

**3449-3461 Hamilton FT LLC v Arnav Indus. Inc.**

2025 NY Slip Op 31936(U)

May 22, 2025

Supreme Court, New York County

Docket Number: Index No. 655447/2023

Judge: Andrea Masley

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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 48

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3449-3461 HAMILTON FT LLC, DOV ZABROWSKY,  
MOSHE GLATZER, and YAAKOV GLATZER

Plaintiffs,

- v -

ARNAV INDUSTRIES INC. PROFIT SHARING PLAN AND  
TRUST and JUDAH WASSNER,

Defendants.

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INDEX NO. 655447/2023

MOTION DATE -

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 60

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT.

Plaintiffs 3449-3461 Hamilton Ft, LLC (3449-3461 Hamilton), Dov Zabrowsky, Yaakov Glatzer (Yaakov), and Moshe Glatzer (Moshe) move, pursuant to CPLR 5019 (a), to correct the court’s June 23, 2024 Decision and Order (NYSCEF 40) to reflect that the court’s decision dismissing this action is without prejudice and, pursuant to CPLR 2221 (d), for leave to reargue that decision. Defendant Arnav Industries Inc. Profit Sharing Plan and Trust (Arnav) cross-moves for attorneys’ fees incurred in connection with its defense of this action.

**Background**

On November 4, 2019, plaintiffs executed an “Iska Agreement,” which acknowledged that plaintiffs received \$6.1 million “to invest ...in any business venture or investment ... .” (NYSCEF 2, Iska Agreement at 3; NYSCEF 1, Complaint ¶ 10.) The Iska Agreement states that Jewish law “prohibits paying and receiving interest on

loans., and thus, the \$6.1 million is considered an investment, not a loan, and profits and losses are shared equally between the parties. (*Id.* at 2.) The Iska Agreement also provides that, if “additional terms and conditions are agreed to in a separate mortgage,” they are “interpreted in a manner consistent with [the Iska Agreement] and Jewish Law of Interest.” (*Id.* at 4.) In addition to the Iska Agreement, on November 4, 2019, 3449-3461 Hamilton executed a note in the amount of \$6.1 million secured by a mortgage. (NYSCEF 12, King County Action Summons and Complaint with Exhibits.) Zabrowsky, Yaakov, and Moshe executed a guarantee, guaranteeing payment of the amounts owed under the note and mortgage. (*Id.*)

#### Kings County Action

On March 2, 2022, Arnav filed an action in Kings County against 3449-3461 Hamilton, Zabrowsky, Yaakov, and Moshe to foreclose on the mortgage and enforce the guaranty. (*Id.* [*Arnav Industries Inc. Profit Sharing Plan v 3449-3461 Hamilton FT LLC, et al.*, Index Number 506240/2022].) Arnav moved for a default judgment and 3449-3461 Hamilton, Zabrowsky, Yaakov, and Moshe cross-moved to dismiss for lack of subject matter jurisdiction and failure to state a claim, or in, alternative to compel arbitration or permit a late answer. (NYSCEF 62, Appellate Division, Second Department Decision and Order at 3.) On June 16, 2023, Hon. Lawrence Knipel granted the default motion and denied the cross-motion. (NYSCEF 19, Kings County Supreme Court June 16, 2023 Decision and Order.) On August 10, 2023, Judge Knipel denied 3449-3461 Hamilton, Zabrowsky, Yaakov, and Moshe’s motion to reargue. (NYSCEF 22, Kings County Supreme Court August 10, 2023 Decision and Order.)

On April 9, 2025, the Appellate Division, Second Department affirmed Judge Knipel, finding that 3449-3461 Hamilton, Zabrowsky, Yaakov, and Moshe “failed to provide a reasonable excuse for their default in answering the complaint.” (NYSCEF 62, Appellate Division, Second Department Decision and Order at 4.) As to the cross-motion to dismiss, which was based on the contentions “that the court lacked subject matter jurisdiction because the iska agreement required the application of Jewish law and that the plaintiff failed to state a cause of action because the iska agreement converted the loan into an investment,” the Second Department held that “the iska agreement was executed only by the appellants and not by the plaintiff, and there is no evidence that the plaintiff agreed to be bound by the iska agreement” and that “[i]n any event, the iska agreement constituted ‘merely a compliance in form with Hebraic law’ and ‘a partnership is not created thereby.’” (*Id.* at 5 [citation omitted].) The Appellate Court also held that the arbitration provision contained in the Iska Agreement was only binding on the parties that executed the document. (*Id.* at 6.)

