

Tahari v Narkis

2025 NY Slip Op 33094(U)

August 15, 2025

Supreme Court, New York County

Docket Number: Index No. 650671/2021

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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ELIE TAHARI, ELIE TAHARI LTD,
Plaintiff,

INDEX NO. 650671/2021

- v -

MOTION DATE 08/01/2025

SHLOMO NARKIS, HAIM NARKIS, RUTH PELEG

MOTION SEQ. NO. 014

Defendant.

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 014) 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334

were read on this motion to/for RENEWAL.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 8.14.25) and in the Court’s prior Decisions and Orders, dated July 21, 2025 (NYSCEF Doc. No. 320), and dated August 27, 2024 (NYSCEF Doc. Nos. 206 and 207), Elie Tahari’s motion to renew his previous motion for summary judgment (Mtn. Seq. No. 007) is GRANTED, and on renewal, summary judgment is GRANTED as to his breach of contract claim against Shlomo Narkis.

A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion.” (CPLR § 2221[e]). Although motions to renew are addressed to the court’s sound discretion (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]), such motions should be “granted sparingly” and are not a second chance

for parties who have not exercised due diligence submitting facts in the prior motion (*Beiny v Wynyard (In re Beiny)*, 132 AD2d 190, 209-210 [1st Dept 1987]).

Previously, the Court denied Mr. Tahari's motion for summary judgment based **solely** on the affidavit of Ofer Resles, dated December 18, 2023 (NYSCEF Doc. No. 193). To wit, notwithstanding the fact that Mr. Narkis failed to disclose Mr. Resles in his interrogatory responses as someone with knowledge of the "at issue" transaction, the Court nonetheless, out of an abundance of caution, denied summary judgment based solely on the last-minute surprise affidavit of Mr. Resles offered by Mr. Narkis. As the Court previously explained, Mr. Tahari had met his

"prima facie burden of 'tendering sufficient evidence to demonstrate the absence of any material issues of fact' . . . as to his breach of contract and his fraud claims. However, Shelly Narkis raises an issue of fact as to whether the \$9 million transaction was actually repayment of a prior obligation based solely on the affidavit of Ofer Resles" (NYSCEF Doc. No. 206 at 1-2) (emphasis in original). As a result, the Court denied summary judgment as to Tahari's breach of contract and fraud claims against Narkis and ordered fulsome discovery concerning Resles. Specifically, the Court stated that, "[i]f Mr. Resles fails to produce all relevant documents, Elie Tahari may move to preclude him from testifying at trial . . ." (NYSCEF Doc. No. 206 at 4 n. 1)

On appeal, the Appellate Division found that the Court properly denied summary judgment because there were issues of fact as to whether the 2007 agreement was a new loan or repayment of an old debt such that the 2007 agreement was a sham transaction:

Narkis does not contest that Tahari agreed to transfer \$9 million, and that Tahari fully performed on that promise when ETL transferred the \$9 million, or that there had been a series of monetary transfers between the parties that were expected to be repaid. Thus, there remain questions of fact as to whether the 2007 agreement reflected a new loan to Narkis or the repayment of an old debt by Tahari. The court's statement that Narkis had admitted to all relevant facts establishing the breach of contract claim other than the actual breach does not prohibit Narkis from presenting the evidence he believes establishes that the 2007 agreement was a sham agreement intended to cover-up an illegal scheme. Such

evidence would go to the issue of whether Narkis breached the 2007 agreement by failing to repay Tahari \$9 million.

In connection with the motions *in limine* (Mtn Seq. Nos. 012 and 013), Mr. Tahari sought to preclude Mr. Resles from testifying at trial. The Court permitted Mr. Tahari to conduct appropriate discovery as to Mr. Resles' potential proffered testimony as he had not previously had an opportunity to take that discovery including in obtaining relevant documents. Mr. Narkis, by his own litigation strategy, and notwithstanding the many opportunities offered by the Court, frustrated Mr. Tahari's ability to obtain relevant discovery that Mr. Tahari was entitled to and without which he would be substantially prejudiced. Ultimately, despite multiple warnings from the Court that Mr. Resles would be precluded from testifying, Mr. Resles was precluded from testifying at trial for the reasons set forth in the Prior Decisions, and Mr. Tahari was given leave to move to renew his previous motion for summary judgment. The fact that Mr. Resles may not testify at trial is a new fact not available on the prior motion. Renewal is therefore appropriate and granted.

On renewal, there is no longer any factual basis to support Mr. Narkis' *ipse dixit* contention that the 2007 agreement was a repayment of an old debt. The \$4 million "loan" that Mr. Narkis identifies occurred *after* this \$9 million was undisputably advanced and can not be repayment of that because it had not even happened yet. It happened two months later and during a time which the parties agreed that the \$9 million would not need to be repaid by Mr. Narkis. In other words, the papers as to this \$4 million executed after the \$9 million was advanced does not create an issue of fact as to whether money that had actually already been advanced was an

actual loan or a sham transaction masking payment of a prior obligation. More specifically, Mr. Narkis does not have any credible explanation as to what this \$9 million advance was a sham of – other than repayment. He just calls it a sham. And he now offers nothing factual as to a prior obligation that in fact it was a repayment of. He does not however dispute he received the money and that he promised repayment including \$3-\$4 million within the first year.

For completeness, the Court notes that to the extent that Mr. Narkis leans into prior dealings between Mr. Tahari and himself, they too, do not create an issue of fact as to this \$9 million advance for at least two reasons. First, the prior transactions including, Mr. Tahari's alleged \$2 million "sham" loan to Mr. Narkis, which even if a sham, was only advanced to prop Mr. Narkis up and assist him in defrauding third parties. This alleged sham offers nothing in the way of factual support to the assertion that the \$9 million which he did receive was a sham. Second, none of the prior transactions involved the actual transfer of any money. Indeed, the absence of the transfer of money is the evidence of what made them sham transactions. Again, as to this transaction, there is no dispute that as to this \$9 million, it was in fact transferred to Mr. Narkis and at his request through his agent with promise of repayment. These events were not a sham. They happened and they are not in dispute. It is also not in dispute that this \$9 million was never repaid to Mr. Tahari. Additionally, the Court notes that even as to the transactions which Mr. Narkis indicates were sham transactions where no money was in fact transferred, as to the prior transactions, these appear to be to have been for Mr. Narkis' benefit not Mr. Tahari's.

Thus, inasmuch as there is no factual basis upon which a jury could find that this was anything other than what it purports to be a – an actual loan from Mr. Tahari to Mr. Narkis – there are no

issues of fact warranting further proceedings, and summary judgment is granted to Mr. Tahari on his breach of contract claim.

The Court has considered the parties' remaining arguments and finds them unavailing.


Accordingly, it is hereby

ORDERED that Mr. Tahari's motion (Mtn. Seq. No. 014) to renew his previous motion for summary judgment against Mr. Narkis is GRANTED; and it is further

ORDERED that summary judgment is GRANTED as against Mr. Narkis on his breach of contract claim; and it is further

ORDERED that Mr. Tahari shall submit judgment; and it is further

ORDERED that Mr. Narkis is directed to order and upload a copy of the transcript (*tr.* 8.14.25) to NYSCEF.


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<u>8/15/2025</u> DATE					<u>ANDREW BORROK, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input checked="" type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE