

E.Z.LOR Realty LLC v Narkis

2026 NY Slip Op 30017(U)

January 6, 2026

Supreme Court, New York County

Docket Number: Index No. 155714/2020

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

-----X

E.Z.LOR REALTY LLC,EYAL ZIVYON

Plaintiff,

- v -

CHAIM NARKIS, JASON A. OSHINS,

Defendant.

-----X

INDEX NO. 155714/2020
MOTION DATE 09/13/2024
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109

were read on this motion to/for DISMISS.

In this action seeking to quiet title to two residential condominium units, recover damages under tort and contract claims, and for declaratory and injunctive relief, Defendant Chaim Narkis (“Narkis”) moves to dismiss seven of the eleven causes of action alleged by Plaintiffs E.Z.LOR Realty LLC (“E.Z.LOR”) and Eyal Zivyon (“Zivyon”) (collectively “Plaintiffs”) pursuant to CPLR § 3211(a)(5) and (7). Plaintiffs oppose the motion. Defendant Jason A. Oshins (“Oshins”) has not appeared.

The action stems from Plaintiffs’ ownership of three condominium units located at 392 Central Park West, Units 2E (“2E”) and 7V (“7V”), and 382 Central Park West, Unit 4T (“4T”) (collectively, “Units”). The claims in this action relate to alleged conduct with respect to 7V and 4T. A related action pending before this Court, *E.Z.LOR Realty LLC et al v Chaim Narkis et al*, Index No. 155282/2020, asserts claims regarding the same activity as it relates to 2E. As set forth in the Complaint, E.Z.LOR was a partial and later full owner of the Units at all times relevant to the action. Zivyan is the sole member and manager of E.Z.LOR.

The Complaint (NYSCEF Doc. No. 71, “Complaint”) alleges that in 2015, Narkis and/or his father, who lives in Israel and is not a party to the action, loaned money to Zivyon. The terms of this loan were not put in writing but according to the Complaint it was “under \$200,000” subject to a 25% interest rate, and there was no timeline for repayment. The Complaint alleges that Zivyon repaid the loan the same year, but that Narkis continues to maintain that additional sums are due and, beginning in 2016, filed UCC-1 financing statements (“UCC-1s”) against the Units in order to compel payment.

E.Z.LOR became the sole owner of the Units in early 2018, and thereafter Plaintiffs attempted to obtain a mortgage but were unable to do so due to the UCC-1s. Zivyon approached Narkis about removing the UCC-1s and the parties entered into a “Provisional Agreement” (NYSCEF Doc. No. 83) in which Narkis agreed to arrange for removal of the UCC-1s and Zivyon “will make payment to Narkis.” The agreement does not specify the amount to be paid. Narkis removed the UCC-1s, and Plaintiffs subsequently obtained a mortgage from Emigrant Mortgage Company for \$1,500,000 encumbering all three Units. The Complaint alleges that Zivyon paid “the amount Narkis demanded and which Narkis said was necessary to fully satisfy all of Zivyon’s obligations for repayment” of the 2015 loan (Complaint, ¶ 50).

Nevertheless, thereafter Narkis filed two more UCC-1s against the Units. Purportedly because of these filings, in August 2019 Zivyon and Narkis entered into two additional agreements which, in part, provided for another loan from Narkis to Zivyon. The agreements (NYSCEF Doc. Nos. 86-87) collectively provide that the total loan balance is \$1,850,000, \$950,000 of which is secured by 7V and \$900,000 of which is secured by 4T, and that 2E is to serve as “backup collateral” under certain conditions. The agreements further provide that E.Z.LOR is to execute a “Deed in Lieu of Foreclosure” for 7V and 4T in favor of Narkis and his

father, to be held in escrow by Narkis's counsel, Defendant Oshins. The parties then executed an Escrow Agreement (NYSCEF Doc. No. 88) which set a deadline for repayment and stated that no interest shall accrue. It further established a protocol for when Oshins was to record the deeds in the event of a default and provided that E.Z.LOR was to execute a "Backup Collateral Unit Deed" for 2E, to be held in escrow by Plaintiffs' counsel.

The Complaint alleges that Narkis failed to fully fund the loan and to timely remove the UCC-1s as promised, which Plaintiffs contend were conditions precedent to further entitlement under the agreements. The Complaint does not indicate whether Zivyon repaid any or all of whatever sums he did receive. However, in mid-2020, Zivyon was served with Notices of Default pursuant to the agreements, and Zivyon served a Rejection. Thereafter, Oshins filed the escrowed deeds against 7E and 4T. The Complaint further alleges that Narkis and Oshins doctored a copy of the 2E deed, the original of which was being held by Plaintiffs' counsel, had it fraudulently notarized, and filed it.

Plaintiffs commenced this and the related action in July 2020. In this action, they assert eleven causes of action which allege entitlement to void the 7V and 4T deeds as violative of Real Property Law § 320, declaratory judgments to quiet title as to 7V and 4T and to void a usurious debt, as well as entitlement to damages due to fraud, prima facie tort, breach of contract, slander of title, unjust enrichment, and abuse of process. Plaintiffs allege Defendants' actions have caused them damages including preventing them from selling the Units and paying down or refinancing the Units' mortgage and impairing their ability to collect rent.

The action was commenced via Summons with Notice. The parties agreed to extend Plaintiffs' time to serve a complaint, which was ultimately filed on October 4, 2023. Narkis moved to dismiss pursuant to CPLR § 3211(a)(2), (5) and (7), in part contending the Complaint

was untimely. Plaintiff cross-moved, *inter alia*, to compel Narkis to accept the Complaint or for an extension of time to file. The Court (Adams, J.) denied Narkis's motion, granted Plaintiffs' cross-motion, and set deadlines for Plaintiffs to serve and file the Complaint and for Narkis to "to file an Answer, or otherwise move" (NYSCEF Doc. No. 72). Narkis then filed the instant motion seeking dismissal pursuant to CPLR § 3211(5) and (7). Plaintiffs contend Narkis's motion must be denied because his prior motion was denied. Although the Court's prior decision did not set forth a basis for denial of the motion, its directives regarding service of the Complaint and Narkis's response thereto indicate that the denial was not on the merits. The Court directed Narkis to Answer the Complaint or otherwise move, and Narkis has now moved.

Narkis's motion seeks dismissal of the causes of action for fraud, declaratory judgment voiding a purportedly usurious debt, prima facie tort, slander of title, unjust enrichment, abuse of process, and a preliminary and permanent injunction restraining Narkis and Oshins from transferring or encumbering 7T and 4V. Narkis maintains that the usury, prima facie tort, slander of title, and abuse of process causes of action are time-barred, and that Plaintiffs fail to state a claim on all causes of action in the motion.

"On a motion to dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations, the defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired" (*Benn v Benn*, 82 AD3d 548 [1st Dept 2011] [internal quotation marks omitted]). The Court "must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff" when considering a motion to dismiss pursuant to CPLR 3211(a)(5) (*id.*).

With respect to the claim for judgment voiding a usurious debt, Narkis maintains Plaintiffs are time-barred because the debt they seek to void was incurred in 2015. Plaintiffs

contend the claim is timely because the limitations period begins to run in 2019 “from the date of the last loan amendment.” Plaintiffs rely only on *Falk v Levy*, 180 F2d 562, 564 (2d Cir 1950), which states that New York courts have found that “proof of usury in the new obligation revives the old.” The 2019 agreements do not provide for any accrual of interest, and the Complaint does not allege they are usurious. Additionally, the Complaint alleges that Zivyon repaid the 2015 loan that same year, therefore the 2019 agreements cannot be considered amendments to the allegedly usurious loan. Accordingly, the fifth cause of action is untimely and must be dismissed. The causes of action for slander of title, prima facie tort, and abuse of process, however, are timely. Plaintiffs commenced this action on the same day that the deeds for 7V and 4T were purportedly wrongfully filed.

When considering a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), “the allegations in the complaint are to be afforded liberal construction, and the facts alleged therein are to be accepted as true, according a plaintiff the benefit of every possible favorable inference and determining only whether the facts alleged fit within any cognizable legal theory” (*M&E 73-75 LLC v 57 Fusion LLC*, 189 AD3d 1, 5 [1st Dept 2020]). However, “conclusory allegations – claims consisting of bare legal conclusions with no factual specificity – are insufficient to survive a motion to dismiss” (*Godfrey v Spano*, 13 NY3d 358, 374 [2009]).

“The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]).

Accepting all facts plead in the Complaint as true, the misrepresentations made by Narkis as to the ownership of the Units were not made to Plaintiffs (*see Bielsa v Gonzalez*, 201 AD3d 459

[1st Dept 2022]). Additionally, the Complaint does not allege that Plaintiffs justifiably relied on any misrepresentations Narkis made. Accordingly, the claim for fraud must be dismissed.

“The requisite elements of a cause of action for prima facie tort are (1) intentional infliction of harm, (2) which results in special damages, (3) without any excuse or justification, (4) by an act or series of acts which would otherwise be lawful” (*Freihofer v Hearst Corp.*, 65 NY2d 135, 142-143 [1985]). An action for prima facie tort will be dismissed where the pleadings do not allege that the defendant’s sole motivation was “disinterested malevolence” (*Burns Jackson Miller Summit & Spitzer v Linder*, 59 NY2d 314, 333 [1983]). Even affording Plaintiffs the benefit of all favorable inferences, the Complaint is bereft of facts indicating that Narkis was solely motivated by disinterested malevolence. Therefore, the claim for prima facie tort must be dismissed.

For the same reasons, the cause of action for slander of title must be dismissed. A successful cause of action for slander of title requires showing that the defendant’s conduct was motivated by malice or spite (*Properties Hacker, LLC v City of New York*, 189 AD3d 589, 591 [1st Dept 2020]) and the Complaint does not make those allegations.

As to Plaintiffs’ unjust enrichment cause of action, they must show that Narkis was enriched at Plaintiff’s expense, and that “it is against equity and good conscience to permit the defendant to retain what is sought to be recovered” (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [internal quotations omitted]). When read in the light most favorable to Plaintiffs, the Complaint states a cause of action for unjust enrichment. Although Narkis seeks dismissal of this claim, his papers do not make any arguments in support of the position that Plaintiffs fail to state this cause of action. Therefore, this branch of the motion is denied.

“Abuse of process has three essential elements: (1) regularly issued process, either civil or criminal, (2) an intent to do harm without excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective” (*Curiano v Suozzi*, 63 NY2d 113, 116 [1984]). Abuse of process requires “the deliberate premeditated infliction of economic injury without economic or social excuse or justification” (*Stroock, Stroock & Lavan v Beltramini*, 157 AD2d 590, 591 [1st Dept 1990], quoting *Bd. of Educ. v Farmingdale Classroom Teachers Assn.*, 38 NY2d 397, 405 [1975]). The Complaint does not to plead facts to that effect. Accordingly, Plaintiffs’ abuse of process cause of action is dismissed.

Finally, to successfully plead a claim for an injunction, a plaintiff must allege a violation of a right presently occurring, that there is no adequate remedy at law, that serious and irreparable harm will result, and that the equities are balanced in the plaintiff’s favor (*Caruso v Bumgarner*, 120 AD3d 1174, 1175 [2d Dept 2014]). An injunction is a remedy for an underlying wrong, not an independent cause of action (*Talking Capital LLC v Omanoff*, 169 AD3d 423, 424 [1st Dept 2019]). Because Plaintiffs’ breach of contract and unjust enrichment claims remain, and because the Complaint alleges facts supporting an injunction, the motion to dismiss the cause of action seeking an injunction must be denied.

Accordingly, for the reasons set forth herein it is hereby

ORDERED that Narkis’s motion is granted in part and Plaintiffs’ second, fifth, sixth, eighth, and tenth causes of action are dismissed; and it is further

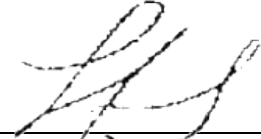
ORDERED that Narkis’s motion is denied as to Plaintiffs’ ninth and eleventh causes of action; and is further

ORDERED that Narkis shall file an Answer within twenty (20) days; and it is further

ORDERED that the parties shall appear for a Preliminary Conference on February 24, 2026 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.

1/6/2026
DATE


LORI S. SATTLER, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE