

Behler v Kai-Shing Tao

2022 NY Slip Op 34708(U)

June 8, 2022

Supreme Court, New York County

Docket Number: Index No. 652567/2020

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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 ALBERT BEHLER

Plaintiff,

- v -

KAI-SHING TAO,

Defendant.

INDEX NO. 652567/2020

MOTION DATE 10/07/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
 MOTION**

-----X
 HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for

DISMISS

Upon the foregoing documents, Kai-Shing Tao's motion to dismiss the complaint must be granted because Digipac, LLC's (**Digipac**) operating agreement (NYSCEF Doc. No. 13) does not provide for an automatic exit option and the operating Agreement otherwise indicated that it superceded any prior or contemporaneous agreement (*id.* at § 13.2). Alan Behler is bound by the operating agreement because he is a member of Digipac (NYSCEF Docs. No. 18-20). It does not matter that he did not sign it (6 Del C § 18-101(9); *See also Seaport Village Ltd v Seaport Village Operating Company, LLC*, 2014 WL 4782817 [Del. Ch. 2014]). In addition, the terms of this alleged oral agreement are unenforceable because they are indefinite and incapable of being enforced. No agreement or formula is alleged as to the terms of any such exit option after the five years the defendant purportedly promised to provide him with an exit strategy (*Marlio v McLaughlin*, 288 AD2d 97, 99 [1st Dept 2001]). The promissory estoppel claim fails because Mr. Behler's reliance on Mr. Tao's alleged promise was unreasonable based on the lack of

definite terms as to any purported guaranteed exit strategy. Therefore, the motion to dismiss must be granted.

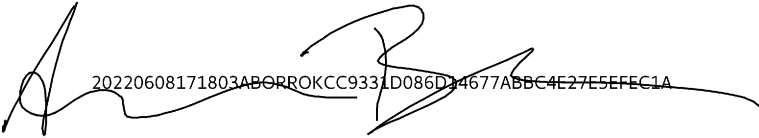
The Court has considered the remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that Kai-Shing Tao’s motion to dismiss the complaint is granted; and it is further

ORDERED that the complaint is dismissed.

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<p style="text-align: center;"><u>6/8/2022</u> DATE</p>	 <hr/> ANDREW BORROK, J.S.C.					
<p>CHECK ONE:</p> <p>APPLICATION:</p> <p>CHECK IF APPROPRIATE:</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input checked="" type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN </td> <td style="width: 10%; vertical-align: middle; text-align: center;"> <input type="checkbox"/> DENIED </td> <td style="width: 40%; vertical-align: top;"> <table border="0"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE </td> </tr> </table> </td> </tr> </table>	<input checked="" type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> DENIED	<table border="0"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE </td> </tr> </table>	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE
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