

Tahari v Narkis

2024 NY Slip Op 33022(U)

August 27, 2024

Supreme Court, New York County

Docket Number: Index No. 650671/2021

Judge: Andrew Borrok

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

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ELIE ELIE TAHARI, ELIE ELIE TAHARI LTD,
Plaintiff,

- v -

SHLOMO SHELLY NARKIS, HAIM NARKIS, RUTH
PELEG

Defendant.

INDEX NO. 650671/2021

MOTION DATE 12/20/2023,
12/20/2023

MOTION SEQ. NO. 007 008

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 007) 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 182, 190, 191, 192, 193, 194, 195, 196, 197, 198

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 184, 185, 186, 187, 188, 189, 199, 200, 201, 202, 203, 204, 205

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents and as discussed (*tr.* 8.23.24), Elie Tahari and Elie Tahari Ltd. (ETL)’s motion (Mtn. Seq. No. 007) for summary judgment is denied, and Shlomo “Shelly” Narkis’s motion (Mtn. Seq. No. 008) for summary judgment is granted solely to the extent that (i) ETL’s claims are dismissed as time-barred, and (ii) the claims sounding in promissory estoppel and unjust enrichment are dismissed as duplicative of the breach of contract claim.

Simply put, at bottom, there are issues of fact as to whether the \$9 million transaction at issue in this case was a new loan, as Elie Tahari alleges and the documentary evidence confirms, or if it was repayment of a prior obligation, as Shelly Narkis claims.

More specifically, Elie Tahari meets his *prima facie* burden of “tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]) as to his breach of contract and his fraud claims. However, Shelly Narkis raises an issue of fact as to whether the \$9 million transaction was actually repayment of a prior obligation **based solely on the affidavit of Ofer Resles** (NYSCEF Doc. No. 193), dated December 18, 2023, in which Mr. Resles indicates:

2. I am acquainted with both Shelly Narkis ("Shelly") and Elie Tahari ("Elie").
3. In or about 2000, I was present during a meeting between Shelly and Elie. The meeting was held at Elie's office in New York City.
4. During that meeting, Elie and Shelly discussed money that had been transferred between the two men.
5. At the end of the conversation, ***Elie agreed that he owed Shelly \$9 million.***
6. Immediately after that agreement, I vividly recall that the two men shook hands and hugged each other.

(*id.*, at ¶2-6 [emphasis added]).

The Court notes, however, that this **last-minute surprise affidavit is at odds with Shelly Narkis' interrogatory responses where he neglected to mention Mr. Resles was someone with relevant knowledge:**

Interrogatory No: 1:

Identify all persons with knowledge of the subject matter of this Action, and state the nature and subject matter of their knowledge.

Response:

Defendant objects to this Interrogatory to the extent that it exceeds the scope of Commercial Rule 11-a(b) by seeking information not limited to the name of witnesses with knowledge of information material and necessary to the subject matter of the action.

Subject to and without waiving this objection,

Shelly Narkis
Haim Narkis
Ruth Peleg
Elie Tahari

Defendant reserves the right to amend and supplement this response as additional information is discovered.

Interrogatory No: 2:

Identify all persons with knowledge relating to any defense that may be asserted in this Action, and state the nature and subject matter of their knowledge.

Response:

Defendant objects to this Interrogatory to the extent that it exceeds the scope of Commercial Rule 11-a(b) by seeking information not limited to the name of witnesses with knowledge of information material and necessary to the subject matter of the action. Subject to and without waiving this objection,

Shelly Narkis
Haim Narkis
Ruth Peleg
Elie Tahari

Defendant reserves the right to amend and supplement this response as additional information is discovered.

Interrogatory No: 3:

Identify all persons with knowledge relating to the Agreement.

