Eddi v Antebi

2026 NY Slip Op 30156(U)

January 9, 2026

Supreme Court, Kings County

Docket Number: Index No. 509647/2025

Judge: Cenceria P. Edwards

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At an IAS Term, Part FRP1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 9th day of January 2026.

P R E S E N T:
HON. CENCERIA P. EDWARDS, C.P.A.,
Justice.

X
ELY EDDI,

Plaintiff(s),

-against-

ELLIOT ANTEBI, RACHEL ANTEBI F/K/A SUTTON and SEVENTEEN TRUCK LLC),

Defendant(s).
----------X

ORDER

Calendar Date: 06/25/2025
Calendar #(s): 4

Index #: 509647/2025

Mot. Seq. #(s): 1

The following e-filed papers read herein:	NYSCEF Doc. Nos.:
Notice of Motion/Order to Show Cause/Petition/Cross-Motion and Affidavits (Affirmations) and Exhibits	7 8 9 10 15
Opposing Affidavits (Affirmations) and Exhibits	13 14
Reply Affidavits (Affirmations) and Exhibits	

Plaintiff Ely Eddi ("Plaintiff") commenced this on March 21, 2025, to resolve the parties breach of contract/loan dispute by filing a summons and complaint against defendants Elliot Antebi, Rachel Antebi (together "the Individual Defendants"), and Seventeen Truck LLC (all three parties making up "the Defendants") along with a notice of pendency filed against Defendants property at 1448 East 8th Street, Brooklyn, New York, 11223 (the "Brooklyn Property") (*see* NYSCEF Doc. # 1; *see also* NYSCEF Doc. # 2).

The Complaint alleged that Plaintiff loaned Defendants, $260,000, to purchase an investment property in Miami, which Defendant's sold and used the proceeds of sale to buy the Brooklyn Property in lieu of repaying the Plaintiff his profit interest.

The Complaint asserts five causes of actions against Defendants: (1) declaratory judgment, (2) breach of contract, (3) promissory estoppel (pled in the alternative), (4) breach of contract (pled in the alternative), and (5) unjust enrichment (pled in the alternative). (*see* NYSCEF Doc. # 1)

Defendant now moves pursuant to NY CPLR 3211 (a)(1) and (7) to (1) dismiss Plaintiff's first cause of action for declaratory judgment, and any claim or remedy based on the imposition of a constructive trust and (2) to cancel the Notice of Pendency filed against the real property. (*see* NYSCEF Doc. # 7)

BACKGROUND

Plaintiff Ely Eddi is the first cousin of Defendant Eliot Antebi. Defendants Eliot Antebi and Rachel Antebi are married. Seventeen Truck LLC is a New York Limited Liability Company owned by Defendants Antebi. (*see* NYSCEF Doc. #1 ¶¶ 8-10) Plaintiff claims he and Defendant Eliot Antebi have been partners in several joint ventures in New York and Florida. (*see* NYSCEF Doc. # 13 ¶¶ 7)

Plaintiff asserts that "on or about the summer of 2021" Mr. Antebi advised the Plaintiff that Defendants were "in the process of acquiring" a property located at 6145 Pine Tree Drive, Miami Beach, Florida ("Miami Property") as an investment vehicle and that the plan was to purchase the property and resell it for at least $800,000. (*see* NYSCEF Doc. #1 ¶¶ 11). Plaintiff further alleges that Mr. Antebi asked Plaintiff to help fund the purchase of the Miami Property in exchange for a share of the proceeds. (*see id.* at ¶¶ 12).

Plaintiff then alleges that he invested $210,000 in cash that he transferred to Mrs. Antebi on or about August 24, 2021, to help fund the Miami Property, and $50,000 in credit that represented rent that Defendants allegedly owed for renting one of Plaintiff's properties. (*see id.* at ¶¶ 13-14).

Plaintiff's further asserts that on or about October 2021, Mr. Antebi told Plaintiff that Defendants needed additional funds to purchase the Brooklyn Property and asked Plaintiff to secure a $1.5 million loan to Mrs. Antebi. The Complaint states that Defendants promised to repay the loan by the end of 2021 by using proceeds from the Miami Property sale and that on or about October 26, 2021, Plaintiff secured the $1.5 million loan. (*see id.* at ¶¶ 18-20).

Plaintiff alleges that while Defendants closed on a transaction involving the Miami Property on or about November 2021, they did not repay Plaintiff's initial $260,000 loan, any share of the profits, nor the $1.5 million loan. (*see id.* at ¶¶ 21). Plaintiff alleges that Defendants used the proceeds from the sale of Miami Property to purchase the Brooklyn Property and that on or about December 22, 2021, they placed title of the Brooklyn Property in the name of Seventeen Truck LLC. (*see id.* at ¶¶ 22-23).

The Defendant's motion to dismiss and cancel the Notice of Pendency is predicated on two main arguments. First, that the Plaintiff's central factual allegation: that Plaintiff funded the purchase of the Miami Property (and as a result is entitled to what the profits of the sale of the Miami Property were used for) is false based on the evidence of a deed showing when the Miami Property was purchased. The second argument is that because Plaintiff didn't have an interest in the Brooklyn property, nor did Defendant ever promise Plaintiff an interest in it that a constructive trust cannot be formed. (*see* NYSCEF Doc. #8 at ¶¶ 3-5).

Plaintiff opposes the motion, arguing that the constructive trust doctrine is a flexible equitable remedy, and that the timeline of the Miami Property's purchase is irrelevant to Plaintiff's rights to the proceeds of the sale of the Miami property. (*see* NYSCEF Doc. #14 at 1)

DISCUSSION

When moving to dismiss a complaint pursuant to CPLR §3211 (a) (7) the court must accept all facts in the complaint as true and accord the plaintiff the benefit of every possible favorable interference and determine only whether the alleged facts fit in an actionable legal theory. *see (Sokol v. Leader*, 74 AD.3d 1180 [2d Dep't 2010]).

CPLR §3211 (a) (1) DOCUMENTARY EVIDENCE MIAMI DEED

Pursuant CPLR §3211(a) (1) documentary evidence warrants dismissal if it "conclusively establishes a defense as a matter of law." The evidence must resolve all factual issues and definitively dispose of the plaintiff's claims. S*ee (NYU Langone Hosps. v. Robinson*, 235 A.D.3d 653, 654 [2d Dep't 2025]).

The first issue is whether the Miami Deed demonstrates that the Miami Property purchased in March 2021 "utterly refutes" the Plaintiff's allegations that the funds he gave Defendants in August 2021 were used to purchase it or to secure Plaintiff's investment interest in the Miami Property. "On or about August 24, 2021, Plaintiff transferred $210,000.00 to Defendant Mrs. Antebi to help fund the purchase of the Miami Property", which was Defendants purchased on March 18, 2021. (*see* NYSCEF Doc. # 9). Defendants argue this five-month gap makes the Plaintiff's allegations that he invested in the Miami property factually impossible. In opposition, Plaintiff argues that the Miami deed does not refute that the parties agreed to share in the proceeds and the funds were provided "in connection with" the Miami Property.

While the Miami deed does establish the date Defendants purchased the property, contrary to Defendant's arguments it does not conclusively establish the non-existence of the joint venture or the investment agreement between the parties. Nor does it refute Plaintiff's allegations that he loaned Defendants $260,000 in reliance on a promise to share in the proceeds of the sale of the Miami property. Thus, the Miami deed does not conclusively in itself establish a defense to Plaintiff's claims and/or resolve all the factual issues amongst the parties as matter of law. *See,* (*Block 865 Lot 300, LLC v Baione*, 230 A.D.3d 552 [2nd Dep't 2024*]; In re of Baugher, 98 A.D.3d 1111, 1112* [2nd Dep't 2012]).

CONSTRUCTIVE TRUST

A constructive trust is an equitable remedy designed to prevent unjust enrichment. The four elements required to form a constructive trust are (1) a confidential or fiduciary relationship, (2) a promise, express or implied (3) a transfer made in reliance of said promise and (4) unjust enrichment. *See (Angel v. Strulovich*, 240 A.D.3d 643, 646 [2d Dep't 2025]).

