

Strategic Capital Partners, LLC v Mei Kwan Ting

2007 NY Slip Op 30700(U)

March 29, 2007

Supreme Court, New York County

Docket Number: 0604131/2006

Judge: William A. Wetzel

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WETZEL
Justice

PART 50E

STRATEGIC CAPITAL PARTNERS
LLC

INDEX NO. 604131/06

- v -

MEI KWAN TING

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is granted

See dec of 3/29/07

FILED
APR 13 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/29/07 [Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50E

STRATEGIC CAPITAL PARTNERS, LLC,
W.O.W. CAFÉ INC., and GILBERT CHAN,

Plaintiffs,

-against-

MEI KWAN TING,

Defendant.

WILLIAM A. WETZEL, J.:

DECISION AND ORDER

Index No. 604131/06

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Plaintiffs brings this proceeding seeking to permanently enjoin the prosecution of the case of Strategic Capital Partners, LLC., against W.O.W. Café Inc., a landlord and tenant proceeding (93846-06) pending in the Civil Court of the City of New York, County of New York, hereinafter referred to as "L & T action".

It is important to set forth the history of the previous proceedings involving the parties to the L & T action. In April 2004, Gilbert Chan became interested in starting a coffee shop at 381-383 Broadway, New York. Mr. Chan was aware that the premises were available for lease and negotiated satisfactory terms with Broadway Realty, the landlord. He then approached two individuals who agreed to become passive investors in the business, Carol Sam and the defendant herein, Mei Kwan Ting, hereinafter "Ting". The latter agreed to an ownership interest of 30% proportionate to her investment.

In order to finalize the lease, Mr. Chan and the landlord agreed to use an existing corporate entity Strategic Capital Partners, LLC., owned by Mr. Chan. It was understood that an operating corporation W.O.W. Café would then be incorporated and operate the business.

It was also understood that while Strategic Capital would be the vehicle for signing the lease, each of the investors would be deemed to have the same interest in Strategic Capital in order to protect their investment objective. Under this theory, Ting had a 30% interest but only for purposes of protecting her interest in the lease.

After the business began operations, a dispute arose amongst the investors and Ting sought judicial dissolution of the operating entity W.O.W. Café. The application for dissolution was denied by this court and the parties sought alternatively to have Ting's interest purchased by the corporation which required a valuation proceeding. See BCL § 1118.

In connection with the buyout, Ting submitted a valuation report prepared by a public accounting firm. This report provided, in part, that W.O.W. Café had entered into a 10-year lease with a 5-year option to renew, and noted that because there was this 15-year lease period, the valuation should be based on W.O.W. Café being a going business. The valuation report was in all respects consistent with this premise. This court after considering the submissions by both parties valued the interest of Ting at \$110,000. Mr. Chan purchased her shares for this amount.

On October 1, 2006, Ting commenced the L& T action supposedly acting as the "managing member" of Strategic Capital, the tenant of record. Ms. Ting fails to set forth any

logical explanation for how she would have come to be the majority shareholder or managing member of Strategic Capital. She does assert that she has failed tax returns on behalf of the entity but these raise more questions than answers.

The tax returns which Ms. Ting suggests evidence her 80.48% ownership of Strategic Capital LLC., are totally self-serving documents prepared by her while the earlier litigation was pending and suggest if anything some devious intent on her part to claim an interest in the leasehold without any equitable basis. Ms. Ting provides no basis as to how, when, and for what consideration she acquired this 80.48% interest and it makes absolutely no sense in the context of the known relationships between the parties. Why would she who owned 30% equity in the business have an 80.48% interest in the corporate vehicle used to obtain the lease? The lack of explanation on the part of Ms. Ting speaks volumes.

The simple fact of the matter is that there exists no legal basis for Ms. Ting to assert that she controls Strategic Capital. More importantly for her position to be consistent assumes that she offered the valuation report in the prior proceeding to seek a substantial financial benefit while at the same time she knew that the business had no lease and was subject to a license solely within her control. It is this inconsistent position which gives rise to judicial estoppel. See Baje Realty Corp v. Cutler, 820 N.Y.S.2d 57 (1st Dept. 2006).

This court rejects as totally disingenuous the argument asserted by Ms. Ting's counsel that she is not responsible for her valuation report in the prior proceeding because her accountant

got the information from Mr. Chan. In the first instance, if there is any validity to her current claim, she would have realized this mistake and had an affirmative obligation to avoid any misrepresentation to the court. Secondly, the fact of the matter is that it was in her financial interest that the corporation be valued as one having an existing 15-year lease. To take this baseless position that she was in fact the lease holder, and the corporation was a mere licensee or tenant at will is a singular affront to the integrity of this court and cannot be permitted.

The application for an injunction is in all respects granted and the L& T action is permanently stayed. Further, Ms. Ting is enjoined permanently from asserting any equity interest or control of Strategic Capital Partners, LLC.

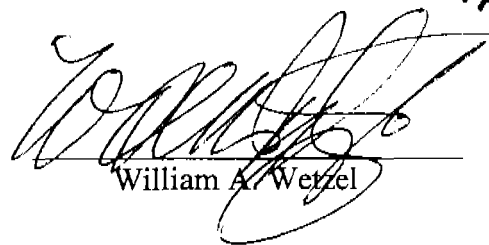
Because this action is considered to be frivolous, based upon false and misleading information, and completely without merit in law or in fact, sanctions pursuant to 22 NYCRR § 130 1.1.(a) are imposed against Mei Kwan Ting in the amount of all reasonable and necessary legal fees incurred in both the L& T action and the within action.

Plaintiff herein shall submit a proposed order on notice to the defendant.

This constitutes the Decision and Order of this court.

Dated: March 29, 2007
New York, NY

FILED
APR 13 2007
NEW YORK
COUNTY CLERK'S OFFICE



William A. Werzel