

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

Michael Gross Diamonds Inc. v. Vaknin

2026 NY Slip Op 03762 · No. Index No. 651396/14; Appeal No. 6895; Case No. 2024-01158 · Decided June 16, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed a judgment dismissing Michael Gross Diamonds Inc.'s amended complaint after a bench trial. The court deferred to the trial court's credibility determinations and held that its findings concerning diamond transaction memoranda, a consigned necklace, and a \$140,000 check were supported by a fair interpretation of the evidence.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Webber, J.P.; Kapnick, J.; Gesmer, J.; Rodriguez, J.; Rosado, J.                                                                                                                                                                                                                                                        |
| JURISDICTION          | New York Supreme Court, Appellate Division, First Department                                                                                                                                                                                                                                                            |
| DECIDED               | June 16, 2026                                                                                                                                                                                                                                                                                                           |
| DOCKET                | Index No. 651396/14; Appeal No. 6895; Case No. 2024-01158                                                                                                                                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Plaintiff appealed from a judgment entered after a bench trial that dismissed the amended complaint with prejudice and brought up for review an earlier order dismissing the complaint.                                                                                                                                 |
| STANDARD OF REVIEW    | A judgment following a bench trial, particularly where credibility is central, should be set aside only when it is not supported by any fair interpretation of the evidence. Trial-court factual and credibility determinations receive great weight because the trial court observed the witnesses and their demeanor. |
| PRECEDENTIAL VALUE    | Published New York appellate decision; uncorrected and subject to revision before publication in the Official Reports.                                                                                                                                                                                                  |
| PARTIES               | Michael Gross Diamonds Inc. v. Yishai Vaknin, et al.                                                                                                                                                                                                                                                                    |

TOPICS

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## PRACTICE AREAS

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## QUESTIONS PRESENTED

1. Whether the trial court's credibility determinations and rejection of plaintiff's claims were supported by a fair interpretation of the evidence.
2. Whether the trial court erred in rejecting plaintiff's claims concerning the three memoranda allegedly exchanged for the necklace, eight other diamond-transaction memoranda, and the \$140,000 check.

## HOLDINGS

1. A bench-trial judgment, especially one turning substantially on witness credibility, should be set aside only when it is not supported by any fair interpretation of the evidence, and appellate courts must accord great weight to the trial court's credibility determinations.
2. The trial court properly rejected plaintiff's claims because its findings were supported by a fair interpretation of the evidence, including its credibility determinations and the evidence supporting defendants' claimed setoff.

## KEY QUOTATIONS

*“A judgment from a bench trial, especially where credibility played an important role, should only be set aside where it is not supported by any fair interpretation of the evidence” (\*1)*

*“Upon appellate review, a trial court's decision in a bench trial must be accorded great weight, since that court was in the best position to assess the evidence presented at trial, having the advantage of observing the witnesses, or the absence thereof, and their demeanor on the witness stand” (\*1)*

## FACTUAL BACKGROUND

Michael Gross Diamonds Inc. claimed that defendants owed payment for diamond transactions memorialized in three memoranda allegedly exchanged for a necklace, as well as eight other memoranda, and sought reimbursement for a \$140,000 check that was returned for insufficient funds or stopped. The trial court disbelieved plaintiff's principal, Michael Gross, credited defendants' principal, Yishai Vaknin, and found the memoranda unclear or lacking bona fides. The court also credited evidence that the necklace was owned by another entity and had been consigned to plaintiff, and defendants asserted a setoff based on payments made to the necklace's owner under a separate judgment against plaintiff.

## PROCEDURAL HISTORY

Supreme Court, New York County, entered a judgment on November 30, 2023, following a bench trial, and dismissed Michael Gross Diamonds Inc.'s amended complaint with prejudice. The Appellate Division reviewed the judgment and the July 26, 2023 dismissal order and unanimously affirmed the judgment with costs.

## DISPOSITION

affirmed

## CASES CITED

- Thoreson v. Penthouse Intl., 80 NY2d 490, 495 (1992)
- Wong v. Hsia Chao Yu, 160 AD3d 549, 550 (1st Dept. 2018)
- Abreu v. Barkin & Assoc. Realty, Inc., 115 AD3d 624, 624 (1st Dept. 2014)
- Reed v. City of New York, 304 AD2d 1, 7 (1st Dept. 2003), lv denied 100 NY2d 503 (2003)
- Brian E. Weiss, P.C. v. Miller, 166 AD2d 283, 283 (1st Dept. 1990), affd 78 NY2d 979 (1991)
- Blue Riv. Gems Inc. v. S.V.&V. Diamond Corp., 55 Misc 3d 450 (Sup. Ct., NY County 2016), affd 190 AD3d 581 (1st Dept. 2021)

## OPINION

### PER CURIAM.

Michael Gross Diamonds Inc. v Vaknin - 2026 NY Slip Op 03762 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Michael Gross Diamonds Inc. v Vaknin 2026 NY Slip Op 03762 June 16, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports. Michael Gross Diamonds Inc., Plaintiff-Appellant, v Yishai Vaknin et al., Defendants-Respondents. Decided and Entered: June 16, 2026 Index No. 651396/14|Appeal No. 6895|Case No. 2024-01158| Before: Webber, J.P., Kapnick, Gesmer, Rodriguez, Rosado, JJ. OfECK & Heinze, LLP, New York (Mark F. Heinze of counsel), for appellant.

Law Offices of Morris Fateha, Brooklyn (Morris Fateha of counsel), for respondents. [\*1] Judgment, Supreme Court, New York County (Barry R. Ostrager, J.), entered November 30, 2023, following a bench trial, and bringing up for review an order of the same court and Justice, entered July 26, 2023, which dismissed the amended complaint with prejudice, unanimously affirmed, with costs.

The court properly determined that plaintiff's principal, Michael Gross, was unworthy of belief and that defendants' principal, Vishai Vaknin, was credible. A judgment from a bench trial, especially where credibility played an important role, should only be set aside where it is not supported by any fair interpretation of the evidence ( see Thoreson v Penthouse Intl.

80 NY2d 490, 495 [1992]; *Wong v Hsia Chao Yu*, 160 AD3d 549, 550 [1st Dept 2018]; *Abreu v Barkin & Assoc. Realty, Inc.*, 115 AD3d 624,624 [1st Dept 2014]). Upon appellate review, a trial court's decision in a bench trial must be accorded great weight, since that court was in the best position to assess the evidence presented at trial, having the advantage of observing the witnesses, or the absence thereof, and their demeanor on the witness stand ( *Reed v City of New York*, 304 AD2d 1, 7 [1st Dept 2003], lv denied 100 NY2d 503 [2003]; *Brian E. Weiss, P.C. v Miller*, 166 AD2d 283, 283 [1st Dept 1990], affd 78 NY2d 979 [1991]).

Accordingly, we defer to the trial court's determinations as to the credibility of the primary witnesses. We also note that the court's determinations as to the substantive issues before it were informed by its conclusions as to the credibility of the primary witnesses. Supreme Court's determination that plaintiff was not entitled to payment by defendants of the three memos purportedly exchanged for a necklace was based on a fair interpretation of the evidence, taking into account its analysis of the witnesses' credibility ( see *Thoreson v Penthouse Intl.*, 80 NY2d 490, 495 [1992]; *Wong v Hsia Chao Yu*, 160 AD3d 549, 550 [1st Dept 2018]).

The court had ample grounds to reject plaintiff's evidence elicited to establish that the necklace was exchanged for three memos representing the transfer to defendants of diamonds of approximately equal value. The court also had grounds to credit defendants' evidence that the necklace, which was owned by an unrelated entity, was merely consigned to plaintiff based on the representation by plaintiff's principal that he had a buyer.

Indeed, the dispute concerning the necklace was the subject of another action brought by its owner, Blue River Gems Inc., that resulted in a judgment against plaintiff for conversion ( see *Blue Riv. Gems Inc. v S.V.&V. Diamond Corp*, 55 Misc 3d 450 [Sup Ct, NY County 2016], affd 190 AD3d 581 [1st Dept 2021]).

In that case, this Court affirmed the motion court's finding that the necklace was consigned to plaintiff rather than purchased by it and that plaintiff converted the proceeds of the sale. [\*2] Supreme Court rejected plaintiff's claims based on eight other memos reflecting diamond transactions with defendants because of their lack of clarity and the court's skepticism regarding the bona fides of the memos, based on its credibility determinations.

That finding is entitled to deference since the court was in the best position to assess the evidence presented at the bench trial, having the advantage of observing the witnesses and their demeanor ( see *Reed v City of New York*, 304 AD2d 1, 7 [1st Dept 2003], lv denied 100 NY2d 503 [2003]). Supreme Court's conclusion that plaintiff was not entitled to reimbursement for a check for \$140,000 provided by defendants in payment for diamonds that was returned for insufficient funds or for which payment was stopped, was also supported by a fair interpretation of the evidence.

The court noted that defendants claimed a set-off of that amount because they paid Blue River a portion of the judgment that they had obtained against plaintiff. We have considered plaintiff's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 16, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

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