

**Tahari v Narkis**

2023 NY Slip Op 32801(U)

August 11, 2023

Supreme Court, New York County

Docket Number: Index No. 650671/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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ELIE TAHARI, ELIE TAHARI LTD,  
  
Plaintiff,

INDEX NO. 650671/2021

MOTION DATE N/A

- v -

SHLOMO NARKIS, HAIM NARKIS, RUTH PELEG  
  
Defendant.

MOTION SEQ. NO. 006

**DECISION + ORDER ON  
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113 were read on this motion to/for DISCOVERY.

Mr. Narkis’s motion to compel the Plaintiffs to produce (i) banking records and Elie Tahari Ltd.’s (ETL) books and records showing transfers or transactions between the parties, and (ii) tax records demonstrating any transfers or transactions between the parties must be granted in part.

Mr. Tahari and ETL must produce (i) banking records and books and records solely to the extent that they show monies received from Mr. Narkis, and (ii) tax records solely to the extent that they demonstrate how the \$9 million at issue in this case was reported to tax authorities.

By Decision and Order dated January 13, 2022 (NYSCEF Doc. No. 75), this Court, among other things, denied Mr. Narkis’s motion to dismiss. On appeal, the Appellate Division noted that, according to the complaint, Mr. Tahari caused ETL to send \$9 million to Mr. Narkis in April 2005 while Mr. Narkis was incarcerated in Israel because the \$9 million loan would help him

reach a potential plea deal and avoid a lengthy prison sentence (NYSCEF Doc. No. 101, at 1). The loan was allegedly conditioned upon Mr. Narkis's agreement to sign a loan agreement memorializing the terms and conditions of the loan and Mr. Narkis's obligation to repay the debt (*id.*, at 1-2). Mr. Narkis's son allegedly promised that \$3-4 million would be repaid within three to four months and the remainder would be paid within the year, but that Mr. Narkis could not sign the agreement until he was released from prison (*id.*, at 2). Mr. Narkis was allegedly released in April or May 2005, but did not sign the agreement that Mr. Tahari sent to him (*id.*). On March 14, 2007, Mr. Tahari and Mr. Narkis executed a written loan agreement in which Mr. Narkis acknowledged the debt and the parties agreed that the agreement "will be in force after 10 years" (*id.*). Mr. Narkis later swore to an Israeli court in July 2019 that he had not needed the \$9 million to cover his obligations pursuant to his plea bargain (*id.*).

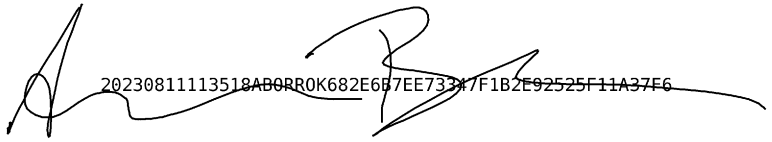
The parties continue to dispute the nature of the \$9 million sent from ETL to Mr. Narkis. As discussed above, Mr. Tahari contends that it was a loan and seeks its repayment. Mr. Narkis on the other hand asserts that the parties engaged in various financial transactions over a period of years that resulted in Mr. Tahari owing him money and that this amounted to repayment. Mr. Narkis alleges that in 2000 the parties agreed that the amount that Mr. Tahari owed Mr. Narkis was \$9 million. He further alleges that the parties agreed that Mr. Tahari would keep the money in his account in the United States until Mr. Narkis requested the money at the conclusion of the Israeli tax authorities' investigation. Mr. Narkis allegedly requested the money in 2005, *i.e.*, at or around the time he was allegedly incarcerated, and Mr. Tahari then sent the money.

As material and necessary to Mr. Narkis' case, he entitled to banking records and ETL's books and records solely to the extent that they demonstrate monies received by the Plaintiffs from Mr. Narkis. He is not entitled however to more than that. For completeness, it does not matter that Mr. Narkis was unable to produce such bank records or that he testified that he destroyed or otherwise did not keep such records.

The Plaintiffs' tax records must also be produced solely to the extent they reflect how the Plaintiffs reported the \$9 million, if at all. Although production of tax records is generally disfavored, it is required where the information is necessary and is unavailable from other sources (*Garcia v 2728 Broadway Housing Development Fund Corp.*, 171 AD3d 491, 491 [1st Dept 2019]). Here, the nature of the \$9 million, *i.e.*, whether it was a loan or a repayment of a debt, is central to the action, and Mr. Narkis is entitled to know how the Plaintiffs reported the money to tax authorities (if at all). To the extent the Plaintiffs do not have any relevant documents or have already produced all relevant documents within their possession, they must produce a Jackson affidavit to that effect.

It is hereby ORDERED that Mr. Narkis's motion to compel is granted as set forth above; and it is further

ORDERED that the documents shall be produced within 14 days of the date of this order.



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8/11/2023

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE