

Shields v Darpoh

2026 NY Slip Op 31184(U)

March 20, 2026

Supreme Court, Kings County

Docket Number: Index No. 519170/2017

Judge: Lisa Lewis

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At an I.A.S. Trial Term, Part 21 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 20th day of March, 2026

P R E S E N T :
HON. LISA LEWIS

Justice

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RAY SHIELDS and VENTUREVEST REALTY
PARTNERS, LLC,

Plaintiffs,

Index No.: 519170/2017

-against-

DECISION AFTER TRIAL

KENNETH DARPOH and RENEE TIRADO,

Defendants.

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A non-jury trial was held before this Court, on May 19, 2025, May 27, 2025, May 29, 2025, and June 2, 2025, and the parties were provided with an opportunity to submit post-trial memoranda and the Court reserved decision. Upon the submission of the post-trial memoranda, the Court deemed the record closed in this matter. Since this was a bench trial, the Court was both the finder of facts and the determiner of questions of law. The Court considered the testimony of the witnesses, gave weight to that testimony, and generally determined the reliability of the witnesses' testimony (*see Horsford v Bacott*, 32 AD3d 310, 312 [1st Dept 2006]). The Court also considered the interest or lack of interest in the case and the bias or prejudice of the witnesses (*People v Ferguson*, 178 AD2d 149 [1st Dept 1991]). Having reviewed the parties' submissions and having reflected upon the evidence submitted at trial, the Court issues the following findings of fact and conclusions of law.

As an initial matter, this case has a complex history involving alleged prior ventures and litigation in Housing Court. However, it is not necessary to review that history in order to determine the issue presented in this bench trial, which is did the parties enter into an oral agreement for a joint real estate venture?

BACKGROUND

This action arose out of a verbal agreement between the parties. However, the terms of the agreement are heavily contested. Plaintiffs commenced this action sounding in breach of contract and unjust enrichment against defendants alleging, *inter alia*, that they breached an oral agreement to form a joint real estate investment venture. Defendants asserted counterclaims for, *inter alia*, unjust enrichment, statue of frauds and conversion of the rent monies collected, and defendants seek a monetary amount to be determined after trial inasmuch as plaintiff failed to provide an accounting of income and expenses.

Specifically, according to the complaint, plaintiffs allege that in 2007 the parties entered into a verbal joint venture agreement to purchase a property located at 279 Clermont Avenue in Kings County, convert it into condominiums and sell it for a profit. Plaintiff, Ray Shields (hereinafter referred to as “Shields” or “plaintiff”) alleged that this was his “family home” where he lives with his niece, and he filed the lawsuit to protect his interest in the property and the “valuable leases”. Plaintiff further alleges that the parties agreed plaintiff would renovate and sell the property, with defendants being repaid their monetary investments plus a small profit. Pursuant to the complaint, plaintiff alleges that he invested \$400,000.00 in the repair of the property.

By verified answer and complaint, defendants Renee Tirado (hereinafter referred to as “Tirado”) and Kenneth Darpoh (hereinafter referred to as “Darpoh”) dispute plaintiff’s recitation of events. Defendants allege that in September 2007 they consulted with plaintiff in his capacity

as a “real estate investor” to identify investment properties for the purpose of “flipping” the properties.

Upon plaintiff’s recommendation, defendants purchased the subject property and agreed to compensate plaintiff for his assistance after the property was sold. Through their papers, defendants stated since plaintiff did not have any capital or credit to contribute towards the purchase of any real property, they did not consider entering into a joint venture agreement. Defendants stated that in plaintiff’s capacity as “real estate investor” he was tasked with making minor repairs to the property and assisting in securing prospective buyers. Defendants assert, in order to assist plaintiff with that task, they gave plaintiff the keys to the property. Defendants contend that pursuant to the verbal agreement, plaintiff would assist in renovating and selling the subject property. However, plaintiff failed to meet his obligations when he moved into the subject property and refused to vacate.

Defendants further allege through their papers that plaintiff rented the units and refused to provide defendants with an accounting. Defendants counterclaimed for an excess of \$1,000,00.00 in rental income arrears and quiet title to the subject property.

FINDINGS OF FACT

Plaintiff Shields testified that he is a professional real estate investor and he owns a company called VentureVest Realty. Plaintiff testified that the parties met through their professional roles: Shields represented that he had approximately 20 years of experience in New York City real estate, defendant Darpoh worked in the music industry and defendant Tirado was an attorney.

In 2007, the defendants purchased 279 Clermont Avenue in Brooklyn, New York. Through his testimony, plaintiff described the purchase of the subject property. Plaintiff claims the parties

orally agreed to the following terms: plaintiff was the intended owner of the building, plaintiff would be responsible for all the financial payments, including interest and renovations and defendants would receive their interest in their investment after the property was refinanced and ownership was transferred to the plaintiff.

Shields asserted that defendants would contribute towards the downpayment, closing costs, and loans secured by mortgages defendants signed. As to their individual contributions, plaintiff testified Darpoh would contribute \$25,000.00 towards the downpayment and sign the mortgage. In return Darpoh would receive \$10,000.00 from the sale or refinancing of the property. With respect to Tirado, Shields testified Tirado funded the balance from a Chase Bank home equity line of credit and agreed to sign the mortgage agreement. In return, Tirado would receive 7% interest on her financial contribution, plus 10% of Shields' net profits. Shields stated that defendants Tirado and Darpoh signed the mortgage and are named on the deed. Plaintiff testified that he was not able to sign the loan agreement because he had poor credit. Therefore, his name was not listed on the property deed.

As to his efforts, Shields testified that he hired professionals to close the sale, secured financing with Washington Mutual, which included a \$1,168,000.00 mortgage and a \$193,000.00 line of credit that would allow the mortgage to be refinanced. In addition, Shields asserted he made monetary contributions in the form of loans from various parties, including a \$30,000.00 loan from Valerie Francis, the buyer's agent, and an \$80,000.00 loan from Joe Shaara. In addition, plaintiff testified he paid \$3,500.00 to the buyer's attorney and contributed \$20,000.00 to the downpayment in the form of repayment on the Shaara loan. Plaintiff testified that per the agreement, defendants understood that plaintiff was the owner of the property and agreed to these terms because he was doing all the work.

Shields testified that at the closing in December 2007, Tirado gave Shields the keys to the building and told him it was his. Shields testified that he subsequently discovered Washington Mutual had not funded the line of credit and he was not able to obtain a replacement loan. Dennis Mitchell (hereinafter referred to as “Mitchell”) testified on behalf of plaintiff. He testified that he worked in the financial industry in various capacities, including mortgage pools. In addition, he and the plaintiff were friends and had a long relationship. Mitchell stated in 2008 plaintiff contacted him for assistance with the Washington Mutual loan. Mitchell testified that he tried to reach a settlement with Washington Mutual, but he was unable to because he did not have Tirado’s authorization. He testified that she did not respond to his attempts to communicate with her. In addition, Shields testified that the parties’ attempts to sell the property were similarly unsuccessful.

Shields contends that he was solely responsible for the expenses related to the subject property. Shields avers that he spent his own personal funds, repaid \$15,000.00 on Tirado’s line of credit, borrowed \$173,000.00 from various friends and others and spent between \$700,000.00 and \$800,000.00 on repairs. Plaintiff alleged that he paid for the renovation work primarily in cash.

Plaintiff testified that he began renting the apartments in 2010. Plaintiff testified he collected approximately \$770,600.00 in rental payments between 2010 and 2024. Plaintiff testified that the most he collected from a unit was \$2,900.00 for a two-bedroom apartment on the top floor. Plaintiff asserted he resided in a one-bedroom apartment. The monthly rent for the one-bedroom apartment in the property was \$2,400.00 per month or \$496,800.00 for the 14 years plaintiff lived on the property. Plaintiff testified that he gave some of those monies to defendants but had no record of such payments. He also testified he used the rent payments he collected to renovate the property and repay debts he incurred in connection with the property.

Alex Furst (hereinafter referred to as “Furst”) testified on behalf of plaintiff. He testified that he is a licensed real-estate broker with 15 years of experience. Furst testified that in May 2007 the property condition was classified as “average”. However, after the property was purchased the building deteriorated and was in “fair” condition when Shields began renovations. Furst testified that the property is currently in good condition. Furst testified that the difference between fair and good condition represents a 25% to 30% increase in value. In 2018, the validation of the debt for the property was \$1,784,980.63 (Plaintiff’s Exh 59, page 11). Plaintiff points to the defendants’ verified answer that they claim the value of the property was \$2.8 million.

In support of his contention that there was a joint venture agreement, plaintiff submitted several emails. In a July 2008 email from defendant Tirado, she wrote:

“While we are all disappointed about the building, as you have mentioned repeatedly, the circumstances were against us. I have my personal concerns and just want to move on. We owe money to enough people to make this even more stressful and damaging. Selling is our only real option. Let’s figure out TODAY a way to work together as a genuine team with the SAME goal.”

Shields asserts defendant Tirado recognized Shields’ interest in a second email wherein she wrote:

“Ray we talked in the fall and agreed to list the building in November if your deal did not close so you could buy Ken & I out of the building”.

Shields testified that defendants, specifically Tirado, breached the agreement in 2009 when she refused to cooperate with the bank to refinance the loan. Shields filed multiple mechanics liens, specifically in 2009, 2016 and 2017. Shields testified he filed the first mechanics lien in September 2009 based on Tirado’s alleged breach. In the mechanic lien plaintiff attested that the defendants owed him money, named Darpoh and Tirado as owners and plaintiff as their employee.

At the conclusion of plaintiff's case, the defendants argued on the record that plaintiff failed to establish a *prima facie* case of breach of contract and failed to establish damages. Defendant also asserted the affirmative defense that the alleged contract violated the statute of frauds. Defendants declined to present a direct case and rested without calling any witnesses.

CONCLUSIONS OF LAW

Breach of Contract

Generally, “[i]n order for a breach of contract to exist, there must be a meeting of the minds on the agreement said to have been breached. Mutual assent evincing the intention of the parties to form a contract is essential,” in contrast to “an agreement to agree, which leaves material terms of a proposed contract for future negotiation” (*Miranco Contr., Inc. v Perel*, 29 AD3d 873 [2d Dept 2006])[internal citations and quotation marks omitted]).

“A joint venture is ‘an association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill and knowledge’” (*Kaufman v Torkan*, 51 AD3d 977, 979 [2d Dept 2008], quoting *Williams v Forbes*, 175 AD2d 125, 126 [2d Dept 1991]). “It is in a sense a partnership for a limited purpose, and it has long been recognized that the legal consequences of a joint venture are equivalent to those of a partnership” (*Gramercy Equities Corp. v Dumont*, 72 NY2d 560, 565 [1988]).

“The essential elements of a joint venture are an agreement manifesting the intent of the parties to be associated as joint venturers, a contribution by the coventurers to the joint undertaking (i.e., a combination of property, financial resources, effort, skill or knowledge), some degree of joint proprietorship and control over the enterprise[,] and a provision for the sharing of profits and losses” (*MacKay v Paesano*, 185 AD3d 915, 915-916, [2d Dept 2020], quoting *Mawere v Landau*, 130 AD3d 986, 988 [2d Dept 2015]).

“An agreement to enter into a joint venture may be oral and may be inferred from the totality of the parties' conduct in performance of the joint venture” (*Calcagno v Graziano*, 200 AD3d 1248,

1252 [3d Dept 2021]). “An agreement to distribute the proceeds of an enterprise upon a percentage basis does not give rise to a joint venture if the enterprise does not represent a joinder of property, skills and risks” (*Matter of Steinbeck v Gerosa*, 4 NY2d 302, 317 [1958]), and “it is not enough that two parties have agreed together to act in concert to achieve some stated economic objective” (*id.* at 317).

Here, it is undisputed that the parties never signed a contract or memorialized the agreement. It was uncontested that Shields was not listed on the deed and could not sign the mortgage because of his poor financial history. It is also uncontested that plaintiff did not have the finances or the credit to purchase the property and the parties verbally agreed that the defendants’ name would be listed on the deed and mortgage. Further, defendants do not contest that they voluntarily gave plaintiff the keys to the premises.

Plaintiff was very evasive on the questions relating to how he obtained financing for his financial contributions and disbursements. With respect to plaintiff’s contributions to the purchase and renovation of the property, aside from inconclusive bills, no proof of cash contributions was presented. Photocopies of receipts for the work done by contractors and the materials were submitted in evidence. However, the receipts, contractor invoices and proposals were provided without verification of payment and the testimony demonstrated that plaintiff paid them in cash. Although Shields attested that he was unable to be named on the deed because he had bad credit, he testified that he was able to obtain more than \$200,000.00 in personal loans, and he spent more than \$700,000.00 on renovations, plus monthly payments of \$6,000.00 to repay those various loans. Shields stated that he often paid cash directly to the contractors and he was responsible for purchasing the tools and equipment. However, plaintiff was unable to provide a record of payments, documentation or agreement to evidence plaintiff’s record of financial investment.

When asked for documentation of the renovations, plaintiff produced documents signed by himself, unpaid invoices and contract proposals and various receipts purportedly connected to the renovations. Plaintiff's testimony that he personally invested between \$700,000.00 and \$800,000.00 in the property is inconsistent with the complaint wherein he alleged he personally invested over \$400,000.00.

On the other hand, the evidence demonstrated, and plaintiff acknowledged, defendants bore the sole financial burden of the mortgage debt. Plaintiff's testimony that he bore the financial burden of various debt from personal loans is, at best, dubious. Plaintiff's testimony that he contributed his real estate knowledge and expertise is similarly doubtful. Plaintiff averred that he engaged in substantial renovations that increased the value of the property. However, the testimony established that many of the renovations were completed without the requisite permits or certificate of occupancy and the line of credit Shields allegedly negotiated with Washington Mutual fell through and could not be used for the renovations. Plaintiff's lapses of judgment are inconsistent with his purported years of knowledge and experience.

The witness contended that his actions were taken because of the parties' understanding that he was the owner of the building. However, plaintiff was unable to produce any instrument evidencing defendant's acknowledgement of any agreement about the parties' respective share in the property. No proof was presented about any authority given to plaintiff to rent the apartments to tenants or retain the rents collected. The emails presented were inconclusive of any acknowledgment that defendants forfeited their ownership rights or right to the rents plaintiff collected. The Court finds the plaintiff's testimony to be completely self-serving, and at times, unbelievable. It makes no sense, as the plaintiff claims, that an experienced real estate investor and attorney entered an agreement with substantial financial contributions and risk on the part of

defendants and zero guarantee of transfer on the part of plaintiff without reducing the agreement to writing. Also, the Court is incredulous of plaintiff's clam that he was able to obtain personal loans of \$200,000.00 given his unstable financial situation.

Based on the evidence submitted to the Court, the testimony of the witnesses, and the weight afforded that testimony in light of the witnesses' credibility, the Court finds that the parties did not have a mutual understanding. Moreover, the plaintiff failed to establish a mutual undertaking to share the burden of the losses of the alleged venture. It must be established by a preponderance of the credible evidence that the position asserted on behalf of Shields more nearly represents the facts than that opposed to it. That is, it must be established to that standard that Shields, Darpo and Tirado agreed that Shields was the true property owner. However, based on lack of credibility, missing and unverified documents, and Shields' extremely self-serving and incredulous testimony, the Court must conclude that plaintiff has not met its burden of proof that it had a verbal joint venture agreement. The Court discredits the testimony in this regard.

Statute of Limitations

If the court determined that there was a breach, plaintiff's claims would still fail. To recover on a breach of contract or breach of joint venture claim, a plaintiff must commence an action within the six-year statute of limitations period (CPLR § 213; *see Eskenazi v Schapiro*, 27 AD3d 312, 315 [1st Dept 2006]). "A breach of contract or breach of joint venture claim accrues on the date "when all the facts necessary to the cause of action have occurred," which is generally the date of the alleged breach (*Aetna Life and Cas. Co. v. Nelson*, 67 NY2d 169, 175 [1986]; *Ely-Cruikshank Co. v Bank of Montreal*, 81 NY2d 399, 402 [1993]).

The defendants contend that the alleged breach of joint venture or oral agreement claims are untimely because they accrued no later than September 2009 – the year that plaintiff alleged

defendants breached their alleged agreement by refusing to refinance the property and transfer ownership of the property to plaintiff. Shields asserts that the defendants breached the joint venture agreement by attempting to sell the property as exclusive owners and without his knowledge. However, plaintiff's attempt to characterize the alleged breach as occurring in 2016 or 2017 is inconsistent with the testimony at trial.

Shields' main contention is that he is the rightful owner of the property, and the agreement was to transfer the property to him via the refinance. Thus, this claim accrued much earlier, in 2009, when defendant Tirado allegedly refused to cooperate with the refinance. Inasmuch as plaintiff asserted refinance was the only way to transfer ownership, which inured to his benefit and forms the basis of this action, the breach could not have occurred in 2016 or 2017. Plaintiff failed to bring the breach claims until 2017 and are now time-barred because they were not commenced until after the six-year limitations period expired.

Constructive Trust

"To obtain the remedy of a constructive trust, a party is generally required to establish four factors, or elements, by clear and convincing evidence: (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment flowing from the breach of the promise" (*Sanxhaku v Margetis*, 151 AD3d 778, 779 [2d Dept 2017]). In the instant case, plaintiff has failed to prove any transfer to defendants in reliance of a promise arising from a fiduciary relationship. Accordingly, plaintiff has failed to prove his cause of action for a constructive trust.

Damages

No credible evidence or proof was presented that the plaintiff was duly authorized by the

owners of the property to rent the apartments and collect rent. Therefore, by retaining the rents, plaintiff was unjustly enriched.

The emails presented, while expressing frustration over the situation and desire to sell the property, failed to demonstrate that the defendants ever intended to waive their ownership rights. Plaintiff argues the court should accept that email references to the parties working as a team towards the same goal means the parties entered into a joint venture agreement. The Court finds that leap questionable. The testimony of the plaintiff indicates that he failed to keep records of rental income and expenses. The Court finds his explanation for his failure to do so dishonest.

Therefore, the Court finds in favor of defendants. Plaintiff has failed to meet his burden of proof with respect to his rights of possession and interest in the property. Except for self-serving documents, some of which were incomplete or illegible, the plaintiff did not provide sufficient records or receipts of payments that had been made. No other record of payments, loans or financial contribution was provided. Thus, the Court finds the costs of the renovations unsubstantiated. However, the Court does credit the testimony of Furst that the value of the property increased with the renovations and attributes 25% of the difference between the 2018 estimated market value and the validation of debt or \$253,754.84 to plaintiff's efforts.

In sum, this Court concludes that the parties did not have a joint venture agreement, plaintiffs failed to establish an ownership or financial interest in the property, plaintiff improperly rented and retained rents collected. Accordingly, the Court finds in favor of the defendants' counterclaims and awards defendants \$1,006,505.09, representing the value of the rents¹ less the added value to the property, and quiet title to the subject property.

¹ Contrary to defendant's calculations, the Court determines that the value of plaintiff's residence was \$489,600.00.

This constitutes the Trial Decision of the Court.

SETTLE ORDER.

Dated: March 20, 2026

ENTER
Lewis
J. S. C.

Hon. Lisa Lewis

KINGS COUNTY CLERK
FILED
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