

E17 Apts., LLC v NY Tower Capital LLC

2025 NY Slip Op 32985(U)

July 31, 2025

Supreme Court, Kings County

Docket Number: Index No. 504988/22

Judge: Lawrence Knipel

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At an IAS Term, Part Comm-6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 31st day of July, 2025.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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E17 APARTMENTS, LLC, DAVID CRISPIN and KEREN CRISPIN,

Plaintiffs,

- against -

Index No. 504988/22

NY TOWER CAPITAL LLC, NY PRINCIPAL FUNDING CORP., JACQUES WERDYGER AS TO \$500,000, MALKY KLEIN AS TO \$100,000, CHANA WERDYGER AS TO \$300,000, TOBY WERDYGER 2018 FAMILY TRUST AS TO \$200,000, DOUGLAS TAPLIN, REUVEN SAGI, IZIDOR MIKHILI, ESQ., THE LAW OFFICE OF IZIDOR MIKHILI, PLLC, JOSPEH SCHWARTZ, ESQ., JOSEPH TEPFER and JOHN DOE NO. 1 through 99, said names being fictitious and further co-conspirators, presently unknown to Plaintiff,

Defendants,

VALENCIA AUSTON, SKYWATER CAPITAL GROUP, INC., and JAY RENDELL a/k/a DERRICK R. JOHNSON,

Crossclaim Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/

Petition/Cross Motion and

Affidavits (Affirmations) _____

184-195 197-212

Opposing Affidavits (Affirmations) _____

198-212, 214-215 218-221

Reply Affidavits (Affirmations) _____

216-221

Upon the foregoing papers in this fraud action by plaintiffs E17 Apartments, LLC

(E17) and its members, David and Keren Crispin (collectively, Plaintiffs) to quiet title to E17's real property at 349 17th Street in Brooklyn (Premises), and to void two allegedly fraudulent mortgages encumbering the Premises pursuant to RPAPL Article 15, defendant NY Tower Capital LLC (NY Tower) moves (in motion sequence [mot. seq.] seven) for an order, pursuant to CPLR 3212, granting it summary judgment on its cross-claims for indemnification and compelling defendants Reuven Sagi (Sagi) and Izidor Mikhli (with defendant Law Office of Izidor Mikhlu, Esq.) (Mikhli) to pay NY Tower the \$250,000 paid to each of them by cross-claim defendant Jay Rendell a/k/a Derrick Johnson, in settlement of NY Tower's cross-claims against Sagi, Mikhli and Valencia Auston (Auston), Skywater Capital Group, Inc. (Skywater) and Jay Rendell a/k/a Derrick R. Johnson (Rendell/Johnson) (Crossclaim Defendants) (NYSCEF Doc No. 184).

Mikhli and his law firm cross-move (in mot. seq. eight) for an order, pursuant to CPLR 3212, granting summary judgment dismissing NY Tower's cross-claim for indemnification against them (NYSCEF Doc No. 197).

Background

On February 17, 2022, plaintiffs E17¹ and David and Keren Crispin, husband and wife, commenced this fraud action by filing a summons and complaint alleging, upon information and belief, that Defendants Sagi, Mikhli, and Douglas Taplin "colluded to

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The complaint alleges that "[o]n March 6, 2020, Plaintiff [E17 Apartments, LLC] was formed by David and Keren, jointly, as 50% members of the Plaintiff, each" (complaint at ¶ 23).

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place a mortgage upon E17's Premises without the consent of David, Keren, and/or Plaintiff"; "Plaintiff did not receive any portion of the proceeds of the Fraudulent Mortgage No. 1"; and the November 24, 2020 \$500,000.00 mortgage in favor of NY Principal Funding Corp. (NY Principal Funding) "is a fraud and/or forgery and is not a valid lien upon the Premises" (complaint at ¶¶ 40, 46 and 47). The complaint alleges that "[i]n further connection with Fraudulent Mortgage No. 1, Defendant Taplin, again, knowingly falsely on behalf of Plaintiff, executed an Assignment of Rents, Leases and Other Contract Rights" in favor of NY Principal Funding (*id.* at ¶ 48).

The complaint also alleges that on December 16, 2020, Defendants Mikhli, who David Crispin believed to be his lawyer regarding the Premises (*id.* at ¶ 56), and Sagi allegedly defrauded David regarding his membership interest in E17 when Sagi falsely represented that he was purchasing the Premises from E17:

"Defendant Mikhli handed David documents to sign which both Defendant Mikhli and Defendant Sagi represented to David were to effectuate the sale [] of the Premises [to] Defendant Sagi for \$1.675 million. In fact, the documents were intended to convey [] David's membership interest in the Plaintiff to Defendant Sagi without any payment and so that Defendant Sagi could defraud Plaintiff, David, and Keren" (*id.* at ¶ 57).

The complaint alleges that both Defendants Mikhli and Sagi "had actual knowledge that David suffered [from] dyslexia and could not read well and that David would rely on the[ir] advice and representations . . ." (*id.* at ¶ 58; *see also* ¶ 16). The complaint alleges that when David Crispin had second thoughts about the transaction, Mikhli and Sagi

assured him that the transaction was void and pretended to return the original documents to him (*id.* at ¶¶ 59-63). The complaint alleges, upon information and belief, that Mikhli and Sagi “retained copies of these documents, known to them to be void, in order to perpetrate a fraud upon Plaintiff, David, and Keren” (*id.* at ¶ 66).

The complaint also alleges that on December 17, 2020, Sagi, representing that he was the sole member of E17, fraudulently encumbered the Premises with a second mortgage from Jacques Werdyger as to \$500,000, Malky Klein as to \$100,000, Chana Werdyger as to \$300,000 and Toby Werdyger 2018 Family Trust as to \$200,000 (*id.* at ¶¶ 67-68). On that same day, Sagi allegedly executed a fraudulent Assignment of Rents on behalf of Plaintiff to Jacques Werdyger, Malky Klein, Chana Werdyger and Toby Werdyger and “a Declaration of Restrictions with Defendant Tepfer, allegedly on behalf of Plaintiff, where Defendant Sagi promised not to transfer the Premises without the consent of Defendant Tepfer . . .” (*id.* at ¶¶ 72 and 74).

Additionally, the complaint alleges that “[o]n February 3, 2021, NY Principal Funding . . . recorded a UCC-1 Fixture Filing Financing Statement against the Premises (‘Fraudulent UCC’) . . .” (*id.* at ¶ 79). The complaint alleges that on June 1, 2021, NY Principal Funding commenced an action to foreclose Fraudulent Mortgage No. 1, in which Defendant Joseph Schwartz, who is “of counsel” to the Mikhli law firm, appeared in court on behalf of E17 and filed an answer verified by Sagi as “Authorized Signatory” for E17 (*id.* at ¶¶ 80-82).

The complaint asserts 10 causes of action for: (1) a judgment declaring that Fraudulent Mortgage No. 1 is not a lien or encumbrance upon the Premises and cancelling and discharging the record of same (*id.* at ¶¶ 86-98); (2) a judgment declaring that Fraudulent Assignment of Leases and Rents No. 1 is void, cancelled and discharging the record of same (*id.* at ¶¶ 100-110); (3) a judgment declaring that the Fraudulent UCC is cancelled and discharging the record of same (*id.* at ¶¶ 112-116); (4) a judgment declaring that Fraudulent Mortgage No. 2 is not a lien or encumbrance upon the Premises and cancelling and discharging same (*id.* at ¶¶ 118-129); (5) a judgment declaring that Fraudulent Assignment of Leases and Rents No. 2 is cancelled and discharging the record of same (*id.* at ¶¶ 131-141); (6) a judgment declaring that Fraudulent Declaration of Restrictions is cancelled and discharged of record (*id.* at 143-153); (7) fraud (*id.* at 155-167); (8) aiding and abetting fraud (*id.* at ¶¶ 169-175); (9) breach of fiduciary duty against Defendant Sagi (*id.* at ¶¶ 177-179); and (10) breach of fiduciary duty against Defendant Mikhli and his law firm (*id.* at ¶¶ 181-189).

NY Tower's Amended Answer and Cross-claims

On August 1, 2023, NY Tower, NY Principal Funding's mortgage assignee, filed an amended answer to the complaint in which it denied the material allegations therein, asserted affirmative defenses, including that it is "a bona fide encumbrancer for value without notice of alleged fraud in the chain of title," and asserted cross-claims against Taplin, Sagi and Mikhli for indemnification (NYSCEF Doc No. 103 at ¶¶ 194-196) and

cross-claims against Auston, Skywater and Rendell/Johnson (who it is alleged forged and fabricated E 17's formation and corporate transfer documents while engaging the services of a straw person to impersonate an authorized signatory of E 17) for unjust enrichment (*id.* at ¶¶ 198-203). On August 21, 2023, Defendant Mikhli responded to NY Tower's cross-claim (NYSCEF Doc No. 111).

