

MEMORANDUM DECISION

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable ALLAN B. WEISS IAS PART 2
Justice

GOLDEN BRIDGE LLC d/b/a/ GOLDEN
BRIDGE FUNDING, LLC,

Index No. 716234/19

Plaintiff,

Motion Date: 6/15/2022

-against-

111-25 116 LLC, ENVIRONMENTAL
CONTROL BOARD, et al.,

Motion Seq. No. 3

Defendants.



The papers numbered EF Document Numbers 45-62, found on NYSCEF, were read on the plaintiff Golden Bridge LLC d/b/a/ Golden Bridge Funding, LLC's motion (1) to reform the construction loan mortgage, construction loan note, and loan documentation of plaintiff to reflect the accurate entity ownership name of the property, namely, 111-25 116 LLC; (2) to grant summary judgment pursuant to CPLR 3212 to plaintiff as against defendant 111-25 a/k/a 111-25 116 LLC, and appointing a referee to compute the amount due and owing to the plaintiff for default interest, together with any monies advanced and paid to protect the plaintiff's mortgage, including, and not limited to, taxes, assessments, water charges, sewer, rents, insurance premiums, and other expenses to repair and preserve 111-23/25 116 Street, South Ozone Park, Queens County, New York 11420; and (3) to compute the amounts due and owing from the defendant.

As an initial matter, the Court, at defendant's request, has not considered paragraphs 14-16 of its opposing papers, found at EF Document Number 52.

The facts of this case were discussed in this Court's prior decision on Motion Sequence Number 2, dated January 24, 2022, and entered on February 18, 2022. See, EF Doc. No. 42. In that decision, the Court denied the plaintiff's motion to confirm the referee's report and granted the defendant's cross-motion

permitting a late answer.

As the Court noted in its prior decision, the owner of the mortgaged real property is 111-25 116 LLC. Its member Lata Dass, however, signed loan documents knowing that they mistakenly indicated that 111-24 LLC is the property's owner. This Court observed: "Notably, plaintiff has not ought to reform the mortgage and loan documents." Order, at EF Doc. No. 42, p.3.

The Court has read the affirmation of Stephen I. Feder, Esq. ("Feder"), the transactional attorney who represented plaintiff Golden Bridge LLC d/b/a Golden Bridge Funding, LLC in the subject matter of the litigation herein. Feder was and is the authorized signatory for the plaintiff on transactional matters.

On May 2, 2018, defendant executed a Construction Loan Mortgage and Construction Loan Mortgage Note in the sum of \$410,000.00 concerning the property located at 111-23/25 116 Street, South Ozone Park, New York 11420 (hereinafter the "111-23/25 Property"). The Construction Loan Mortgage was recorded on May 15, 2018, in the Office of the Register, City of New York, Queens County (No. 2018000162700).

The full amount of the Construction Loan was disbursed to the defendant. All interest through May 2, 2019 was prepaid at closing. The loan matured and was fully due and payable on May 2, 2019. Defendant failed to pay any part of the principal back on May 2, 2019, thereby defaulting in the terms of the Note. Defendant has also defaulted in making the 24% default interest payments for the time period from May 2, 2019 through to date concerning the 111-23/25 Property.

Defendant owes Plaintiff the sum of \$410,000.00 plus 24% default interest for the time period from June 2, 2019 through to date pursuant to Article 36 of the Construction Loan Mortgage costs, and disbursements pursuant to Article 9(d) of the Construction Loan Mortgage and attorneys' fees in the amount to be determined upon the adjudication of this action pursuant to Article 51(d) of the Construction Loan Mortgage concerning the 111-23/25 Property.

In this case, defendant executed various loan documents at the closing of the construction loan which unequivocally establishes that the loan documentation should have reflected that the ownership entity name of Defendant should have

been 111-25 116 LLC. This mistake was based upon a scrivener's error.

There is no question that the proper corporate name for the Defendant is 111-25 116 LLC. At the closing, the defendant's Sole Member, Lata Dass, and her attorney noticed that the name was in error all over the set of documentation, but they chose to say nothing. On all of the documents, Ms. Dass signed as Member of 111-25 LLC, and never said a word. Additionally, Ms. Dass executed an "Errors and Omissions Compliance Agreement," included among other documents found at EF Document Number 50. The aforementioned Agreement directs any party "to re-execute any document or instrument signed at or prior to closing as necessary to effectuate the loan, including any corrected documents."

Defendant and her transactional attorney at the time of the loan executed an affidavit acknowledging that they both have received the mortgage documents being executed and are satisfied that the Plaintiff now holds a valid and fully enforceable Note and Mortgage against the 111-23/25 Property.

Although the aforementioned "Errors and Omissions Compliance Agreement," requires the borrower to re-execute any incorrect document "within seven days" of its May 2, 2018 signing, the six-year statute of limitations governing an action for reformation [inapplicable here on this 2019 loan] would be the only temporal limitation that would prevent this Court to correct an obvious error by the lender and prevent a one-sided windfall for the borrower. *See*, CPLR 213(6); *see, e.g., Johnson v. Broder*, 112 A.D.3d 788 (2nd Dept. 2013).

The defendant here cannot be permitted to capitalize opportunistically upon a mistake and thereby reap a windfall which clearly was the result of an obvious mistake that the defendants had no reason to rely upon. *See, Merrill Lynch, Pierce, Fenner & Smith Inc. v. Arcturus Builders Inc.*, 159 A.D.2d 283, 285 (1st Dept. 1990).

Mutual mistake or fraud may furnish the basis for reforming a written agreement. The two concepts are closely related. In a case of mutual mistake, the parties have reached an oral agreement and, unknown to either, the signed writing does not express that agreement. *See, Harris v. Uhlendorf*, 24 N.Y.2d 463 (1969); *Hart v. Blabey*, 287 N.Y. 257 (1942). In a case of fraud, the parties have reached agreement and, unknown to one party but known to the other - - who has misled

the first - - the subsequent writing does not properly express that agreement. *See, Barash v. Pennsylvania Term. Real Estate Corp.*, 26 N.Y.2d 77, 86 (1970).

As to the branch of the plaintiff's motion seeking reformation, the plaintiff is entitled to reformation of the mortgage to accurately reflect the parties' agreement. This Court grants the Plaintiff's motion to allow the reformation of the Construction Loan Mortgage, Construction Loan Note,, and Loan Documentation of Plaintiff *nunc pro tunc* based upon scrivener's error to reflect the correct and accurate ownership entity name of the defendant herein.

The plaintiff's request for reformation is consistent with governing law. *See, e.g., Bank of Am., N.A. v. Pennicooke*, 186 A.D.3d 545 (2nd Dept. 2020); *JPMorgan Chase Bank, N.A. v. Grinkorn*, 172 A.D.3d 1183 (2nd Dept. 2019); *VNB New York Corp. v. Chatham Partners, LLC*, 125 A.D.3d 517 (1st Dept. 2015). Reformation is an appropriate remedy where the wrong party was named in the contract. *See, e.g., 313-315 W. 125th St. L.L.C. v. Arch Specialty Ins. Co.*, 138 A.D.3d 601, 602 (1st Dept. 2016); *EGW Temporaries, Inc. v. RLI Ins. Co.*, 83 A.D.3d 1481 (4th Dept. 2011).

The plaintiff's amended verified complaint [EF Doc. No. 6] is deemed amended to conform to the proof presented on this motion.

As to the branch of the plaintiff's motion for summary judgment, the plaintiff established prima facie that, as a result of a scrivener's error, the loan documents incorrectly named the borrower. Once the scrivener's error is corrected, and the agreements reformed, as indicated above, no triable issue exists. *See, Wells Fargo Bank, NA v. Ambrosov*, 120 A.D.3d 1225, 1226-27 (2nd Dept. 2014). The branches of the motion seeking summary judgment and for a referee to compute the amounts due and owing from the defendant are also granted.

Settle order on notice.

Dated: July 29, 2022
D#64

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J.S.C.

