREET TITLE AGENCY, LTD., STEWART TITLE INSURANCE COMPANY, CREIF (LENDER) LLC, CREIF (REIT) LLC, CASTELLAN HOLDINGS LLC, LIBERTY PLACE PROPERTY MANAGEMENT LLC, ROBERT LOSCHIAVO, GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP, SNOWPOINT CAPITAL LLC

Defendant.
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The following e-filed documents, listed by NYSCEF document number (Motion 035) 1282, 1283, 1284, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298

were read on this motion to/for REARGUMENT/RECONSIDERATION.

With the instant motion, third-party defendant Stephen Seung ("Seung") moves, pursuant to CPLR § 2221(d), for leave to reargue this court's decision and order dated December 15, 2025, which denied his motion for summary judgment seeking dismissal of the sole remaining cause of action asserted against him by third-party plaintiff Creif 109 LLC ("Creif 109"), sounding in fraud.[1] In the alternative, Seung moves pursuant to CPLR § 2221(e) for leave to renew. Upon reargument and/or renewal, Seung seeks an order granting summary judgment dismissing the fraud claim in its entirety.

More specifically, Seung requests that the court grant leave to reargue and, alternatively, renew, and that, upon such reargument and/or renewal, the court modify its prior determination to award summary judgment in his favor dismissing, with prejudice, the fraud cause of action asserted against him by Creif 109. The motion is grounded principally upon two related contentions. First, Seung asserts that the court misapprehended the nature and legal significance of his standing argument by construing it solely as a request for affirmative declaratory relief on a counterclaim, rather than recognizing it as a dispositive merits-based ground directly supporting the relief expressly sought in the notice of motion—namely, dismissal of the fraud claim itself. Second, Seung maintains that the court misapprehended both the evidentiary record developed on the summary judgment motion and the governing legal standard for scienter, thereby concluding that triable issues of fact existed as to whether he acted recklessly in issuing the opinion letter at issue when, in his view, the record contains no evidence from which fraudulent intent may reasonably be inferred.

In the alternative, Seung contends that renewal is warranted in light of intervening authority from the Appellate Division, First Department, which clarifies that no talismanic or formulaic language is required to effectuate the transfer of fraud claims where the assignment instrument,

[1] The court notes that the Honorable Denis J. Reo, who presided over and decided the original motion, has since been reassigned to the Supreme Court, Suffolk County, and is therefore unavailable within the meaning of CPLR § 2221. As the undersigned has now been assigned as the presiding Justice in this matter, and in light of that unavailability, the present motion is properly before and has been considered and determined by the undersigned in accordance with the authority conferred by the statute and court administration.

read as a whole and in context, sufficiently manifests an intent to transfer such claims (*see BH 336 Partners LLC v Sentinel Real Estate Corp*., 245 AD3d 549 [1st Dept 2026]).

BACKGROUND AND PROCEDURAL HISTORY

This litigation arises out of an August 2016 financing transaction in which Seung, acting as counsel in connection with the closing, issued an attorney opinion letter concerning the borrower and the transaction. Creif 109 later asserted claims against Seung sounding in negligence and fraud. By decision and order dated December 20, 2022, Justice Hagler dismissed the negligence claim as time-barred, leaving only the fraud cause of action against Seung. The transcript of the December 20, 2022 proceedings further reflects that, while the fraud claim was not then dismissed, the issue of standing would be addressed after discovery. That procedural history is reflected in the motion record before the court.

Following discovery, Seung moved for summary judgment dismissing the remaining fraud claim. He argued, among other things, that Creif 109 lacked standing because, by assignment dated August 19, 2016 and recorded on September 13, 2016, Creif 109 assigned to Creif Lender LLC all of its right, title, and interest in the mortgage and note together with "the debt and claims secured thereby," "all rights to collect and receive such debt," and "any and all other liens, privileges, security interests, rights, entitlements, equities, claims and demands" possessed by the assignor. Seung also argued that the evidentiary record failed, as a matter of law, to raise a triable issue as to scienter. The prior decision denied summary judgment, reasoning in relevant part that the notice of motion did not specifically seek relief on Seung's counterclaim and that issues of fact remained as to whether Seung acted recklessly in issuing the opinion letter. The motion papers now before the court assert that the prior decision further stated that Seung had only "likely, but not definitely," reviewed the relevant documents, whereas his affidavit stated unequivocally that he reviewed all loan documents relating to the transaction before issuing the opinion letter. Those assertions are also reflected in the motion record.

In opposition to the present motion, Creif 109 contends that reargument is improper because Seung merely repeats arguments already made and rejected. Creif 109 further argues that the court correctly declined to grant relief not specifically demanded in the notice of motion; that the 2016 transfer to Creif Lender was an internal affiliate transfer undertaken for business and lender-related reasons and was not intended to transfer tort claims; that Creif 109 remained the beneficial owner of the loan on its books; that the note and mortgage were reassigned to Creif 109 in 2022; and that, in all events, the record presents triable issues of fact as to scienter, recklessness, and reliance, including by reason of expert proof criticizing Seung's diligence in issuing the opinion letter. Those opposition arguments likewise appear in the submitted record.

ARGUMENTS

Seung argues that leave to reargue should be granted because the court overlooked or misapprehended controlling law and material record facts. As to procedure, Seung contends that standing was not some separate species of affirmative relief that had to be separately noticed as a counterclaim remedy, but rather a dispositive merits issue going directly to whether Creif 109 could maintain the fraud cause of action at all. Because his notice of motion expressly sought

dismissal of the fraud claim, Seung maintains that the court was free to decide standing as one of the grounds for that dismissal. He further argues that any technical defect in notice was nonprejudicial because Creif 109 fully briefed the standing issue on the merits. As to substance, Seung contends that the 2016 assignment language is broader than the assignment language considered in *Commonwealth of Pa. Pub. Sch. Empls.' Retirement Sys. v Morgan Stanley & Co., Inc.*, 25 NY3d 543 (2015), *North Fork Bank v Cohen & Krassner*, 44 AD3d 375 (1st Dept 2007), and *BH 336 Partners LLC v Sentinel Real Estate Corp.*, 245 AD3d 549 (1st Dept 2026), and that, when read as a whole, it plainly transferred the fraud claim arising from the same loan transaction. Seung also argues that the record is devoid of evidence from which a rational factfinder could infer knowing falsity, fraudulent intent, or an opinion so baseless as to imply no genuine belief in its truth, and that what remains is, at most, an attempted repackaging of an already-dismissed negligence theory into a fraud claim.

Creif 109 responds that Seung has not identified any matter overlooked or misapprehended, but instead seeks a second bite at the apple. It argues that the court properly refused to award relief not specifically demanded in the notice of motion, relying upon the principle that a court may not grant relief that is materially different from the relief noticed where the opposing party lacked clear notice of the relief sought. Creif 109 further argues that under Commonwealth, fraud claims do not pass automatically with a note or mortgage and that the 2016 assignment did not expressly assign tort claims. It contends that the transfer was purely internal, that Creif 109 remained the beneficial owner, and that any standing issue was in any event cured by the 2022 reassignment. On the merits of fraud, Creif 109 argues that the opinion letter was unqualified, that Seung failed to undertake adequate diligence before issuing it, that its expert's proof permits an inference of recklessness, and that reliance is supported by record evidence that Creif 109 would not have closed absent the opinion letter.

DISCUSSION

A motion for leave to reargue under CPLR § 2221(d) is addressed to the sound discretion of the court and may be granted where the movant shows that the court overlooked or misapprehended matters of fact or law in determining the prior motion; it is not designed to afford an unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted (*Foley v Roche*, 68 AD2d 558, 567-568 [1st Dept 1979]). A motion to renew under CPLR § 2221(e) must generally be based on new facts not offered on the prior motion that would change the prior determination, or upon a change in the law that would change the prior determination, and reasonable justification must be shown for the failure to present such matter earlier (*see* CPLR § 2221[e]). Summary judgment, in turn, is warranted where the movant establishes entitlement to judgment as a matter of law by tendering evidence sufficient to eliminate any material issue of fact, and the opposing party then fails to demonstrate the existence of a triable issue requiring trial (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

Upon review of the full motion record, the court concludes that Seung has demonstrated that reargument is warranted. The prior decision misapprehended the procedural posture of the standing issue. Although the prior decision correctly noted that a court should not grant materially different relief from that demanded in the notice of motion where the adverse party lacked notice,

see *Onofre v 243 Riverside Dr. Corp.*, 232 AD3d 443, 443-444 (1st Dept 2024), that principle does not compel the conclusion that the court was foreclosed from deciding standing here. Seung's notice of motion expressly sought dismissal of the fraud cause of action. Standing was not a separate and unrelated form of relief; it was one of the legal grounds advanced in support of the noticed request for dismissal. Where a party has been fully heard on a dispositive issue and suffers no prejudice, a court may grant relief not too dramatically unlike the relief sought (*see Caesar v Metropolitan Transp. Auth.*, 229 AD3d 601, 601-602 (2d Dept 2024), and may disregard nonprejudicial irregularities in furtherance of substantial justice (CPLR § 2001). Here, Creif 109 fully briefed the standing issue on the prior summary judgment motion and again on the present motion. The court therefore concludes that the prior decision misapprehended the extent to which the standing issue was properly before it as a merits-based ground for dismissal of the fraud claim.

Upon reargument, the court further concludes that Seung is entitled to summary judgment dismissing the fraud cause of action because Creif 109 lacked standing to prosecute that claim. The Court of Appeals has held that fraud claims do not pass automatically upon the assignment of a contract or note; rather, there must be some language evincing an intent to transfer such claims, though no particular formula or "magic words" is required (*Commonwealth of Pa. Pub. Sch. Empls.' Retirement Sys. v Morgan Stanley & Co., Inc.*, 25 NY3d 543, 550-551 [2015]). The Appellate Division, First Department's recent decision in *BH 336 Partners LLC v Sentinel Real Estate Corp.*, 245 AD3d 549 (1st Dept 2026), confirms that sufficiently broad assignment language, read in context, may effectuate the transfer of fraud claims even in the absence of talismanic phrasing.

The assignment language at issue here is broad. According to the motion record, Creif 109 assigned all of its right, title, and interest in the mortgage and note, together with the debt and claims secured thereby, all rights to collect and receive such debt, and any and all other rights, entitlements, claims, and demands possessed by the assignor. That language, read as a whole and in context, is not fairly characterized as a bare transfer of paper alone. Rather, it transferred the full enforcement package associated with the loan transaction, including related claims and demands. The fraud claim asserted against Seung arises from the very transaction by which the loan was originated and documented and thus falls within the ambit of the transferred rights.

North Fork Bank v Cohen & Krassner, 44 AD3d 375, 375 (1st Dept 2007), is particularly instructive. There, in an action arising from an allegedly false opinion letter, the Appellate Division, First Department, held that such a fraud claim was viable only insofar as asserted by the assignee that had received the lender's interest before suit. While the precise wording of the assignment there differed from the wording here, the decision strongly supports the proposition that where the lender's rights in the underlying transaction have been assigned, the right to maintain an opinion-letter fraud claim relating to that transaction resides, if at all, in the assignee. Creif 109's reliance on intra-company purpose, beneficial ownership, and internal accounting treatment does not raise a triable issue sufficient to defeat summary judgment. Where an assignment is clear and unambiguous, the legal effect of the instrument is determined from its text, not from *post hoc* assertions of subjective intent or internal bookkeeping practice. The Hammer proof, even crediting it fully, explains the business purpose for the transfer; it does not negate the legal effect of the written assignment actually executed. Nor does the 2022 reassignment avail Creif 109 on this record. Creif 109's own position is that tort claims do not travel automatically

with the note and mortgage. Yet the papers, as summarized in the present record, identify no language in the 2022 reassignment expressly reassigning claims, demands, or tort causes of action back to Creif 109. Thus, even assuming the fraud claim left Creif 109 in 2016, the present record does not raise a triable issue that it was later reassigned to Creif 109 before the continued prosecution of this action.

