

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Jianjun Qiao v. Tang

Qiao, 2026 NY Slip Op 03430 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2023-11113 · Decided June 3, 2026

SUMMARY

The Appellate Division, Second Department modified an order denying defendants' motion to dismiss claims arising from escrow funds allegedly withheld after a demand for their return. The court dismissed claims for which the plaintiff conceded deficiencies or untimeliness, including claims for disgorgement for breach of fiduciary duty, while allowing contract, implied covenant, and conversion claims against certain defendants to proceed. The court also dismissed the conversion claim against Yilan Li because the complaint alleged only that she was Tang's wife.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Linda Christopher, J.; Carl J. Landicino, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 3, 2026
DOCKET	2023-11113
DISPOSITION	other
PROCEDURAL POSTURE	Defendants appealed from an order denying their CPLR 3211(a) motion to dismiss multiple causes of action in an action involving escrow funds, breach of contract, breach of the implied covenant of good faith and fair dealing, and conversion.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the court accepts the complaint's allegations as true, affords the plaintiff every favorable inference, and determines whether the alleged facts fit within any cognizable legal theory. On a CPLR 3211(a)(1) motion, dismissal is proper only when documentary evidence utterly refutes the allegations and conclusively establishes a defense as a matter of law. On a CPLR 3211(a)(5)

	statute-of-limitations motion, the defendant bears the initial prima facie burden of establishing that the limitations period expired.
PRECEDENTIAL VALUE	Published
PARTIES	John Yong Tang, Tang, P.C., Yilan Li v. Jianjun Qiao

TOPICS

breach of contract motions to dismiss statute of limitations implied covenant of good faith civil procedure

PRACTICE AREAS

Contracts Civil procedure Appellate procedure Remedies

QUESTIONS PRESENTED

1. Whether defendants established that Qiao lacked standing to assert claims concerning the escrow funds.
2. Whether collateral estoppel barred Qiao's claims based on a prior criminal proceeding.
3. Whether documentary evidence conclusively refuted Qiao's allegations or established a defense as a matter of law under CPLR 3211(a)(1).
4. Whether the complaint stated a conversion claim against Tang and Tang, P.C., and against Li.
5. Whether the contract, implied-covenant, and conversion claims were barred by the statute of limitations.
6. Whether the first, fourth, sixth, seventh, and ninth causes of action were subject to dismissal based on pleading deficiencies or untimeliness.

HOLDINGS

1. Defendants failed to establish prima facie that Qiao lacked standing because Qiao was a party to the two 2011 agreements at issue.
2. The court was not required to decline enforcement of the agreements because neither contract was illegal on its face.
3. Collateral estoppel did not warrant dismissal because defendants failed to establish that the source of the escrow funds had been litigated and decided in the prior criminal proceeding.
4. The defendants' submissions did not justify dismissal because they did not utterly refute Qiao's allegations or conclusively establish a defense as a matter of law.
5. The complaint adequately stated a conversion claim against Tang and Tang, P.C., but failed to state a conversion claim against Li.
6. The second and third causes of action and the eighth cause of action against Tang and Tang, P.C. were not shown to be time-barred because those claims accrued in August 2022 when the defendants refused Qiao's demand to return the escrow funds.
7. The first, fourth, sixth, seventh, and ninth causes of action were dismissed because the plaintiff conceded that the fourth cause of action failed to allege an essential element of disgorgement for breach of

fiduciary duty and that the other identified causes of action were time-barred.

KEY QUOTATIONS

*“A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession” ([*2])*

*“A breach of contract cause of action accrues at the time of the breach, even when no damage occurs until later, and even though the injured party may be ignorant of the existence of the wrong or injury” ([*3])*

*“However, where possession is originally lawful, such causes of action do not accrue until the owner makes a demand for the return of the property and the person in possession of the property refuses to return it” ([*3])*

FACTUAL BACKGROUND

In 2011, Tang and Tang, P.C. agreed to hold certain funds belonging to Qiao in escrow. Qiao alleged that in August 2022 Tang and Tang, P.C. refused to return the escrow funds after Qiao demanded their return. The complaint alleged that Tang and Tang, P.C. exercised unauthorized control over a specifically identifiable fund, while its only allegation against Li was that she was Tang's wife.

PROCEDURAL HISTORY

Qiao commenced the action in Supreme Court, Queens County, against John Yong Tang, Tang, P.C., Yilan Li, and others. The defendants moved under CPLR 3211(a) to dismiss the first, second, third, fourth, sixth, seventh, eighth, and ninth causes of action. Supreme Court denied the challenged branches of the motion, and the Appellate Division modified the order by dismissing the first, fourth, sixth, seventh, and ninth causes of action against the defendants and dismissing the eighth cause of action against Li, while affirming the order in all other respects.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified to grant dismissal of the first, fourth, sixth, seventh, and ninth causes of action against Tang, Tang, P.C., and Li, and to grant dismissal of the eighth cause of action against Li. As modified, the order was affirmed insofar as appealed from.

CASES CITED

- Bank of N.Y. Mellon v Tedeschi, 240 AD3d 466, 467
- Capital One, N.A. v Ludden, 192 AD3d 752, 753
- Caprer v Nussbaum, 36 AD3d 176, 201
- Tutor Perini Corp. v State of New York, 209 AD3d 692, 695
- Alpha Interiors, Inc. v Tulger Constr. Corp., 101 AD3d 660, 661

- Giamundo v Dunn, 219 AD3d 878, 881
- Ryan v New York Tel. Co., 62 NY2d 494, 500
- Lennon v 56th & Park [NY] Owner, LLC, 199 AD3d 64, 69
- 1470 39th St., LLC v Goldberg, 226 AD3d 853, 855
- Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326
- IPA Asset Mgt., LLC v Schuman, 239 AD3d 619, 621
- Yan Ping Xu v Van Zwienen, 212 AD3d 872, 874
- Farah v City of New York, 241 AD3d 1435, 1436
- Leon v Martinez, 84 NY2d 83, 87-88
- Agudas Chasidei Chabad of United States v Simpson, 239 AD3d 796, 797
- Colavito v New York Organ Donor Network, Inc., 8 NY3d 43, 49-50
- Neurological Surgery, P.C. v Group Health Inc., 224 AD3d 697, 699
- County of Nassau v Expedia, Inc., 120 AD3d 1178, 1180
- Family Health Mgt., LLC v Rohan Devs., LLC, 207 AD3d 136, 145
- Petrone v Davidoff Hutcher & Citron, LLP, 150 AD3d 776, 777-778
- Filasky v Andover Cos., 230 AD3d 1297, 1298
- Morrow v Vibration Mountings & Controls, Inc., 223 AD3d 736, 737-738
- St. Hillaire v Torres, 229 AD3d 476, 477
- Filasky v Andover Cos., 230 AD3d at 1300
- New York Bus Operators Compensation Trust v American Home Assur. Co., 241 AD3d 563, 566-567
- Merlino v Knudson, 214 AD3d 642, 645
- Obstfeld v Thermo Niton Analyzers, LLC, 168 AD3d 1080, 1083
- Siegler v Lippe, 189 AD3d 903, 904
- Matter of Village of Kiryas Joel v Mezrich Estates Condominiums, 237 AD3d 724, 724
- Feiner v Ostreicher, 241 AD3d 1281, 1283
- Perez v Y & M Transp. Corp., 219 AD3d 1449, 1451