

GKER Ltd. v Clarkson BU LLC

2025 NY Slip Op 33946(U)

October 9, 2025

Supreme Court, New York County

Docket Number: Index No. 653955/2023

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02M

Justice

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GKER LTD., ON BEHALF OF ITSELF AND DERIVATIVELY
ON BEHALF OF CLARKSON BU LLC,

Plaintiff,

- v -

CLARKSON BU LLC,75-77 CLARKSON AVENUE
INVESTORS, LLC,ERAN REISFELD, RAN ORON,
CLARKSON 1, LLC,HANNAN SALTZMAN, GILI
HABERBERG, BENJAMIN HABERBERG, BARUCH
BEZNER, NIR MESTERMAN, RAN MESTERMAN, OFFICE
LINE LTD., HEZI ASPIS

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 147, 156, 157, 158, 159, 162, 164, 169, 170, 171, 172, 173, 174, 175, 183, 184, 185, 186, 187, 188, 189, 190, 194, 195, 196, 198, 199, 200, 201, 202

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 160, 161, 163, 165, 176, 177, 178, 179, 180, 181, 182, 191, 192, 193, 197

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 203, 204, 205, 206, 207, 208, 209, 210, 211, 216, 217, 218, 219

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 220, 221, 222, 223, 224, 225

were read on this motion to/for FEES/COMMISSIONS/DISBURSEMENTS.

This breach of contract and tort action arises from an indirect real-estate investment made by Plaintiff, GKER Ltd. (“Plaintiff”). Plaintiff bought shares in Defendant 75-77 Clarkson Ave Investors, LLC (“75-77 Clarkson”), which held membership in Defendant Clarkson BU LLC (“Clarkson BU”). Together with New Brookland, LLC and then on its own, Clarkson BU was responsible for the developing, selling and leasing the condominium (“Project”) to be located at

77 Clarkson Avenue, Brooklyn, New York. Upon 75-77 Clarkson's dissolution, Plaintiff became a member of Clarkson BU. Defendants Clarkson 1 LLC ("Clarkson 1"), Hannan Saltzman, Nir Mesterman, Gili Haberberg, Benjamin Haberberg, and Baruch Bezner directly or indirectly were members of 75-77 Clarkson, and then Clarkson BU.

Plaintiff contends that it never received any disbursements from its investment, even though the construction phase of the Project was completed, the units in the condominium were being sold, and other members and companies, including Defendants Office Line Ltd ("Office Line") and Hezi Aspis, allegedly received payments from Clarkson BU (Amended Complaint ¶¶ 18, 57-79, 82, 127).

In April 2022, Plaintiff filed a lawsuit against New Brookland, LLC, Eran Reisfeld, Boaz Gilad, Assaf Fittousi, Ran Oron, and Gili Haberberg, seeking, *inter alia*, to enforce Plaintiff's right to inspect the books and records of 75-77 Clarkson and Clarkson BU (*GKER Ltd. v. New Brookland LLC et al.*, Index No. 652012/2022) (Amended Complaint ¶ 85), which has been consolidated with the instant action. On March 7, 2024, the Court granted Plaintiff's motion requesting an attachment of property and preliminary injunction restraining Clarkson BU and other defendants from dissipating, paying or transferring any money in connection with the Project (NYSCEF Doc. No. 82, Order, Adams, J.). On appeal, the First Department reversed and vacated the Order, finding that Plaintiff was not entitled to this relief (NYSCEF Doc. No. 166, First Department Decision).

In November 2024, Plaintiff filed the Amended Complaint in which, on behalf of itself and derivatively on behalf of Clarkson BU, it interposed nine causes of action for breach of contract, breach of fiduciary duty, fraud, conversion, unjust enrichment, aiding and abetting fraud, civil conspiracy, and an accounting. Thereafter, the parties filed the instant four motions. In Motion

Sequence No. 005, Defendants Clarkson BU, 75-77 Clarkson, Eran Reinfeld, Ran Oron, Clarkson 1, Gili Haberberg, Benjamin Haberberg, Nir Mesterman, Baruch Bezner, and Hannan Saltzman (“Clarkson Defendants”) move to dismiss the Amended Complaint in its entirety. In Motion Sequence No. 006, Office Line and Hezi Aspis (“Aspis Defendants”) join the Clarkson Defendants’ motion to dismiss. Plaintiff opposes these motions and cross-moves for an order extending its time to serve Hannan Saltzman, Baruch Bezner, and the Aspis Defendants, and for leave to further amend the Amended Complaint. In Motion Sequence No. 007, Plaintiff moves for an order enjoining Defendants Eran Reinfeld, Ran Oron, and Gili Haberberg from blocking Plaintiff’s access to the books and records of Clarkson BU and granting sanctions, costs, and fees as against these Defendants and Clarkson BU pursuant to 22 NYCRR 130-1.1 and Judiciary Law § 773. In Motion Sequence No. 008, the Clarkson Defendants move for fees, costs, and damages pursuant to CPLR 6212(e) and CPLR 6315. All these motions are opposed, and are consolidated for disposition herein.

Leave to amend pleadings under CPLR 3025(b) should be freely given unless doing so would result in surprise or prejudice to the nonmoving party (*Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011]). Leave will be denied when the proposed pleading fails to state a cause of action, is palpably insufficient as a matter of law, or is devoid of merit (*Thompson v Cooper*, 24 AD3d 203, 205 [1st Dept 2005]; *see Perrotti v Becker, Glynn, Melamed & Muffly LLP*, 82 AD3d 495, 498 [1st Dept 2011], citing *MBIA Ins. Corp v Greystone & Co., Inc*, 74 AD3d 499, 500 [1st Dept 2010]). However, the party seeking leave to amend need not establish the merit of proposed allegations (*see Agbo v Constantin Assoc., LLP*, 204 AD3d 599, 599 [1st Dept 2022] citing *Perrotti*, 82 AD3d at 498). CPLR 1002(b) provides for joinder of additional

defendants for claims “arising out of the same transaction, occurrence, or series of transactions or occurrences” where there are common questions of law or fact.

The proposed Second Amended Complaint presents new factual allegations, including the claims based on the Clarkson BU company agreement and limitations on loans set therein, and seeks to add a new defendant, Shar Corp., an entity which, according to Plaintiff, is an affiliate of Defendant Nir Mesterman, and which benefited from the allegedly fraudulent loans discussed in the Amended Complaint. Neither of the asserted causes of action is palpably insufficient as a matter of law. Nor did the Clarkson Defendants and Aspis Defendants demonstrate that the new allegations are completely devoid of merit. Accordingly, Plaintiff’s cross-motion to amend the complaint is granted.

The motions to dismiss (MS 005 and 006) are denied without prejudice as they no longer address the operative pleading, and the movants have not elected to have their motions applied to the Second Amended Complaint (*cf. Sage Realty Corp. v Proskauer Rose L.L.P.*, 251 AD2d 35, 38 [1st Dept 1998]). To the extent the motions were made due to improper service, Plaintiff’s cross-motion seeking an extension of time to serve Hannan Saltzman, Baruch Bezner, and the Aspis Defendants is also granted pursuant to CPLR 306-b in the interest of justice (*cf. Galindo v Doherty*, 234 AD3d 571, 571 [1st Dept 2025]).

Plaintiff’s motion for an order enjoining Defendants Eran Reinfeld, Ran Oron, and Gili Haberberg from blocking Plaintiff’s access to the books and records of Clarkson BU LLC is denied. Plaintiff failed to demonstrate by clear and convincing evidence its irreparable harm if the sought injunction is not granted, or that the balance of equities is in its favor (*see Uber Tech., Inc. v Am. Arbitration Assn., Inc.*, 204 AD3d 506, 508 [1st Dept 2022] [internal citation omitted]).

The Clarkson Defendants' motion for damages, costs, and fees by reason of the now-vacated attachment and preliminary injunction is granted to the extent of finding Plaintiff liable (CPLR 6212[e]; CPLR 6312[b]; *see Metro. Transp. Auth. v Trinity NYC Hotel, LLC*, 234 AD3d 597, 599 [1st Dept 2025]). The amount of these damages, costs, and fees will be determined at the time of trial or upon disposition of the remainder of the action.

Accordingly, it is hereby

ORDERED that the Clarkson Defendants' and the Aspis Defendants' motions to dismiss (MS 005 and MS 006) are denied without prejudice; and it is further

ORDERED that Plaintiff's cross-motion for leave to amend the complaint and extend its time to serve (MS 005 and MS 006) is granted; and it is further

ORDERED that the Second Amended Complaint in the proposed form annexed to the moving papers (NYSCEF Doc. No. 178) shall be deemed served upon the defendants to date properly served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Plaintiff shall serve summons and Second Amended Complaint together with a copy of this order with notice of entry within twenty days from the date of entry of this order upon Hannan Saltzman, Baruch Bezner, Office Line Ltd., Hezi Aspis, and Shar Corp. in accordance with this decision; and it is further

ORDERED that defendants shall answer the Second Amended Complaint or otherwise respond thereto within twenty days from the date of said service; and it is further

ORDERED that Plaintiff's motion for an order enjoining Defendants Eran Reisfeld, Ran Oron, and Gili Haberberg (MS 007) is denied; and it is further

ORDERED that the Clarkson Defendants' motion for damages, costs, and fees (MS 008) is granted to the extent of finding Plaintiff liable, and it is further

ORDERED that the amount of these damages, costs, and fees will be determined at the time of trial or upon disposition of the remainder of the action; and it is further

ORDERED that the parties shall appear for a Status Conference on December 2, 2025 at 9.30 a.m. in person at 60 Centre Street, Room 212.

All other relief sought is denied. This constitutes the Decision and Order of the Court.

10/9/2025

DATE



LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

653955/2023 GKER LTD., ON BEHALF OF ITSELF AND DERIVATIVELY ON BEHALF OF CLARKSON BU LLC vs. CLARKSON BU LLC ET AL Motion No. 005 006 007 008

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