

Tamayo v Maezawa
2024 NY Slip Op 35231(U)
March 13, 2024
Supreme Court, Westchester County
Docket Number: Index No. 50759/2021
Judge: Janet C. Malone
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

.....X
ALAN JOHN TAMAYO,

Plaintiff,

-against-

YUKIKO MAEZAWA,

Defendant.

.....X
YUKIKO MAEZAWA,

Plaintiff,

-against-

ALAN JOHN TAMAYO,

Defendant.

.....X
MALONE, J.:

DECISION AND ORDER
(Action No. 1)

Index No. 50759/2021
Motion Sequence Nos. 2 and 3

CONSOLIDATED FOR
JOINT TRIAL¹

DECISION AND ORDER
(Action No. 2)

Index No.: 59370/2023
Motion Sequence No. 1

Alan John Tamayo (“Tamayo”) and Yukiko Maezawa (“Maezawa”) were divorced in 2019 (Judgment of Divorce, NYSCEF Doc. No. 8) and are now before the Court on three motions, two of which dispute which former spouse is entitled to \$50,000 of the net proceeds from the sale of their former marital residence and the third motion is to consolidate the two captioned matters. Tamayo moved for summary judgment under CPLR R. 3212 and Maezawa opposed and cross-moved under CPLR 3212 for summary judgment dismissing Tamayo’s claim.

¹Herein, this Court consolidates these two actions for joint trial (*see infra* at 6).

On July 20, 2023, under Index Number 50759/2021, Tamayo filed the Notice of Motion (NYSCEF Doc. No. 41) seeking an order granting him summary judgment, pursuant to CPLR R. 3212, awarding him a money judgment in the amount of \$50,000.00 together with prejudgment interest from October 3, 2019, plus costs and disbursements, and such other and further relief as may be just, proper and equitable (Motion Sequence 2). Tamayo's motion is supported by affidavits of Alan John Tamayo in support and reply, Exhibits 1-17 (NYSCEF Doc Nos. 42, 44-59, 80, 82); memoranda of law in support and reply (NYSCEF Doc Nos. 43, 81); and is opposed by the affidavit in opposition of Yukiko Maezawa, Exhibits A-M (NYSCEF Doc Nos. 64-76, 79, 84); and memorandum of law in opposition (NYSCEF Doc No. 63).

On August 22, 2023, also under Index Number 50759/2021, Maezawa filed the Notice of Cross-Motion (NYSCEF Doc. No. 61) seeking an order granting her summary judgment pursuant to CPLR R. 3212 dismissing Tamayo's cause of action for breach of fiduciary duty, and such other and further relief as this Court may deem just and proper Motion (Motion Sequence 3). Maezawa's cross-motion is supported by the affidavit in support of Yukiko Maezawa, with Exhibits A-N (NYSCEF Doc Nos. 64-76, 79, 84); memoranda of law in support and reply² (NYSCEF Doc Nos. 63, 83).

Under Index Number 59370/2023 is Maezawa's Notice of Motion (NYSCEF Doc No. 3) to consolidate Tamayo's action (50759/2021) and Maezawa's action (59370/2023) for a joint trial. This motion is supported by the affirmations of Robert Rambadadt, Esq. in support and reply, with Exhibits A-D (NYSCEF Doc Nos. 4-9, 15); and affirmation in opposition of Henry E. Kruman, Esq. (NYSCEF Doc No. 14).

Upon the foregoing papers, the motions are consolidated for this decision and order; both summary judgment motions are denied and the motion to consolidate the actions for joint trial is granted as follows.

Background

The parties were married in Japan in November 2008, moved to New York in April 2012, and purchased a cooperative apartment in Bronxville, New York (the "Apartment") in September

² Although labeled "Affidavit or Affirmation in Support of Cross-Motion" this document is an impermissible memorandum in reply (CPLR § 2215) that was not read or considered in issuing this Decision.

2017, in Maezawa's name individually³ (Maezawa Transcript dated Apr. 21, 2023 [NYSCEF Doc No. 82] at 12, lines 2-24). To finance the purchase of the Apartment, Maezawa borrowed funds from a mortgage lender and Tamayo borrowed \$50,000 from his brother-in-law, J. Kevin Quinlivan (Quinlivan)⁴. The purported loan agreement between Tamayo and Quinlivan is a one-page document, dated September 11, 2017 and signed by Quinlivan but not Tamayo, that sets forth a loan date, interest rate, monthly payment amount, and other basic terms for a "Bridge Loan \$50,000" (NYSCEF Doc Nos. 46 and 66).

Tamayo provided the the \$50,000.00 to Maezawa, and at the mortgage lender's request in November 2017, the parties executed a "gift letter" in connection with its loan commitment underwriting (the "Gift Letter"). In the Gift Letter, Tamayo certified that he had given Maezawa the \$50,000.00 "and no repayment of this gift is expected or implied" (NYSCEF Doc No. 67). The parties lived together in the Apartment from December 2017 until about September 2018, when Tamayo moved out.

The parties sold the Apartment for \$248,000.00 in October 2019, and after satisfying the mortgage and paying attorney fees, brokers fees, and other disbursements, the net proceeds paid to Maezawa, as the sole title holder, was approximately \$54,000.00 (Closing Statement at NYSCEF Doc No. 52.)

In May 2019, Maezawa sued Tamayo for divorce in this Court alleging the "irretrievable breakdown" of the marriage (DRL § 170 [7]), and waived distribution of marital property (Maezawa Aff. dated Aug. 30, 2019 [NYSCEF Doc No. 75] at ¶ 6a). Tamayo appeared in the Divorce Action by affidavit (Tamayo Aff. dated Aug. 5, 2019 [NYSCEF Doc No. 59]), waived his right to answer the complaint and consented to the divorce (*id.* at ¶ 2), stating that he was "not seeking equitable distribution" and that "I understand that I may be prevented from further asserting my right to equitable distribution" (*id.* at ¶ 5a). Both Tamayo and Maezawa stated in their affidavits that "[a]ll economic issues of equitable distribution of marital property . . . are not to be

³ The parties state that they purchased the Apartment together (Tamayo Aff. dated July 19, 2023 [NYSCEF Doc No. 42] ¶ 9; Maezawa Aff. dated Aug. 23, 2023 [NYSCEF Doc No. 42] ¶ 8). Tamayo states that the Apartment was not in his name because his "business income was too low" (Tamayo Aff. dated July 19, 2023, at ¶ 14).

⁴ At one point in her papers, Maezawa claims that Quinlivan gave the funds to Tamayo as a gift (*Tamayo*, Maezawa aff [NYSCEF Doc No. 79] at ¶ 9). However, whether the source of Tamayo's funds was a loan or a gift has no direct bearing on whether Tamayo provided the funds to Maezawa as a gift.

incorporated into the Judgment of Divorce, since neither party to the divorce has contested [the issue]” (*id.* at ¶ 8; NYSCEF Doc. No. 75 at ¶ 6b).

The parties’ divorce was finalized in November 2019 (NYSCEF Doc No. 45), and in January 2021, Tamayo commenced a plenary action in this Court under Index Number 50759/2021 (“Action No. 1”), wherein he alleged that Maezawa had defaulted on her promise to pay him \$50,000.00 as part of their divorce settlement and sought damages in the amount of \$50,000.00, plus interest and costs (Verified Complaint [NYSCEF Doc No. 1]). The Verified Complaint initially asserted five causes of action, sounding in fraud, breach of fiduciary duty, conversion, unjust enrichment/restitution, and breach of contract. However, after Maezawa’s motion to dismiss the complaint (Motion Sequence 1) pursuant to CPLR R. 3211 (a) (1), (7), only the cause of action alleging breach of fiduciary duty remained (Hubert, J. [Decision and Order dated January 5, 2022] NYSCEF Doc No. 28).

The Court found in relevant part that:

“ . . . It is axiomatic that transactions between spouses ‘involve a fiduciary relationship.’ *Christian v. Christian*, 42 N.Y.2d 63 (1977). . . . However. . . consider[ing] . . . information upon which the belief of [Maezawa’s] misconduct is based . . . [Maezawa’s] motion to dismiss [Tamayo’s] cause of action for breach of fiduciary duty is denied.

(NYSCEF Doc. No. 28, ¶2). The Decision & Order has neither been appealed nor a motion to reargue or renew made. (*Ramanathan v. Aharon*, 109 A.D.3d 529, 530 (2d Dept. 2013)(“when an issue [has been] judicially determined, that should be the end of the matter as far as the Judges and courts of coordinate jurisdiction are concerned”).

On April 11, 2023, Maezawa commenced an action against Tamayo under Index No. 59370/2023 (“Action No. 2”) that asserted three causes of action sounding in fraud in the inducement, breach of fiduciary duty, and harassment (Verified Complaint [NYSCEF Doc No. 1] at ¶¶ 29-39). The Complaint alleged that in November 2017, Tamayo “expensed a portion of the \$50,000.00 as a gift” on his 2017- and 2018-income tax returns by “report[ing] a loss and carr[ying] the tax benefits over to the next year” (Action No. 2 Verified Complaint [Index No. 59370/2023, NYSCEF Doc No. 1] at ¶¶ 6, 9-10). Maezawa’s Complaint also alleged that after Maezawa had filed for divorce, Tamayo demanded that Maezawa return “the of the \$50,000.00 gift” (*id.* at ¶ 12). Maezawa, “believing that returning the [\$50,000] to [Tamayo] to be an appropriate gesture, agreed to return the money to him from the proceeds of the sale of the

[Apartment] and not include the amount in the [Divorce Action] to avoid paralegal costs” (*id.* at ¶ 13). Maezawa further alleged that, in reliance on the Gift Letter’s representation that Tamayo had given her the \$50,000, she purchased the Apartment, “did not contest or dispute” Tamayo’s “claiming the gift benefit” on his tax returns, and “sold the Apartment and attempted to move on with her life” (*id.* at ¶¶ 20-25).

In June 2023, before issue was joined in Action No. 2 ~~Maezawa’s action~~ (59370/2023), Maezawa moved under CPLR § 602 (a) for an order directing the joint trial or consolidation of Action Nos. 1 and 2.

Discussion

As an initial matter, Maezawa’s motion to consolidate the cases for joint trial, is warranted and appropriate. The two cases are mirror images of each other in that they have identical parties; arise from the same set of facts and concern the dispute between them regarding entitlement to the same funds.

To make a prima facie showing of entitlement to judgment as a matter of law, the moving party must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). The parties’ competing contentions must be viewed in a light most favorable to the non-moving party (*De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]). If the moving party meets its burden, the burden shifts to the nonmoving party to establish, through admissible evidence, the existence of disputed issues of material facts for trial (CPLR 3212 [b]; *Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]); *Sears Holding Mgmt Corp. v. Rockaway Realty Assoc. LP*, 176 AD3d 433 (1st Dept. 2019)(“Plaintiff met its burden on its motion for summary judgment ... by submitting admissible evidence including the emails from ...an employees of one of the defendants”)

Here, the parties’ central dispute is whether the \$50,000 that Tamayo provided to Maezawa to purchase their Apartment was a gift. According to Tamayo, Maezawa “consistently and repeatedly agreed to repay the \$50,000 that I borrowed from [Quinlivan]” (Tamayo aff, July 19, 2023 [NYSCEF Doc No. 42] ¶ 17). As evidence, Tamayo submits among other things an email that Maezawa had sent him on April 2, 2019, stating that “I am thinking about not putting the \$50,000 in the [parties’] separation agreement [for the divorce], because that will be additional fee to them [sic]. I will definitely give it to you though.” Maezawa added that “I will send you the

\$50,000 before the judge signs [the Judgment of Divorce], so it will be a transfer of assets between spouses (not taxable)” (NYSCEF Doc No. 68; Complaint [NYSCEF Doc. No. 1] ¶ 11).

Opposing Tamayo’s motion and cross-moving for summary judgment, Maezawa contends that the \$50,000 was a gift which she is not obligated to return and alleges that on or about November 27, 2017, Tamayo “stated that he would give [Maezawa] the \$50,000.00 as a gift, and she “agreed to use it towards the purchase of [the Apartment]. We drafted the Gift Letter and provided it to the mortgage lender.” (Maezawa aff [NYSCEF Doc No. 62] at ¶ 10). But shortly after Tamayo moved out of the Apartment in September 2018, he “began to insist on the return of the \$50,000.00 gift” (*id.* at ¶ 13). Maezawa “suggested that we sell [the Apartment] and split the sale proceeds, however, [Tamayo] agreed not to litigate, the cost of which could exceed \$50,000.00 if the gift was returned. I reluctantly agreed” (*id.* at ¶ 14).

Here, the submissions raise triable issues of fact which preclude summary judgment for either party.

“The elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct” (*Wallkill Med. Dev., LLC v Catskill Orange Orthopaedics, P.C.*, 178 AD3d 987, 988 [2d Dept 2019] [internal quotation marks omitted]).

Although the parties, as husband and wife, had a fiduciary relationship (NYSCEF Doc No. 28 at 2; *see also Christian v Christian*, 42 NY2d 63, 72 [1977] [“Agreements between spouses . . . involve a fiduciary relationship requiring the utmost of good faith”]), whether Tamayo gave Maezawa the \$50,000.00 as a gift is an issue of credibility to be determined by the trier of fact (*Brown v. Kass*, 91 AD3d 894, 895 (2d Dept 2012)(“Summary judgment is inappropriate where triable issues of fact or credibility are raised that require a trial”). As such, Maezawa’s misconduct has not been established by admissible evidence. Additionally, Tamayo has not shown direct damages. While Tamayo states that he is still repaying Quinlivan for his loan, he fails to provide any documentary evidence of his payments or proof of how much he has paid to Quinlivan to date.

Accordingly, Tamayo’s motion for summary judgment and Maezawa’s cross-motion for summary judgment are denied. The parties other relief has been given consideration and found either without merit or moot based on the foregoing. Accordingly, it is hereby

ORDERED that, with respect to *Tamayo v Maezawa* (Index Number 50759/2021)(Action No. 1), Tamayo's motion (Sequence Number 2) and Maezawa's cross-motion (Sequence Number 3) for summary judgment are denied; and it is further

ORDERED that, with respect to *Maezawa v Tamayo* (Index Number 59370/2023)(Action No. 2) Tamayo's motion for consolidation is granted to the extent that *Tamayo v Maezawa* and *Maezawa v Tamayo* are joined for trial; and it is further

ORDERED, that as discovery is complete in *Tamayo v Maezawa*, and as the facts in *Tamayo v Maezawa* are identical to those in *Maezawa v Tamayo*, the Court sees no reason for additional discovery in either case; and it is further

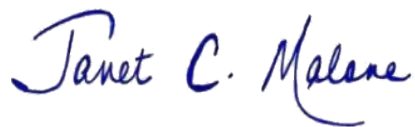
ORDERED that as the parties in *Tamayo v Maezawa* and *Maezawa v Tamayo* are directed to appear before this Court for an in-person settlement conference on April 3, 2024 at 10:00am at Westchester County Supreme Court, 111 Dr. Martin Luther, King, Jr. Blvd, Room 1401, White Plains, NY.

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, NY

March 13, 2024

SO ORDERED:



JANET C. MALONE, J.S.C.