

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Tartell v. Klein

2026 NY Slip Op 02382 (N.Y. Ct. App. 2026) · No. Index No. 653837/24; Appeal Nos. 6422-6423; Case Nos. 2024-07224, 2025-03054 · Decided April 21, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed orders denying plaintiffs' motion to disqualify defense counsel and granting defendants' motion to dismiss. The court held that the business judgment rule barred the claims against the Zionist Organization of America and found insufficient evidence of a conflict of interest warranting counsel's disqualification.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Renwick, P.J.; Friedman, J.; Gesmer, J.; Pitt-Burke, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 21, 2026
DOCKET	Index No. 653837/24; Appeal Nos. 6422-6423; Case Nos. 2024-07224, 2025-03054
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order denying their motion to disqualify defense counsel and from a subsequent order granting defendants' motion to dismiss the complaint.
STANDARD OF REVIEW	The denial of the motion to disqualify counsel was reviewed for abuse of discretion; the motion-to-dismiss ruling was reviewed under the applicable business-judgment-rule and pleading standards.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Paul Tartell et al. v. Morton Klein et al.

TOPICS

- business judgment rule
- corporate governance
- motions to dismiss
- commercial litigation
- appellate procedure

PRACTICE AREAS

corporate law

commercial litigation

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the complaint was subject to dismissal under the business judgment rule.
2. Whether plaintiffs established grounds to disqualify defense counsel based on a conflict of interest in the joint representation of the board-member defendants and ZOA.

HOLDINGS

1. Dismissal under the business judgment rule was proper because the complaint did not sufficiently allege facts calling into question the independence of a majority of the remaining board members, and the board's investigation and subsequent reelection of Klein reaffirmed its organizational support for him.
2. The denial of plaintiffs' motion to disqualify defense counsel was proper because the record was insufficient to establish a conflict of interest between the board-member defendants and ZOA, and ZOA's executive director provided a written waiver of any potential conflict arising from joint representation.

KEY QUOTATIONS

*“The business judgment rule applies where an independent majority of the board declines to take action against the allegedly interested board members” (*1)*

FACTUAL BACKGROUND

Plaintiffs alleged that Morton Klein acted improperly as national president of the Zionist Organization of America and that four board members permitted or protected his alleged misconduct. Plaintiffs made a July 17, 2024 demand that the board investigate the alleged misconduct. After the action was commenced but before the complaint was filed, the board convened an investigative committee, and a majority of the board later reelected Klein. Plaintiffs also sought disqualification of defense counsel based on an alleged conflict between the board-member defendants and the nominal defendant, ZOA.

PROCEDURAL HISTORY

Supreme Court, New York County, denied plaintiffs' motion to disqualify defense counsel in an order entered on or about November 20, 2024. The same court later granted defendants' motion to dismiss the complaint in an order entered May 5, 2025. The Appellate Division, First Department, unanimously affirmed both orders.

DISPOSITION

affirmed

CASES CITED

- Auerbach v Bennett, 47 NY2d 619, 629 [1979]

- Consumers Union of U.S., Inc. v State of New York, 5 NY3d 327, 360 [2005]
- Sanford v Colgate Univ., 36 AD3d 1060, 1061-1062 [3d Dept 2007]
- O'Donnell, Fox & Gartner v R-2000 Corp., 198 AD2d 154, 155 [1st Dept 1993]
- Stilwell Value Partners IV, L.P. v Cavanaugh, 123 AD3d 641, 641-642 [1st Dept 2014]
- Ferolito v Vultaggio, 99 AD3d 19, 28 [1st Dept 2012]

OPINION

PER CURIAM.

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Tartell v Klein

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April 21, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Paul Tartell et al., Appellants,

v

Morton Klein et al., Respondents.

Decided and Entered: April 21, 2026

Index No. 653837/24|Appeal No. 6422-6423|Case No. 2024-07224, 2025-03054|

Before: Renwick, P.J., Friedman, Gesmer, Pitt-Burke, Hagler, JJ.

Gordonlaw LLP, Katonah (Michael R. Gordon of counsel), for appellants.

Kasowitz LLP, New York (Marc E. Kasowitz of counsel), for respondents.

[*1]

Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered on or about November 20, 2024, which, to the extent appealed from as limited by the briefs, denied plaintiffs' motion to disqualify defense counsel, unanimously affirmed, without costs.

Order, same court and Justice, entered May 5, 2025, which granted defendants' motion to dismiss the complaint, unanimously affirmed, without costs.

The court properly granted defendants' motion to dismiss based on the business judgment rule, which "bars judicial inquiry into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes" (*Auerbach v Bennett*, 47 NY2d 619, 629 [1979]; *see Consumers Union of U.S., Inc. v State of New York*, 5 NY3d 327, 360 [2005]).

While plaintiffs assert that defendant Morton Klein acted improperly in his role as national president of Zionist Organization of America (ZOA) and that four members of the board permitted his improper conduct and protected him from oversight, the complaint contains insufficient allegations from which to question the independence of the majority of the remaining board members.

On August 8, 2024, after this action was commenced but before plaintiffs filed their complaint, the board convened a committee to investigate plaintiffs' July 17, 2024 demand that the board investigate alleged misconduct. Subsequently, a majority of the board reelected Klein to his position, thus reaffirming the organization's support for him (*see* *Sanford v Colgate Univ.*, 36 AD3d 1060, 1061-1062 [3d Dept 2007] [The business judgment rule applies where an independent majority of the board declines to take action against the allegedly interested board members]).
Because the complaint is dismissed under the business judgment rule, it is unnecessary to reach defendants' arguments regarding plaintiffs' standing and the sufficiency of the pleadings.
The court providently exercised its discretion in denying plaintiffs' motion to disqualify counsel (*see* *O'Donnell, Fox & Gartner v R-2000 Corp.*, 198 AD2d 154, 155 [1st Dept 1993]).

The record on plaintiffs' motion was insufficient to establish a conflict of interest between the board member defendants and nominal defendant ZOA (*see* *Stilwell Value Partners IV, L.P. v Cavanaugh*, 123 AD3d 641, 641-642 [1st Dept 2014]).

Moreover, ZOA's executive director, who is not a named defendant, provided a written
waiver of any potential conflict arising from joint representation (*see* *Ferolito v Vultaggio*, 99 AD3d 19, 28 [1st Dept 2012]).
We have considered plaintiffs' remaining arguments and find them unavailing.
THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.
ENTERED: April 21, 2026

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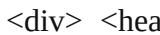
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PER CURIAM.

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