

New Fuzhou Senior Assn. USA, Inc. v Chaoxiang Lin
2012 NY Slip Op 30732(U)
March 20, 2012
Supreme Court, New York County
Docket Number: 104203/10
Judge: Paul Wooten
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PAUL WOOTEN

Justice

PART 7

NEW FUZHOU SENIOR ASSOCIATION
USA, INC.,

Plaintiff,

-against-

INDEX NO. 104203/10

MOTION SEQ. NO. 007

CHAOXIANG LIN,

Defendant.

The following papers, numbered 1 to ___ were read on this motion by _____.

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

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

FILED

PAPERS NUMBERED _____

MAR 26 2012

Cross-Motion: Yes No

NEW YORK
COUNTY CLERK'S OFFICE

Motion sequences 002 and 007 are hereby consolidated for purposes of disposition.

Pursuant to this Court's order dated September 28, 2011, the parties consented to the appointment of Timothy K. Wong, Esq. of 33 Bowery, Suite C204, New York, NY, 10002, as a receiver pursuant to CPLR 6401, to review the corporate structure and financial practices of the not-for-profit corporation plaintiff, New Fujian Fuzhou Senior Association USA, Inc. (plaintiff), including its bylaws, certificate of incorporation, and its officeholder election procedures in order to determine if plaintiff is in compliance with New York State not-for-profit corporation law and oversight requirements of the New York State Attorney General. Mr. Wong was also appointed as receiver to review the correct amount and proper status of defendant's expenditures and plaintiff's corporate funds, while the defendant served as plaintiff's president. Also within the September 28, 2011 order, the parties consented to set aside \$7,500.00 in a receiver's account for the Court Appointed Receiver's fee and expenses.

Mr. Wong, who is qualified as a receiver pursuant to Rules of the Unified Court System, Part 36, was appointed in this matter because he possessed the requisite qualifications

necessary for the determination of the issues presented herein.¹ Specifically, his background as a Certified Public Account (CPA) and lawyer with extensive experience in accounting, auditing, finance and corporation law, made Mr. Wong qualified to review whether plaintiff was in compliance with the relevant corporation law and to review and make determinations regarding plaintiff's financial documents and expenditure receipts.

Additionally, Mr. Wong speaks and reads Mandarin, Cantonese and Chinese. His proficiency in these languages enabled him to communicate and understand plaintiff's members and the defendant, who are all from Fuzhon and speak Fuzhounese, a dialect of the Mandarin language.² Mr. Wong's language skills were an important factor in his selection as a receiver because plaintiff's corporate minutes and records, as well as defendant's financial receipts are all written in the Chinese language.³ Moreover, Mr. Wong is also of Asian-American descent, and is aware of the cultural sensitivities and plaintiff's importance within the community. Most importantly, upon meeting with the parties Mr. Wong was able to effectively communicate with the parties, thereby allowing him to make the determinations for which he was appointed.

On July 18, 2011 and September 11, 2011, Mr. Wong filed his First and Final Receiver's Reports and Recommendations (collectively, Reports), respectively, with the Court. On August 1, 2011, plaintiff filed its opposition to the Receiver's First Report, and subsequently filed in opposition to the Final Report on September 30, 2011. The defendant moved by Order to Show Cause on November 18, 2011, to affirm and accept the Receiver's Report (motion

¹ The Court forwarded a copy of the Order appointing Mr. Wong as receiver to the Fiduciary Clerk of the Court, Part 36.

² The Court sought a Chinese language interpreter at each Court appearance, sometimes without success. The Court does not have a Fuzhounese language interpreter (eg. August 4, 2010, court transcript p. 2, line 17).

³ The Court notes, in prior motion practice the language barrier was an issue for defendant, as he could not understand a prior order of this Court. The result of this lead to plaintiff bringing a motion for contempt, wherein defendant asserted the language barrier as a partial defense.

sequence 007). The Court heard oral argument on motion sequences 006 and 007 on November 30, 2011.

Mr. Wong filed his Accounting and Request for Compensation and Expenses on December 20, 2011, with accompanying exhibits A through J. Mr. Wong submits an itemized bill detailing the description of his work, including: the date of the work, the hours expended for each item, the hourly rate, and the amount requested for each item. His total alleges \$165.00 in expenses (\$40.00 for certified mail and \$125.00 for copies) and 29.5 hours of work at an hourly rate of \$300.00 per hour for a total amount of \$9,015.00. Mr. Wong, in his request for compensation and expenses reduced his fees and expenses to \$7,500.00, and the notation states, "[d]iscount to agreed upon fee of \$7,500.00" (see Request for Compensation, Invoice dated September 30, 2011). On January 3, 2012, plaintiff submitted its opposition to the Receiver's fee expenses.⁴ Plaintiff's opposition does not address any specific charge, fee, expense, or hourly rate, instead plaintiff opposes on the basis that Mr. Wong is biased. Defendant does not specifically oppose Mr. Wong's fees.

DISCUSSION

Mr. Wong's role in this case did not entail the traditional responsibilities of a temporary receiver such as holding real or personal property, or suing and collecting debts or claims (see e.g. CPLR 6401[b]). Instead, Mr. Wong's responsibilities of reviewing plaintiff's corporate structure and financial practices and also reviewing the correct amount and proper status of defendant's expenditures and plaintiff's corporate funds, involved Mr. Wong making findings of fact and determinations regarding credibility of the parties, analogous to responsibilities often directed to a special referee. As such, the Court adopts the findings of Mr. Wong's Reports as he was in the best position to determine the issues presented in this matter (see *Nager v*

⁴ Plaintiff submitted a two-page double spaced affidavit by the Association Acting President in partial opposition.

Panadis, 238 AD2d 135, 135-136 [1st Dept 1997] [internal citations omitted]; see also *Melnitzky v Uribe*, 33 AD3d 373 [1st Dept 2006]; *Kaplan v Einy*, 209 AD2d 248 [1st Dept 1994]; *Namer v 152-54-56 W. 15th St. Realty Corp.*, 108 AD2d 705 [1st Dept 1985] lv dismissed sub nom *Walker v Sant'Andrea*, 72 NY2d 954 [1988]).

Mr. Wong's Reports recommended, *inter alia*, that "the Court's order barring defendant Mr. Lin from entering the Association premises is lifted and all documents suggesting otherwise are removed from the premises" (see Final Report, exhibit A, p. 5). Mr. Wong further concluded in his Reports, after conversations with the parties and reviewing plaintiff's bank records and defendant's expenditure receipts, which are written in Chinese, that defendant properly expended money on "celebratory matters" subsequent to his election as President of the plaintiff association, before this Court voided his election (see Final Report, exhibit A, p. 3, 4). In addition, those funds spent by the defendant, while President, in the defense of this action were reimbursed to the plaintiff (see First Receiver's Report, p. 2-3, "Location of the Funds"). In plaintiff's opposition to Mr. Wong's request for compensation, the Court finds the allegation of bias to be unavailing, as well the other arguments in opposition. Contrary to plaintiff's opposition, the Court finds that the record fully supports Mr. Wong's factual findings and conclusions of law contained within his Report. Thus, all of Mr. Wong's recommendations in the Reports are adopted by the Court, and his Reports are confirmed.

Finally, the Court turns to Mr. Wong's request for compensation and finds that fee restriction contained within CPLR 8004(a), regarding commissions of receivers is not applicable to this case, as funds did not pass through Mr. Wong's hands. In addressing a request for compensation by a receiver, the Court needs to ensure that the receiver properly kept receipts for expenditures and itemized his invoice, and to determine whether the fees, expenses and the requested compensation are appropriate and reasonable in light of the tasks required. The Court finds that Mr. Wong's request for fees and compensation are reasonable for the tasks he

performed in this matter, and an hourly rate of \$300.00 per hour is commensurate for an attorney with his years of admittance to the bar and for his additional training as a CPA. Moreover, as discussed above, all parties consented to the amount that Mr. Wong is now seeking as compensation, and to date there has been no opposition to the amount of compensation he is seeking (see September 28, 2011 Order).

CONCLUSION

Accordingly, it is,

Motion Sequence 002

ORDERED that the defendant's motion to vacate the preliminary injunction and temporary restraining ordered in motion sequence 001 is granted, except that portion of defendant's order requesting that the defendant be reinstated to have access to the plaintiff's premises is granted in accordance with Mr. Wong's recommendation; and it is further,

ORDERED that plaintiff's cross-motion to dismiss defendant's motion to vacate the preliminary injunction and temporary restraining ordered in motion sequence 001 is denied as moot; and it is further,

ORDERED that plaintiff's cross-motion for defendant's contempt alleging that defendant allegedly misappropriated funds from plaintiff is denied in accordance with Mr. Wong's findings; and it is further,

Motion Sequence 007

ORDERED that the defendant's motion for an order: (1) striking paragraph four of the complaint is denied as moot, per motion sequence 002; and (2) vacating the order barring the defendant from the entering the plaintiff's premises is denied as moot, per motion sequence 002; it is further

ORDERED that the branch of defendant's motion seeking to have all documents referring to defendant Mr. Lin's former restriction from entering the premises and his alleged

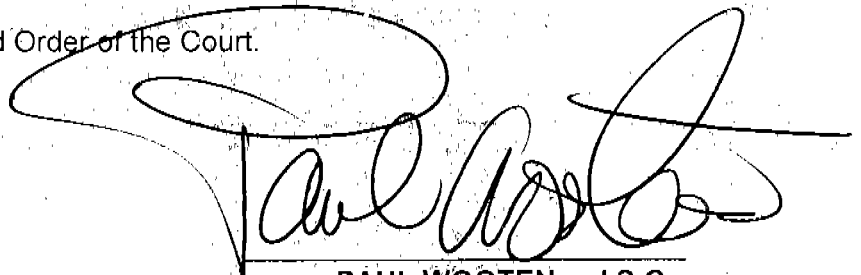
misappropriations of funds is granted, and all such documentation shall be removed from the premises within 15 days of entry; it is further

ORDERED that the defendant's motion adopting and implementing the recommendations in the Official Receiver's Report # 1 (dated July 18, 2011) and # 2 (dated September 11, 2011) is granted; it is further

ORDERED that the Receiver's application for compensation in the amount of \$7,500.00 is granted, subject to his completion of the appropriate forms; and it is further,

ORDERED that counsel for defendant is directed to serve a copy of this Order with Notice of Entry upon the plaintiff and the Fiduciary Clerk of Part 36, within 45 days of entry.

This constitutes the Decision and Order of the Court.


PAUL WOOTEN J.S.C.

Dated: 3-20-12

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

FILED

MAR 26 2012

NEW YORK
COUNTY CLERK'S OFFICE