

Chung v Xie
2021 NY Slip Op 32158(U)
October 28, 2021
Supreme Court, Kings County
Docket Number: Index No. 503139/2020
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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YOUNG S. CHUNG, individually and on behalf of
URBAN FRESH CORP. and 11 UM FOOD CORP.,
Plaintiffs, Decision and order

- against - Index No. 503139/2020

COLIN K. XIE, BARBARA JANUS, JUICEBROTHERS,
LLC, AND DOES 1-100
Defendants, October 28, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has again moved pursuant to CPLR §3025(b) seeking to amend the complaint to add a cause of action for fraud. The defendants oppose the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, the plaintiff Young Chung and the defendant Colin Xie are equal owners of two grocery stores, one located in Queens County and the other in Kings County. The plaintiff alleges the defendant has failed to pay his share of a business loan and owes over \$58,000. The plaintiff asserts that he cannot continue to pay his share as well as defendant's share and this can cause great damage to the future of the business. In addition, the plaintiff alleges the defendant used over one million dollars of business money to pay for personal debts from August 2018 through June 2019. The defendant counters the plaintiff utilized and basically stole over \$400,000 of the business for his own personal needs. The plaintiff seeks to add

a cause of action for fraud. The court had previously denied such a request on the grounds the plaintiff failed to adequately plead the requisite requirements necessary to sustain a fraud action. The plaintiff asserts the current proposed amended complaint rectifies those infirmities.

Conclusions of Law

A party may be allowed to amend or supplement a pleading at any time by leave of court and such leave shall be "freely granted" unless the amendment is palpably insufficient or clearly devoid of merit (Lomeli v. Falkirk Management Corp., 179 AD3d 660, 116 NYS3d 332 [2nd Dept. 2020], CPLR §3025(b)).

As recorded in the prior order, it is well settled that to succeed upon a claim of fraud it must be demonstrated there was a material misrepresentation of fact, made with knowledge of the falsity, the intent to induce reliance, reliance upon the misrepresentation and damages (Cruciata v. O'Donnell & McLaughlin, Esqs., 149 AD3d 1034, 53 NYS3d 328 [2d Dept., 2017]). These elements must each be supported by factual allegations containing details constituting the wrong alleged (see, JPMorgan Chase Bank, N.A. v. Hall, 122 AD3d 576, 996 NYS2d 309 [2d Dept., 2014]).

The proposed Revised Second Amended Complaint contains

paragraphs supporting a fraud cause of action. Specifically, paragraphs 85 and 86 assert that on February 19 and February 22, 2017 the defendant sent two emails to the accountant for the plaintiff companies with attached credit card statements the defendant represented were expenses incurred on behalf of the companies when in actuality they were personal expenses. Paragraph 97 states that "Defendant Xie materially misrepresented his personal credit card charges to Amex as business expenses knowing that his representations were false, and intending for the Plaintiffs to rely on his false representations to the accountant for the Plaintiff Companies, Plaintiff Chung and the Plaintiff Companies" (id). The next paragraph states that "Plaintiffs relied on Defendant Xie's false representations, and had no reason to suspect or question his false statement of business expenses" (see, Proposed Revised Second Amended Complaint, ¶98). Further, Paragraph 220 states that "for the relevant time periods, Plaintiffs justifiably relied on the above-referenced misstatements and misconduct of Defendant Xie, which were incorporated into the Companies' financial records, P&L statements and tax returns, all which incorrectly included Defendant Xie's personal expenses as business expenses for the Companies. The Plaintiffs made contemporaneous decisions on the operation of the Plaintiff Companies and purchase of new inventory and supplies based on the


false information reported by Defendant Xie" (id).

The defendant opposes the motion arguing there is no evidence any harm resulted from the filing of alleged false tax returns thinking they were accurate since an amendment can be filed at any time. Thus, even if a false misrepresentation was relied upon by the plaintiff no damages resulted thereby. However, it is speculative to wonder the extent to which the business was harmed by such false tax returns. In any event, at this stage of the litigation, those questions do not undermine the filing of a fraud claim, rather, such claim is proper on its face and will now be subject to discovery. Furthermore, the Proposed Revised Second Amended Complaint also describes how business decisions were affected by the alleged false reports submitted by the plaintiff. Thus, such damages are apparent since there are allegations the business in fact directly suffered as a result of those reports. Moreover, this precise claim is not duplicative of any other claims in this case. Of course, as noted, all claims will undergo rigorous discovery and upon the completion of all discovery any party may file any substantive motion. Therefore, the motion seeking to add the claim of fraud is granted.

So ordered.

ENTER:

DATED: October 28, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC