GFE NY, LLC v GI Toys Holding, Inc.
2026 NY Slip Op 31957(U)
April 28, 2026
Supreme Court, Kings County
Docket Number: Index No. 524161/2024
Judge: Richard J. Montelione
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At IAS Part 99 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, Brooklyn, NY 11201, on the 28th day of April 2026.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

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GFE NY, LLC,

Plaintiff,

-against-

GI TOYS HOLDING, INC. D/B/A AIRSOFT GI INC., AIRSOFTGI.COM, AIRSOFTGI.COM, LLC., AIRSOFT GI WEST, INC., 88 TRADING, INC. D/B/A AIRSOFT GI, LILY CHUN LING WANG AND WALTER HUANG JUNG CHANG,

Defendants.

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DECISION and ORDER

Index No.: 524161/2024
Motion Date: 4/22/2026
Motion Cal. No.: 23
Mot. Seq. 3

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Defendants' Notice of Motion/Order to Show Cause/Affidavits/Affirmations/Exhibits (MS#3) to reargue the court's decision and order denying defendants Chun Ling Wang and Walter Huang Jung Chang's motion for summary judgment (MS#3).....	72-76
Answering Affirmations/Affidavits/Exhibits.....	84-85
Reply Affirmations/Affidavits/Exhibits.....	86
Other.....	

MONTELIONE, RICHARD J., J.

The defendants move to reargue the court's decision dated September 24, 2025 and entered on September 30, 2025 on the basis that the court did not consider the doctrine of collateral estoppel. The defendants previously moved for summary judgment on the ground that the United States Bankruptcy Court for the Eastern District of North Carolina found the same merchant cash advance agreement ("MCA") asserted by plaintiff in this action to be a criminally usurious loan and void (In Re: J and M Supply of the Carolinas, LLC, Debtor, J and M Supply of the Carolinas, LLC v. GFE NY, LLC, Adversary Proceedings, No. 22-00040-5-DMW, US Bankruptcy Court-Eastern District of North Carolina, Wilmington Division) and therefore defendants should be allowed to amend their complaint to add a defense of collateral estoppel and the court should grant summary judgment dismissing the complaint. (NYSCEF #75).

Law Regarding Collateral Estoppel

The application of collateral estoppel is found in *Babad v Oratz*, 242 AD3d 807, 808 [2d Dept 2025]:

> "Pursuant to CPLR 3211(a)(5), a party may move to dismiss a [complaint] based on the doctrine of res judicata or collateral estoppel" (*Joseph v. Bank of N.Y. Mellon,* 219 A.D.3d 596, 597, 194 N.Y.S.3d 275). "Under the doctrine of res judicata, a disposition on the merits bars litigation between the same parties or those in privity with them of a cause of action arising out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the prior proceeding" (*Goldstein v. Massachusetts Mut. Life Ins. Co.,* 32 A.D.3d 821, 821, 820 N.Y.S.2d 852; *see Paramount Pictures Corp. v. Allianz Risk Transfer AG,* 31 N.Y.3d 64, 72–73, 73 N.Y.S.3d 472, 96 N.E.3d 737). The doctrine of collateral estoppel "precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same" (*Ryan v. New York Tel. Co.,* 62 N.Y.2d 494, 500, 478 N.Y.S.2d 823, 467 N.E.2d 487; *see Matter of A. Ottavino Prop. Corp. v. Incorporated Vil. of Westbury,* 203 A.D.3d 920, 921, 161 N.Y.S.3d 812). "The party seeking the benefit of collateral estoppel bears the burden of proving that the identical issue was necessarily decided in the prior action and is decisive of the present action, and the party against whom preclusion is sought bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination" (*Fowler v. Indymac Bank, FSB,* 176 A.D.3d 682, 684, 107 N.Y.S.3d 708 [alteration and internal quotation marks omitted]; *see Matter of Dunn,* 24 N.Y.3d 699, 704, 3 N.Y.S.3d 751, 27 N.E.3d 465).

See Miller v Falco, 170 AD3d 707, 709 [2d Dept 2019]:

> While "[a]n issue is not actually litigated if, for example, there has been a default" (*Kaufman v. Eli Lilly & Co.,* 65 N.Y.2d 449, 456–457, 492 N.Y.S.2d 584, 482 N.E.2d 63), "collateral estoppel may be properly applied to default judgments where the party against whom preclusion is sought appears in the prior action, yet willfully and deliberately refuses to participate in those litigation proceedings, or abandons them, despite a full and fair opportunity to do so" (*Matter of Abady,* 22 A.D.3d at 85, 800 N.Y.S.2d 651; *see Brown v. Suggs,* 39 A.D.3d 395, 834 N.Y.S.2d 526).

The issues before this Court are:

1) Did the default in the bankruptcy court which found the agreement involving a different merchant (seller) usurious, collaterally estop the plaintiff from proceeding with its action for breach of contract?

2) Was the plaintiff given a fair opportunity to fully litigate the issue of the validity of the Agreement in the bankruptcy court?

The plaintiff here (defendant in the bankruptcy proceeding) moved to vacate its default in the bankruptcy court which involved a different merchant (seller). The bankruptcy court denied the motion and found that the agreement, similar if not identical to the agreement in the instant action, was a usurious loan. *J and M Supply of the Carolinas, LLC* did not involve whether the merchant actually ever attempted to reconcile under the terms of the agreement which is now a factor to be considered under *Apollo Funding Co. v Dave Reilly Constr., LLC*, 241 AD3d 1508, 1509 [2d Dept 2025], "…because DRC did not engage in the agreement's reconciliation procedure, our review of the claim that the process was illusory is precluded. Moreover, no contractual provision existed establishing that a declaration of bankruptcy would constitute an event of default (*cf. Crystal Springs Capital, Inc. v. Big Thicket Coin, LLC,* 220 A.D.3d 745, 747, 198 N.Y.S.3d 142)."

Under these particular circumstances, it cannot be said that the plaintiff intentionally defaulted in the context of a motion to vacate a default and it cannot be said that the decision in *J and M Supply of the Carolinas, LLC* involved consideration of whether the merchant actually ever asked for reconciliation which is a factor under *Apollo Funding Co*. *See also In re Abady*, 22 AD3d 71 [1st Dept 2005]:

> A more difficult question is raised by respondent's contention that the Referee and Hearing Panel erred in applying collateral estoppel based on the default judgment in the *Koncelik* matter. Under New York law, "collateral estoppel effect will only be given to matters actually litigated and determined in a prior action" (*Kaufman v. Eli Lilly & Co.,* 65 N.Y.2d at 456, 492 N.Y.S.2d 584, 482 N.E.2d 63 [internal quotations omitted]; *see also Koch v. Consolidated Edison Co.,* 62 N.Y.2d 548, 554, n. 2, 479 N.Y.S.2d 163, 468 N.E.2d 1 [1984], *cert. denied* 469 U.S. 1210, 105 S.Ct. 1177, 84 L.Ed.2d 326 [1985]; Restatement [Second] of Judgments § 27). An issue is not actually litigated if "there has been a default, a confession of liability, a failure to place a matter in issue by proper pleading or even because of a stipulation" (*Kaufman,* at 456–457, 492 N.Y.S.2d 584, 482 N.E.2d 63; *see also* Restatement [Second] of Judgments § 27, comments d, e at 255–257).
>
> While the above authorities accurately reflect the general rule with respect to default judgments, this Court has carved out a limited exception where the party against whom collateral estoppel is

> sought to be invoked has appeared in the prior action or proceeding and has, by deliberate action, refused to defend or litigate the charge or allegation that is the subject of the preclusion request (*see Kanat v. Ochsner,* 301 A.D.2d 456, 458, 755 N.Y.S.2d 371 [2003]; *Matter of Latimore,* 252 A.D.2d at 219–220, 683 N.Y.S.2d 526).

See Stewart Tit. Ins. Co. v Bank of New York Mellon, 154 AD3d 656, 663 [2d Dept 2017]:

> Moreover, the issue of whether collateral estoppel should be applied in a particular case "turns on general notions of fairness involving a practical inquiry into the realities of the litigation" (*Melendez v. McCrowell,* 139 A.D.3d 1018, 1020, 32 N.Y.S.3d 604 [internal quotation marks omitted]; *see Jeffreys v. Griffin,* 1 N.Y.3d 34, 41, 769 N.Y.S.2d 184, 801 N.E.2d 404). Collateral estoppel is a "flexible doctrine" and should not be "rigidly or mechanically applied since it is, at its core, an equitable doctrine reflecting general concepts of fairness" (*Simpson v. Alter,* 78 A.D.3d 813, 814, 911 N.Y.S.2d 405 [internal quotation marks omitted]).

Moreover, "(w)hether the MCA agreements were disguised loans turns on the features of the agreements, which raise hotly disputed questions of fact. The New York Court of Appeals has held that issue preclusion is 'at least theoretically' available for mixed questions of law and fact. *See Am. Home. Assurance Co. v. Int'l Ins. Co.*, 684 N.E.2d 14, 16 n.1 (N.Y. 1997), *see Golden Foothill Ins. Services, LLC v Spin Capital, LLC*, 24-CV-8515 (AS), 2025 WL 2402616, at *4 [SDNY Aug. 19, 2025]."

Based on the foregoing, it is

ORDERED that the defendants' motion to reargue is GRANTED and upon reargument the court adheres to its original decision and order and DENIES defendant's motion (MS#2); and it is further

ORDERED that all other requests not specifically addressed are DENIED.

This constitutes the decision and order of the Court.

2026 MAY -7 10:00
KINGS COUNTY CLERK
FILED

Hon. Richard J. Montelione

For Clerk's use only:
MG ✓ [ ] to the extent
MD _____
Motion seq. # 3