

Cross Riv. Bank v Breadberry Lakewood, LLC

2026 NY Slip Op 31694(U)

April 16, 2026

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 16th day of April 2026.

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

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CROSS RIVER BANK,

Plaintiff,

Index No. 514181/2025

-against-

Cal. No. 5 MS 3

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

Decision and Order

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 3

58-61, 63-69, 71

Defendants’ motion to dismiss plaintiff’s second cause of action 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 U.S. Small Business Administration Unconditional Limited Guarantee dated March 3, 2023 (the “Limited Guaranty”) executed by defendant Ester Gluck (“Ester”) and secured by her interest in a Brooklyn residence. By Decision and Order dated October 20, 2025, the Court granted defendants’ CPLR 3211 motion and dismissed the second cause of action for judgment

against the limited guarantor Ester on the ground that the Limited Guaranty was an unenforceable nullity for failure to identify any pledged collateral, and further dismissed the third cause of action for attorneys' fees as not constituting an independent cognizable claim. However, by Decision and Order dated December 19, 2025, the Court granted plaintiff's motion for reargument and, upon reargument, vacated the prior dismissal of the second cause of action, holding that the Limited Guaranty must be construed together with the contemporaneously executed loan documents, which identify the pledged collateral, such that the blank collateral provision constituted a correctable clerical defect rather than rendering the guaranty unenforceable. The Court further granted plaintiff leave to file an amended complaint to properly plead its claim for attorneys' fees as part of its substantive causes of action.

Defendants now move to dismiss the second cause of action in plaintiff's amended complaint pursuant to CPLR 3211(a)(1) and (a)(7), which seeks a "judgment lien" against Ester in the amount of approximately \$5.52 million limited to her interest in the mortgaged property. Defendants argue that the claim is barred by documentary evidence and fails to state a cause of action because the Limited Guaranty limits recovery to the collateral and does not permit a separate judgment lien, rendering the relief sought duplicative and improper.

In opposition, plaintiff argues that the Amended Complaint properly pleads enforcement of the Limited Guaranty by seeking judgment for the full debt while limiting recovery against Ester to the pledged collateral, that defendants improperly conflate the amount of the debt with the scope of recourse, and that neither the loan documents nor RPAPL 1301 requires foreclosure as the exclusive remedy. Plaintiff further argues that the documentary evidence does not conclusively refute the claim and that defendants' nullity argument is barred by the Court's prior ruling on reargument.

Discussion

“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must afford the complaint a liberal construction, accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*USCHAG Corp. v Flagstar Bank, FSB*, 220 AD3d 823, 823-24 [2d Dept 2023] [citation omitted]). “Although a court may consider materials submitted by the defendant in support of its motion, the materials must establish conclusively that the plaintiff has no cause of action” (*id.*). Moreover, “a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint and the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Leon v Martinez*, 84 NY2d 83, 88 [1994] [citation and internal quotation marks omitted]). “The pleading will be deemed to allege whatever may be implied from its statements by reasonable intendment and the court must give the pleader the benefit of all favorable inferences that may be drawn from the complaint” (*Dunn v Gelardi*, 59 AD3d 385, 386 [2d Dept 2009] [citation omitted]).

“A motion to dismiss pursuant to CPLR 3211(a)(1) will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claim” (*Fontanetta v Doe*, 73 AD3d 78, 83 [2d Dept 2010] [citation and internal quotation marks omitted]). Such documentary evidence must be “of undisputed authenticity” (*id.*). Indeed, “[t]o constitute documentary evidence, the evidence must be unambiguous, authentic, and undeniable” (*Xu v Van Zwiennen*, 212 AD3d 872, 874 [2d Dept 2023] [citation and internal quotation marks omitted]).

Here, accepting the facts as alleged in the complaint as true and according plaintiff the benefit of every possible favorable inference as the Court must, plaintiff sufficiently alleges a cause of action to enforce the Limited Guaranty. “To state a cause of action on a guaranty, a plaintiff

must allege an underlying obligation, a guaranty, and the prime obligor's default in payment on the underlying obligation" (*SMG Automotive Holdings, LLC v Kings Automotive Holdings, LLC*, 229 AD3d 473, 474 [2d Dept 2024] [citations omitted]). Here, plaintiff sufficiently alleges the loan documents evidencing the indebtedness, the execution of the Limited Guaranty by Ester, defendants' default in repayment, and plaintiff's entitlement to recovery thereunder, while expressly limiting any recovery against the limited guarantor to her interest in the pledged collateral.

As to defendants' argument that the Limited Guaranty "is a nullity" because it "fails to identify any collateral," that contention is without merit. This precise argument was previously considered and rejected by the Court in its Decision and Order dated December 19, 2025, wherein the Court held that the Limited Guaranty must be construed together with the contemporaneously executed loan documents, which identify the pledged collateral, and that the omission in the Limited Guaranty constituted a clerical defect rather than rendering the agreement unenforceable. Consistent with that determination, the documentary evidence submitted herein does not utterly refute plaintiff's claim.


Defendants' further argument that plaintiff is required to proceed exclusively by foreclosure is likewise unavailing. Neither the Limited Guaranty nor the mortgage documents at issue expressly provides that foreclosure constitutes plaintiff's sole or exclusive remedy, and defendants have failed to identify any contractual language imposing such a limitation.

Conclusion

Based on the foregoing, defendants' motion is denied in its entirety. It is further ORDERED that defendants shall serve and file an Answer or otherwise respond to the Amended Complaint within twenty (20) days of entry of this Decision and Order.

Any arguments not expressly addressed herein was considered and deemed 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.**