

Contact Realty Corp. v Zion

2025 NY Slip Op 33794(U)

September 25, 2025

Supreme Court, Kings County

Docket Number: Index No. 504753/2017

Judge: Richard J. Montelione

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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 25th day of September 2025.

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

**DECISION
and
ORDER**

-----X-
CONTACT REALTY CORP. and YAIR HARARI,

Plaintiffs,

Index No.: 504753/2017
Mot. Seq. No.: 8-9

-against-

DAVID ZION, YARIV KATZ and WALL STREET
HOMEBUYERS LLC,

Defendants.

-----X

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

<u>Papers</u>	NYSCEF DOC. #
Plaintiffs Contact Realty Corp., et al. Notice of Motion, Affidavit & Affirmation in Support, Exhibits, & Memorandum of Law in Support.....(MS#8)	201-215
Defendant Yariv Katz’s Order to Show Cause, Affirmations in Support and Exhibits(MS#9)	186-194, 199
Plaintiffs’ Opposition Affidavits & Affirmations, Exhibits, & Memorandum of Law(MS# 9)	216-230
Plaintiffs Reply Affirmation(MS#8)	236-240
Plaintiffs Supplemental Affirmation and Exhibits.....(MS#9)	241-245

MONTELIONE, RICHARD J., J.

This action was commenced when plaintiffs Contact Realty Corp. and Yair Harari (“President of plaintiff Contact Realty”) (Contact Realty Corp. and Harari) filed the summons and complaint on March 9, 2017, alleging, inter alia, and to the extent that it involves defendant Yariv Katz (“Katz”) and is relevant, that plaintiff Contact Realty Corp. loaned defendant Katz \$60,000.00 on November 1, 2015. The summons and complaint were served on defendant Katz on March 22, 2017, and the affidavit of service was filed on April 5, 2017. Issue was joined by defendant David Zion by Verified Answer filed on March 19, 2018 (NYSCEF #57). Defendant Katz defaulted in answering and plaintiffs filed a motion for default judgment that was granted by order dated July 11, 2017, which scheduled an inquest for November 9, 2017 (MS#1, NYSCEF #15). The note of issue for the inquest was filed on July 27, 2017 (NYSCEF #18). The inquest was adjourned from November 9, 2017 to “time of trial” by Order dated March 12,

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2018 (NYSCEF #58).

According to plaintiff Hariri's Affirmation (entitled "Affidavit of Plaintiffs"), after this Court issued a default judgment against "all of the defendants in this case, including Katz" ... "Katz wired to me a fifteen thousand (\$15,000.00) payment towards the amount owed on the loan ... thereby reducing the balance owed on that loan to forty-five (\$45,000.00) dollars." (NYSCEF #202, ¶¶ 8 & 10 respectively).

The action against defendant Wall Street Homebuyers LLC was discontinued on October 24, 2018 (NYSCEF #113). The only party where a trial was to be scheduled was for defendant David Zion (Zion). Plaintiffs moved for summary judgment *only against defendant Zion* by motion filed on August 4, 2022 (NYSCEF #174). The court issued a short form order as follows:

Plaintiffs' summary judgment motion is granted against defendants Zion *and Katz*, both having defaulted. Submit Order and Judgment on notice. (*Emphasis added*).

(NYSCEF #179).

The proposed judgment (NYSCEF #181) did not contain any language specifying that a motion for summary judgment was sought against defendant Katz, did not indicate that an inquest was required at time of trial (NYSCEF #58), and remarkably, presented a judgment to the court claiming \$218,000.00 against *both* defendant Zion and Katz, even though black letter law limits any default judgment against defendant Katz to the amount claimed in the complaint which in this matter is \$60,000.00. (*See* Complaint, ¶ 57, NYSCEF #1; *See R.D. Smithtown, L.L.C. v Lucille Roberts Figure Salons, Inc.*, 277 AD2d 439, 440 [AD 2nd Dept. 2000]). The court, in clear error, entered a judgment against Katz in the principal amount of \$218,000.00 along with an inaccurate amount of interest.

Plaintiffs now move for the following relief by amending its notice of motion (NYSCEF #201, MS#8): "pursuant to CPLR Rule 3025(c), amending the Complaint dated March 9, 2017, to conform the pleading to the proof and reflect that the Plaintiffs are owed a sum certain amount of ninety-five thousand (\$95,000.00) dollars by Defendant Katz plus statutory interest from the due date, and amend the December 4, 2023 judgment to reflect this conformed proof." Plaintiff Contact Realty Corp., through the affidavit of plaintiff Harari, states that the loan of \$60,000.00 was made to alleviate a shortfall in defendant Katz's attorney IOLA account.¹ This loan was partially paid by defendant Katz in the amount of \$15,000.00 which now reduces the amount of the loan to \$45,000.00; however, there was allegedly a second loan, never mentioned in the original complaint, of \$70,000.00, but due to subsequent payments, the amount actually due is \$95,000.00 and plaintiffs seeks to "correct the mistake" and to amend the judgment so there is a

¹ The court takes judicial notice that defendant Katz was disbarred by order of the Appellate Division dated January 8, 2025 (2020-06842, Attorney Registration No. 4714119).

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judgment in the amount of \$95,000.00 against defendant Katz. Plaintiffs state that it “(did) not seek summary judgment against defendant Katz,” (NYCEF #214) but the only logical reading of the short form order presented to the court is that defendants, including Katz, *defaulted on the motion for summary judgment*. The proposed order and judgment was clearly submitted with the intention of receiving the full amount claimed in plaintiffs’ motion for summary judgment as it does not seek an inquest for the lesser amount claimed against defendant Katz (NYSCEF #58).

Defendant Katz’ motion to vacate the judgment entered herein as against defendant Yariv Katz is GRANTED (MS#9).

It was brought to the court’s attention by plaintiffs’ counsel, in a court-permitted supplemental affirmation filed on September 2, 2025 (NYSCEF #241), that the parties stipulated to settle the issues involving the judgment by agreement signed on “Feb. __, 2025” by the defendants Zion and Katz, and signed by the plaintiffs on April 14, 2025 (NYSCEF #244 filed on September 2, 2025). The stipulation, amongst other provisions, calls for defendants to pay \$65,000.00, at paragraph (i), on or before February 15, 2025 (paragraph (ii)); a release of defendants Zion and Katz by plaintiff Contact Realty “[u]pon execution of this Agreement *and* the Settlement Check clearing” at paragraph 9 (emphasis added); a release of defendants Zion and Katz by plaintiff Harari “[u]pon execution of this Agreement *and* the Settlement Check clearing” at paragraph 10 (emphasis added); defendants Zion and Katz’ release of plaintiff Contact Realty Corp. “[u]pon execution of this Agreement” at paragraph 11 (emphasis added); and defendants Zion and Katz’ release of plaintiff Harari “[u]pon execution of this Agreement” at paragraph 11 (emphasis added). Finally, paragraph 13 of the agreement states:

(t)his agreement shall not be effective until the settlement check has cleared the escrow account of The Gold Law Firm, PC. Except that paragraphs 11 and 12 of this agreement shall be effective once it is executed by all parties to this agreement.

The court need not rule on the effect of the releases exchanged by the parties or whether any payment was made pursuant to the parties stipulation filed at NYSCEF #244 as the court is not authorizing an amended pleading as set forth below.

Legal Analysis

The court will vacate the judgment against defendant Katz and direct a new judgment be submitted solely against defendant David Zion because: 1) no inquest was held as was required under the court’s prior order; 2) the judgment issued was in excess of the amount permitted under black letter law because the amount claimed in the complaint was for \$60,000.00 (*See* CPLR 3215[b]; *R.D. Smithtown, L.L.C. v Lucille Roberts Figure Salons, Inc.*, 277 AD2d 439); 3) the amount claimed in the complaint would never or should never have been entered as a judgment even if an inquest had been held because the amount sought must be reduced by \$15,000.00 as conceded by the plaintiff given that certain payments were made to reduce the \$60,000.00 debt; and 4) although courts will freely provide for amendment of pleadings, the

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amendment sought by the plaintiffs involve a separate and distinct cause of action based on a separate and distinct subsequent loan without any indication in the complaint sought to be amended of there being any other claim for monies owed. Given that the statute of limitations has expired on the separate loan, and there is no showing that the “relation back” doctrine applies, the court denies the motion to amend the pleading. (*See Schwartz v Walter*, 171 AD3d 969 [2d Dept 2019]; *see also Chappaqua Congress of Teachers v Bd. of Educ. of Chappaqua Cent. School Dist.*, 238 AD3d 849, 852[2d Dept 2025], “A claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading” (CPLR 203[f]”); *see Campbell v Bradco Supply Co.*, 192 AD3d 967, 969[2d Dept 2021], “(c)ontrary to the plaintiff’s contention, the allegations in the original complaint gave no notice of the facts, transactions, and occurrences giving rise to the proposed supplemental claims raised in the [proposed] causes of action and, thus, the relation-back doctrine does not apply (*see* CPLR 203[f]).”

In fact, notice of the \$60,000 loan in the original complaint could not have provided notice of the subsequent Promissory Note because this second loan was allegedly provided by plaintiffs to defendant Katz on October 2, 2017 (NYSCEF #223), after the filing of the action on March 9, 2017. Notwithstanding the acknowledgment of defendant Katz in the subsequent Promissory Note that he also owed the plaintiff the original \$60,000.00 loan, to amend the complaint to add a separate cause of action more than seven years after a default judgment was entered and after the statute of limitations has run on this second loan, is prejudicial and precludes such an amendment.

The affidavit from the attorney who originally submitted the motion for summary judgment indicates that he is now retired, and although the court finds that the judgment submitted and the short form order provided to the court was improper and sanctionable under 22 NYCRR § 130-1.1(c)(1)(3), the court declines to impose sanctions inasmuch as all collection actions ceased immediately upon plaintiffs’ being informed of the inaccuracy.

Based on the foregoing, it is

ORDERED that the defendant’s motion to vacate the judgment against defendant Yariv Katz (MS#9) is **GRANTED** and the court’s order and judgment dated December 4, 2023, and entered on December 8, 2023 (NYSCEF #183), is recalled and vacated; and it is further

ORDERED that plaintiffs submit a new proposed judgment with notice of settlement without naming defendant Yariv Katz as a judgment debtor (MS#9); and it is further

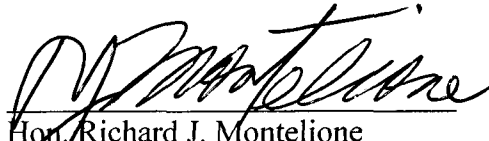
ORDERED that the inquest regarding Yariv Katz is scheduled for 1/14/2026, Part 99 at 2:30 AM/PM; and it is further

ORDERED that plaintiffs’ motion to amend the complaint is **DENIED** (MS#8); and it is further

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ORDERED that any other request for relief is **DENIED**.

This constitutes the decision and order of the Court.


Hon. Richard J. Montelione

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