

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

PRESENT: HON. MELISSA ANNE CRANE PART IAS MOTION 60

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Mali Fuks

Plaintiff,

- v -

Rakia Associates
Defendant.

Index No. 122768/1996
Mot. Seq No - 028, 029, & 030

-----X

SHOMRON, RUTH

Plaintiff,

- v -

FUKS, DARYA

Defendant.

INDEX NO. 102882/2002
MOTION SEQ. NO. 026 027

**DECISION + ORDER ON
MOTION**

The court consolidates all the above motions for disposition. The court decides the motions and confirms the report of the special referee in accordance with the reasoning on the record of 7/22/2021.

This case and its companion have been pending since 1996. Although the parties asked for and agreed to a special referee for trial, this was not the sort of case that was appropriate for a special referee largely due to the lack of authority to enforce deadlines. Moreover, both sides have unduly complicated and prolonged these proceedings for reasons unknown. Indeed, this court feels the same way Judge Friedman did when she remarked way back on February 24, 2010, "I have never seen a case like this that has proved so intractable. This case has been

pending since 1996. It has gone to arbitration which failed after years. . .one begins to wonder if there is any interest in resolving this case” [EDOC 14]).

In these motions, in addition to asking the court to confirm those portions of the report that are favorable to Shomron, while, at the same time, seeking a rejection for those portions that are disfavorable, counsel for Shomron now claims that he was prosecuting some of the other defendants’ counterclaims¹ in Index No. 122768/1996 at the trial before the special referee. Although the issue of the counterclaims was referred to the special referee (see Tr Feb. 24. 2010 at pg 34 [EDOC 14]), no mention was made of the counterclaims during the trial and certainly the other defendants did not testify. Accordingly, defendants have abandoned these counterclaims, and certainly have failed in their burden of proof with respect to these counterclaims. Given that the referee found that the amounts Shomron recorded for these loans were inaccurate, the failure of any of these other defendants to testify is fatal. Therefore, to the extent the special referee may have overlooked these counterclaims, the court dismisses them. To the extent that these loans overlap with those in the eighth counterclaim, that was not abandoned, the court addresses them in the second decretal paragraph and by confirming the report.

Defendant Shomron’s motions largely seek a redo of the hearing before the special referee. However, this court will not engage in second guessing a hearing officer who made credibility findings after listening to testimony directly during a 7-year inquest.

Accordingly it is,

¹ These are defendant Rakia’s ninth counterclaim, defendant 2701 Broadway’s tenth counterclaim, defendant Goldstein’s eleventh counterclaim, and defendant Simon’s twelfth counterclaim.

ORDERED THAT, the court awards a judgement of \$375,000 with statutory interest from 2/10/1996, as calculated by the clerk of the court, in favor of Mali Fuks and against Ruth Shomron; and it is further

ADJUDGED, DECREED AND DECLARED that the loans from Salon, 2701 Broadway, Helfman, Zilber, Rakia, Kaplan, Kahn and Ms. Shomron, bearing interest rates of 10% per annum, identified at pages 78-79 of the referee's report are valid and enforceable; and it is further

ORDERED THAT the court imposes a constructive trust in the amount \$1,158,316.66, representing the total sum of "rents and profits" earned by the Trust and Greenland from the four cooperative apartments during the period 1992 to 2008.

The clerk is directed to enter judgment accordingly.

FILED
Aug 16 2021
NEW YORK
COUNTY CLERK'S OFFICE

7/29/2021
DATE

Melissa Anne Crane
MELISSA ANNE CRANE, J.S.C.

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

16 th Aug. 2021

JUDGMENT

FILED
AUG 16 2021
AT 07:51 A M
N.Y. CO. CLK'S OFFICE

Multon Adavi Tonglong
Clerk