

Katusha v Mizrahi

2026 NY Slip Op 31314(U)

March 31, 2026

Supreme Court, New York County

Docket Number: Index No. 656920/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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JOSEPH KATUSHA,

Plaintiff,

- v -

DANIEL MIZRAHI, ALEKSANDRA MIZRAHI, MIZRAHI STRATEGIES, LLC, D&A PROPERTIES SOLUTIONS, LLC

Defendant.

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INDEX NO. 656920/2022
MOTION DATE 04/04/2024
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 201, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249

were read on this motion to/for DISMISSAL.

This action arises out of allegations of, inter alia, breach of contract, fraud and fraudulent inducement. The complaint also seeks a declaration as to ownership of an investment property in New Jersey. Defendants Aleksandra Mizrahi ("Aleksandra") and D&A Properties Solutions LLC ("D&A"), now move to vacate a default judgment entered against them and seek dismissal of the complaint.

Background

Plaintiff and defendants are all residents of the state of New Jersey. Essentially, plaintiff alleges that that in January 2019 the defendants entered into a oral contract whereby plaintiff would invest \$200,000 to facilitate the purchase, renovation and sale of residential property located at 71 Claremont Road, Fort Lee, New Jersey. Plaintiff alleges he was defrauded,

commenced the action and was awarded a default judgment and subsequently damages, after an inquest was held, against all defendants.

Defendants, Aleksandra and D&A, then moved to vacate the default judgment against them and to dismiss the complaint pursuant to CPLR §§5015(a) and 3211(a)(8). Plaintiff opposed the motion and cross-moved for jurisdictional discovery. This Court granted jurisdictional discovery and additional briefing on the motion.

Discussion

In support of its motion, defendants, New Jersey residents, contend that there is not a sufficient basis to assert long-arm jurisdiction over them in the state of New York. Defendants cite to the complaint wherein there are no allegations regarding either moving defendants' ties to New York, and no allegations regarding any conduct, fraudulent or otherwise, by either moving defendant in New York.

In opposition the defendants' motion and after jurisdictional discovery was complete, plaintiff contends that the basis for personal jurisdiction in New York is defendant Daniel Mizrahi acting as the agent of the moving defendants. Plaintiff contends that misrepresentations made by defendant Daniel, while they were at lunch in New York City, and other times when the two met in New York City to discuss the business venture are attributable to the moving defendants. Further, plaintiff avers that Daniel Mizrahi's statements that Aleksandra was working in New York City and that she was shopping in New York City during one of the meetings that plaintiff had with Daniel is sufficient to establish that jurisdiction is appropriate in New York. Plaintiff also contends that its deposit of the initial investment funds into a Citibank account, that pursuant to subpoena, was discovered to have an address in Brooklyn, New York as

the address for the individual defendants, as a sufficient basis to establish jurisdiction over the movants.

Where a defendant moves to vacate a default judgment pursuant to CPLR §5015(a)(4) or dismiss a complaint for lack of personal jurisdiction pursuant to CPLR §3211(a)(8), the plaintiff “must come forward with sufficient evidence, through affidavits and relevant documents, to prove the existence of jurisdiction.” *Fischbarg v Doucet*, 9 NY3d 375, 381, n 5 [2007].

Preliminarily, as to D&A the default judgment is vacated and the matter dismissed. First, the Court notes that the damages awarded after the inquest were in error and in excess of the damages sought in the complaint. The only relief sought in the complaint as against D&A is a declaratory judgment with respect to the ownership interest in the subject property, thus the monetary award, inconsistent with the complaint was in error (*see* CPLR §3215(b); *Herald Ctr. Dept. Store of NY LLC v Shchegol*, 224 AD3d 588, 589 [1st Dept 2024] analyzing *Gluck v Allen Mfg. Co.* (53 AD2d 584, 585 [1st Dept 1976] and *Frank P. McNally, Inc. v Ontario Frgt. Lines Corp.* (29 AD2d 678 [2d Dept 1968])). Additionally, neither the complaint nor any affidavits submitted in opposition to the motion establish any connection between D&A and New York sufficient for this Court to exercise personal jurisdiction over it.

Notably, plaintiff filed an action and a *lis pendens* regarding the subject property in New Jersey, and contrary to its assertions the matter was not stayed pending resolution of this action, rather it was dismissed based on plaintiff’s failure to appear for a damages hearing. *See* NYSCEF Doc. 187. Movants contend that plaintiff’s misrepresentations and failure to disclose the New Jersey action warrant dismissal of the instant complaint pursuant to CPLR §5015(a)(3). The Court will not address this argument, rather it turns to plaintiff’s legal theory in support of its

contention that this Court has personal jurisdiction over Aleksandra, agency. Plaintiff contends that Mizrahi was the sole agent of both movants.

Pursuant to CPLR §302(a)(1), (2) “a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent: transacts any business within the state [or] commits a tortious act within the state.” *Id.* “The conduct of an agent may be attributed to the principal for jurisdictional purposes where the agent engaged in purposeful activities in this state in relation to the transaction at issue for the benefit of and with the knowledge and consent of the principal and the **principal exercised some control over the agent in the matter**” (*Morgan ex rel. Hunt .v A Better Chance, Inc.*, 70 AD3d 481, 482 [1st Dept 2010] citing *Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 467 [1988]emphasis added).

Plaintiff asserts that Aleksandra’s testimony that Mizrahi had the authority to act on her behalf establishes that he was her agent. However, what is missing from plaintiff’s recitation is any evidence or allegation that Aleksandra was the person in control and directed Mizrahi to perform any actions. To the contrary, based on plaintiff’s own submissions it appears that Mizrahi was in control and was in fact the principal who exercised control, not vice versa. Similarly, plaintiff fails to allege or point to any facts to support that D&A was the principal in control and that Mizrahi was acting on its behalf.

The Court notes that plaintiff is not prejudiced by these findings as the New Jersey action was dismissed without prejudice and is undoubtedly the proper jurisdiction to adjudicate plaintiff’s claims against the movants. Further, this determination does not affect the judgment rendered against the remaining defendants. Accordingly, it is hereby

ORDERED that defendants Aleksandra Mizrahi and D&A Properties Solutions LLC motion to vacate its default judgment herein is granted; and it is further

ORDERED that the matter is dismissed in its entirety as against defendants Aleksandra Mizrahi and D&A Properties Solutions LLC for lack of personal jurisdiction; and it is further

ORDERED that defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

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3/31/2026
DATE

LYLE E. FRANK, J.S.C.

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