Plaintiff adequately pleaded the first element: a confidential/fiduciary relationship. At the pleading stage, family relationships often satisfy this element. *See (Kissane v. Cashman*, 217 A.D.3d 932, 934 [2d Dep't 2023]). Plaintiff cites the familial ties between him and Defendants and a history of joint ventures where Defendant Mr. Antebi was the one with superior knowledge.

The next two elements, a promise and a transfer made in reliance of that promise are intertwined. "In order to establish that there was a transfer in reliance on the promise, it must be shown that the party seeking to impose the constructive trust had some interest in the property prior to obtaining the promise that the property would be conveyed, and that this interest was parted with in reliance on the promise." *See (Bontecou v. Goldman*, 103 A.D. 2d 732, 733 [2d Dep't 1984]).

Defendants assert they never promised Plaintiff any interest in the Brooklyn Property. Moreover, Plaintiff does not allege he invested or was promised an interest in the Brooklyn Property only that Defendants used the proceeds of sale from the Miami property to purchase it. Plaintiff never transferred funds in reliance on receiving the Brooklyn Property. Furthermore, the Court notes that Plaintiff did not unequivocally state that he loaned Defendants $1.5 million, co-signed or guaranteed a loan nor did Plaintiff submit any documentary evidence confirming his statement as to any monies provided to Defendants for the Brooklyn Property. Plaintiff failed to allege that the $260,000 dollars "were provided in reliance on any express or implied promise to share in some interest" in the Brooklyn Property, *See (Angel v. Strulovich*, 240 A.D.3d 643, 643 [2d Dep't 2025]).

Plaintiff's reliance on *Simonds* is misplaced. The key principle of Simonds' is that it allows plaintiffs to "trace" funds into substituted assets. *see Simonds v. Simonds*, 45 NY.2d 233, 237 (1978). However, this doctrine relies on a plaintiff having a vested equitable interest in the original property or funds before they were converted, which Plaintiff herein did not have.

Additionally, Plaintiff did not have any actual prior interest in the Brooklyn Property, nor did he allege that an equitable interest developed through the expenditure of money, labor and time in the Brooklyn Property. *See* (*Rock v Rock*, 100 AD3d at 616 [2d Dep't 2012] quoting *Marini v Lombardo*, 79 AD3d 932, 934, 912 N.Y.S.2d 693 [2d Dep't 2010]).

Thus, Plaintiff failed to state a valid cause of action for the imposition of a constructive trust over the Brooklyn Property.

Finally, Defendants seek to cancel the Notice of Pendency under CPLR §6501, which permits a notice of pendency to be filed against real property when the judgment demanded would affect the title to, or the possession, use or enjoyment of it. CPLR § 6501 (a). A claim for money damages does not support a notice of pendency. S*ee (Bennett v. John*, 151 A.D.2d 711, 711-12 [2d Dep't 1989]). Here, the only claim that would affect title to the Brooklyn Property is a

declaratory judgment/constructive trust and those claims have been dismissed. As a result, cancellation of the notice is mandatory.

REMAINING CLAIMS

The dismissal of Plaintiff's constructive trust and declaratory ownership theories does not necessarily dispose of Plaintiff's claims surrounding money damages such as breach of contract or unjust enrichment.

Accordingly, it is hereby

ORDERED that Defendant's **Motion Seq #1** pursuant to CPLR §3211 (a)(1) and (a)(7) is GRANTED to the extent that Plaintiff's causes of action seeking a declaratory judgment of ownership and the imposition of a constructive trust over the Brooklyn Property are DISMISSED;

It is further ORDERED that the Notice of Pendency filed against the Brooklyn Property is CANCELLED pursuant to CPLR §6514;

It is further ORDERED that the County Clerk, Kings County, shall cancel the Notice of Pendency forthwith.

E N T E R,

January 09, 2026

Hon. Cenceria P. Edwards, J.S.C, CPA