

1746 E13 St. LLC v Khaimov
2026 NY Slip Op 31379(U)
February 11, 2026
Supreme Court, Kings County
Docket Number: Index No. 525824/2019
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of February 2026

HONORABLE FRANCOIS A. RIVERA

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1746 E13 STREET LLC, 5601 14TH AVE LLC,
6801 21 AVE LLC, 6301 23 AVE LLC, INDEX NO.:
1350 54TH STREET LLC, 690 OCEAN PKW LLC,
3051 OCEAN AVE LLC, OSGOOD LLC
57-63 WADSWORTH LLC, 261 WADSWORTH LLC,

Plaintiffs,

- against -

ITOMOR KHAIMOV, a/k/a ANTHONY
MARCHELLO, a/k/a TONY MARCHELLO,
a/k/a TOMMY KERSH,

Defendant.

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DECISION & ORDER

Index No.: 525824/2019

Fully Submitted: 2/5/2026

Cal. No.: 1

Ms. Seq. No.: 22

Recitation in accordance with CPLR 2219 (a) of the papers considered on the order to show cause filed on October 3, 2025, under motion sequence number twenty-two, by defendant Itomor Khaimov, a/k/a Anthony Marchello, a/k/a Tony Marchello, a/k/a Tommy Kersh (hereinafter defendant) for an order:

- (a) pursuant to CPLR 3025 (b) granting leave to pro se Itomor Khaimov (“Respondent”) to file its Second Amended Answer to add Defense and Counterclaims against Plaintiffs and to submit the Second Amended Answer via NYSCEF a copy of which is annexed to these moving papers as Exhibit “A”, and to amend caption adding CounterPlaintiff and Counter-Respondents; and
- (b) pursuant to CPLR § 6314, CPLR § 5015(a)(2), CPLR § 5015(a)(3) vacating this Court’s Preliminary Injunction issued via orders;

- 1) Decision and Order (Doc. 17) dated and entered on November 26, 2019 (the “November 26 Order”) issued by Hon. Carolyn E. Wade; and

- 2) Decision and Order (Doc. 46) dated and entered on July 27, 2020 and (Doc. 50) dated July 27, 2020 and entered on July 30, 2020 (the “July 27 Order”), issued by Hon. Loren Baily-Schiffman; and
 - 3) First Amended Order (Doc. 51) dated August 6, 2020 and entered on August 18, 2020 (the “August 6 Order”) issued by Hon. Loren BailySchiffman; and
 - 4) Second Amended Order (Doc. 108) dated and entered June 17, 2021 (the “June 17 Order”) issued by Hon. Loren Baily-Schiffman; and
 - 5) Order (Doc. 323) and entered June 16, 2022 (the “June 16 Order”) issued by Hon. Robin K. Sheares; and or
 - 6) in alternative granting Respondent leave to reargue so much of the court’s November 26 Order, July 27 Order, August 6 Order, June 17 Order and June 16 Order pursuant to C.P.L.R. § 2221(d); and
- (c) for an order pursuant to CPLR § 6315 and CPLR § 6312 (b) (3) and CPLR § 6312 (c) awarding Respondent’s damages and fees incurred in rearguing this motion based on the erroneously ordered temporary restraining order; and
- 1) in alternative granting Respondent leave to reargue so much of the court’s Jan. 5 Order and Jan. 25 Amd. Order and February 1 Judgment pursuant to CPLR § 2221(d) and, upon the granting of same vacating the decisions/orders; and
 - 2) pursuant to CPLR § 2201 and CPLR § 5519(c), staying and tolling all proceedings in the instant matter, including the Trial hearing scheduled for Monday, April 21, 2025, at 10:30 am pending the P hearing and determination of Respondent’s Appeal (2nd Appellate Division Docket No. 2023-01840 - 2023-01841) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 32); and
- (d) for an order pursuant to CPLR § 5015(a)(2) and CPLR § 5015(a)(3) vacating this Court’s Order (Motion seq. 8) (Doc. 330) dated June 22, 2022 and entered July 1, 2022 (the “June 22 Order”) issued by Hon. Lawrence Knipel; and or
- 1) in alternative granting Respondent leave to reargue so much of the court’s June 22 Order pursuant to C.P.L.R. § 2221(d), CPLR § 3124, CPLR § 3126, CPLR § 3104 (a), 22 NYCRR §130- 1.1; and
 - 2) pursuant to CPLR § 5519 (c) and/or CPLR § 2201, staying and tolling all proceedings in the instant matter, including the Trial assigned to Justice Francois A. Rivera, Part 52 and scheduled for a trial hearing for Monday, April 21, 2025, at 10:30 am pending the hearing and determination of Respondent’s Appeal (2nd Appellate Division Docket No. 2023-05175) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), which was fully briefed on

March 10, 2024 and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 7); and

- (e) for an order pursuant to CPLR § 5015(a)(2) and CPLR § 5015(a)(3) vacating the Order (Motion seq. 12) issued by Hon. Rachel E. Freier, dated April 14, 2023 and entered April 20, 2023 (hereinafter “April 14 Order”) (Doc. 407) as denied Respondent’s discover motion (seq. 12) for compel and strike Plaintiffs’ Note of Issue and Statement of readiness and to remove from the trial court calendar and other relief thereto; and or
- 1) in alternative granting Respondent leave to reargue so much of the court’s April 14 Order pursuant to CPLR § 2221(d) and, upon the granting of same vacating the decision/order; and
 - 2) pursuant to CPLR § 3124, directing Plaintiffs, by a date certain, to provide previously requested documents for the inspection (See. Notice of second Set of Discovery (Doc. 331); and Notice to Admit (Doc. 332); and First Set of Interrogatories (Doc. 333); and
 - 3) pursuant to CPLR § 5519 (c) and/or CPLR § 2201, staying and tolling all proceedings in the instant matter, including the Trial assigned to Justice Francois A. Rivera, Part 52 and scheduled for a trial hearing for Monday, April 21, 2025, at 10:30 am pending the hearing and determination of Respondent’s Appeal (2nd Appellate Division Docket No. 2023-05175) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1), which was fully briefed on March 10, 2024 and (Brief for Defendant-Appellant Itomor Khaimov AD2 NYSCEF. DOC. NO. 7); and
- (f) for an order pursuant to CPLR § 5015(a)(2) and CPLR § 5015(a)(3) vacating the Order (Motion seq. 14) issued by Hon. Robin K. Sheares, dated December 7, 2023 and entered on December 15, 2023, as denied Respondent’s motion (seq. 14) for summary judgment other relief thereto, (hereinafter “December 7 Order”) (Doc. 506); and or
- 1) in alternative granting Respondent leave to reargue so much of the court’s December 7 Order pursuant to CPLR § 2221(d) and, upon the granting of same vacating the decision/order; and
 - 2) pursuant to CPLR § 5519 (c) and/or CPLR § 2201, staying and tolling all proceedings in the instant matter, including the Trial hearing scheduled for Monday, April 21, 2025, at 10:30 am (Doc. 542) pending the hearing and

determination of Respondent's Appeal (2nd Appellate Division Docket No. 2024-00059) (Notice of Appeal AD2 NYSCEF. DOC. NO. 1); and

(g) pursuant to CPLR 3211(a)(4) dismissing plaintiffs action captioned 6801 21 AVENUE LLC v. ITOMOR KHAIMOV, a/k/a ANTHONY MARCELLO, a/k/a TONY MARCELLO, a/k/a TOMMY KERSH under Index No. 505492/2024, this retaliatory SLAPP action must be dismissed because there is another action pending between the parties where the same relief has been requested.

The motion is opposed.

- Order to show cause
- Affidavit in support
Exhibits A, 1-24
- Memorandum of law in support
Exhibit 1
- Affirmation in opposition
- Memorandum of law in opposition
- Affidavit in reply
- Memorandum of law in reply

LAW AND APPLCATION

By decision and order issued on July 10, 2025 (hereinafter the July order), the Court denied a prior motion of the plaintiff filed under sequence number sixteen, which sought an order consolidating the instant action with another action. By that same order, the court denied the defendant's prior motion filed under motion sequence number seventeen to, among other things, amend the defendant's answer.

The July order noted that the defendant's motion papers did not comply with 22 NYCRR §§ 202.5 (a) (1) and 202.8-b. The papers failed to comply with 22 NYCRR 202.5 (a) (1) because, inter alia, the margins are less than one inch. The motion papers also failed to comply with 22 NYCRR 202.8-b because the defendant submitted an affidavit in support that was seventy-two pages, a memorandum in support that that was

eighty-two pages, and an affidavit in reply that was twenty-seven pages. All these documents were above the page limits set forth in the Court rules and were submitted without the Court's permission.

The July order advised, among other things, that in the future, all motion papers filed by the defendant must comply with the requirements of 22 NYCRR §§ 202.5 (a) (1) and 202.8-b as well as with CPLR 2101 (a) and (b). The defendant was advised that a failure to comply with this directive on any future filings may result in a rejection of any such motion papers.

Plaintiff's counsel submitted a memorandum of law in opposition to defendant's motion papers which immediately pointed in the first paragraph of its preliminary statement that the defendant's motion papers did not abide with the Court's directive to comply with the requirements of 22 NYCRR 202.8-b and CPLR 2101 (a) and (b).

In an abundance of caution the plaintiff substantively addressed the merits of the defendant's motion. The Court declines to do so. Once again, the defendant's motion papers do not comply with the requirements of 22 NYCRR § 202.8-b.

The defendant's affirmation in support of the motion is eighty-nine pages. The defendant's memorandum of law in support is ninety-three pages. The affirmation in reply is thirty-three pages. The memorandum of law in reply is twenty-seven pages. All these documents are above the page limits set forth in the Court rule and were submitted without the Court's permission.

The defendant's motion papers are rejected as defective without regard to its content and substance. The denial is without prejudice to resubmit the motion in proper form within twenty days of entry of the instant decision and order.

The foregoing constitutes the decision and order of this Court.

ENTER:


J.S.C.

HON. FRANCOIS A. RIVERA