

Rebbouh v 741 Hancock LLC

2025 NY Slip Op 31295(U)

April 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 501677/2021

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 9 day of April 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

**DECISION
and
ORDER**

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VALERIE REBBOUH; BK ADVISORY LTD,

Plaintiffs,
-against-

741 HANCOCK LLC; MCKARKEIN INVESTMENT IDF LLC;
MCKARKEIN CAPITAL LLC; BERKSHIRE ABSTRACT &
TITLE AGENCY, LLC; ZEV SCHWARTZ; EITAN BINET;
YANIV NASIMI; MEYER DEUTSCH; CW FUNDING, LLC;
TRISTONE LAND SERVICES, LLC; YIFAT BEN ZEV;
ISRAEL ARAD; LIMOR ILANY; PEYOM LHR SCOOPSA,
ACTING THROUGH AND IN RESPECT OF ITS
COMPARTMENT: PEYOM-16082018-HANCOCKJUNIOR-SE;
"JOHN DOE #1 through "JOHN DOE #100", the last hundred
names being fictitious and unknown to Plaintiff, the persons or
parties intended being the tenants, occupants, persons or
corporations, if any, having or claiming an interest upon the
premises described in the Complaint,

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Mot. Seq. No.: 8

Defendants.

-and-

GILBER TIMSIT,

Intervenor-Defendant.
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After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Defendant 741 Hancock LLC's Motion for (1) an Order pursuant to CPLR § 5001(A) awarding interest to Moving Defendants on the escrow funds of \$721,025.97 (the "Escrow Funds") belonging to Moving Defendant that was wrongfully withheld in Plaintiffs' counsel, Hasbani & Light's, attorney trust account for the period of time October 5, 2021 until November 13, 2023, when Plaintiffs returned 484,417.73 to Moving Defendant per Order of this Court dated November 8, 2023 (NYCEF Doc. No.	

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240); and (2) an Order pursuant to CPLR § 5001(A) awarding interest to Moving Defendants on the balance of the escrow funds of \$236,608.24 (the “Escrow Balance”) for the period of time November 13, 2023 to February 6, 2024 when Plaintiffs returned the Escrow Balance to Moving Defendant per Order of this Court dated February 2, 2024 (NYSCEF Doc. No. 260); and (3) an Order awarding costs and sanctions for frivolous conduct per 22 CRR-NY 130- 1.1 and supporting papers.....	261-263
Plaintiff’s Opposition papers.....	266-280
Defendant 741 Hancock LLC’s Reply.....	281-283
Other.....	

MONTELIONE, RICHARD J., J.

This action was commenced by filing the summons and complaint on February 11, 2021, alleging, inter alia, that plaintiffs loaned certain funds to defendants Hancock LLC and Eitan Binet for the purchase of 741 Hancock Street, Brooklyn, New York 11235 (the “Property”), but instead of providing a mortgage to the plaintiffs these parties secured an additional loan through defendant CW Funding, LLC, giving this entity a mortgage. The plaintiffs seek either a return of the funds loaned plus interest or a mortgage which is superior to other mortgages to secure the plaintiffs’ loan. “Plaintiffs seek a judgment under the theories of unjust enrichment, breach of contract, fraud, violations of the federal Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961, et seq.; accounting, promissory estoppel, conversion, money had and received, negligence, breach of fiduciary duty, and foreclosure to recover money and damages fraudulently and unjustly obtained by the defendants through their real estate scam,” *see* complaint, ¶ 4 (NYSCEF #2). Issue was joined by defendant 741 Hancock LLC by filing of its answer on February 8, 2022 (NYSCEF #102), which raised as a defense the statute of frauds, as they have no “contracts, agreements, or other legally binding writings between the parties.” (NYSCEF #102). A history of prior proceedings in this litigation can be found in this court’s decision and order dated February 2, 2024 (NYSCEF #279).

Defendant 741 Hancock LLC now seeks (1) an Order pursuant to CPLR § 5001(A) awarding interest to moving defendants on the escrow funds of \$721,025.97 (the “Escrow Funds”) belonging to moving defendant that was allegedly wrongfully withheld by plaintiffs in plaintiffs’ counsel, Hasbani & Light’s, attorney trust account for the period of time from October 5, 2021 until November 13, 2023, when Plaintiffs returned 484,417.73 to Moving Defendant per order of this court dated November 8, 2023 (NYCEF Doc. No. 240); and (2) an Order pursuant to CPLR § 5001(A) awarding interest to Moving Defendants on the balance of the escrow funds of \$236,608.24 (the “Escrow Balance”) for the period of time November 13, 2023 to February 6, 2024 when Plaintiffs returned the Escrow Balance to Moving Defendant per Order of this Court dated February 2, 2024 (NYCEF Doc. No. 260); and (3) an Order awarding costs and sanctions for frivolous conduct per 22 CRR-NY 130- 1.1. (Mot. Seq. No. 8)

By order dated March 25, 2021 (NYSCEF #30) the court allowed the sale of units at the property and:

that pending the hearing and determination of this application, the Defendants, their employees, agents, representatives, attorneys, servants and all persons acting on their behalf are hereby permitted

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to proceed with the sale of the units at the Subject Property and to disburse proceeds from the sales.

The court eventually issued an order which (NYSCEF #74):

STAYED, restrained, enjoined, and prohibited from taking any actions to encumber or sell the condominium unit known as Block 1658, Lot 1101 at 741 Hancock Street, Brooklyn, NY

At a conference held on November 8, 2023 (NYSCEF #262), the parties agreed that of \$721,025.97 held in escrow by plaintiffs' counsel, counsel was to retain the disputed principal and interest of \$236,608.24 which plaintiffs claimed was due and owing. This left a balance of \$484,417.73 in the plaintiffs' counsel's escrow account and the parties agreed this sum was not disputed and released to movant. The court thereafter scheduled a hearing for January 31, 2024, at 2:30pm to determine if the remaining funds in escrow should be released, or deposited with the clerk of the court. (NYSCEF #240, court's order dated November 8, 2023). After the hearing, "...when plaintiffs' counsel was specifically asked for the legal basis for the relief, and an offer of proof for retaining the escrow funds, there was neither a viable legal basis or an offer of proof that met any of the requirements under CPLR Article 62 or 63 (see CPLR6212, 6201, 6301-6314) or any other statutory or common law basis." The plaintiffs now argue there was a contractual basis for retaining the funds until either the parties settled or the court issued an order directing the release of the funds. The defendants argue there is no written escrow agreement.

According to plaintiffs' counsel, there was a purported escrow agreement approved by Zev Schwarz which bound the parties whereby plaintiffs' counsel would receive the funds from the sale of individual condominium units, then plaintiff would provide a release of the notice of pendency, and use these funds to pay down the debt owed to the plaintiffs. (NYSCEF #266). This allegedly occurred for units #1102, 1103, 1104, between April 20, 2021, and June 29, 2021, and it is claimed by plaintiffs that *plaintiffs' counsel received \$1,066,752.62 of which \$919,512.74 was applied toward principal and interest owed on the loans extended by plaintiffs to pay down the amounts owed, as agreed between the parties.*" (NYSCEF #266, ¶ 16). There is no dispute that "(o)n October 5, 2021, the final unit was sold, and Mr. Weinberger's office wired \$721,025.97 (the "Escrow Funds") to H&L's attorney trust fund." (NYSCEF #266, ¶ 41). There are numerous references to communications between plaintiffs' counsel and prior defendant Zev Schwartz where phone conversations are confirmed by email and a proposed escrow agreement is modified and sent to defendants' counsel as a result of these communications confirming that escrow funds would not be released unless a settlement was reached or by court order.¹ After a hearing and after oral argument at a subsequent appearance, the court ordered the full amount to be returned to the defendants.

This court will view the entire context of the dealings between these parties and will consider the actions of the parties, and writings exchanged between the parties, and not merely whether there is a signed escrow agreement. First, this court cannot conceive of any reason the defendants would permit the plaintiffs' lawyer to receive funds from a sale of real property,

¹ No party has raised an ethical issue as to plaintiffs' counsel communicating directly with a defendant (since dismissed from the matter) and this court will not speculate.

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owned by the defendant, some of which were allegedly retained in payment of principal and interest, *unless there was an understanding between the parties*. Second, although there is an affidavit in support of defendants' motion from "Steven" Schwartz, the court does not know if "Steven" Schwartz is the same as defendant "Zev" Schwartz and his title as "advisor to defendant 741 Hancock LLC" does little to explain exactly what role or ownership interest this deponent played in the communications, if any, between the parties. Third, there is neither a denial of the receipt of the plaintiffs' counsel's emails, or text, nor a counterclaim seeking the funds retained by the plaintiffs to pay down the alleged debt or for the return of the escrow funds. There is one text message purported to be from "Zev" Schwartz on 10/5/2021, 10:37am, agreeing to the escrow terms, "can you send me the last version with Track changes, I will accept all and send to Eitan to sign." (NYSCEF # 272) (*See Argent Acquisitions, LLC v First Church of Religious Science*, 118 AD3d 441, 990 NYS2d 1, 2014 NY Slip Op 04048, 2014 WL 2522677 [1st Dept 2014], for elements determining formation of a contract). The defendants have failed to sufficiently support their application for interest, as a matter of law, by failing to address "Zev" Schwartz's acceptance of a proposed escrow agreement. It is unknown to this court whether this individual had authority to bind the defendants to the escrow agreement and this court finds that the unusual context of the dealings between the parties may or may not have resulted in contract formation, and at this point the court declines to award interest under CPLR § 5001(A). (*See General Obligations Law §5-701. Agreements required to be in writing*). The court finds there is a sufficient question of fact as to the existence of an escrow agreement created through the writings between the parties and the acceptance by one of the prior defendants, Zev Schwartz, and alternatively, that an oral escrow agreement may have existed. *Zhang v Lau*, 210 AD3d 829, 178 NYS3d 545, 2022 NY Slip Op 06287, 2022 WL 16827177 [2d Dept 2022].

There is no question that at the time defendants' letter was sent to plaintiffs' counsel demanding the return of the escrow funds that the plaintiffs' counsel should have undertaken the return of the escrow funds, and if plaintiffs refused such return, that plaintiffs' counsel should have moved the court to either release the funds per the direction of the court or to otherwise deposit the funds with the clerk of the court. Counsel could not articulate a reason for retaining the funds. Notwithstanding, the court declines to order the payment of interest under CPLR § 5001(A) as a matter of law and discretion because defendants have not met their burden of showing that in the context of the particular dealings by the parties in this case, that a written or oral escrow agreement was not formed which allowed the plaintiffs to retain the funds until settlement or a court determination. ie, "I will accept all and send to Eitan to sign." (*See Argent Acquisitions, LLC v First Church of Religious Science*, 118 AD3d 441 [1st Dept 2014]). Further, under 22 NYCRR 130-1.1, the application is denied as a matter of discretion given the circumstances and dealings between the parties because the defendants have failed to show, as a matter of law, that the escrow agreement was not viable, and plaintiffs had no contractual right to retain the funds until settlement or court order. It cannot be said that the plaintiffs' conduct, although somewhat risky given the unnecessary exposure of the law firm to liability, violated the requirements of 22 NYCRR 130-1.1. "An escrow agent has a duty not to deliver the escrow funds to anyone except upon strict compliance with the conditions imposed (*see Sasidharan v. Piverger*, 145 A.D.3d 814, 815, 44 N.Y.S.3d 85; *Baquerizo v. Monasterio*, 90 A.D.3d at 587; *Matter of Ginzburg*, 89 A.D.3d 938, 941). *see Zhang v Lau*, 210 AD3d 829, 831-32, 178 NYS3d 545, 548, 2022 NY Slip Op 06287, 2022 WL 16827177 [2d Dept 2022] and strict compliance would require agreement of the parties or by the court's direction.

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The court notes that certain parties were dismissed from this action by order dated July 20, 2021 (NYSCEF #74):

This action is dismissed as abandoned as against defendants BERKSHIRE ABSTRACT & TITLE AGENCY, LLC, ZEV SCHWARTZ, MEYER DEUTSCH, YIFAT BEN ZEV, ISRAEL ARAD, LIMOR ILANY, PEYOM LHR SCOOPSA, ACTING THROUGH AND IN RESPECT OF ITS COMPARTMENT: PEYOM-16082018-HANCOCK-JUNIOR-SE, and "JOHN DOE #1 through "JOHN DOE 100," none of whom have been served with the summons and complaint and more than 120 days have elapsed since this action was commenced.

The caption shall be amended as a result thereof.

Based on the above, it is

ORDERED, that defendants' motion is DENIED (MS#8); and it is further

ORDERED, that the Clerk of the Court is directed to amend the caption as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

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VALERIE REBBOUH; BK ADVISORY LTD,

Plaintiffs,

-against-

741 HANCOCK LLC; EITAN BINET; YANIV NASIMI;
CW FUNDING, LLC; TRISTONE LAND SERVICES, LLC;

Defendants.

-and-

GILBER TIMST,

Intervenor-Defendant.

-----X
And it is further,

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ORDERED, that all other requests for relief are denied.

This constitutes the decision and order of the Court.



Hon. Richard J. Montelione

KINGS COUNTY CLERK
FILED
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