

**Hua Chin Chen v Centaurus Fin., Inc.**

2024 NY Slip Op 31380(U)

April 12, 2024

Supreme Court, Kings County

Docket Number: Index No. 522708/2022

Judge: Richard Velasquez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12<sup>th</sup> day of APRIL, 2024.

P R E S E N T:  
HON. RICHARD VELASQUEZ  
Justice.

-----X  
HUA CHIN CHEN, AMELIE TSENG,  
and LESLIE TSENG,

Plaintiff,

Index No.: 522708/2022  
Decision and Order  
Mot. Seq. No. 3 & 4

CENTAURUS FINANCIAL, INC.  
and BRYON MARTINSEN,

Defendants,  
-----X

The following papers NYSCEF Doc #'s 20 to 61 read on this motion:

<u>Papers</u>	<u>NYSCEF DOC NO.'s</u>
Notice of Motion/Order to Show Cause	
Affidavits (Affirmations) Annexed _____	20-31; 33-35
Opposing Affidavits (Affirmations) _____	40-58;
Reply Affidavits _____	
Memorandum of Law _____	32; 36; 39; 60; 61

After having come before the Court and the court having heard oral argument on November 1, 2023 and upon a review of the forgoing the court finds as follows:

Defendant Centaurus Financial, Inc, moves pursuant to CPLR §3211(a)(1), (7), for an order dismissing Plaintiffs' Complaint and pursuant to CPLR 3211(a)(5) because the claims are barred in whole or in part by the relevant statute of limitations. (MS#3). Plaintiff opposes the same. Defendant Bryon Martinsen moves pursuant to CPLR 3211(a)(5) and (a)(7) for an order dismissing the plaintiffs complaint as against defendant Martinsen with prejudice. (MS#4) Plaintiff opposes the same.

As to the statute of limitations periods for Plaintiffs' causes of action: for the cause of action of Breach of fiduciary duty the statute of limitations is the longer of six (6) years from the date the cause of action accrued or two years from the time plaintiff had actual or constructive discovery of the wrongdoing, see CPLR § 213(8); as to the Fraud cause of action the statute of limitations period is the longer of six (6) years from the date the cause of action accrued or two years from the time plaintiff had actual or constructive discovery, see CPLR § 213(8); as to the Negligence cause of action the statute of limitations period is three (3) years, see CPLR § 213(4); as to the Breach of contract cause of action the statute of limitations period is six (6) years, see CPLR § 213(2); and finally as to the Restitution/unjust enrichment cause of action the statute of limitations is six (6) years, see CPLR § 213(1). In the present case, the Plaintiffs have pleaded they first discovered defendant Martinsen's misconduct on August 25, 2020. Plaintiffs' claims were filed in this Court on August 8, 2022, making all claims timely. As for the causes of action against defendant Centaurus that period was tolled further, from October 7, 2020, through July 14, 2022, because that is the time period that FINRA retained jurisdiction over the matter.

Next, in considering a motion to dismiss a complaint pursuant to CPLR 3211 (a) (7), the court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (see *Leon v Martinez*, 84 NY2d 83, 88 [1994]; *Meyer v North Shore—Long Is. Jewish Health Sys., Inc.*, 137 AD3d 880, 880–881 [2d Dept 2016]; *Cecal v Leader*, 74 AD3d 1180, 1181 [2d Dept 2010]). **The criterion is whether the proponent of the pleading has a cause of action, not whether he has**

stated one" (*Guggenheimer v. Ginzburg*, 43 NY2d 268, 275, 401 NYS2d 182, 372 NE2d 17; *Rovello v. Orofino Realty Co.*, 40 NY2d at 636, 389 NYS2d 314, 357 NE2d 970). "[B]are legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on such a motion" (*Palazzolo v. Herrick, Feinstein, LLP*, 298 AD2d 372, 751 NYS2d 401). If the documentary proof disproves an essential allegation of the complaint, dismissal pursuant to CPLR 3211(a)(7) is warranted even if the allegations, standing alone, could withstand a motion to dismiss for failure to state a cause of action (see *McGuire v. Sterling Doubleday Enters., LP*, 19 AD3d 660, 661, 799 NYS2d 65).

In the present case, affording the complaint a liberal construction, accepting the facts as alleged therein as true, and granting plaintiffs the benefit of every possible inference, it is the opinion of this Court that the complaint sufficiently states causes of action. Although facts sufficient to justify opposition may exist, they currently reside almost exclusively within the knowledge of the officers or employees of defendant (see CPLR 3211[d]). See also *Iommarini v. Mortg. Elec. Registration Sys., Inc.*, 54 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2017).

When a party, usually the defendant, moves for a motion to dismiss, it is asking the court to make that determination instead. "Courts are not infallible. In undertaking such a task, a court should be mindful to prevent errors which could result in the dismissal of a worthy claim, even if it means risking an unworthy claim proceeding to trial. In other words, it must err on the side of the plaintiff. Toward this aim, many rules and standards have evolved for the court to follow." *Poolf v. Brooks*, 38 Misc. 3d 1216(A), 967 N.Y.S.2d 869 (Sup. Ct. 2013)

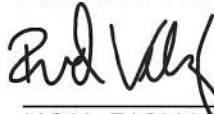
In the case at bar, Plaintiff's sworn complaint constitutes evidence. How credible that evidence is irrelevant at this juncture. Plaintiff must still make out a *prima facie* case against them at trial through competent evidence, but when it comes to "he said, she said," merely raises a question of credibility for the jury to decide (see *Communications & Entertainment Corp. v. Hibbard Brown & Co., Inc.*, *supra*, 202 A.D.2d 191, 608 N.Y.S.2d 214). As such, the plaintiffs have plead facts sufficient to for all causes of action and defendant has failed to submit any documentary evidence to the contrary. As such, it is inappropriate to dismiss such claims at this early juncture as this is a pre-answer motion to dismiss.

Accordingly, both defendants' motions to dismiss are hereby denied for the reasons stated above. Defendants have 30 days from the date of this order to file and answer. (MS#3 & MS#4).

This constitutes the Decision/Order of the court.

Dated: Brooklyn, New York  
April 12, 2024

ENTER FORTHWITH:



HON. RICHARD VELASQUEZ

Hon. Richard Velasquez, JSC

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KINGS COUNTY CLERK  
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