

**Tamir v Azrak**

2020 NY Slip Op 33873(U)

October 2, 2020

Supreme Court, New York County

Docket Number: 653839/2019

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART IAS MOTION 63M**

*Justice*

-----X

YOUNES TAMIR,

Plaintiff,

- v -

VICTOR AZRAK, LUCKY STAR LICENSING, LLC, JOHN  
DOE

Defendant.

-----X

INDEX NO. 653839/2019

MOTION DATE August 18,  
2020

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

The following read on defendant LUCKY STAR LICENSING LLC'S partial summary judgment motion, CPLR 3212, for quantum meruit, and unjust enrichment; YOUNES TAMIR cross-moves for partial summary judgment, CPLR 3212, for breach of contract against VICTOR AZRAK.

CPLR § 3212 (b) states that, "the [summary] motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." At this point no discovery has occurred, and the motion and cross-motion are based solely on affidavits of the parties.

The alleged facts are derived from the affidavits of Younes Tamir, Victor Azrak, and Ruben Azrak. Younes Tamir and Victor Azrak had worked together approximately ten years ago for two years. Younes Tamir later worked through his own business in selling Lucky Star

Apparel, which was headed by Ruben Azrak, the father of Victor Azrak, and which Victor Azrak had an officer type role.

In July 2018, Younes Tamir loaned Victor Azrak \$125,000. Receipt of the loan monies were placed in Lucky Star's Account in Gotham Bank, which was under the control of Ruben Azrak.

As per Victor Azrak's affidavit in paragraph ten, "[u]pon receipt, my father kept \$25,000 as a return portion of the money [I] owed to him and the remainder of \$100,000 my father wired to another individual to whom I owed money, Joshua Soufah."

Victor Azrak's affidavit continues in paragraph eleven, "I never disputed that I borrowed the money. Indeed, I was always grateful to the plaintiff for loaning me the money."

The affidavit of Ruben Azrak deposes in paragraph four, "[t]he \$125,000 sent by plaintiff to Lucky Star was in connection with an investment between the plaintiff and my son, Victor Azrak. Lucky Star's sole involvement in this matter was accepting the wire for convenience purposes. The plaintiff wired the money to Lucky Star's account and Lucky Star immediately wired the money out. Lucky Star did not retain the money or benefit from the money in any way."

Ruben Azrak affirms that, "[i]n July 2018 my son, Victor Azrak, together with another individual, Mr. Soufeh, became involved in an investment in connection with purchasing property in Brooklyn (located at 82 Somers Street). The property was purchased on July 24, 2018 through an entity, 1671 Lincoln Place LLC. In connection with the investment, my son asked, and I had agreed, to initially loan him \$75,000 of which \$25,000 would be immediately returned so that the net loan amount would be \$50,000."

On July 23, 2018 Lucky Star advanced to 1671 Lincoln Place LLC \$75,000 for the purchase of the Brooklyn property. On July 26, 2018, Lucky Star received \$125,000 from Younes Tamir. On July 26, 2018, Lucky Star wired to Mr. Soufeh, Victor Azrak's investor, the sum of \$100,000.

It appears Lucky Star, controlled by Ruben Azrak, received \$125,000, kept \$25,000, and wired the sum of \$100,000 to Mr. Soufeh. Lucky Star was enriched by \$25,000.

The affidavit of Younes Tamir affirms that the money sent to Lucky Star was a loan to Victor Azrak and not an investment in real estate. Paragraph fifteen of Younes Tamir's affidavit states, "[t]he monies wired to Lucky Star were a Loan."

Younes Tamir affirms in paragraph six that, "Victor Azrak agreed that if the money could be advanced right away, it would be paid back within sixty days." Victor Azrak affirms in paragraphs six, seven, eight, "[t]he plaintiff, being a good friend, knew that I was suffering and offered to loan me \$125,000 until the criminal matter against me is resolved at which time I will pay him back. Since this was a loan between friends, I did not sign any documents and there are no documents evidencing the loan. The loan and its terms were made orally between us. We had agreed that the loan was interest-free and that I would repay the plaintiff when the criminal matter against me was completely resolved. Since the criminal matter against me is still pending and is not yet resolved, I do not yet owe the money." A written agreement between the parties has not been submitted to this Court.

To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented (see *Glick & Dolleck Inc v Tri-Pac Export Corp*, 22 NY2d 439, 441 [1968]). Summary judgment should not be granted where there is any doubt as to the existence of a

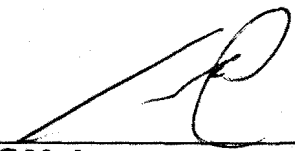
factual issue or where the existence of a factual issue is arguable (see *Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]).

Through affidavits of the parties there was an agreement between Younes Tamir and Victor Azrak regarding a loan in the amount of \$125,000. There remain questions of fact about the duration and terms of this loan agreement. Younes Tamir affirms the loan duration of sixty days while Victor Azrak affirms "until the criminal matter against me is resolved." Lucky Star appears to be the conduit between these two parties and benefited by \$25,000. However, it remains unclear at this time of Lucky Star Licensing LLC's role, responsibilities, and possible liabilities. Clearly discovery must proceed in this matter.

Defendant LUCKY STAR LICENSING LLC'S motion for partial summary judgment regarding quantum meruit and unjust enrichment is DENIED.

Plaintiff YOUNES TAMIR'S motion for partial summary judgment for breach of contract is DENIED.

10/2/2020  
DATE

  
**HON. LAURENCE L. LOVE**  
**J.S.C.**

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

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

APPLICATION:

CHECK IF APPROPRIATE: