

Makson v Pilko

2026 NY Slip Op 31876(U)

April 30, 2026

Supreme Court, Kings County

Docket Number: Index No. 530574/2023

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 30th day of April 2026.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

=====
ANNA B. MAKSON,

Plaintiff,

-against-

MARIANA PILKO and LORI R. SOMEKH, ESQ.,

Defendants.
=====

DECISION & ORDER

Index No.: 530574/2023

Calendar No.: 3

Return Date: 3/5/2026

Motion Seq. No.: 6

Recitation of the following papers as required by CPLR 2219 (a):

**NYSCEF
Papers Numbered**

Notice of Motion and Supporting Documentation, Affirmation in Opposition and Supporting Documentation88-103, 106-116

Upon the foregoing papers, the decision and order of the Court is as follows:

Plaintiff ANNA B. MAKSON (“plaintiff”) seeks an Order pursuant to CPLR 3212 for summary judgment for claims of fraud and conversion for the total sum of \$122,906.28, against defendant Mariana Pilko (“defendant Pilko”), plus interest at the statutory rate. The motion is denied.

Facts

In September 2020, plaintiff was injured when she fell on the sidewalk in front of 1305 Kings Highway, Brooklyn, New York. She contends that she communicated with defendant Pilko, a Russian-speaking paralegal, and attorney Daniel Luisi (“Luisi”), defendant Pilko’s then-employer, who referred her to Salzman & Winer LLP.¹ An action was commenced against CityMD and 1305 Properties, LLC under Index Number 503300/2021.

¹ As of currently, defendant Pilko no longer works for the Law Office of Daniel Luisi as a paralegal and interpreter since she was fired.

Although defendant Pilko did not work for Salzman & Winer LLP, she accompanied plaintiff to various medical appointments and served as plaintiff's interpreter while the lawsuit was pending. In 2021, the lawsuit was settled and plaintiff received \$138,323.14. Plaintiff discussed with defendant Pilko the possibility of losing her government benefits once she received her settlement funds. It is alleged that defendant Pilko advised plaintiff to create a trust to protect her settlement funds and preserve her benefits.

Defendant Pilko accompanied plaintiff to an initial consultation with defendant Lori R. Somekh, Esq. ("Somekh"), a trusts and estates attorney.² Plaintiff, who understands limited English, submits that defendant Pilko spoke in English to Somekh and falsely identified herself as "plaintiff's niece," and informed the attorney that she "want[ed] to give away the money."

Plaintiff met with Somekh a second time with defendant Pilko and Luisi in attendance. The meeting was conducted primarily in English; defendant Pilko interpreted for plaintiff. Plaintiff submits that Somekh instructed plaintiff to sign a document and pay her a legal fee of \$2,500.00. It was plaintiff's understanding, based on defendant Pilko's representations, that the document that she signed during that meeting was a Trust ("trust"). However, the document signed by plaintiff was a Power of Attorney (POA) appointing defendant Pilko with a broad scope of powers.

Somekh had advised plaintiff of the three options to safeguard her benefits: (1) Medicaid Asset Protection Trust (MAPT),³ (2) pooled-asset trust,⁴ (3) or outright gift to friend or family member. If plaintiff did not select one of those three options, her benefits, especially as an elderly individual, may have been negatively impacted. Defendant Pilko contends that plaintiff was informed that if she selected the third option, an outright gift, that the donee was not permitted to return gifted

² A stipulation of partial discontinuance has been filed stating that plaintiff discontinued this matter as against defendant Lori R. Somekh, Esq. only, with prejudice.

³ A MAPT is primarily used to protect large assets from the Medicaid resource limit for future care, while a pooled trust is often used to manage excess monthly income to meet current eligibility requirements.

⁴ Somekh testified that she believed plaintiff did not elect the pooled-asset trust because after she died, the money would not be returned for her heirs.

money because of the appearance of government benefits fraud. Plaintiff issued a check to defendant Pilko and, on defendant Pilko's advice, she wrote the word "gift" in the memo line. It was plaintiff's understanding that the check would be deposited into a trust account for her benefit. However, defendant Pilko deposited the check into her personal checking bank account. Thereafter, plaintiff made several requests to defendant Pilko for certain disbursements from the "trust." Defendant Pilko issued several payments to plaintiff and, for each disbursement, provided plaintiff with a receipt and an accounting of the remaining balance of \$122,906.28.

In March 2022, plaintiff consulted another trusts & estates attorney, Viktoria Beress ("Beress"), concerning the documents she thought constituted a trust. During this consultation, plaintiff learned that the document she signed was a POA. After the meetings, plaintiff sent two demand letters to defendant Pilko, requesting the return of the remaining balance of the funds. Defendant Pilko refused to return the funds held to plaintiff. Plaintiff then commenced this legal action.

Discussion

A) Summary Judgment

Pursuant to CPLR § 3212 (b), a motion for summary judgment "shall be granted if, upon all papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party" (CPLR § 3212 [b]). On the other hand, to defeat a motion for summary judgment, the opposing party must "show facts sufficient to require a trial of any issue of fact" (*id.*). Normally, if the opponent is to succeed in defeating a summary judgment motion, the opponent must make their showing by producing evidentiary proof in admissible form" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). When the movant has established a prima facie case, it is the opposing party's burden to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact . . . or [to] demonstrate [an]

acceptable excuse for [their] failure to meet [this] requirement" (*City of New York v Grosfeld Realty Corp.*, 173 AD2d 436, 570 [2d Dept 1991]).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (*see Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Shop & Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept 2002]).

B) Fraud

To establish a claim for fraud, a "plaintiff must prove a representation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*Richmond Shop Smart, Inc. v Kenbar Development Center, LLC*, 32 AD3d 423, 424 [2d Dept 2006]). The law "[r]egards the making of a misrepresentation by a defendant who possesses a position of superiority and influence over the plaintiff by reason of the confidential relationship between them as a breach of duty actionable as constructive fraud" (*Brown v Lockwood*, 76 AD2d 721, 731 [1980]).

Plaintiff has failed to establish as a matter of law that defendants defrauded her (*Cameron v City of Long Beach*, 297 AD2d 774). Plaintiff asserts that she and defendant Pilko developed a confidential relationship during her personal injury lawsuit due to her limited command of the English language, and that defendant Pilko exploited this relationship by deliberately misleading her as to the POA. However, defendant Pilko and Somekh testified that plaintiff spoke to Luisi in

English; did not indicate a lack of understanding concerning Somekh's instruction about the risk and cost and benefits of the three choices explained to her in English; that she was not induced to write the word "gift" on the check; and that she answered all questions in English. Therefore, a jury must determine the parties' credibility as this Court cannot accept as true plaintiff's version of events (*Xiang Fu He v Troon Management, Inc.*, 34 NY3d 175; *Cameron v City of Long Beach*, 297 AD2d 774).

C) Conversion

To establish a claim for conversion, a plaintiff must show (i) plaintiff's possessory right or interest in the property, and (ii) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 50 [2006]). As stated in *Petrone v Davidoff Hutcher & Citron, LLP*, 150 AD3d 776, 777 [2d Dept 2017], "[M]oney, if specifically identifiable, may be the subject of a conversion action." Conversion is deemed to have occurred "[w]hen funds designated for a particular purpose are used for an unauthorized purpose" (*id.*).

Here, plaintiff asserts that she is the sole owner of the funds deposited into defendant Pilko's TD Bank account ending in 3007, and that defendant Pilko admitted in her deposition that, "I understood this was not my money. This is the money that I was supposed to help [plaintiff] with when she needed. I had no desire to keep this money for myself." Again, based on the conflicting testimony, plaintiff has failed to establish as a matter of law that defendant Pilko fraudulently converted the funds (*Xiang Fu He v Troon Management, Inc.*, 34 NY3d 175; *Cameron v City of Long Beach*, 297 AD2d 774). There is a dispute as to whether plaintiff understood that she 1) was surrendering her possessory interest in the funds when she signed the POA that she believed as a trust document and issued the check to defendant Pilko; and 2) could not request the return of the funds in a lump sum or exercise actual control over it, otherwise both may be charged with a fraudulent scheme concerning plaintiff's governmental benefits.


The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for an order pursuant to CPLR § 3212 for summary judgment is DENIED.

This constitutes the decision and order of the Court.

ENTER:

A handwritten signature in blue ink, appearing to be 'AS', is written over a faint circular stamp.

Hon. Anne J. Swern, J.S.C.

Dated: 4/30/2026