

<b>Jinmei Yang v Shang Dai</b>
2020 NY Slip Op 32247(U)
July 8, 2020
Supreme Court, New York County
Docket Number: 650268/2020
Judge: Barry Ostrager
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**SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY**

**PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM**

*Justice*

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JINMEI YANG,	Plaintiff,	<b>MOTION DATE</b>	
- v -		<b>MOTION SEQ. NO.</b>	001
SHANG DAI and DA WEI GONGSUN,	Defendants.	<b>DECISION + ORDER ON MOTION</b>	
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HON. BARRY R. OSTRAGER

The Court heard extended oral argument on July 6, 2020 via Skype on plaintiff’s motion for summary judgment in lieu of complaint pursuant to CPLR 3213. Under well-settled principles, summary judgment in lieu of complaint is available for an instrument for the payment of money only. And, under equally settled principles, the Court is to look to the four corners of the instrument sued upon in determining whether the instrument qualifies as one for the payment of money only.

The instrument at issue here is the December 28, 2018 Amended and Restated Secured Promissory Note between plaintiff Jinmei Yang, as Lender, and defendant Shang Dai, as Borrower, in the sum of \$1,150,000.00 (NYSCEF Doc. No. 5). The Note is guaranteed by the co-defendant Da Wei Gongsun pursuant to a Continuing Guaranty executed on the same date as the Note (NYSCEF Doc. No. 7). In support of the motion, plaintiff Jinmei Yang submits an affidavit confirming that she wired \$1,150,000.00 to the defendant Borrower, authenticating the loan documents on which plaintiff relies, and confirming defendants’ default in payment and the calculations comprising the amount of \$1,123,809.42 alleged to be due as of January 13, 2020 (NYSCEF Doc. No. 2). The affidavit and documents suffice to state a prima facie case.

In opposition, the defendant Borrower asserts in his Affidavit that the Note at issue is inextricably intertwined with various business dealings he had with plaintiff’s husband, nonparty

Xiajie Huang, related, among other things, to DaDong Restaurant (“the Restaurant”) (NYSCEF Doc. No. 22). Defendant Borrower explains that he entered into a joint venture with Huang to invest in the Restaurant via the formation of DaDong LLC. Defendant claims Huang offered to lend him the money represented by the Note to facilitate that investment. The Lender under the Note is Huang’s wife, Jinmei Yang, because Huang conducted business in the United States through his wife’s bank account. But the Borrower insists the terms of the original Note and all amendments were between the Borrower and Huang and that plaintiff was involved in name only. Defendant Borrower further asserts he was fraudulently induced by Huang’s misrepresentations to borrow the money to invest in the Restaurant, believing the Restaurant would generate profits defendant could use to repay the loan, but the Restaurant venture ultimately failed and defendant lost his entire investment.

In sum, the defendant Borrower claims he should be relieved of any obligation to pay on the Note because he was fraudulently induced by plaintiff’s husband Huang to invest the loan money in Huang’s business venture related to the Restaurant. The defendant Guarantor Da Wei Gongsun similarly asserts in his affidavit that he was fraudulently induced by Huang’s misrepresentations about the potential success of the Restaurant to sign the Guaranty (NYSCEF Doc. No. 23). Plaintiff’s counsel in reply merely reiterates that the Note itself makes no reference to the Restaurant or any other business venture and that no defense to the Note has been stated.

The Court agrees with the plaintiff Lender. In the Note the defendant Borrower “unconditionally promises” to pay \$1,150,000.00 to the plaintiff Lender pursuant to the terms of the Note. Nowhere in the seven-page Note is there any reference to the Restaurant, to Huang, or to any business venture with Huang or anyone else. The Note is a straightforward instrument for the payment of money only that reflects detailed negotiations between the parties. Nothing in the

Note indicates that the Note is inextricably intertwined with any related or unrelated business transaction. Defendant's allegations of fraud in the inducement, which focus on his business dealings with plaintiff's husband, a nonparty to the Note, are insufficient to negate the comprehensively detailed and carefully drafted multi-page Note for the payment of money only.

The Note does state on page 2 that: "THIS NOTE IS CONTINUOUSLY SECURED, IN PART, BY ... THE AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT ENTERED INTO BY AND AMONG THE BORROWER, THE TRUE TASTE ONE BRYANT PARK, LLC, A NEW YORK LIMITED LIABILITY COMPANY, AND THE LENDER ..."

As defendant explains in his Affidavit (at ¶15), the referenced company True Taste is the company of the defendant Borrower Shang Dai. Defendant further explains that, through his company, he made a capital contribution in the amount of \$1,250,000 for 10 percent (10%) of the membership interests in DaDong Management LLC, the entity that indirectly owned the operating company for DaDong Restaurant.

The referenced Amended and Restated Pledge and Security Agreement executed on the same date as the Note is between defendant Shang Dai as Pledgor, Dai's company True Taste as Issuer, and plaintiff Jinmei Yang as the Secured Party (NYSCEF Doc. No. 6). There, defendant pledged "100% of the membership interest of the Issuer [True Taste], which was the managing member and the legal and beneficial owner of 10 Units or 10% of the issued and outstanding membership interests of Dadong Management LLC, a Delaware limited liability company (the "Company"), to the Secured Party [plaintiff Jinmei Yang] ..."

But the fact that defendant collateralized the Note with his or his company's membership interest in the Restaurant's operating company, or that he invested the loan money in the Restaurant company with the mistaken belief the Restaurant would succeed, does not change the

fact that the Note is an instrument for the payment of money only not dependent upon, or inextricably intertwined with, the success or failure of the Restaurant. The Court therefore finds that plaintiff is entitled to a judgment on the Note and the Guaranty.

The Note also provides in paragraph 7 that plaintiff may recover reasonable attorneys' fees to enforce the Note. Plaintiff requests such fees but offers no invoices or other supporting documentation. The Court will entertain a motion for attorneys' fees with invoices on notice to defendants' counsel made within 30 days of the date of this decision. The Court will then determine whether an inquest is needed or whether the application can be decided on the papers.

Accordingly, it is hereby ORDERED that plaintiff's motion for summary judgment in lieu of complaint is granted. The Clerk is directed to enter judgment in favor of plaintiff Jinmei Yang against defendants Shang Dai and Da Wei Gongsun, jointly and severally, in the amount of \$1,123,809.42 plus interest at the Default Rate of 18% per annum pursuant to the Note as of January 13, 2020, plus costs and disbursements, upon plaintiff's e-filing of a Proposed Judgment and Bill of Costs directed to the County Clerk.

Dated: July 8, 2020

  
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE