

Wenqing Liu v Jun Chen
2019 NY Slip Op 30662(U)
March 15, 2019
Supreme Court, New York County
Docket Number: 652105/2018
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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WENQING LIU,

Index No.: 652105/2018

Plaintiff,

DECISION & ORDER

-against-

JUN CHEN and ETHERDEG LTD.,

Defendants.
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JENNIFER G. SCHECTER, J.:

Plaintiff Wenqing Liu moves for a default judgment against defendant EtherDEG Ltd. (EtherDEG). EtherDEG did not submit opposition papers. Nonetheless, for the reasons that follow, the motion is denied without prejudice.

Plaintiff alleges in his complaint (Dkt. 2) that in December 2017, pursuant to an Asset Purchase Agreement (the APA), he invested \$3 million in EtherDEG, a “decentralized cryptocurrency trading exchange” incorporated in the British Virgin Islands. Allegedly, EtherDEG is governed by a Shareholders’ Agreement. Neither the APA nor the Shareholders’ Agreement are in the record (they are not attached to the complaint or plaintiff’s motion). Plaintiff alleges that on December 16, 2017, in accordance with the Shareholders’ Agreement and a unanimous shareholder resolution (which also was not submitted), he was appointed the CEO of EtherDEG and was granted an annual salary of \$125,000, an 11.25% equity stake, and the right to receive commissions (he does not allege how much) from EtherDEG’s initial coin offering

(which occurred on January 15, 2018). In January 2018, defendant Jun Chen¹ (a Chinese citizen who has not yet been served) allegedly took over EtherDEG. Allegedly, Chen caused plaintiff to be fired and replaced as EtherDEG's CEO. Plaintiff claims this violated the Shareholders' Agreement (he does not state which section) because Chen controlled, at most, only 22.5% of EtherDEG's shares when he allegedly needed a vote of two-thirds of the shares to do so.²

Plaintiff commenced this action on April 30, 2018. His complaint asserts six causes of action. In his first three claims, plaintiff seeks orders pursuant to CPLR 2701 and 1006 and the court's plenary power permitting plaintiff to deposit EtherDEG's cryptocurrency (allegedly worth approximately \$2.25 million) into court for a determination of the parties' rights thereto.³ His fourth cause of action is for breach of contract (a "written employment agreement")⁴ against EtherDEG due to its failure to pay his salary or deliver his shares of stock. His fifth claim is for tortious interference with contract (the "written employment agreement") against Chen and his sixth and final cause of action is for fraud against Chen. Plaintiff seeks \$10 million in damages. The basis for seeking this amount from EtherDEG for breach of contract is unclear as plaintiff's annual salary was only \$125,000, the claim to compel delivery of stock is not a claim for

¹ Confusingly, the complaint often refers to him as "Jen Chun".

² In paragraph 68 of the complaint, plaintiff claims he is not a party to the Shareholders' Agreement and therefore cannot assert claims thereunder. Plaintiff also does not assert any derivative claims against Chen on behalf of EtherDEG by virtue of his status as a shareholder.

³ The court expresses no opinion at this time as to whether this is possible.

⁴ It is unclear whether this agreement is the Shareholders' Agreement or something else.

monetary damages and this cause of action does not seek unpaid commissions (*see* Dkt. 18 at 1) ["EtherDEG's breach of contract caused me to lose at least \$10,000,000 in compensation, including but not limited to the destruction of the value of my equity"].

Plaintiff claims to have served EtherDEG with the complaint on August 10, 2018 upon its registered agent in the British Virgin Islands (*see* Dkt. 5). Plaintiff does not claim to have satisfied the additional service requirements of CPLR 3215(g)(4). On December 28, 2018, plaintiff moved by order to show cause (OSC) for a default judgment against EtherDEG. While the foregoing should make it clear that the court has numerous questions (including why the motion was not simply made on notice), the court signed the OSC in the hope that opposition papers might provide clarity. EtherDEG did not, however, serve opposition papers by the January 23, 2019 deadline.

At most, it appears that plaintiff may have a claim against EtherDEG for the salary he would have earned but for his alleged wrongful termination and for an injunction to deliver his EtherDEG shares. But even more fundamentally, the court cannot determine if his contractual rights were breached without knowing what specific contract governs and reviewing its terms. Plaintiff must renew his motion with a more detailed affidavit of merit addressing the issues raised herein and provide the court with copies of the applicable contracts (or explain why they cannot be produced). If plaintiff continues to assert millions of dollars in damages from EtherDEG, he must provide a more thorough and compelling basis for such demand (*see Guzzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006], quoting *Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]

["CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action."]

Accordingly, it is ORDERED that plaintiff's motion for a default judgment against EtherDEG is denied without prejudice and with leave to renew by appropriate notice of motion.

Dated: March 15, 2019

ENTER:

Jennifer G. Schecter, J.S.C.