

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
ILAN TAVOR,

Plaintiff,

-against-

391 BROADWAY LLC, GIL BOOSIDAN AND
MARTIN HOLLANDER,

Defendants.
-----X

Index No.: 651848/17

**MONEY JUDGMENT
WITH AFFIRMATION
IN SUPPORT OF
BILL OF COSTS**

Upon the Appellate Division First Department issuing an Order and Judgment dated February 15, 2024 modifying the law and facts to reinstate the contract claim dismissed by the Supreme Court awarding Plaintiff Ilan Tavor a Money Judgment as Against Defendant Gil Boosidan in the amount of \$300,000.00 plus interest at the annual rate of 9% from August 17, 2017 to the date of the entry of Judgment (a copy of the Order and Judgment is annexed hereto and made a part thereof); it is

ADJUDGED that Plaintiff Ilan Tavor ("Plaintiff"), residing at 107-40 Queens Boulevard, Apartment 18-A/19-A, Forest Hills, New York 11375 recovers from Defendant Gil Boosidan ("Defendant"), with his principal place of business located at 391 Broadway, New York, New York the sum of \$300,000.00 plus interest at the annual rate of 9% from August 17, 2017 in an amount of \$ 182,712.33 plus costs and disbursements in the amount of \$ 1,135.00 for a total sum of \$ 483,847.33 and that Plaintiff shall have execution hereon.

X

Judgment entered this 22 nd of **May**, 2024

Milton Adair Timpone
CLERK



BILL OF COSTS

MAY 22 2024
I HEREBY CERTIFY THAT I HAVE
ADJUSTED THIS BILL OF COSTS AT
\$1135.00
Milton Adams
CLERK

1.	Judgment granted in Order	22	\$300,000.00	
2.	Interest at 9%, computed from August 17, 2017 to May 21, 2024 (\$73.97 per day @ 2469 days)		\$182,634.93 182,712.33	
3.	Costs, pursuant to CPLR §§ 8201(1); 8201(2) and 8201(3)		\$ 700.00	
4.	Disbursements, pursuant to CPLR § 8018(a) Index Number		\$ 210.00	
5.	Disbursements, pursuant to CPLR § 8301(b) Motion/RJI		\$ 230.00	45.00
6.	Disbursements, pursuant to CPLR § 8301(d) Service of Process Note of issue		\$ 400.00 \$ 30.00	150.00
			Total Due: \$484,171.93	

483,847.33

STATE OF NEW YORK)
 ss:
COUNTY OF NASSAU)

WARREN S. DANK, an attorney admitted to practice law before the Courts of the State of New York, who is not a party to this action, affirmed to be true under penalties of perjury says:

The disbursements above specified have been or will necessarily be made or incurred therein and are reasonable in amount.

Dated: May 21, 2024
Syosset, New York

Warren S Dank
WARREN S. DANK, ESQ.

FILED
May 22 2024
NEW YORK
COUNTY CLERK'S OFFICE

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Moulton, J.P., Friedman, Gesmer, Mendez, Rodriguez, JJ.

1675

ILAN TAVOR,
Plaintiff-Appellant,

Index No. 651848/17
Case No. 2023-03074

-against-

391 BROADWAY LLC et al.,
Defendants-Respondents.

Warren S. Dank, P.C., Syosset (Warren S. Dank of counsel), for appellant.

Johnson & Associates, New York (Bruce D. Johnson of counsel), for respondents.

Order, Supreme Court, New York County (Judy H. Kim, J.), entered on or about May 24, 2023, which, insofar appealed from as limited by the briefs, dismissed plaintiff's breach of contract and unjust enrichment claims after a bench trial, unanimously modified, on the law and the facts, to reinstate the contract claim and to award plaintiff judgment thereon as against defendant Gil Boosidan in the amount of \$300,000 plus interest at the annual rate of 9% from August 17, 2017, to the date of entry of judgment, and otherwise affirmed, without costs.

We agree with the trial court that the October 12, 2015 email from Boosidan to plaintiff was not an enforceable contract; plaintiff's response – "Let[']s get this executed . . . so we can proceed" – shows that he did not believe the email, by itself, was a binding agreement (*see Kolchins v Evolution Mkts., Inc.*, 31 NY3d 100, 106-107 [2018]).

However, the court improvidently exercised its discretion by refusing to let plaintiff use Boosidan's deposition (*see CPLR 3117[a][2]; Gonzalez v Medina*, 69 AD2d

14, 21 [1st Dept 1979]). Since the deposition confirmed the main terms of the November 30, 2015 agreement between plaintiff, on the one hand, and Boosidan and defendant 391 Broadway LLC on the other, the court should have admitted plaintiff's trial exhibit 2 – a photocopy of the November 30, 2015 contract – in evidence (*see Thomson v Rubenstein*, 31 AD3d 434, 436 [2d Dept 2006]; *Dependable Lists v Malek*, 98 AD2d 679, 680 [1st Dept 1983], *appeal dismissed* 62 NY2d 645 [1984]).

Defendants' only defense to plaintiff's contract claim was that he had breached the contract; however, the court dismissed their contract counterclaim, and they have not cross-appealed. According to the agreement, even if the building located at 391 Broadway was not sold, Boosidan was supposed to pay plaintiff \$300,000 by August 18, 2017. The contract provided for interest; in addition, plaintiff is entitled to 9% interest pursuant to CPLR 5001(a) and (b) and 5004(a).

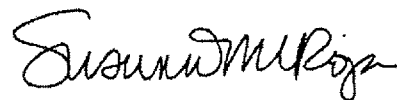
The court properly declined to award plaintiff \$200,000 for his 4% membership interest in 391 Broadway LLC or \$250,000 for the loss of his 5% membership interest in nonparty B & H 225 E82 LLC. The evidence presented by plaintiff did not permit his loss to be ascertained with reasonable certainty (*see Reichman v Warehouse One*, 173 AD2d 250, 252 [1st Dept 1991]).

As to plaintiff's unjust enrichment claim, even assuming the court should not have sua sponte converted the unjust enrichment claim to a quantum meruit claim and then dismissed it for failure to prove an element of quantum meruit, the error was harmless;

plaintiff would not have prevailed on an unjust enrichment claim because an actual agreement between the parties existed (*see Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: February 15, 2024



Susanna Molina Rojas
Clerk of the Court

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Peter H. Moulton, Justice Presiding,
David Friedman
Ellen Gesmer
Manuel J. Mendez
Julio Rodriguez III, Justices.

Ilan Tavor,	Motion No.	2024-01182
Plaintiff-Appellant,	Index No.	651848/17
-against-	Case No.	2023-03074


391 Broadway LLC et al.,
Defendants-Respondents.

Defendants-respondents having moved for reargument of the decision and order of this Court, entered on February 15, 2024 (Appeal No. 1675),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied; the interim relief granted by a Justice of this Court on March 7, 2024, is hereby vacated.

ENTERED: May 21, 2024



Susanna Molina Rojas
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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ILAN TAVOR,

Plaintiff,

-against-

391 BROADWAY LLC, GIL BOOSIDAN AND
MARTIN HOLLANDER,

Defendants.
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Index No.: 651848/17

**1-1
FILED AND
DOCKETED
May 22 2024
AT 09:55 A M
N.Y. CO. CLK'S OFFICE**

MONEY JUDGMENT WITH AFFIRMATION IN SUPPORT OF BILL OF COSTS

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