On December 12, 2024, NY Tower moved for a default judgment on its cross-claims for unjust enrichment against Auston, Skywater and Rendell/Johnson (NYSCEF Doc No. 168). By a March 3, 2025 order, this Court granted NY Tower a default judgment on its cross-claims against Auston, Skywater and Johnson/Rendell (NYSCEF Doc No. 179).

NY Tower's Instant Summary Judgment Motion

On March 17, 2025, NY Towers moved for summary judgment on its cross-claims against Taplin, Sagi and Mikhli for indemnification compelling Sagi and Mikhli to pay it “the \$250,000 paid to each of them by crossclaim defendant [Rendell/Johnson] in settlement of NY Tower's crossclaims . . .” (NYSCEF Doc No. 184). Defense counsel submits an affirmation asserting that:

“Significantly, it was later disclosed in discovery that: (i) in the immediate aftermath of the November 24, 2020 loan to E17, Rendell/Johnson returned to defendant Sagi \$250,000 of loan proceeds borrowed from NY Principal Funding; and (ii) six months later, Rendell/Johnson made a second \$250,000 restitution payment to defendant Izidor Mikhli.

“Since NY Tower has a default judgment on liability against

the Crossclaim Defendants (including Rendell/Johnson), and Sagi and Mikhli concede NY Tower was defrauded in connection with the November 24, 2020 loan, summary judgment should be granted directing Sagi and Mikhli to make payment of the \$500,000 proceeds to NY Tower in satisfaction of NY Tower's crossclaims against Sagi, Mikhli and the Crossclaim Defendants" (NYSCEF Doc No. 185 at ¶¶ 11-12).

Regarding the payment made to Sagi, NY Tower submits: (1) a copy of the \$250,000 bank check that Rendell/Johnson delivered to Sagi on December 2, 2020 (NYSCEF Doc No. 191); (2) excerpts from Sagi's deposition, in which he conceded that he received a \$250,000.00 check from Rendell/Johnson in consideration for not lodging a criminal complaint against Rendell/Johnson (NYSCEF Doc No. 192); and (3) Sagi's Chase bank records reflecting the \$250,000 deposit (NYSCEF Doc No. 193).

Defense counsel asserts that in July 2021, six months after Rendell/Johnson paid Sagi the \$250,000, Rendell/Johnson made a second \$250,000 payment to Mikhli (NYSCEF Doc No. 185 at ¶ 17). Regarding the payment made to Mikhli, NY Tower submits: (1) a July 1, 2021 email chain between Mikhli and Rendell/Johnson in which Mikhli demands the return of the \$500,000 loan proceeds in two installments and Rendell/Johnson agrees to such demand (NYSCEF Doc No. 194); and (2) excerpts from Mikhli's deposition, in which he conceded that he received \$250,000.00 from Rendell/Johnson (NYSCEF Doc No. 195).

Mikhli's Opposition and Summary Judgment Cross-Motion

Mikhli opposes NY Tower's motion and cross-moves for summary judgment

dismissing NY Tower's cross-claim for indemnification against him and his law firm (NYSCEF Doc No. 197). Mikhli submits an affidavit attesting that the funds he received from Rendell/Johnson cannot be released because they are being held in escrow:

“[a]s NY Tower's counsel well knows, any funds received by Mikhli were received in escrow under specific conditions that have not been met, which prevents the releases of the escrowed funds. Mikhli has no personal interest in those trust funds, which are still being held in trust and were to be released only under the express condition that a settlement in full be reached with NY Tower concerning its foreclosure action commenced in June 2021, which has never occurred.

“Yet, NY Tower is requesting that the Court direct Mikhli to violate those conditions in order to distribute trust funds in violation of Mikhli's duties as an attorney to maintain those funds in trust, and instead to distribute them to NY Tower in violation of the express conditions under which the funds were received. It is respectfully submitted that such relief should not be granted by the Court” (NYSCEF Doc No. 198 at ¶¶ 2-3).

Mikhli also asserts that NY Tower concedes that the fraudster was Rendell/Johnson “who orchestrated a fraud against NY Tower's assignor, NY Principal Funding . . .” and asserts that “Mikhli played absolutely no role in that November 2020 NY Tower mortgage/ loan transaction, and none has been alleged by NY Tower . . .” (*id.* at ¶¶ 5-6). Mikhli further asserts that NY Tower has not proven any of the elements of an indemnification claim against Mikhli, and cannot, since “Mikhli is not a guarantor o[f] NY Tower's mortgage/loan, and Mikhli was not otherwise involved in any way in causing that mortgage/loan to be made by NY Tower's [predecessor]” (*id.* at ¶ 8).

Mikhli asserts that “NY Tower has failed to demonstrate that any such loss has yet to be incurred by it in this action or that any such potential loss has been caused solely as a result of Mikhli’s alleged tortious conduct in order [for NY Tower] to obtain [indemnification] from Mikhli” (*id.* at ¶ 9). Mikhli argues that “NY Tower has not suffered any loss or adverse result as a result of this action to support the indemnification cross-claim . . .” and “[t]here has been no adjudication of the claims made by the Plaintiffs . . . against NY Towers with respect to the validity of the NY Tower’s mortgage/loan, or the assignment of rents or UCC-1, and until then any claim against me and my firm is premature” (*id.* at ¶ 13). Mikhli notes, in paragraph 14 of his affirmation, that the second and third decretal paragraphs of the default judgment granted to NY Tower demonstrates that the relief NY Towers seeks by this motion is premature:

“ORDERED, ADJUDGED AND DECREED, that the crossclaim defendants Valencia Auston, Skywater Capital Group and Jay Rendell a/k/a Derrick Johnson are liable to NY Tower on the cross-claims and shall indemnify NY Tower *for any and all damages NY Tower incurs as a result of this action*, and it is further

“ORDERED, ADJUDGED AND DECREED, that the matter is hereby referred for an Inquest on damages *to be held at the trial of this action*” (NYSCEF Doc No. 182 [emphasis added]).

Mikhli argues that “Rendell/Johnson orchestrated the fraud against NY Towers” and “NY Tower has not demonstrated any tortious conduct committed by me or my firm” regarding the \$500,000 mortgage loan to justify NY Tower’s indemnification claim

(NYSCEF Doc No. 198 at ¶ 17). Mikhli notes that NY Tower’s principal, Edward Gitlin, previously attested² that Taplin is the one who appeared at the closing of the NY Tower’s mortgage loan and fraudulently held himself out as the sole member of E17 with authority to encumber the Premises (*id.* at ¶¶ 18-19). Mikhli attests that he was E17’s lawyer at that time, and he and his firm played no role regarding the fraudulent mortgage (*id.* at ¶ 20). Mikhli explains that his client, Sagi, who wished to purchase the Premises, discovered that Rendell/Johnson had orchestrated the fraudulent scheme (*id.* at ¶ 26).

Mikhli explains that after he learned of the fraudulent mortgage loan, his client, Sagi, unilaterally took steps to get the funds back from Rendell/Johnson (*id.* at ¶ 27). Unbeknownst to Mikhli, Sagi “had gotten Mr. Rendell to pay him \$250,000 shortly after he had contacted Mr. Rendell in December 2020” which Mikhli allegedly “did not learn about . . . until after Mr. Sagi’s deposition was taken in October 2024 in this action . . .” (*id.* at ¶ 28).

Mikhli explains that “the fraudster, Mr. Rendell, did not repay NY Tower, and NY Tower commenced a foreclosure action in June 2021. . .” (*id.* at ¶ 29), after which Mikhli wrote a July 1, 2021, email to Rendell/Johnson offering to receive \$500,000 for deposit into his law firm’s attorney escrow account in order to settle NY Tower’s foreclosure action (*id.* at ¶¶ 30-32; *see also* NYSCEF Doc No. 203). Mikhli asserts that Rendell/Johnson acknowledged the fraud and agreed to the terms of the proposed escrow deposit in his responsive email (*id.* at ¶ 33 and NYSCE Doc No. 203). Mikhli attests that

² See NYSCEF Doc No. 200.

his law firm only received \$250,000 of the \$500,000 promised by Rendell/Johnson so it could not settle NY Tower's foreclosure action (*id.* at ¶ 34). Mikhli later learned that Rendell/Johnson had been arrested based on his involvement in the fraudulent NY Tower mortgage/loan transaction (*id.* at ¶ 40).

Mikhli attests that “[t]he \$250,000 wired to my firm’s Trust Account on July 2, 2021 solely for use to settle NY Tower’s foreclosure action remains there, and I have not been authorized by anyone to disburse it” and “without a specific court order related to those specific funds, I am unable to transfer the funds out of my firm’s escrow account because the terms in the escrow agreement have not been satisfied” (*id.* at ¶¶ 41 and 43).

Sagi’s Opposition

Sagi, in opposition, submits an affirmation by his attorney asserting that “there are multiple issues of material facts” and there are “undisputed facts that undermine the movant’s request for summary judgment on its cross-claim . . .” (NYSCEF Doc No. 214 at ¶ 7). Defense counsel also asserts that “this motion is premature as the claim upon which it seeks indemnification is undecided and any claim to damages is speculative” (*id.*).

Defense counsel notes that “movant admits that Jay Rendell a/k/a Derrick R. Johnson is a felon and fraudster who obtained loan proceeds from movant by fraudulent means” and “[i]t is undisputed that no other party hereto, including . . . Sagi, has ever been charged with a crime, let alone convicted, in connection with Mr. Rendell’s crimes

and frauds” (*id.* at ¶¶ 9-10). Defense counsel notes that Sagi’s deposition transcript reflects that “there is no admission of liability or statement that money belongs to any other party” (*id.* at ¶ 17).

Defense counsel asserts that NY Tower seeks an order directing Sagi to turn over \$250,000 in satisfaction of its default judgment against the Crossclaim Defendants, despite the fact that NY Tower was not yet awarded any damages from the Crossclaim Defendants and NY Tower has not yet been found liable in this action (*id.* at ¶ 18). Defense counsel, like Mikhli, relies on the language in the default judgment awarded to NY Tower, noting that it only awards NY Tower indemnification for “any and all damages NY Tower incurs as a result of this action” which will be determined at an inquest “to be held at the trial of this action” (*id.* at ¶ 19; *see also* NYSCE Doc No. 182 at 2).

Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment 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” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez*

v Prospect Hosp., 68 NY2d 320, 324 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]).

“The principle of common-law, or implied, indemnification permits *one who has been compelled to pay for the wrong of another to recover from the wrongdoer the damages it paid to the injured party*” (*Bd. of Managers of Olive Park Condo. v Maspeth Props., LLC*, 170 AD3d 645, 647 [2d Dept 2019] [internal quotation marks omitted] [emphasis added]; *Bd. of Mgrs. of 125 N. 10th Condo. v 125 N. 10th, LLC*, 150 AD3d 1063, 1064 [2d Dept 2017] [same]; *George v Marshalls of MA, Inc.*, 61 AD3d 925, 929 [2d Dept 2009] [same]).

“To sustain a cause of action for common-law indemnification, the party seeking indemnity must prove that the proposed indemnitor’s [tortious conduct] contributed to the damages sustained by the injured party” (*Leak v RBI Assocs., Ltd.*, 229 AD3d 782, 785 [2d Dept 2024]).

NY Tower is not entitled to summary judgment on its cross-claims against Sagi and Mikhli for indemnification, since NY Tower’s liability has not yet been adjudicated

and NY Tower has not been compelled to pay for their alleged wrongdoing, and may never be so compelled (*Kings Park Indus., Inc. v Affiliated Agency, Inc.*, 22 AD3d 466, 467 [2d Dept 2005] [holding that “(a) review of the record reveals that any declaratory judgment would be premature, since the future event which would give rise to indemnification . . . is beyond the control of the parties and may never occur”]; *Hesse v Speece*, 204 AD2d 514, 514 [2d Dept 1994] [declaratory judgment action for indemnification dismissed as premature because “plaintiff has not sustained any damages as the result of the alleged negligence of the defendants, as there has neither been a judgment nor a settlement against him in the underlying personal injury action, and, in fact, there may never be”]). NY Tower’s instant summary judgment motion is premature because there has been no adjudication against NY Tower regarding the fraudulent mortgage loan originated by its predecessor.

Furthermore, there is no allegation in NY Tower’s amended answer that Mikhli and his law firm, E17’s lawyer at the time of the fraudulent mortgage, were involved with the allegedly fraudulent \$500,000 mortgage loan by which Rendell/Johnson and Taplin encumbered E17’s Premises. Because Mikhli is not an alleged wrongdoer regarding the \$500,000 mortgage loan, dismissal of NY Tower’s cross-claim for common law indemnification against Mikhli and his law firm is warranted. Accordingly, it is hereby

ORDERED that NY Tower’s motion (mot. seq. seven) for summary judgment on

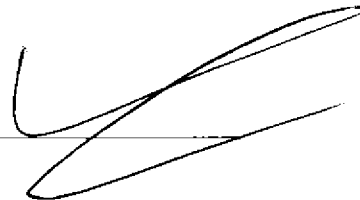
its cross-claims for indemnification against Sagi and Mikhli is denied; and it is further

ORDERED that Mikhli's cross-motion (mot. seq. eight) for summary judgment dismissing NY Tower's cross-claim for indemnification asserted against Mikhli and his law firm is granted, and the crossclaim is dismissed.

This constitutes the decision and order of the court.

E N T E R,

J. S. C.



**HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE**