

Katusha v Mizrahi

2024 NY Slip Op 34554(U)

December 31, 2024

Supreme Court, New York County

Docket Number: Index No. 656920/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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JOSEPH KATUSHA,

Plaintiff,

- v -

DANIEL MIZRAHI, ALEKSANDRA MIZRAHI, MIZRAHI STRATEGIES, LLC, D&A PROPERTIES SOLUTIONS, LLC

Defendant.

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INDEX NO. 656920/2022

MOTION DATE 04/04/2024

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION (Corrected)

The following e-filed documents, listed by NYSCEF document number (Motion 004) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 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, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193

were read on this motion to/for DISMISSAL.

Background¹

Plaintiff, Joseph Katusha, brings this action against the defendants for breaching contractual conditions in a joint venture with Plaintiff for investment in a residential property.

This Court granted Plaintiff’s motion for a default judgment against the defendants in July 2023.

NYSCEF #96. Now, Defendants Aleksandra Mizrahi (“Aleksandra”) and D&A Properties Solutions LLC (“D&A”) (the “Moving Defendants”) move to vacate the default judgment entered against them and to dismiss for lack of personal jurisdiction. Plaintiff cross-moves seeking jurisdictional discovery.

Discussion

“As the party seeking to assert personal jurisdiction, the plaintiff bears the ultimate burden on this issue” (Marist Coll. v. Brady, 84 A.D.3d 1322, 1322-1323, 924 N.Y.S.2d 529

¹ The Court would like to thank Special Master to the Court, Jason Lowe, Esq. for his assistance in this matter.

[Dept. 2011]). However, “in opposing a motion to dismiss pursuant to CPLR 3211(a)(8) on the ground that discovery on the issue of personal jurisdiction is necessary, plaintiffs need not make a prima facie showing of jurisdiction, but instead must only set forth ‘a sufficient start, and show[] their position not to be frivolous’” (Shore Pharm. Providers, Inc. v. Oakwood Care Ctr., Inc., 65 A.D.3d 623, 624, 885 N.Y.S.2d 88 [2nd Dept. 2009], quoting Peterson v. Spartan Indus., 33 N.Y.2d 463, 467, 354 N.Y.S.2d 905, 310 N.E.2d 513 [1974]). Where the jurisdictional issue is likely complex, discovery is “desirable, indeed may be essential, and should quite probably lead to a more accurate judgment than one made solely on the basis of inconclusive preliminary affidavits” (Peterson v. Spartan Indus., 33 N.Y.2d 463, 467, 310 N.E.2d 513, 515 [1974]).

Pursuant to Civil Practice Law and Rules §302(a)(2) "a court may exercise personal jurisdiction over any non-domiciliary.... who in person or through an agent...commits a tortious act within the state.” “To establish that a defendant acted through an agent, a plaintiff must ‘convince the court that [the New York actors] engaged in purposeful activities in this State in relation to [the] transaction for the benefit of and with the knowledge and consent of [the defendant] and that [the defendant] exercised some control over [the New York actors]’” (Coast to Coast Energy, Inc. v. Gasarch, 149 A.D.3d 485, 486–87, 53 N.Y.S.3d 16, 19 (1 st Dept. 2017) quoting Kreutter v. McFadden Oil Corp., 71 N.Y.2d 460, 467, 527 N.Y.S.2d 195, 522 N.E.2d 40 [1988]). “The conduct of an agent may be attributed to the principal for jurisdictional purposes where the agent engaged in purposeful activities in this state in relation to the transaction at issue for the benefit of and with the knowledge and consent of the principal and the principal exercised some control over the agent in the matter” (Morgan ex rel. Hunt v A Better Chance, Inc., 70 AD3d 481, 482 [1st Dept 2010])

To be entitled to jurisdictional discovery a Plaintiff's pleadings, affidavits, and accompanying documentation must show a "sufficient start" to warrant discovery on the issue of personal jurisdiction (*American BankNote Corp. v Daniele*, 45 AD3d 338, 350 [1st Dept 2007]). Plaintiff has made a sufficient start towards showing that this Court may have personal jurisdiction over the defendants due to the actions of Danny Mizrahi, who Plaintiff argues acted as the agent for the Moving Defendants. For instance, Plaintiff notes that the Affidavit of Aleksandra Mizrahi admits that she demanded Plaintiff speak with Danny Mizrahi regarding certain issues between the parties. Further, the attorney for D&A considered Danny Mizrahi to be the representative of D&A for the sale of the property at issue.

Since Plaintiff's assertion regarding defendants' New York contacts constitute a sufficient start, the issue of jurisdiction should not be decided based on the current record before the Court. Rather, the issue of jurisdiction should not be decided by the court prior to discovery on the above issues (*Edelman v. Tattinger, S.A.*, 298 A.D.2d 301 [1st Dep't 2002]). Therefore, the Court grants Plaintiff's cross motion for jurisdictional discovery in accordance with what is ordered below.

Since the Court must first determine whether it has jurisdiction before it determines the remainder of the motion, the Court holds the motion in abeyance pending the below.

Accordingly, it is hereby

ORDERED that Plaintiff shall have 60 days from the date this Order is uploaded to NYSCEF to conduct jurisdictional discovery; and it is further

ORDERED that within 80 days of the date this Order is uploaded to NYSCEF, Plaintiff shall file a supplemental briefing and any other documents that support its opposition to this motion; and it is further

ORDERED that within 100 days of the date this Order is uploaded to NYSCEF, Defendants Aleksandra Mizrahi and D&A Properties Solutions LLC shall file a supplemental briefing and any other documents that support their motion

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12/31/2024

DATE

LYLE E. FRANK, 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