#### New York County Action

On November 1, 2023, 3449-3461 Hamilton, Zabrowsky, Yaakov, and Moshe commenced this action for (1) breach of the Iska Agreement, (2) fraud, based on misrepresentations that the \$6.1 million was provided as an investment and not a loan, (3) fraud on the Kings County court, and (4) abuse of process in using the Kings County action to violate Jewish law and circumvent the Iska Agreement. (NYSCEF 1, Complaint.) On June 5, 2024, the court granted defendants’ motion to dismiss pursuant to CPLR 3211(4) as both actions arise out of the same subject matter and substantial identity of parties. (NYSCEF 40, Decision and Order [mot. seq. no. 001]; NYSCEF 57,

So-Ordered Transcript [mot. seq. no. 001].) The court dismissed this action without prejudice in light of the prior pending action in Kings County. (*Id.*)

### **Discussion**

As a preliminary matter, as previously stated, the Second Department held that the Iska Agreement at issue here was only executed by 3449-3461 Hamilton, Zabrowsky, Yaakov, and Moshe and there is no evidence of Arnav's intent to be bound by such. Thus, even if the court grants this motion, plaintiffs cannot state a claim for breach of the Iska Agreement. (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013] [To state a claim for breach of contract, a plaintiff must allege that the parties entered into a valid agreement].)

Plaintiffs move to correct the court's June 23, 2024 Decision and Order (NYSCEF 40) to reflect that the dismissal is without prejudice. While the written decision and order did not specifically state that the dismissal was without prejudice, the court's decision on the record clearly indicates that dismissal was without prejudice as the court repeatedly states that the action should be filed and belongs in Kings County. The court's dismissal of plaintiffs' complaint was without prejudice.

Plaintiffs also move, pursuant to CPLR 2221 (d), for leave to reargue the court's decision dismissing the complaint, arguing that the court overlooked and misapprehended applicable law. Specifically, plaintiffs argue that dismissal pursuant to CPLR 3211 (4) requires that the causes of action and relief sought be identical in both actions. However, that is not the standard. (*See White Light Prods. v On the Scene Prods.*, 231 AD2d 90, 93-94 [1st Dept 1997] [holding that there must be "sufficient identity as to both the parties and the causes of action asserted in the respective

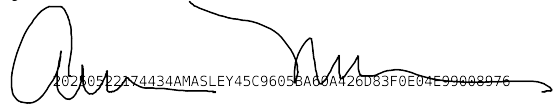
actions” and “the relief sought must be ‘the same or substantially the same’” (citations omitted)]; *Simonetti v Larson*, 44 AD3d 1028, 1029 [2d Dept 2007] [“To warrant dismissal, the two actions must be ‘sufficiently similar’ and the relief sought must be ‘the same or substantially the same’” (citations omitted)].) Further, even the presence of additional parties “will not necessarily defeat a motion pursuant to CPLR 3211 (a) (4) where, as here, both suits arise out of the same subject matter or series of alleged wrongs.” (*White Light Prods*, 231 AD2d at 94.) Accordingly, plaintiffs fail to demonstrate that the court overlooked or misapprehended the applicable law in its previous decision.

Arnav cross-moves for attorneys’ fees incurred in connection with its defense of this action which was denied on the record without prejudice as premature. (NYSCEF 61, tr at 26:20-21.)

Accordingly, it is

ORDERED that the motion of defendant for leave to reargue is denied; and it is further

ORDERED that the cross-motion for attorneys’ fees is denied.



5/22/2025  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  OTHER  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: