

UNI-RTY Corp. v New York Guangdong Fin., Inc

2021 NY Slip Op 31361(U)

April 22, 2021

Supreme Court, New York County

Docket Number: 157621/2012

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

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UNI-RTY CORPORATION, GOLDEN PLAZA LIMITED PARTNERSHIP,

Petitioners,

INDEX NO. 157621/2012

MOTION DATE 10/23/2020

MOTION SEQ. NO. 018

- v -

NEW YORK GUANGDONG FINANCE, INC, GUANGDONG BUILDING INC., THE ESTATE OF JOSEPH CHU, ALEXANDER CHU, CENTRE PLAZA, LLC, EASTBANK, N.A., CHINA CONSTRUCTION BANK, AGRICULTURAL BANK OF CHINA, SHERIFF OF NEW YORK COUNTY,

Respondents.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 018) 699, 700, 702, 703, 704, 705, 706

were read on this motion to/for STRIKE JURY DEMAND.

Upon the foregoing documents,

The following read on respondents,' GUANGDONG BUILDING, INC., THE ESTATE OF JOSEPH CHU, ALEXANDER CHU, CENTRE PLAZA, LLC, and EASTBANK, NA., motion to strike petitioners' jury demand; and respondents,' AGRICULTURAL BANK OF CHINA and CHINA CONSTRUCTION BANK, cross-motion to join foresaid respondents' motion to strike petitioners' jury demand.

A verified petition was filed with the Clerk of New York on October 26, 2012.

Respondents CHINA CONSTRUCTION BANK and AGRICULTURAL BANK OF CHINA answered the petition on or about December 21, 2012. Respondents GUANDONG BUILDING, INC., THE ESTATE OF JOSEPH CHU, ALEXANDER CHU, CENTRE PLAZA, LLC, and EASTBANK NA, appeared through a motion to dismiss filed with the Clerk of the Court on December 21, 2012.

This article 52 special proceeding, pursuant to CPLR 5225(a), 5225(b), 5227, 5228, and the New York Debtor and Creditor Law (“Debtor Law”), seeks the possession of assets pursuant to a federal judgment. Petitioners seek to enforce a Federal Southern District of New York Judgment in the sum of \$8,500,000 (see NYSCEF doc. no. 2). This litigation involves a series of transactions from 1989 to 1994 involving a commercial property located at 239 – 241 Canal Street, New York, in the Manhattan neighborhood of Chinatown.

CPLR 4101 provides in relevant part, “[i]ssues triable by a jury revealed before a trial in ... an action in which a party demands and sets forth facts which would permit a judgment for a sum of money only (first paragraph) ... any other action in which a party is entitled by the constitution or by express provision of law to a trial by jury (second paragraph).”

Respondents argue that, “[p]etitioners do not qualify for a jury trial under CPLR 4101(1) because they do not seek ‘a judgment for a sum of money *only*.’ To the contrary, they seek turnover of property or proceeds that they allege rightfully belonged to NYGFI (New York Guangdong Finance, Inc.) a judgment debtor of petitioners. That is not an action for a sum of money only.” Respondent cites a New York Supreme Court Fourth Department case from 2015, *Colonial Sur. Co. v. Lakeview Advisors, LLC*, 125 A.D.3d 1292, 1294 [4th Dept 2015].

Respondent continues that neither the constitution nor provision of law entitles petitioners to a trial by jury. A judgment creditor who brings a special proceeding to enforce a judgment against a party other than the judgment debtor is not entitled to a jury trial on his claims (*id*).

Respondent also highlights that a petitioner who seeks both legal and equitable relief for the same alleged wrong, irrevocably waives his right to a jury trial. It has long been settled that the joinder of claims for legal and equitable relief results in a waiver of the right to a jury trial

(see *Zimmer-Masiell, Inc. v. Zimmer, Inc.*, 164 A.D.2d 845, 846 [1st Dept 1990]). Petitioners have requested equitable relief in this special proceeding, such as a “declaration of rights” and the “appointment of an article 52 Receiver.”

Petitioners contend “[a] turnover action as in the instant case is similar to a declaratory judgment action (i.e., to void a fraudulent conveyance of assets).” While the 1894 constitution “froze the right to a jury trial to those types of cases in which it was recognized at common law or by statute as of [its] adoption ... the right to trial by jury is not limited to those instances in which it was sued as of 1894 but extends to cases that are analogous to those which were traditionally tried by jury” (see *Independent Church of Realization of Word of God v. Bd of Assessors of Nassau Co.*, 72 A.D.2d 554 [2nd Dept. 1979]).

The declaratory judgment action did not arrive on the New York scene until almost a century after the 1840’s merger of law and equity and a century and a half after New York’s 1777 Constitution, which marks the State’s original moment of inheritance of the distinctions between common law and chancery. Therefore, it is impossible to award the declaratory action to either the law or equity category (see David D. Siegel, *New York Practice* § 439 [6th ed. 2018]).

Trial court properly denied defendant’s motion to strike plaintiff’s jury demand because although plaintiff sought equitable relief in the form of a declaratory judgment and an accounting, underlying controversy sought monetary damages (see *Arrow Communication Labs. v. Pico Prods.*, 219 A.D.2d 859 [4th Dept. 1995]). Alleged facts upon which damages alone will afford full relief entitled plaintiff to jury trial notwithstanding inclusion of a request for equitable relief (see *Hebrank v. Bioline Labs.*, 149 A.D.2d 567 [2nd Dept 1989]).

The first paragraph of CPLR 4101 involves whether an award of money damages alone can afford a full and complete remedy. If that is possible then the action sounds in law and may be tried by a jury. Because the petitioners can be fully compensated by an award of money damages the claims should be determined by a jury.

ORDERED that the cross-motion of AGRICULTURAL BANK OF CHINA and CHINA CONSTRUCTION BANK to join GUANGDONG BUILDING, INC., THE ESTATE OF JOSEPH CHU, ALEXANDER CHU, CENTRE PLAZA, LLC, and EASTBANK, NA.'S, motion to strike petitioners' jury demand is DENIED; and further it is

ORDERED that respondents' motion, AGRICULTURAL BANK OF CHINA, CHINA CONSTRUCTION BANK, GUANGDONG BUILDING, INC., THE ESTATE OF JOSEPH CHU, ALEXANDER CHU, CENTRE PLAZA, LLC, and EASTBANK, NA., to strike petitioner's jury demand is DENIED.

4/22/2021
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE