

Hazan v Flushing Unique Homes, LLC

2026 NY Slip Op 31257(U)

March 16, 2026

Supreme Court, Kings County

Docket Number: Index No. 512643/2016

Judge: Katherine A. Levine

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 92

-----X
MARDOCHE HAZAN,

Plaintiff,

Index No. 512643/2016

– against –

ORDER
Hon. Katherine A. Levine

FLUSHING UNIQUE HOMES, LLC, et al.,

Mot. Seq. 22

Defendants,

-----X
FLUSHING UNIQUE HOMES, LLC,

Third-Party Plaintiff,

– against –

MOSES FISCHMAN and ENYQ CORP.,

Third-Party Defendants.
-----X

The following e-filed papers read herein:

NYSCEF Doc. Nos.

Notice of Motion and

Affidavits (Affirmations) Annexed..... 434-443

Opposing Affidavit (Affirmations)..... 445, 446

Reply Affidavits (Affirmations)..... 447-449

In this foreclosure action, Defendant and Third-Party Plaintiff, Flushing Unique Homes, LLC (“Flushing”), files this motion seeking: (1) to restore this action to the trial calendar; (2) pursuant to CPLR § 7503, to compel arbitration of the dispute in this action; and (3) pursuant to CPLR § 3126, to strike the complaint for Plaintiff’s failure to appear at deposition and to strike Third-Party Defendant’s answers for failure to answer questions and for allegedly inappropriate behavior at their deposition. The court addresses each branch of this motion in turn.

As an initial matter, this case was marked off the calendar before the note of issue was filed and the court routinely will restore cases marked off prior to the note of issue being filed

and, accordingly, the court grants that branch of the instant motion seeking to restore the case to the trial calendar.

The court turns next to the branch of the motion seeking to compel arbitration before a rabbinical court. In support of the motion, Flushing attaches as an exhibit a summons for a rabbinical court arbitration, requested by Flushing member Rabbi Sholom Wagschal (or “Shulem Wagshal”), directing Third-Party Defendant Moses “Fishman” (actually spelled “Fischman”) and his son Benjamin, as well as co-Third-Party Defendant “Enya Corp.” (actually titled “ENYQ Corp.”), to appear before the Rabbinical Court of Kolel Tartikov. Flushing alleges that Moses Fischman returned the summons, writing on the bottom of the page in response: “YES, WE ARE ACCEPTING THIS DATE. PLEASE CONFIRM.” Flushing maintains that this handwritten statement, together with his admission in his deposition that he agreed to go to the Rabbinical Court, provides that he consented to go to arbitration and that this court should compel him to arbitrate the matter before them. The summons itself states vaguely that it “regard[s] 565 Flushing Avenue, Brooklyn, NY.”

Although the parties might have some inkling as to the issues which were to have been discussed at this future arbitration, the specific disputes were not stated explicitly in the summons. As a general matter, “[a]rbitration is a matter of contract, and arbitration clauses, which are subject to ordinary principles of contract interpretation, must be enforced according to their terms.” *Rubinstein v. C & A Mktg., Inc.*, 205 A.D.3d 832, 834 (2d Dept. 2022). However, arbitration agreements “must be clear, explicit and unequivocal as to their meaning and must not depend upon implication or subtlety.” *Id.* Specific claims, types of disagreements and/or causes of action must be specified and consented to in an arbitration agreement and must not depend on external

interpretation. *Id.* To be enforceable, such an agreement must “expressly and unequivocally encompass” the kinds of claims at issue in the dispute which the moving party is seeking to submit to arbitration. *Qureshi v. Vital Transp., Inc.*, 173 A.D.3d 1076, 1079 (2d Dept. 2019).

In this case, the furthest conclusion the court can determine from the submitted summons is that Fischman and ENYQ Corp. “agreed to agree to arbitration.” *Sasson v. Reisz*, 2021 NY Slip Op 30871(U), *6 (Sup Ct, Kings County 2021). “[A] mere agreement to agree, in which a material term is left for future negotiations, is unenforceable.” *Total Telecom Group Corp. v. Kendal on Hudson*, 157 A.D.3d 746, 747 (2d Dept 2018). An arbitration “regarding” the Subject Premises in this case is insufficient to determine what exactly was to be arbitrated at that future date. Furthermore, the summons states that, in the event Fischman and ENYQ Corp. failed to contact the rabbinical court in a timely manner, the hearing would be canceled. The court interprets this language as showing that the summons was, as correctly titled, merely a summons to appear, not to unequivocally submit to arbitration, even if the summons itself had been sufficiently specific as to its ultimate subject matter. The court therefore denies that branch of Flushing’s motion.

Finally, Flushing moves to strike the complaint for plaintiff Mardoche Hazan’s failure to appear for a scheduled deposition. However, the record is clear that Hazan assigned his interest in the property to Fischman and ENYQ Corp., and Fischman was deposed. Flushing also movea to strike Fischman and ENYQ Corp.’s third-party answer based upon Fishman’s conduct at his deposition. Upon a review of the deposition transcript, the court finds that many of the questions were repeated over and over, and the court observes that Fischman did respond to the questions, albeit not to deposing counsel’s approval. Similarly, some of the questions posed to him were

properly objected to because they sought information protected by attorney-client privilege. As such, the court denies this third branch of the instant motion. For these reasons, it is:

ORDERED that the motion to restore the action to the trial calendar is granted; and it is

ORDERED that the motion to compel arbitration is denied; and it is

ORDERED that the motion to strike the complaint and third-party answer is denied.

Dated: March 16, 2026



Hon. Katherine A. Levine, J.S.C.