

Kaufman v Frankel

2025 NY Slip Op 32995(U)

July 21, 2025

Supreme Court, New York County

Docket Number: Index No. 653822/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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INDEX NO. 653822/2020

WILLIAM D KAUFMAN,

Plaintiff,

- v -

ADY GLUCK FRANKEL, HANA FINANCIAL
INC., NECESSARY OBJECTS LTD.

DECISION AFTER INQUEST

Defendants.

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After a pre-inquest conference, the parties agreed to hold this inquest (which considers only certain defendants' counterclaims) on papers.

In support of their counterclaims, defendants submit an affidavit from Ms. Frankel in which she details the misdeeds of Mr. Kaufman, the former CFO of a company for which Ms. Frankel is the founder, sole shareholder and CEO. She points out that he falsely claimed to have loaned money to the company and then reimbursed himself at defendants' expense, that plaintiff improperly took funds from pension plans, failed to pay payroll taxes, hired his wife for a no-show job and diverted other funds. Ms. Frankel contends that the returns and financial statements establish damages in the amount of \$6,396,087.00, that \$78,515 is owed for the no-show job, \$609,140.71 is owed for failure to pay required taxes and insurance, \$50,000.00 is owed for a loan plaintiff took out on a 401(k) plan that he never repaid, and \$649,500.00 is owed for stolen funds from a trading account emptied by plaintiff without permission.

In opposition, plaintiff submits a memorandum of law in which he contends that defendants failed to submit a single deposit slip or bank statement. He complains that portions of defendants' proof are in the form of unsigned tax returns and financial statements prepared by three separate outside CPAs. Plaintiff argues that the affidavit submitted by defendants in support did not properly establish that these records constitute business records and therefore, these records constitute inadmissible hearsay.

Plaintiff also insists that none of the claims cited in the affidavit were specifically pled in defendants' counterclaims. He details purported deficiencies with each of the exhibits submitted by defendants and claims that defendants are only entitled to nominal damages.

In reply, defendants observe that plaintiff was the CFO and so he provided the financial information to the accountants used to prepare both the tax returns and the financial statements. Defendants argue that the counterclaims specifically cite plaintiff's diversion of funds for his personal benefit and payroll misrepresentations. Defendants also submit a reply affidavit from Ms. Frankel who emphasizes that the records produced in support were kept in the course of the defendants' routine business and that they were generated by plaintiff himself (and that they were produced by plaintiff during discovery).

Discussion

As an initial matter, the Court finds that defendants adequately established the admissibility of their exhibits through both the affidavits in support and in reply. Ms. Frankel addressed all of the objections raised by plaintiff in his opposition and sufficiently demonstrated the requirements for the admissibility of the subject documents (*Bank of New York Mellon v Gordon*, 171 AD3d 197, 205, 97 NYS3d 286 [2d Dept 2019] [detailing the basis for the admission of a business record]). Moreover, as this is an inquest as opposed to a dispositive

motion, defendants were entitled to remedy this issue in reply. An inquest is, of course, a trial and so a party is not prohibited from establishing the admissibility of evidence after objections are initially raised by an adversary.

The Court also rejects plaintiff's assertion that the counterclaims are insufficient to support the damages sought by defendants. A review of the counterclaims at issue reveal that they clearly set forth defendants' theory that plaintiff wrongfully diverted funds for his own benefit. For instance, in Ms. Frankel's pleading, she claims that "(i) holding himself out as the Company's CEO; (ii) holding himself out as the Company's sole, controlling, or majority shareholder; (iii) forging Ms. Gluck-Frankel's signature (and the signature of others in whose names Kaufman opened secret accounts); and (iv) fraudulently inducing Ms. Gluck-Frankel's signature" (NYSCEF Doc. No. 34, ¶ 55). Of course, the "proper remedy for a [party] who is unable to answer a complaint which is unclear is to move for a more definite statement (*Rosen v Raun*, 164 AD2d 809, 811, 559 NYS2d 541 [1st Dept 1990]). Plaintiff did not do that here nor is there any indication he served a demand for a bill of particulars.

The purpose of a pleading is merely to provide an adversary with adequate notice of what the case is about. Defendants did that here and were entitled to include additional specifics in connection with this inquest. There is no basis for plaintiff's argument that an adversary is essentially strictly limited only to the four corners of a pleading.

Finally, the Court observes that plaintiff did not submit anything from someone with personal knowledge to contradict Ms. Frankel's account of plaintiff's misdeeds. Only a memorandum of law from plaintiff's attorney was submitted. Therefore, this Court is left with Ms. Frankel's assertions, which are wholly unopposed. Defendants are therefore entitled to the full amount of damages they seek.

Accordingly, it is hereby

ORDERED that after the inquest the Clerk is directed to enter judgment in favor of defendants Ady Gluck Frankel and Necessary Objects, LTD and against plaintiff in the following amounts:

\$6,396,087.00, for the improper loans and advances plus statutory interest from August 14, 2020¹; plus


\$78,515.00 for the no-show job plus statutory interest from December 9, 2016; plus

\$609,140.71 for the failure to pay and withhold wages plus interest from August 14, 2020²; plus

\$50,000.00 for the improper 401(k) loan plus statutory interest from August 24, 2017; plus

\$649,500.00 for funds taken from a trading account without permission, plus interest from January 1, 2009

Along with costs and disbursements upon presentation of proper papers therefor.

<u>7/21/2025</u> DATE	 <small>ARLENE P. BLUTH, J.S.C.</small>			
CHECK ONE: APPLICATION: CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE

¹ Defendants did not include a specific date for interest for this section of damages and instead requested interest from the date of accrual. That is too vague to include in this section. As there were many different wrongful acts detailed, the Court picked the commencement of this action as all the actions were completed prior to the start of this case.

² Similar to above, defendants asked for interest from the various dates of these allegations. That is too vague and will only result in a delay in entering a final judgment.