Response:

Defendant objects to the definition of Agreement as referring to an “oral agreement entered into between Plaintiffs, Defendant and Haim in April 2005, pursuant to which Tahari agreed to transfer \$9 million to a bank account maintained by Peleg for the benefit of Defendant and Defendant and Haim, in turn, agreed to repay \$3-4 million of the transferred funds/loan within 3- 4 months, with the balance to be repaid in one year (as described in Paragraph 71 of the Complaint).” Defendant denies that there was any such agreement that he entered into. Subject to and without waiving this objection, Shelly Narkis, Chaim Narkis, Husein Jafferjee and Elie Tahari have knowledge concerning the transfer of funds at issue in this case. Defendant reserves the right to amend and supplement this response as additional information is discovered.

(NYSCEF Doc. No. 187, at 3-4). These interrogatory responses do not appear to have been updated to reflect Shelly Narkis’ summary judgment position that, in fact, Mr. Resles has

knowledge of the subject matter of this lawsuit.¹ However, trial is necessary to resolve this factual dispute.² Indeed, if the \$9 million was in fact repayment of an obligation of Elie Tahari personally, as Shelly Narkis asserts, then there is no breach because nothing needed to be repaid by him (as the \$9 million itself was a repayment) and, as to the alleged fraud, Elie Tahari suffered no injury as he owed the money to Shelly Narkis.

For the avoidance of doubt, Shelly Narkis is incorrect in asserting that the 2007 document (the **Loan Agreement**; NYSCEF Doc. No. 142) memorializing the 2005 transfer of \$9 million, which was signed by both parties, does not evidence an enforceable obligation because it is not a promissory note or because it fails to set forth the material terms of a loan transaction.

The Relevant Facts and Circumstances

This case has been the subject of extensive motion practice and numerous decisions of this Court (*see* NYSCEF Doc. Nos. 75, 76, and 77; collectively, the **Prior Decisions**). The facts are set forth in the Prior Decisions. Familiarity is presumed.

¹ Discovery surrounding Mr. Resles' Affidavit was never conducted in this case and he was never deposed (because he was not previously identified as a potential witness). Elie Tahari is entitled to fulsome discovery, including any and all documents in his possession, and he must subsequently be deposed in New York. Discovery as to Mr. Resles must proceed immediately and Elie Tahari may serve his demands for discovery by September 16, 2024 (including, without limitation, as to Mr. Resles' personal diaries/calendars, cell phone records, hotel receipts, emails, etc.). Responses and all relevant documents shall be produced no later than October 4, 2024. Shelly Narkis must also produce Mr. Resles no later than November 4, 2024 for a deposition, provided that he has produced all relevant documents prior to October 4, 2024. If Mr. Resles fails to produce all relevant documents, Elie Tahari may move to preclude him from testifying at trial based on the substantial prejudice of this newly identified and adduced evidence (only identified well after fact discovery was completed and note of issue filed). In addition, if based on what discovery reveals, a motion seeking renewal or reargument is appropriate, leave is granted to Elie Tahari to file an order to show cause seeking the same.

² Shelly Narkis will need to appear at trial in person or remotely via the Court's virtual platform or he will be defaulted.

Briefly, and by way of background, Elie Tahari sued Shelly Narkis, Haim Narkis, and Ruth Peleg for \$9,000,000 alleging causes of action sounding in breach of contract, promissory estoppel, unjust enrichment, fraud, conspiracy, aiding and abetting fraud, and declaratory judgment. The Court largely denied the motions to dismiss that were filed in this case. Upon review by the Appellate Division, the Appellate Division modified the Court's decision by dismissing the declaratory judgment cause of action but otherwise affirmed:

Order, Supreme Court, New York County (Andrew Borrok, J.), entered on or about January 13, 2022, which, to the extent appealed from as limited by the briefs, denied defendant Shlomo Narkis's motion to dismiss the complaint as against him, unanimously modified, on the law, to grant so much of the motion as sought dismissal of the cause of action for a declaratory judgment, and otherwise affirmed, without costs.

According to the allegations of the complaint, in April 2005, defendant, while incarcerated in Israel, telephoned plaintiff Tahari several times, asking for a \$9 million loan to help him satisfy a potential plea deal with Israeli tax authorities and thus avoid a lengthy prison term. Defendant's son Haim also called Tahari relaying the same request. Tahari ultimately agreed to send the money, and defendant agreed to "sign a loan agreement memorializing the terms and conditions" and his obligation to repay the debt. Tahari directed plaintiff Elie Tahari Limited's financial manager to "arrange for the provision of the loan and the details of the loan agreement."

On April 14, 2005, Haim provided the information for the funds transfer into defendant's former wife's bank account, and the financial advisor explained that the funds would be sent the following Monday, April 18, 2005. Haim stated by email that \$3-4 million would be repaid within three to four months, and the rest would be repaid "within the year," but he also advised that defendant would not be able to sign the note until he was released from prison. The money was transferred as promised, and defendant struck a plea bargain in Israel the same day, April 18, 2005, satisfying charges of tax fraud and money laundering. Defendant was at liberty between April 18 and May 5, 2005, but did not sign the agreement that plaintiffs sent.

On March 14, 2007, Tahari and defendant executed a written loan agreement in which defendant acknowledged the debt, and the parties agreed that "[the] document will be in force after 10 years." Defendant later swore before an Israeli court in July 2019 that he had not, in fact, needed plaintiffs' \$9 million to cover his obligations under the 2005 plea bargain.

Supreme Court properly denied the motion to dismiss on statute of limitations grounds, as the record does not conclusively demonstrate that the defense applies (*see Matter of Behr*, 191 AD2d 431, 431 [2d Dept 1993]). The March 14, 2007 loan agreement does not

expressly constitute a promise by defendant to “waive, to extend, or not to plead the statute of limitation” (General Obligations Law § 17-103[1]). Instead, despite the inartful phrasing of the agreement that it “[would] be in force after 10 years,” the effect of the March 2007 agreement may be interpreted to extend the term of the original agreement for 10 years from April 18, 2005, the date that the funds were transferred. Under this interpretation, because the debt was owed in full as of April 18, 2015, this action would be timely, as it was commenced on January 29, 2021, before the six-year limitations period expired (CPLR 213[2]). For the same reason, the causes of action for promissory estoppel, unjust enrichment, and a declaratory judgment would be timely commenced (*see Solnick v Whalen*, 49 NY2d 224, 229-230 [1980]; *Maya NY, LLC v Hagler*, 106 AD3d 583, 585 [1st Dept 2013]).

Moreover, even assuming, as defendant asserts, that the March 2007 agreement was meant only as a promise to toll the limitations period for 10 years rather than to extend the term of the loan, a factfinder may find that equitable estoppel prevents defendant from interposing a statute of limitations defense under the circumstances presented here. According to the allegations in the complaint, defendant arrived at Tahari Ltd.’s corporate office unannounced, insisted that Tahari agree to his terms, and falsely stated that he could be sent to prison if plaintiffs made good on their threats to sue him, thus inducing Tahari by deception to sign the agreement so that defendant, who was his cousin, could purportedly avoid prison (*see General Obligations Law § 17- 103[4][b]*; *Zumpano v Quinn*, 6 NY3d 666, 674 [2006]; *Rodriguez v Morales*, 200 AD2d 406, 407 [1st Dept 1994]).

The cause of action for fraud, as well as the alternative claims of conspiracy to commit fraud and aiding and abetting fraud, was also timely commenced within two years of the time plaintiffs discovered the fraud (CPLR 213[8]). It was not until July 2019 when defendant averred in an affidavit that he did not actually need or use the \$9 million to satisfy the financial obligation in connection with the plea agreement, that plaintiffs first learned of the alleged fraud. Defendant further averred that the monies had remained in his former wife’s account long after the transfer. Prior to defendant’s affidavit, plaintiffs did not have information to show that defendant misrepresented the reason for the loan and the location of the monies (*Non-Linear Trading Co., Inc. v Braddis Assoc.*, 243 AD2d 107, 118 [1st Dept 1998]). As such, plaintiffs’ duty of inquiry was not triggered until 2019 (*see MBI Intl. Holdings Inc. v Barclays Bank PLC*, 151 AD3d 108, 115 [1st Dept 2017], *lv denied* 29 NY3d 919 [2017]).

We reject defendant’s argument that Tahari does not have standing. The allegations in the complaint regarding defendant’s and his son’s direct negotiations with Tahari demonstrate that Tahari was the real party in interest regarding the loan as it was initially provided. Furthermore, defendant and Tahari are the parties named in the 2007 loan agreement, which defendant drafted (*see e.g. Travelsavers Enters., Inc. v Analog Analytics, Inc.*, 149 AD3d 1003, 1007 [2d Dept 2017]).

As to the causes of action for promissory estoppel and unjust enrichment, both of these claims were properly pleaded in the alternative to the breach of contract cause of action,

as the matter presents a bona fide dispute as to the existence of a valid contract (*see Kramer v Greene*, 142 AD3d 438, 441-442 [1st Dept 2016]). Plaintiffs also stated a cause of action for promissory estoppel by pleading that defendant had made a “sufficiently clear and unambiguous promise” in both 2005 and 2007 to repay the debt; that plaintiffs had reasonably relied on the promise in giving the money to defendant and agreeing to the written agreement in 2007; and that plaintiffs were injured by the reliance, as defendant refused to repay the money (*see Castellotti v Free*, 138 AD3d 198, 204 [1st Dept 2016]). Similarly, plaintiffs stated a cause of action for unjust enrichment by pleading that defendant was enriched at plaintiff’s expense by the transfer of \$9 million and a more lenient jail term, as well as plaintiff’s later acquiescence to defendant’s demand not to bring legal action for several years (*see Kramer*, 142 AD3d at 442; *Mandarin Trading, Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]).

Supreme Court also correctly denied the motion to dismiss the cause of action for fraud for failure to state a cause of action (CPLR 3016[b]; *see Perella Weinberg Partners LLC v Kramer*, 153 AD3d 443, 449 [1st Dept 2017]). The facts alleged support a conclusion that there was an agreement between defendant and his son to commit fraud, because they worked together to convince Tahari that defendant needed the money even though he did not. Further, defendant’s son provided the account number for the transfer of funds into his ex-wife’s account (*see Gregor v Rossi*, 120 AD3d 447, 449 [1st Dept 2014]). The complaint also sufficiently alleges aiding and abetting fraud, asserted against defendant in the alternative, as it alleges that defendant made false representations to Tahari, thus assisting the fraud and proximately causing the harm on which the primary liability is predicated (*see Stanfield Offshore Leveraged Assets, Ltd. v Metropolitan Life Ins. Co.*, 64 AD3d 472, 476 [1st Dept 2009], *lv denied* 13 NY3d 709 [2009]).

However, the cause of action seeking a declaratory judgment should have been dismissed as duplicative (*see Nationstar Mtge., LLC v Ocwen Loan Servicing, LLC*, 194 AD3d 490, 493 [1st Dept 2021]). The claim is substantially similar to the one for breach of contract, as it seeks a declaration of the same rights and obligations as those arising from the 2005 loan and the 2007 written loan agreement (*see Colfin SNP-1 Funding, LLC v Security Natl. Props. Servicing Co., LLC*, 199 AD3d 406, 407 [1st Dept 2021]).

We have considered defendant’s remaining contentions and find them unavailing

(*Elie Tahari v Shelly Narkis*, 216 AD3d 557 [1st Dept 2023]).

Subsequently, discovery ensued including that certain interrogatories were propounded and certain answers were given. Among these interrogatories, Elie Tahari asked Shelly Narkis for information as to any and all people who might have knowledge of the transaction at issue in this

case so that he could conduct appropriate discovery. As discussed above, in his verified interrogatory response (NYSCEF Doc. No. 187), Shelly Narkis indicated that Haim Narkis, Ruth Peleg, Ellie Tahai and he were the only people with knowledge of the transaction at issue in this case. **At this time, he did not mention Mr. Resles or that Mr. Resles may have knowledge of any of the issues involved in this case. As such, discovery as to Mr. Resles has simply not taken place.**

With discovery seemingly complete, however, on October 19, 2023, Elie Tahari filed Note of Issue in this action (NYSCEF Doc. No. 122). Both parties have filed for summary judgment.

In support of his motion for summary judgment, Elie Tahari argues that all of the contemporaneous documentary evidence supports the entry of summary judgment. In fact, he argues, there simply was no purpose for execution of the Loan Agreement *after* he funded the money other than to evidence Shelly Narkis' obligation and to satisfy his expressed concerns that Shelly Narkis was swindling him based on Shelly Narkis' then broken promise that upon release from incarceration he would execute loan documentation. Indeed, based on Shelly Narkis' execution of the Loan Agreement, there was no need for further inquiry. Shelly Narkis had satisfied Elie Tahari's concern and that in doing so he further concealed his alleged fraud. Put another way, nothing put Elie Tahari on notice of the fraud at issue in this case until the 2019 Affidavit and rather than being on inquiry notice of Shelly Narkis' actual wrongdoing, Shelly Narkis executed the Loan Agreement which served to conceal it by laying to rest Elie Tahari's expressed concerns. Thus, the developed record reflects what this Court and the Appellate

Division previously held, that nothing appears to have put Elie Tahari on inquiry notice until the 2019 Affidavit.

In his opposition papers and in support of his motion for summary judgment, Shelly Narkis argues it was actually he that was owed \$9 million and that the parties often had papers which did not reflect the true nature of the transaction or otherwise did not document their financial dealings at all. According to Shelly Narkis, he had papers which would support his position, but he destroyed them. It is not clear when or why. In addition, and as discussed above, he argues that Elie Tahari acknowledged that it was he that was owed \$9 million at a meeting where Mr. Resles was present that took place many years before the transfer at issue in this case took place. In support of this position (and as discussed above, at odds with his prior interrogatory response which he never updated [NYSCEF Doc. No. 187]), he now adduces the Affidavit of Mr. Resles (NYSCEF Doc. No. 193). Mr. Resles' affidavit requires discovery and response and prevents the award of summary judgment to Elie Tahari.

Finally, as relevant, the Court notes that in the Israeli Action, Shelly Narkis submitted an affidavit (the **2019 Affidavit**; NYSCEF Doc. No. 144, at 37-53) which first put Elie Tahari on inquiry notice of the alleged fraud.³

Discussion

³ Although when Shelly Narkis initially failed to sign loan papers when he was no longer incarcerated, as he had promised to do to induce Elie Tahari to cause the \$9 million to be funded, Elie Tahari expressed concern that Shelly Narkis might have been swindling him, **Shelly Narkis satisfied this concern by executing the Loan Agreement. This served to further conceal the fraud at issue in this case and to eliminate and need for further inquiry by Elie Tahari.** Thus, Shelly Narkis is wrong that Elie Tahari was previously on inquiry notice requiring dismissal on statute of limitations grounds. At most, this raises an issue of fact for trial.

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form to establish the existence of material issues of fact requiring trial (*id.*).

I. Summary Judgment is denied as to the breach of contract claim.

To prevail upon a cause of action for breach of contract, a plaintiff must prove that: (i) a contract exists; (ii) plaintiff performed in accordance with the contract; (iii) the defendant breached its contractual obligations; and (iv) the defendant's breach resulted in damages (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).

As discussed above, it is undisputed that there was a contract between Elie Tahari and Shelly Narkis and that Elie Tahari performed his contractual obligations (and unless appealed from this decision and order, Shelly Narkis is estopped from arguing otherwise at trial). The Loan Agreement and contemporaneous communications are *prima facie* evidence that in fact Shelly Narkis borrowed \$9 million from Elie Tahari and that this was not a repayment of a prior obligation of Elie Tahari's to Shelly Narkis; Shelly Narkis does not dispute that \$9 million was in fact transferred for his benefit and that ultimately he received it. Indeed, given that the Loan Agreement was executed on March 14, 2007, almost two years after Shelly Narkis received the money on April 18, 2005, it is hard to square why Shelly Narkis would have executed a document that he now claims is a charade if in fact, as he claims, Elie Tahari owed him money.

This does not make any sense. The logical explanation is that Shelly Narkis executed the Loan Agreement to *conceal his alleged fraud*. In other words, given that Elie Tahari was concerned that Shelly Narkis was defrauding him *based on Shelly Narkis' failure to execute the loan papers that he had promised to execute*, the record reflects that Shelly Narkis executed the Loan Agreement *to satisfy Elie Tahari's expressed concerns and to conceal the fact that he had in fact lied about needing the \$9 million to avoid long term incarceration*. It is also puzzling why in his Response to Plaintiff's Demand for Interrogatories, he failed to identify Mr. Resles as a person with relevant knowledge (NYSCEF Doc. 187). Under the circumstances, it is also curious that Mr. Resles has such a specific recollection of the dollar amount of this alleged obligation and that he says that he heard Elie Tahari acknowledge it at a meeting that he just happened to be at over 20 years ago. It is also odd (and Mr. Resles' Affidavit does not address this either) why Mr. Resles would be at a meeting where the cousins allegedly discussed their otherwise personal business dealings. That said, and based solely on Mr. Resles' affidavit, there are issues of fact as to what that contract actually was – *i.e.*, repayment of an existing debt or a new loan. The Court notes that to the extent that Shelly Narkis indicates that he has destroyed any evidence of prior dealings between the parties that he says supports his version of events and the fact that the Loan Agreement was executed over two years after the transfer occurred is incredibly problematic to his position. Mr. Resles' affidavit is also not clear based on when it was executed whether it actually addresses the issue in this case or whether this “obligation” had been previously satisfied (as this alleged meeting also took place years before the transfer at issue in this case). However, summary judgment must be denied. As discussed above, inasmuch as fulsome discovery as to Mr. Resles must occur (and has not yet occurred because Shelly Narkis only now identifies him as a person with knowledge), Elie Tahari is granted leave to file

an order to show cause seeking renewal or reargument after such discovery is complete if appropriate.

II. Summary Judgment is also denied as to the Fraud claim.

The elements of common-law fraud are a (i) representation of a material fact, (ii) falsity, (iii) scienter, (iv) reliance, and (v) injury (*Kline v Taukpoint Realty Corp.*, 302 AD2d 433 [2d Dept 2003]). A cause of action sounding in fraud is duplicative of a breach of contract cause of action if it is based on identical circumstances (*Toobian v Toobian*, 209 AD3d 907, 909-10 [2d Dept 2022]). The record firmly establishes that all elements of fraud in this case are satisfied except potentially injury. As discussed above, if in fact this was repayment, Elie Tahari suffered no injury because he owed the money to Shelly Narkis. Thus, summary judgment must be denied.

III. Elie Tahari's Promissory Estoppel and Unjust Enrichment Claims Are Dismissed as Duplicative

Elie Tahari's promissory estoppel and unjust enrichment claims are dismissed as duplicative of the breach of contract and fraud causes of action. To be clear, to the extent that Elie Tahari argues that he should be able to proceed on these alternative theories of recovery because Shelly Narkis disputes the existence of a contract, this is not exactly right. The record before the Court now indicates that Shelly Narkis does not really dispute the existence of a contract with Elie Tahari or that Elie Tahari performed (and he is now estopped from arguing at trial otherwise). He disputes what the contract was. According to Shelly Narkis, the contract at issue and the \$9 million transfer reflected an obligation of Elie Tahari to pay him back \$9 million. Thus, these quasi-contract claims are duplicative. Either the contract was for a new loan or it was not. For

the avoidance of doubt, and as discussed below, ETL's claims sounding in promissory estoppel and unjust enrichment, must also be dismissed as time barred.

