

**O'Keke v IRA Judelson, LLC**

2017 NY Slip Op 32205(U)

October 13, 2017

Supreme Court, Kings County

Docket Number: 504072/16

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 9**

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**PATRICK O'KEKE,**

**Plaintiff,**

**DECISION/ORDER  
Index No. 504072/16  
Motion Seq. #1  
Submitted: 10/12/17**

**-against-**

**IRA JUDELSON, LLC, and IRA JUDELSON BAIL  
BONDSMAN,**

**Defendants.**

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**HON. DEBRA SILBER, J.S.C.:**

Recitation as required by CPLR 2219(a), of the papers considered in the review of plaintiff's motion for summary judgment.

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<b>Papers</b>	<b>Numbered</b>
Notice of Motion, Affirmation and Exhibits Annexed.....	<u>1-11</u>
Affidavit in Opposition and Exhibits Annexed.....	<u>12-15</u>
Reply.....	<u>16-22</u>

**Upon the foregoing cited papers, the Decision/Order on this application is as follows:**

Plaintiff moves to for summary judgment; defendants filed papers opposing the motion, but defaulted in appearing on the return date and thus their opposition was not considered by the court.

This is an action alleging causes of action for conversion, unjust enrichment and fraud. Plaintiff, an attorney, in his affidavit, claims that on July 22, 2013, non-party Leila Amissah posted bail for Humphrey Udeh, a defendant in a criminal case,<sup>1</sup> by depositing the

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<sup>1</sup>*People v Udeh*, Kings County Supreme Court Indictment 5303/13.

sum of \$125,000 with defendant Ira Judelson, LLC, to secure a bail bond from defendant Ira Judelson, a bail bondsman, for \$500,000. Plaintiff annexes a copy of the receipt of deposit for these funds as Exhibit #4 to his motion. The receipt specifies that defendants agreed that, upon completion of the case, and a discharge of the bail requirements by the court, the defendants would return the deposited monies, with fees deducted, to Ms. Amissah. A copy of the actual agreement is not provided.

On July 6, 2015, Mr. Udeh's case was completed. Plaintiff annexes as Exhibit #5, a "Certificate of Disposition - Bail Exoneration" from the Kings County Clerk dated July 24, 2015.

Plaintiff avers in his affidavit that he was retained by Mr. Udeh to file and perfect his appeal. He further states that because Mr. Udeh's family could not afford to pay for his services at the time, Mr. Udeh's family agreed to assign the bail money to him, which was deposited with the defendants, towards his fees. To that end, Ms. Amissah assigned the right to collect the bail monies to plaintiff. The "Assignment of Bond/Cash Bail" signed by Ms. Amissah is annexed to the motion as Exhibit #6.

Plaintiff states that defendants rejected the assignment, claiming that they require a specific form be used. The blank form for an assignment provided by defendants is annexed to the motion as Exhibit #7. Plaintiff states that the defendants also told him that, along with the new assignment, they require the agreement/receipt of deposit, and a copy of the exoneration of the bail, that is, the certificate of disposition from the court case and a copy of Ms. Amissah's New York State ID. A copy of Ms. Amissah's driver's license is annexed to the motion as Exhibit #8.

Plaintiff avers that he completed and provided all of these forms, and on July 27,

2015, resubmitted his application for a return of the bail monies. He states that defendants acknowledged that the submission was complete and stamped, signed and dated his submission. A copy of the signed, dated and stamped submission is annexed to the motion as Exhibit #9. Plaintiff further avers that, at that time, he was assured by defendants that he would receive a refund to the bail monies within 60 days.

Plaintiff further avers that, after the 60-day period was up, he contacted defendants to inquire about the status of the application and was told by Mr. Judelson that they "were working on it" and that "some checks got lost in the mail," so they were requesting replacement checks. He was also told that plaintiff had been misinformed, as the waiting time for a refund of bail monies was up to 90 days, so he should be patient.

Plaintiff avers that, after the 90-day period passed, he again contacted defendants and requested an immediate response so that he could avoid taking legal action.

Plaintiff states that, at the end of November, 2015, defendant Judelson personally called him and apologized for the delay. He said it was due to "backed up work" in the office. Plaintiff says that Judelson told plaintiff that the matter would be resolved and a check remitted in the first week of December, 2015.

Plaintiff states that, since that time, Mr. Judelson has made numerous excuses, including his son's illness, insurance company delays, and that the check is lost in the mail. Plaintiff commenced this action on or about March 20, 2016.

By the submission of the plaintiff's evidence, including the bail agreement/receipt of deposit, (which clearly specifies that defendants agreed to return the funds upon completion of the case and a discharge of the bail requirements by the court), the exoneration of the bail and the certificate of disposition, and the assignment of the bail

monies to plaintiff, plaintiff has shown his entitlement to a refund of the bail monies.

Money deposited by a third person in lieu of bail for another remains the depositor's money. (*Balter v County of Wyoming*, 70 AD2d 1051 [4<sup>th</sup> Dept 1979]). "Upon the exoneration of the bail, the money so deposited, less statutory fees, shall, by order of the appropriate criminal court, be refunded to the person who originally deposited such money." (*Balter v. County of Wyoming*, 70 AD2d 1051). A person who posts bail may assign the right to receive the bail proceeds. See *Shields v Carbone*, 78 AD3d 1440 (3d Dept 2010). Here, the funds deposited were not cash bail deposited with the court, but an insurance company bond, and thus the fee permitted is governed by Ins. Law § 6804 (as opposed to Gen Mun Law § 99-m).

As such, the plaintiff's motion for summary judgment is granted on default. Submit a judgment, on notice, to the County Clerk for the amount demanded in the complaint, less the statutory fee, along with a Bill of Costs.

This shall constitute the decision and order of the court.

Dated: Brooklyn, New York  
October 13, 2017



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Hon. Debra Silber, J.S.C.  
Hon. Debra Silber  
Justice Supreme Court