

**Eisner v Zaim**

2021 NY Slip Op 30421(U)

February 11, 2021

Supreme Court, New York County

Docket Number: 656238/2020

Judge: Arlene P. Bluth

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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**

<p><b>PRESENT:</b> <u>HON. ARLENE P. BLUTH</u></p> <p style="text-align: center;"><i>Justice</i></p> <p>-----X</p> <p>MARGARET EISNER, OREN EISNER</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>BEYHAN ZAIM,</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p><b>PART</b> <u>IAS MOTION 14</u></p> <p><b>INDEX NO.</b> <u>656238/2020</u></p> <p><b>MOTION DATE</b> <u>02/10/2021</u></p> <p><b>MOTION SEQ. NO.</b> <u>002</u></p> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>
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The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for RENEWAL.

The motion by plaintiffs to renew the Court's previous decision is denied and this case is removed to Civil Court pursuant to CPLR 325 (d).

This case is about the return of an \$18,600 security deposit. Previously, the Court granted defendant's motion to dismiss in part and denied plaintiff's cross-motion for sanctions. The parties disagreed about whether defendant had wired money (constituting the value of the entirety security deposit) to plaintiffs. Defendant claimed she sent it and plaintiffs swore they did not receive the money. The Court noted that there clearly was a dispute about what happened with the wire transfer: whether the bank or defendant was at fault.

Plaintiffs claim that they have now received documents from defendant's bank (JP Morgan) and they claim that defendant deliberately lied to the Court about the basis for her motion to dismiss. They claim the documents show that the funds defendant claimed she wired to plaintiffs were returned to her bank account on the same day of the attempted transfer. Plaintiffs again seek sanctions against defendant including, costs, legal fees, striking defendant's answer and a default judgment.

In opposition, defendant insists that she attempted to wire the amount in dispute to plaintiffs at the account number provided by plaintiffs. Defendant maintains that the wire transfer failed because plaintiffs did not provide the name on the account. She explains in her affidavit in opposition that “on three occasions I was informed by a person at Chase Bank, that the wire was successfully completed, and the money had been transferred” (NYSCEF Doc. No. 58, ¶ 5).

In reply, plaintiffs contend that the documents from JP Morgan reveal that the money was in defendant’s account according to her bank statement.

### **Discussion**

The Court denies the motion. The award of sanctions requires wildly inappropriate conduct and, here, the Court finds that defendant did not do anything that could justify the harsh remedies demanded by plaintiffs. The facts submitted suggest that defendant was obviously mistaken about whether the wire transfer was completed and that she probably should have consulted her bank account prior to making a motion to dismiss based on the wire transfer. But defendant claims that she was told on numerous occasions by JP Morgan that the money had been sent. A mistaken belief, even a foolish belief, is not a fraud on the Court.

Of course, the context matters here. Defendant was trying, and apparently is still attempting, to give back the money at issue. She allegedly agreed to return the money and consider pursuing a separate action for damage to the apartment (the money that was originally taken out the security deposit). As the Court stated previously, it is bizarre that this case has not settled given that defendant wants to return the security deposit. But plaintiffs seem insistent on utilizing recently passed laws that might entitle them to additional money beyond the security deposit. That is their right. But plaintiffs’ litigation strategy to double their security deposit does not mean they should be awarded sanctions.

## Summary

Under any reasonable interpretation, defendant's conduct is not sanctionable. While she may have been confused and should not have relied on oral conversations with her bankers, nothing constitutes sanctionable conduct or the parade of horrors described by plaintiffs.

The Court also observes that because the amount in controversy here is below the threshold for cases to be brought in Supreme Court, it will transfer the case to Civil Court pursuant to CPLR 325(d). The amount sought in this case is for the return of the security deposit totaling \$18,600, an amount which the landlord tried to give back.

That plaintiffs might be entitled to double damages in the event that they can prove defendant willfully refused to return the security deposit within 14 days is of no moment. Emails submitted on the previous motion between the parties demonstrate that defendant had no idea that plaintiffs had moved out; they never communicated with her prior to moving out and her property manager had apparently died of Covid (NYSCEF Doc. No. 26). She discovered that plaintiffs allegedly had done damage to the premises, but instead of continuing to fight over the security deposit, she decided to return the deposit and consider whether to bring an action for the damage at a later time. The Court finds that because the only basis for exceeding the threshold for this Court's jurisdiction (the purported willful failure to return the deposit) is extraordinarily weak, this case should be removed to Civil Court.

Accordingly, it is hereby

ORDERED that the motion by plaintiffs to renew is denied; and it is further

ORDERED that it appearing to this court that the amount of damages sustained by the plaintiff in this action may be less than the sum demanded and that the Civil Court of the City of New York would have had jurisdiction of this action but for the amount of damages demanded,

this action shall be removed to the Civil Court of the City of New York, New York County pursuant to CPLR 325 (d); and it is further

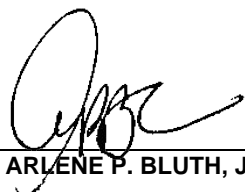
ORDERED that, within 30 days from entry of this order, the counsel for the plaintiffs shall serve a copy of this order with notice of entry upon the Clerk of the Court, who is hereby directed to transfer the file in this action to the Civil Court of the City of New York, New York County; and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) ); and it is further

ORDERED that, within 30 days from entry of this order, counsel for the plaintiffs shall contact the staff of the Clerk of the Court and shall cooperate with the staff in effectuating the transfer of the file in this case to the Civil Court; and it is further

ORDERED that the file in this case shall be delivered to the Civil Court if the case is a hard-copy matter and, if it is an e-filed one, shall be transferred through the New York State Courts Electronic Filing System in accordance with any applicable Administrative Order of the Chief Administrative Judge governing e-filing in the Civil Court.

2/11/2021  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER