

**Min Jin Cheng v Zhi Zeng**

2019 NY Slip Op 32863(U)

September 17, 2019

Supreme Court, Kings County

Docket Number: 501082/2019

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

Index No.: 501082/2019  
Motion Date: 9-9-19  
Mot. Cal. No.: 10

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MIN JIN CHENG,

Plaintiff,

-against-

**DECISION/ORDER**

ZHI ZENG,

Defendant.

-----x

The following papers numbered 1 to 3 were read on this motion:

Papers:	Numbered:
Notice of Motion/Order to Show Cause	
Affidavits/Affirmations/Exhibits/Memos of Law.....	1
Answering Affirmations/Affidavits/Exhibits/Memos of Law.....	2
Reply Affirmations/Affidavits/Exhibits/Memos of Law.....	3
Other.....	

Upon the foregoing papers, the motion is decided as follows:

The plaintiff, MIN JIN CHENG, commenced this action against the defendant, ZHI ZENG, alleging causes of action for breach of contract, unjust enrichment and for the recovery of legal expenses and attorneys fees. The plaintiff now moves for summary judgment at all three causes of action. Defendant opposes the motion.

The proponent of a motion for summary judgment has the initial burden of making a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient proof eliminating any material issues of fact (see, *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853; *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562; *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404). If the proponent meets this

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burden, the burden shifts to any party opposing the motion to come forward with proof in admissible form raising a triable issue of fact (*see Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324; *Zuckerman*, 49 N.Y.2d at 562; *Friends of Animals v. Associated Fur Mfrs.*, 46 N.Y.2d at 1068). If the proponent fails to meet its initial burden, the Court must deny the motion regardless of the sufficiency of the opposition papers (*see Winegrad*, 64 N.Y.2d at 853; *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 29 A.D.3d 547).

By submitting his sworn affidavit and a copy of the written contract at issue, plaintiff demonstrated his prima facie entitlement to summary judgment on his breach of contract claim and on his claim for legal fees including attorneys fees. Plaintiff's submissions demonstrated that he entered into a written contract with the defendant, pursuant to which, he was obligated to transfer to the defendant his 20% interest in the Link Realty Group LLC for the sum of \$60,000, that defendant was obligated to pay him this amount in 12 monthly installments of \$5000 for his 20% interest, that the contract obligated any party who breached the contract to pay the other's legal expenses in enforcing the contract, that he performed all his obligations under the contract and that the defendant breached the contract by failing to make any installment payments after January 28, 2018. As of that time, defendant still owed the plaintiff the sum of \$32,500.

In opposition, the defendant failed to raise a triable issue of fact. Whether defendant is correct in his contention that defendant's failure to respond to plaintiff's Notice to Admit can not be considered as admissible proof on this motion is an issue the Court need not reach. Plaintiff established his prima face entitlement to summary judgement even if defendant's failure to respond to the Notice to Admit is not considered.

Defendant contends that the plaintiff failed to serve as a real estate agent and procure and drive sales and/or commissions for the Link Group . While this may be relevant to defendant's counterclaims, it is not a defense to plaintiff's breach of contract claim.

Contrary to defendant's contention, the written contract between the parties constitutes sufficient proof that the plaintiff, as of the signing of the contract, relinquished his 20% interest in the Link Realty Group LLC and therefore performed his obligations under the contract.

Finally, Mr. Zeng's contention that he did not issue any installment payments to the plaintiff in his individual capacity is irrelevant.

For the above reasons, plaintiff's motion for summary judgment on his claim for breach of contract is **GRANTED** and plaintiff may enter judgment against the defendant in the sum of \$32,500, with statutory interest from May 28, 2018.

The judgment shall also include an award for all the expenses that plaintiff incurred in prosecuting this action, including attorney's fees. The amount of the award shall be determined by a Special Referee/JHO, who shall hear and report with recommendations, or with the parties consent, shall hear and determine. An order of reference is being issued herewith.

The court need not consider plaintiff's motion insofar as it seeks summary judgment on the unjust enrichment claim since the plaintiff is getting a full recovery on his breach of contract claim .

Plaintiff neither requested summary judgment dismissing defendant's counterclaims

nor demonstrated his entitlement to such relief. Accordingly, defendant's counterclaims are hereby severed and defendant may pursue them provided defendant purchases a separate index number within 45 days of this order and files all pleadings in this action under that index number.

For all of the above reasons, it is hereby

**ORDERED** that plaintiff's motion is decided as set forth above.

This constitutes the decision and order of the Court.

Dated: September 17, 2019



**PETER P. SWEENEY, J.S.C.**

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