

Tak Wong v Lin Sing Assn., Inc.
2022 NY Slip Op 31900(U)
June 15, 2022
Supreme Court, New York County
Docket Number: Index No. 651348/2020
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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TAK WONG,

Plaintiff,

- v -

LIN SING ASSOCIATION, INC., DANIEL GOTLIN, JUSTIN YU, JACKY WONG, HON LEUNG, YORK CHAN, JERRY SHIAO, and K.P. LEUNG,

Defendants.

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INDEX NO. 651348/2020

MOTION DATE 07/22/2021

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, and 78

were read on this motion for SUMMARY JUDGMENT & RELATED RELIEF.

LOUIS L. NOCK, J.

Upon the foregoing documents, and after due deliberation, it is ordered that defendants’ motion for summary judgment is granted per the following memorandum.

Background

This action was commenced February 28, 2020, alleging that the defendant association, by and through the individual defendants (all members of the association), wrongly and forcibly removed Mr. Wong from his office as president of the association on February 7, 2020, and turned over executive control to the then-vice-president of the association – one, Hon Poon Leung. An important thing to know about this case is that counsel for Mr. Wong – Alfred Lui, Esq. – was, in his individual capacity, the plaintiff in a *prior* action which already had successfully sought to remove Mr. Leung from office, and successfully caused a new election of officers to be conducted. That action (the “Alfred Lui Action”), filed only a few weeks before this one – on February 5, 2020 – and which concluded in an order granting Mr. Lui’s requested

relief, was titled *Lui v Lin Sing Assn., Inc., et al.* (index No. 650803/2020 [Sup Ct NY County] [Nock, J.]). This court's said order, dated March 2, 2020 (NYSCEF Doc. No. 15 in the Alfred Lui Action), reads as follows, in its entirety:

WHEREAS, plaintiff has moved this court, by order to show cause dated February 7, 2020 (NYSCEF Doc. No. 12), for an order granting a preliminary injunction and, as to which, this court, in said order, granted a temporary injunction pending hearing of said motion, scheduled for argument on March 12, 2020; and

WHEREAS, by letter dated February 27, 2020 (NYSCEF Doc. No. 14), defendant's counsel has consented to the relief sought in said motion, which relief tracks the ultimate relief sought in the complaint in this action (NYSCEF Doc. No. 1), it is

NOW, THEREFORE,

ORDERED that judgment is hereby granted, on consent of the defendant, to the plaintiff for the relief sought in the complaint in this action; and, accordingly, it is

ORDERED AND ADJUDGED that, pending a lawfully convened election by defendant pursuant to its governing rules, which defendant is now directed to begin arrangements for forthwith if it has not already done so: (i) defendant is enjoined from swearing in non-party Hon Poon Leung ("Leung") as its president; (ii) defendant is enjoined from allowing Leung to act as its president or to take any action on its behalf; and (iii) defendant is enjoined from declaring Leung or any other person as its president absent such election; and it is further

ORDERED that, in light of the foregoing final disposition of this matter, the motion for a preliminary injunction is denied as moot, and the March 12, 2020, return date on said motion is canceled as moot.

Remarkably, though, while the Alfred Lui Action was pending, Mr. Lui, as ostensible counsel for Mr. Wong, commenced *this* action, doing a complete double-take from the Alfred Lui Action, and demanding that Mr. Wong be re-installed as president, despite the fact that Mr. Lui himself in the Alfred Lui Action moved for judgment removing Mr. Leung from office and directing a new election of officers to be conducted (*see*, NYSCEF Doc. No. 12 in the Alfred Lui Action [Order to Show Cause seeking to enjoin the association "from declaring another person President of the defendant Association without following the rules listed in the By Laws"])). Yet

now, under the guise of *counsel* for Mr. Wong, Mr. Lui filed the instant action (a mere few weeks after his own commencement of the Alfred Lui Action) seeking, in effect, to reverse the result of the election ordered in the Alfred Lui Action so that Mr. Wong can reassume the office of president of the association.

Defendants now move for summary judgment dismissing the complaint in this action on several grounds, including, most obviously, collateral estoppel. The motion also includes a request for an order disqualifying Attorney Lui from serving as counsel in this matter, on account of his plaintiff status in the related Alfred Lui Action, implicating, of course, the prohibition against fact witnesses serving as counsel (*see*, Rule of Professional Conduct 3.7 [the “witness-advocate rule”]).

Discussion

Collateral Estoppel:

In his first cause of action, Mr. Wong seeks a declaratory judgment reinstating him as president of the association. But the issue of association governance has already been resolved in the Alfred Lui Action, as summarized above. As the Court of Appeals explained in *Buechel v Bain* (97 NY2d 295, 303-04 [2001] [internal citations omitted], *cert denied sub nom., Bain v Buechel*, 535 US 1096 [2002]):

The equitable doctrine of collateral estoppel is grounded in the facts and realities of a particular litigation, rather than rigid rules. Collateral estoppel precludes a party from relitigating in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party or those in privity. The policies underlying its application are avoiding relitigation of a decided issue and the possibility of an inconsistent result. Two requirements must be met before collateral estoppel can be invoked. There must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and there must have been a full and fair opportunity to contest the decision now said to be controlling. The litigant seeking the benefit of collateral estoppel must demonstrate that the decisive issue was necessarily decided in the prior action against a party, or one in privity with a party. The party to be

precluded from relitigating the issue bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination.

In the Alfred Lui Action, Attorney Lui, as party plaintiff, and based on the same fact pattern as in the instant case, sought the following relief: “declaring the appointment of Hon Poon Leung as President of defendant Association null and void and removing Hon Poon Leung as President of the Association” and “preventing defendant [i.e., the association] from declaring another person President of the defendant Association without following the rules listed in the By Laws” (NYSCEF Doc. No. 1 in the Alfred Lui Action). The two actions – both involving Mr. Lui in some sense, either as plaintiff or as plaintiff’s counsel – both mention Mr. Wong. Naturally, in this case, Mr. Wong is the plaintiff. But also, in the Alfred Lui Action, Mr. Wong is specifically referred to (*see*, NYSCEF Doc. No. 3 ¶ 16 in the Alfred Lui Action; NYSCEF Doc. No. 4 ¶ 12 in the Alfred Lui Action).

The court finds the requisite privity element to be found in these circumstances, sufficient for application of collateral estoppel. In *Juan C. v Cortines* (89 NY2d 659, 667-68 [1997] [internal citations and quotation marks omitted]), the Court of Appeals set forth the criteria for privity as follows:

In general, a nonparty to a prior litigation may be collaterally estopped by a determination in that litigation by having a relationship with a party to the prior litigation such that his own rights or obligations in the subsequent proceeding are conditioned in one way or another on, or derivative of, the rights of the party to the prior litigation. This constitutes a form of privity; however, the term privity does not have a technical and well-defined meaning. Rather, it is an amorphous concept not easy of application, and includes those who are successors to a property interest, those who control an action although not formal parties to it, those whose interests are represented by a party to the action, and possibly coparties to a prior action. Importantly, all the circumstances must be considered from which one may infer whether or not there was participation amounting to a sharing in control of the litigation.

Based on the supposed attorney-client relationship between Mr. Lui and Mr. Wong in this case, and Mr. Lui’s status as party plaintiff in the very-much-related Alfred Lui case – both cases

involving Mr. Wong, either as plaintiff (this case) or as a very relevant figure (the Alfred Lui Action) – this court finds that the principle of equitable estoppel aptly applies in this case to preclude the plaintiff from, in effect, re-litigating the disposition of the Alfred Lui Action.

Disqualification:

New York Rule of Professional Conduct (“RPC”) 3.7, titled “Lawyer as Witness,” provides as follows:

(a) A lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact unless: (1) the testimony relates solely to an uncontested issue; (2) the testimony relates solely to the nature and value of legal services rendered in the matter; (3) disqualification of the lawyer would work substantial hardship on the client; (4) the testimony will relate solely to a matter of formality, and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; or (5) the testimony is authorized by the tribunal.

(b) A lawyer may not act as advocate before a tribunal in a matter if: (1) another lawyer in the lawyer’s firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or (2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.

Mr. Lui submitted an affidavit in the Alfred Lui Action which provides details regarding the installation of Hon Poon Leung as acting president, or president, of the association after Mr. Wong vacated the office of president (*see*, NYSCEF Doc. No. 4 in the Alfred Lui Action), with Mr. Lui referring to a “rogue group” which orchestrated such vacatur (*id.*, ¶¶ 10-17). There can be no doubt that the “rogue group” referred to must be the individual defendants in this action, who are all accused of “tortiously interfer[ing] with [Mr. Wong’s] presidency” (NYSCEF Doc. No. 1 [Complaint]) ¶ 28) and “terrorizing [Mr. Wong] into signing invalid and illegal resignation documents” (*Id.*, ¶ 32.) Indeed, the complaint in this action (NYSCEF Doc. No. 1) identifies the individual defendants in this action as the very same “rogue group” members

discussed by Mr. Lui in the Alfred Lui Action (*compare* NYASCEF Doc. 1 ¶ 25 with NYSCEF Doc. No. 4 in the Alfred Lui Action ¶¶ 10-17).

It is absolutely inconceivable how Attorney Lui can justify serving as Mr. Wong's counsel in this case when he has admitted to personal knowledge of facts, in the Alfred Lui Action, that are relevant and material to the causes of action asserted in this action, which also include intentional infliction of emotional distress and negligent infliction of emotional distress (*see*, Complaint ¶¶ 33, 35). Accordingly, Attorney is, most decidedly, a lawyer/witness in this case within the purview of RPC 3.7 and, as such cannot continue in this litigation as counsel for the plaintiff, Mr. Wong.

Accordingly, it is

ORDERED that defendants' motion is granted to the extent that the complaint in this action is dismissed insofar as it seeks any declaration from this court that could possibly disturb the result of the election conducted pursuant to this court's order in *Lui v Lin Sing Assn., Inc., et al.* (index No. 650803/2020 [Sup Ct NY County] [Nock, J.]), dated March 2, 2020 (NYSCEF Doc. No. 15 in the Alfred Lui Action), including, but not limited to, any declaration re-installing the plaintiff as president of defendant Lin Sing Association, Inc.; and it is further

ORDERED that defendants' motion is granted to the further extent of disqualifying Alfred Lui, Esq., as counsel for the plaintiff in this action; and it is further

ORDERED that a status conference will be conducted by the undersigned on July 19, 2022, at 10:00 a.m., at the Courthouse located at 111 Centre Street, Room 1166, New York, New York; and it is further

ORDERED that in the event that proper substitute counsel does not appear for the plaintiff on said conference date, or, absent such appearance, the plaintiff fails to appear at said

conference with a commitment to proceed *pro se*, defendants may renew their request for an order dismissing this case in its entirety.

This will constitute the decision and order of the court.

ENTER:



6/15/2022

DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE