

<b>Peters v Xue Zhen Lin</b>
2019 NY Slip Op 34722(U)
June 24, 2019
Supreme Court, Albany County
Docket Number: Index No. 907594-17
Judge: Richard M. Platkin
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STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

SELVON PETERS,

Plaintiff,

-against-

**DECISION & ORDER**

XUE ZHEN LIN and  
LI QING NI,

Defendants.

Index No.: 907594-17

(Judge Richard M. Platkin, Presiding)

APPEARANCES:

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Hon. Richard M. Platkin, A.J.S.C.

Plaintiff Selvon Peters commenced this action in November 2017 against defendants Xue Zhen Lin and Li Qing Ni,<sup>1</sup> alleging causes of action for false arrest, malicious prosecution, fraud and intentional infliction of emotional distress. Discovery is complete, a trial-term note of issue was filed on March 1, 2019, and the case is assigned a day certain for jury trial of September 16, 2019. Ni now moves for summary judgment dismissing plaintiff's complaint on the ground that she merely served as an interpreter for Lin and, as such, she cannot be held liable for statements made by Lin. Plaintiff opposes the motion.

### **BACKGROUND**

Plaintiff alleges that, on or about March 10, 2017, Lin and Ni falsely stated to the Watervliet Police Department and the Albany County District Attorney's Office that he had obtained money through fraud and/or false pretenses (*see* Greenwald Aff., Ex. A ["Complaint"], ¶ 5). The proof submitted by Ni in support of her motion shows that Lin gave a supporting deposition to the Watervliet Police Department on March 10, 2017. Lin wrote her statement in Mandarin Chinese, and Ni translated it into English (*see* Greenwald Aff., Ex. E).

Lin's deposition, as translated by Ni, stated that on November 17, 2016, Lin contracted with plaintiff to perform home repair work in exchange for the sum of \$80,000 to be paid in four installments. Lin made the first payment of \$35,000 on November 7, 2016, and plaintiff soon requested the second payment of \$25,000, falsely claiming that he had finished the first phase of the work, and he needed the funds to purchase materials for the second phase. However, after

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<sup>1</sup> As clarified in discovery, the summons and complaint misname this defendant as "Li Qing Nt" (Greenwald Aff., Ex. G, p. 63). However, the pleadings never were amended to reflect the proper spelling of her name.

receiving the second payment on December 3, 2016, plaintiff failed to perform any further work on Lin's house, and he would not return her calls. Plaintiff then called Lin on January 17, 2017 and told her to make the third payment of \$10,000, at which point Lin "realized . . . that he was scamming [her]," and she "didn't give him the money." From that point, Lin could not get a hold of plaintiff, who had "disappeared."

The Complaint alleges that the aforementioned "false statements" led to plaintiff's arrest and prosecution, causing "material losses in [his] income, personal humiliation, loss of liberty, fear and anxiety for the prospect of incarceration . . . , and otherwise caused significant pain and suffering to [plaintiff]" (Complaint, ¶¶ 5-10, 14). The criminal charges against plaintiff were dismissed on October 24, 2017 (*see id.*, ¶ 16).

Ni answered the Complaint, denying the pertinent allegations and asserting that the Complaint fails to state a cause of action against her because she acted only as an interpreter for Lin, and the statements she gave to law enforcement were merely a literal translation of the statements made by Lin (*see* Luibrand Aff., Attachment "A," ¶¶ 6-12).<sup>2</sup>

Ni now moves for summary judgment, arguing that she never made a statement on her own behalf or complained about plaintiff in her personal capacity; rather, she simply provided uncompensated translation services to an acquaintance, Lin. Ni also seeks the imposition of sanctions under 22 NYCRR part 130, alleging frivolous conduct on plaintiff's part.

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<sup>2</sup> Although Ni's defense also is framed as a counterclaim, she does not seek any form of affirmative relief in her answer, other than dismissal of the Complaint as against her (*see generally id.*).

## ANALYSIS

Summary judgment is a drastic remedy and should only be granted if there are no material issues of disputed fact (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). In evaluating a motion for summary judgment, a court should determine whether, viewing the evidence in the light most favorable to the nonmoving party, material issues of disputed fact preclude the grant of judgment as a matter of law (*see Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]).

The movant has the initial burden of coming forward with admissible evidence to demonstrate the absence of any material issues of fact, and the “[f]ailure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If a *prima facie* showing has been made, the burden then shifts to the party opposing the motion to demonstrate, by admissible proof, the existence of any factual issue requiring a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Ni supports her motion for summary judgment with her own affidavit, the deposition testimony of the parties, and documentary evidence.

In her affidavit, Ni avers that she “merely provided a free service for an acquaintance, Defendant Lin, to translate as close to verbatim as I could translate Mandarin Chinese into American English, so she could be understood by the Watervliet . . . Police Department with her complaint about Plaintiff” (Ni Aff., ¶ 7; *see also id.*, ¶ 10). Ni further attests that she “never made a statement and never complained about Plaintiff Peters on [her] behalf as [she] ha[s] no personal complaint of or against him,” and that she has “never been contacted by the Watervliet

... Police Department, the Albany County District Attorney's Office or any other ... agency concerning this or any other matter" (*id.*, ¶¶ 8, 11).

Ni also submits the parties' deposition testimony. This proof generally supports Ni's position that she acted only as an interpreter for Lin, an acquaintance who did not speak English, with respect to (1) Lin's interactions with plaintiff concerning the repair of Lin's home, and (2) Lin's communication with the Watervliet Police Department regarding plaintiff (*see Greenwald Aff.*, Ex. F ["Lin's EBT"], pp. 13-16, 20-27, 32-34, 39; *id.*, Ex. G ["Plaintiff's EBT"], pp. 64-67, 72-74; *id.*, Ex. H ["Ni's EBT"], pp. 7, 11-14, 16-23, 26-27, 29-31, 34, 37-38, 40-43, 47-51, 53-56).<sup>3</sup>

The documentary exhibits submitted in support of the motion include the translation of Lin's supporting deposition prepared by Ni, which was provided to the Watervliet Police Department (*see Greenwald Aff.*, Exs. E, J). These documents similarly indicate that Ni acted solely in the capacity of Lin's interpreter.

Finally, Ni submits proof that she performed the translation of Lin's Mandarin Chinese into American English in a manner consistent with the standards applicable to a certified interpreter. To this end, Ni submits a 2015-16 New York State Unified Court System Orientation Guide For Court Interpreter ("Court Interpreter Guide"), which requires that a speaker's responses be interpreted *exactly* as spoken – *i.e.*, in first person and not corrected in any way (*see Greenwald Aff.*, Ex. C, p. 5). Thus, Ni maintains, the written statements she made

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<sup>3</sup> As revealed in the depositions, Ni also goes by the name "Vicky," which is her assumed English name (*see Lin EBT*, p. 13; *Ni EBT*, pp. 36-37).

regarding plaintiff to the Watervliet Police Department merely were the literal translation of Lin's statements.

In opposition to Ni's motion, plaintiff does not submit any proof of his own, instead relying on the proof submitted by Ni.<sup>4</sup> Plaintiff argues that Ni is not a court interpreter, and the record shows Ni's role was not limited to that of interpreter. With regard to the latter contention, plaintiff asserts that: Ni was "always" present "throughout the project"; Ni "regularly" spoke with plaintiff regarding the work, with and without Lin present; Ni went to the work site and observed the progress of the work; and, when the project was not performed to Lin's satisfaction, Ni told Lin to get the police to help her and then accompanied Lin to the police station (Opp. Mem., pp. 2-3). For the reasons that follow, however, plaintiff's arguments are based on a mischaracterization of the parties' testimony and are otherwise unsupported by the record.

Notably, plaintiff himself described Ni as "the go between. She was the one who speaks mostly English. She was the one who as I spoke she translated back to [Lin]" (Plaintiff's EBT, pp. 64-65). Plaintiff was then asked a follow-up question: "So she was a translator?" (*id.*, p. 65). His response was: "Yes" (*id.*).

Although Ni was "always" with Lin during Lin's in-person interactions with plaintiff, there is nothing in the record showing that Ni had any interest or involvement in this matter other than as an interpreter and intermediary (*see id.*, p. 65 [plaintiff testifying that Ni translated "throughout the project," and both he and Lin "relied on (Ni) to communicate"]; pp. 66-67 [Ni

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<sup>4</sup> In reply, Ni argues and submits proof that plaintiff's opposition is untimely (*see* Greenwald Reply Aff., ¶¶ 3-4 & attachments). However, for the reasons that follow, the Court concludes that Ni would be entitled to summary judgment even if plaintiff's opposition papers had been timely served.

telling plaintiff in mid-February 2017 that she “no longer wanted to be involved as a translator”]; pp. 73-74 [plaintiff stating that he never received payment from Ni on behalf of Lin; rather, “Ms. Lin is the one I went for the payment. Ms. Ni is who translated what I wanted from her”]; *see also id.*, p. 76 [plaintiff denies having any knowledge of whether “Ni has a vested interest in (Lin’s) house”]).

Similarly, while Ni communicated with plaintiff by telephone and text messages with or without Lin’s presence or involvement, the uncontroverted proof shows that she merely translated and/or relayed information on Lin’s behalf (*see* Ni EBT, p. 42 [Ni would “always speak to Ms. Lin before sending (a) text message” to plaintiff]; *id.*, p. 48 [“That is all I do for the translator”]; *see generally id.*, pp. 41-44, 47-51).

Further, as acknowledged by plaintiff, Lin’s written statement to the Watervliet Police Department is written in Mandarin Chinese (*see* Plaintiff’s EBT, pp. 67-72). The English translation of the statement expressly states that Ni is “the interpreter for this letter for Xue Zhen Lin,” and it goes on to translate Lin’s statements in first person form (Greenwald Aff., Ex. E). In this regard, plaintiff fails to submit any proof indicating that Ni’s translation was false, inaccurate or reflected her own personal views or statements (*see* Plaintiff’s EBT, pp. 68-69; *cf. Matter of Yovanny L.*, 33 Misc 3d 894, 896-897 [Fam Ct, Bronx County 2011]).<sup>5</sup>

Indeed, the Court Interpreter Guide, submitted by Ni, commands that “words should be interpreted exactly as spoken by the speaker,” even if the speaker uses incorrect grammar or

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<sup>5</sup> Likewise, contrary to plaintiff’s assertion, Lin did not testify that Ni told her to get the police to help her. Rather, Ni stated that the police would help Lin get her money back as part of Ni’s translation of the conversations between a police representative and Lin (*see* Lin EBT, pp. 32-34, 36-39; Ni EBT, pp. 38-39, 56).

improper vocabulary, and “[t]he statements made by speakers are always kept in first person” (Greenwald Aff., Ex. C, p. 5). And although Ni “is not a court interpreter, and was not provided as one by the police department” (Opp. Mem., p. 4), the Court Interpreter Guide shows that Ni rendered translation services in accordance with accepted standards, and the allegedly false and damaging first-person statements made to the police were attributable to Lin, not Ni (*see* Greenwald Aff., Ex. E; *see also* Greenwald Aff., ¶¶ 19-23 & Ex. C).

By providing translation assistance to Lin and communicating with plaintiff on Lin’s behalf and at her request, Ni, at most, acted as an agent for a disclosed principal (*see generally* *People v Romero*, 78 NY2d 355, 361-362 [1991]). There is no evidentiary basis upon which to conclude that Ni committed her “own” affirmative/independent act of misconduct (*American Ref-Fuel Co. of Hempstead v Resource Recycling*, 281 AD2d 574, 575 [2d Dept 2001]; *see Jones v Archibald*, 45 AD2d 532, 535 [4th Dept 1974]) or that she intended to “substitute or superadd [her] personal liability for, or to, that of [Lin]” (*Savoy Record Co. v Cardinal Export Corp.*, 15 NY2d 1, 4 [1964]; *see Weinreb v Stinchfield*, 19 AD3d 482, 483 [2d Dept 2005]; *cf. People v Rios*, 26 Misc 3d 1225[A], 2010 NY Slip Op 50256[U], \*14 [Sup Ct, Bronx County 2010] [“Despite Rios’s argument that he remained involved only to act as an interpreter for the new owner, who did not speak Spanish, the evidence showed that he acted no differently than when he had been the sole owner of the building for 20 years prior to the sale. When viewed in the light most favorable to the People, these facts are legally sufficient to support the jury’s conclusion that Rios was a high managerial agent”], *affd* 87 AD3d 916 [1st Dept 2011]).

Finally, the Court observes that all of the causes of action alleged by plaintiff require proof of malicious or intentional misconduct on Ni’s part (*see* PJI 3:5; PJI 3:6; PJI 3:20; PJI

3:50). Even viewing the record proof in a light most favorable to plaintiff, there simply is no basis to conclude that Ni acted as anything other than a disinterested interpreter.

Based on the foregoing, the Court concludes that Ni has made an initial showing of entitlement to judgment as a matter of law and that plaintiff has failed to raise a triable issue of fact in opposition.

### CONCLUSION

Accordingly,<sup>6</sup> it is



**ORDERED** that defendant Li Qing Ni's motion for summary judgment dismissing the complaint as against her is granted; and it is further

**ORDERED** that plaintiff's complaint is dismissed as against defendant Li Qing Ni.

This constitutes the Decision & Order of the Court, the original of which is being transmitted to counsel for defendant Li Qing Ni; all other papers are being delivered to the Albany County Clerk. The signing of this Decision & Order shall not constitute entry or filing under CPLR 2220, and counsel is not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

Dated: Albany, New York  
June 24, 2019

  
RICHARD M. PLATKIN  
A.J.S.C.

  
7-9-19 

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<sup>6</sup> The Court declines, in the exercise of discretion, Ni's request to impose sanctions upon plaintiff and/or his counsel under 22 NYCRR part 130.

Papers Considered:

1. Notice of Motion for Summary Judgment, dated March 21, 2019; Affidavit of Marc D. Greenwald, Esq. in Support of Summary Judgment, sworn to March 20, 2019, with annexed exhibits A-J; Affidavit of Li Qing Ni in Support of Motion for Summary Judgment, sworn to March 8, 2019;
2. Attorney Affirmation of Kevin A. Luibrand, Esq., dated April 16, 2019, in Response to Motion for Summary Judgment, with Attachment "A"; Memorandum of Law in Response to Motion for Summary Judgment, dated April 16, 2019; and
3. Reply of Marc D. Greenwald, Esq. to Plaintiff's Opposition to Defendant Ni's Summary Judgment Motion, sworn to April 23, 2019, with attachments.