IV. Dismissal based on Statute of Limitations and Lack of Standing is Denied.

As discussed above, the Appellate Division has already rejected Shelley Narkis' argument that the lawsuit is untimely. Discovery has not revealed any evidence that would change these prior determinations, including anything which would have put Elie Tahari on notice of the alleged fraud prior to the filing of the 2019 Affidavit. To the extent that Shelly Narkis suggests otherwise, and as discussed above and on the record, at most this raises an issue of fact for trial. The documents that he adduces that he says put Elie Tahari on notice of the alleged fraud at a previous point in time than his 2019 Affidavit (hereinafter defined) do not support his position. They undermine it. Indeed, and as discussed above, Elie Tahari was concerned **because Shelly Narkis had failed to execute the loan papers when he was no longer incarcerated as he had promised** to do in order to induce Elie Tahari to cause \$9 million to be transferred to him. This concern he satisfied when he executed the Loan Agreement in 2007 thus laying to rest any concerns that Elie Tahari had that he was being defrauded. In fact, and as discussed above, far from putting Elie Tahari on inquiry notice of the fraud, the fact that Shelly Narkis then executed the Loan Agreement, if anything, further served to conceal the fraud that he is alleged to have committed because **it satisfied the concern that Elie Tahari had – i.e., that Shelly Narkis was swindling him based on Shelly Narkis failing to execute the loan papers.** As discussed by this court and the Appellate Division, it was Shelly Narkis' 2019 Affidavit that put Elie Tahari first on notice that he had been allegedly swindled out of \$9 million based on false pretenses.

The Appellate Division also rejected the argument that Elie Tahari lacks standing. There is no new evidence adduced that Elie Tahari was not the real party in interest. Indeed, it is undisputed (and the record bears out that) Elie Tahari (i) caused ETL to transfer the money and (ii) signed, together with Shelly Narkis, the Loan Agreement. As such, he is the real party in interest (*see, id.*) and he has standing.

V. ETL's Claims Are Dismissed as Time Barred

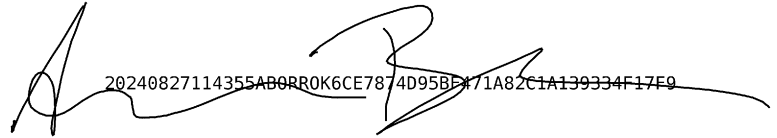
Shelly Narkis is however correct that ETL is not a signatory to the Loan Agreement and thus does not benefit from any extension of the “loan” by virtue of the execution of the Loan Agreement. Only Elie Tahari does. As such, ETL’s claims are dismissed as time-barred (CPLR 213[2], [7]; *see Cusimano v Schnurr*, 137 AD3d 527, 531 [1st Dept 2016]).

Accordingly, it is hereby

ORDERED that the plaintiff’s motion for summary judgment (Mtn. Seq. No. 007) is denied; and it is further

ORDERED that the defendant’s motion for summary judgment (Mtn. Seq. No. 008) is granted solely to the extent that ETL’s claims are dismissed as time-barred and to the extent that the claims sounding in promissory estoppel and unjust enrichment are dismissed as duplicative; and it is further

ORDERED that the parties shall appear for a status conference with the Court via the Microsoft Teams platform on September 12, 2024 at 11:30 am to discuss any issues with the discovery related to Mr. Resles, whether a motion for renewal/reargument is appropriate in this matter and trial.


20240827114355ABORROK6CE7874D95BFA71A82C1A139334F17F9

8/27/2024

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