Even apart from standing, Seung has shown entitlement to summary judgment on the merits of the fraud claim. The elements of fraud are a material misrepresentation of fact, falsity, scienter, justifiable reliance, and damages (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). Scienter, while often established circumstantially, still requires facts from which it is possible to infer knowledge of falsity when the statement was made (*Cimen v HQ Capital Real Estate L.P.*, 227 AD3d 587, 587-588 [1st Dept 2024]). Proof amounting merely to carelessness, inadequate investigation, or malpractice criticism does not, without more, raise a triable issue of fraudulent intent.

Here, the record as described in the motion papers and opposition papers does not supply evidence from which a rational factfinder could infer that Seung knowingly made false statements in the opinion letter or issued opinions so baseless that no genuine belief could have supported them. The opposition emphasizes the absence of an engagement letter, the failure to meet with the principals, the inability years later to recall every document reviewed, and asserted deficiencies in Seung's diligence. That may constitute criticism of the thoroughness of the work performed. It may even be offered as support for a negligence theory. But the negligence claim has already been dismissed as time-barred, and those criticisms do not themselves establish the knowing falsity required for fraud. Moreover, Seung's affidavit, as reflected in the record now before the court, states unequivocally that he reviewed all of the loan documents relating to the transaction and reviewed the corporate documents relating to the formation of the borrower prior to issuing the opinion letter. To the extent the prior decision treated his testimony as merely "likely, but not definitely" establishing such review, the court agrees that the prior decision misapprehended the affidavit on that point.

The court is mindful that questions of intent and credibility are often unsuited to summary judgment. But that principle does not require denial of summary judgment where the nonmovant fails to adduce evidentiary facts from which the requisite fraudulent intent may reasonably be inferred (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). The nonmovant must still produce evidence in admissible form sufficient to require a trial of material questions of fact. Here, the opposition proof does not bridge the gap between alleged insufficiency of inquiry and fraudulent scienter. Nor does the existence of an expert affidavit criticizing Seung's process create a triable issue where the expert's criticism does not furnish nonconclusory proof that Seung knew the opinion letter was false when made. *Cimen* makes clear that bare invocations of recklessness do not substitute for facts showing knowledge of falsity (*Cimen*, 227 AD3d at 587-588).

Because the court concludes that the fraud claim must be dismissed upon reargument, it need not rest its determination on renewal. Nevertheless, the court notes that *BH 336*, decided after the prior decision, constitutes intervening appellate authority that further supports the disposition reached here by clarifying the proper analysis of assignment language in this context. To the extent

necessary, renewal would therefore also be warranted, as the intervening decision would change the prior determination (*see* CPLR § 2221[e]).

Accordingly, Seung's motion is granted. As such, it is hereby

ORDERED that the branch of the motion of third-party defendant Stephen Seung seeking leave to reargue pursuant to CPLR § 2221(d) is granted; and it is further

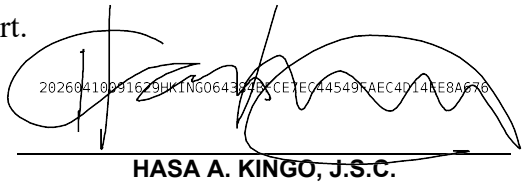
ORDERED that, upon reargument, the court vacates so much of its prior Decision and Order dated December 15, 2025 as denied Seung's motion for summary judgment dismissing the fraud cause of action asserted against him by third-party plaintiff Creif 109 LLC; and it is further

ORDERED that, upon reargument, summary judgment is granted in favor of third-party defendant Stephen Seung dismissing the fraud cause of action asserted against him by third-party plaintiff Creif 109 LLC, and said cause of action is dismissed with prejudice; and it is further

ORDERED that the branch of the motion seeking renewal pursuant to CPLR § 2221(e) is denied as academic in light of the determination upon reargument, except that the court notes that the intervening authority cited by Seung independently supports the result reached herein; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of third-party defendant Stephen Seung dismissing the third-party fraud claim asserted against him.

This constitutes the decision and order of the court.



4/10/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE