

Borough Constr. Group LLC v Citigrant Funding Corp.

2026 NY Slip Op 31969(U)

May 7, 2026

Supreme Court, New York County

Docket Number: Index No. 154230/2021

Judge: Hasa A. Kingo

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This opinion is uncorrected and not selected for official publication.

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. 154230/2021

BOROUGH CONSTRUCTION GROUP LLC, BOROUGH EQUITIES LLC,

MOTION DATE 04/30/2026

Plaintiff,

MOTION SEQ. NO. 008

- v -

CITIGRANT FUNDING CORP., VEIL LLC, EDEN BALLROOM LLC, FYM MILLBROOK LLC

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 188, 189, 190, 191, 192, 193, 194, 195, 212, 213, 214, 215, 216, 217, 231, 235, 236, 238

were read on this motion for ENFORCEMENT.

Plaintiff Borough Equities LLC ("Borough Equities") moves, pursuant to CPLR § 2104, for an order enforcing the settlement placed on the record in open court on March 3, 2026, and for entry of judgment against defendant Citigrant Funding Corp. ("Citigrant") in the amount of \$120,000, or alternatively \$50,000, together with attorneys' fees, costs, and interest. Citigrant opposes the motion and argues, inter alia, that the motion has been rendered moot because Citigrant has already tendered the full \$120,000 settlement amount to the Westchester County Sheriff pursuant to a sheriff's levy issued in connection with an outstanding judgment against Borough Equities and related judgment debtors.

For the reasons set forth below, the motion is denied as moot.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from claims asserted by Borough Equities and Borough Construction Group LLC relating to construction work allegedly performed at property located at 637 West 50th Street, New York, New York. Following years of litigation, trial commenced before this court on March 2, 2026.

On March 3, 2026, after trial had begun, Borough Equities and Citigrant entered into a settlement in open court. The material terms of the settlement were placed on the record after allocation of Citigrant's principal. Under the settlement, Citigrant agreed to pay Borough Equities a total of \$120,000 in three installments, and Borough Equities agreed, upon full payment, to discontinue the action and discharge its mechanic's lien.

The first payment of \$50,000 was due on or before March 24, 2026.

The record further establishes that before trial Citigrant had been served with a restraining notice pursuant to CPLR § 5222 in connection with a judgment exceeding \$3 million entered against Borough Equities, Borough Construction Group LLC, and related parties in separate litigation commenced in Kings County by Red Hook 160 LLC. Thereafter, on April 21, 2026, Citigrant was served with a sheriff's levy directing turnover of the settlement proceeds. Citigrant subsequently tendered the full \$120,000 settlement amount to the Westchester County Sheriff pursuant to that levy.

Borough Equities nevertheless seeks enforcement of the settlement and entry of judgment against Citigrant.

ARGUMENTS

Borough Equities argues that the settlement is binding and enforceable pursuant to CPLR § 2104 because it was placed on the record in open court and because Citigrant admittedly failed to make the first installment payment directly to Borough Equities by the agreed-upon date. Borough Equities further argues that the restraining notice and levy did not excuse Citigrant's obligations under the settlement and contends that this court may direct payment pursuant to the "order of the court" language contained in CPLR § 5222(b).

Citigrant does not dispute that an enforceable settlement was placed on the record. Rather, Citigrant argues that the motion is moot because Citigrant has already tendered the full settlement amount pursuant to the sheriff's levy. Citigrant contends that once it was served with the levy, it became legally obligated under CPLR article 52 to remit the funds to the Sheriff and could not lawfully disregard the levy by paying Borough Equities directly. Citigrant further argues that the remaining dispute concerns competing claims to the settlement proceeds and does not present a basis to enter judgment against Citigrant after Citigrant already paid the full settlement amount.

DISCUSSION

Open-court stipulations of settlement are favored by the courts and generally will be enforced according to their terms absent fraud, collusion, mistake, accident, or other recognized basis to invalidate the agreement (*Hallock v State of New York*, 64 NY2d 224, 230 [1984]; *McCoy v Feinman*, 99 NY2d 295, 302 [2002]). A stipulation made in open court pursuant to CPLR § 2104 constitutes an independent contract binding upon the parties (*Hallock*, 64 NY2d at 230).

Here, there is no genuine dispute that the March 3, 2026, settlement was validly entered into in open court and that its terms were sufficiently definite to be enforceable under CPLR § 2104. However, the existence of an enforceable settlement does not itself require entry of judgment where the record demonstrates that the underlying controversy concerning performance of the settlement has already been extinguished.

A matter is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714 [1980]). Courts of this State do not render advisory opinions or determine abstract

questions disconnected from practical relief (*id.*; *Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 810-811 [2003]).

Applying those principles here, Borough Equities' motion to enforce the settlement and compel payment from Citigrant has been rendered moot by Citigrant's undisputed payment of the full \$120,000 settlement amount pursuant to the sheriff's levy. Citigrant no longer retains possession or control of the settlement funds. Accordingly, there is no remaining controversy concerning whether Citigrant must pay the settlement amount because the payment has already been made.

Moreover, the record demonstrates that Citigrant's payment was made pursuant to statutory enforcement obligations imposed under CPLR article 52. Upon service of the sheriff's levy, Citigrant, as garnishee, was obligated to comply with the levy and surrender property or debts subject thereto (*see* CPLR § 5232[a]). A garnishee who disregards a levy or restraining notice acts at its peril and may face liability for failing to honor enforcement process (*Aspen Indus. v Marine Midland Bank*, 52 NY2d 575, 580-581 [1981]). The statutory scheme governing judgment enforcement is intended to preserve assets available to satisfy judgments and prevent improper dissipation of restrained property (*id.*).

Under these circumstances, Citigrant's tender of the settlement proceeds to the Sheriff constituted compliance with the levy and satisfaction of its obligations as garnishee. Whatever disputes may remain concerning entitlement to those proceeds are disputes among Borough Equities, Red Hook 160 LLC, Rosenberg & Estis, P.C., or other interested parties. They are not disputes concerning any continuing breach by Citigrant of its settlement obligations.

Indeed, Borough Equities effectively seeks an order directing Citigrant to pay the same settlement amount a second time notwithstanding Citigrant's undisputed payment pursuant to levy. Such relief would be incompatible with the practical realities of the present record and inconsistent with the statutory framework governing judgment enforcement proceedings.

Nor is this motion the appropriate procedural vehicle to adjudicate competing priority claims to the funds already turned over to the Sheriff. Questions concerning the validity, priority, or distribution of restrained or levied funds are ordinarily resolved within the context of the judgment enforcement proceedings themselves, with all interested parties before the court (*see* CPLR § 5225; CPLR § 5239). This court declines, on the present motion record, to adjudicate such competing claims indirectly through a CPLR § 2104 enforcement application against Citigrant.

Accordingly, because Citigrant has already tendered the full settlement amount pursuant to the sheriff's levy, Borough Equities' motion to enforce the settlement and compel payment is denied as moot.

Plaintiff's request for attorneys' fees and sanctions is likewise denied. Attorneys' fees are not recoverable absent contractual, statutory, or rule-based authorization (*Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491 [1989]). Borough Equities has failed to establish any basis for such relief. Additionally, the court finds that Citigrant's conduct in complying with the restraining notice and levy was neither frivolous nor sanctionable under 22 NYCRR § 130-1.1.

Finally, because the settlement funds have been fully tendered pursuant to levy, Citigrant has satisfied its monetary obligations under the settlement agreement. Borough Equities therefore shall execute all documents necessary to discharge and cancel the mechanic’s lien asserted against Citigrant’s property, without prejudice to Borough Equities or any other interested party asserting claims to the settlement proceeds in the appropriate enforcement proceeding.

Accordingly, it is hereby

ORDERED that plaintiff Borough Equities LLC’s motion pursuant to CPLR § 2104 is denied as moot; and it is further

ORDERED that plaintiff’s requests for entry of judgment, attorneys’ fees, costs, sanctions, and interest against defendant Citigrant Funding Corp. are denied; and it is further

ORDERED that defendant Citigrant Funding Corp.’s tender of the full \$120,000 settlement amount to the Westchester County Sheriff pursuant to levy constitutes satisfaction of Citigrant Funding Corp.’s monetary obligations under the March 3, 2026 settlement; and it is further

ORDERED that Borough Equities LLC shall, within ten days of service of this decision and order with notice of entry, execute and file all documents necessary to discharge and cancel its mechanic’s lien asserted against the property that is the subject of this action; and it is further

ORDERED that this decision and order does not adjudicate the validity, priority, or distribution of any competing claims to the settlement proceeds presently held pursuant to the sheriff’s levy; and it is further

ORDERED that any requested relief not expressly granted herein is denied.

This constitutes the decision and order of the court.

HASA A. KINGO, J.S.C.

5/7/2026
DATE

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| <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | |

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| <input type="checkbox"/> | NON-FINAL DISPOSITION | <input type="checkbox"/> | OTHER |
| <input type="checkbox"/> | GRANTED IN PART | | |
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| <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |

APPLICATION:

CHECK IF APPROPRIATE: