

Chef Chloe LLC v Pryor Cashman LLP
2021 NY Slip Op 32353(U)
November 17, 2021
Supreme Court, New York County
Docket Number: Index No. 653200/2021
Judge: Jennifer G. Schechter
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JENNIFER SCHECTER PART 54

Justice

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INDEX NO. 653200/2021

CHEF CHLOE LLC,

MOTION SEQ. NO. 001

Plaintiff,

- v -

**DECISION & ORDER ON
MOTION**

PRYOR CASHMAN LLP,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for DISMISS.

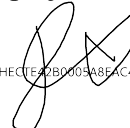
There is no basis to hold defendant liable for its representation of its client notwithstanding its client having been found in the underlying arbitration to have unlawfully converted plaintiff's membership interest in violation of the parties' agreement (*see* Dkt. 22 at 92). The action must be dismissed based on the settled rule "that attorneys are immunized from liability under the shield afforded attorneys in advising their clients, even when such advice is erroneous, in the absence of fraud, collusion, malice or bad faith" (*Pecile v Titan Cap. Group, LLC*, 96 AD3d 543, 544 [1st Dept 2012]; *see Art Cap. Group, LLC v Neuhaus*, 70 AD3d 605, 606 [1st Dept 2010] [providing "indispensable legal advice" by advising and documenting transactions cannot give rise to liability because such services "fall completely within the scope of defendant's duties as an attorney"]). The allegations in this case do not come close to approaching the circumstances under which law firms may be held liable for fraudulent conduct (*see Gansett One, LLC v Husch Blackwell, LLP*, 168 AD3d 579, 580 [1st Dept 2019]). As defendant correctly avers, the argument that its conduct "was meant to give 'an air of legitimacy to an illegitimate transaction'" is untenable based on settled law and "would have a catastrophic chilling effect on the legal profession" (Dkt. 56 at 16). There was no fraud here (*see Oster v Kirschner*, 77 AD3d 51, 56 [1st Dept 2010]), but rather a dispute over the meaning of the parties' agreement (*see Coscarelli v ESquared Hosp. LLC*, 2021 WL 293163, at *5 [SDNY Jan. 28, 2021] ["At a minimum, the CCSW Operating Agreement is ambiguous as to whether a sale without a change of control constitutes a Liquidity Event"]). For good reason, the requisite level of culpability is much higher (*see Bankers Trust Co. v Cerrato, Sweeney, Cohn, Stahl & Vaccaro*, 187 AD2d 384, 385 [1st Dept 1992]).

Indeed, plaintiff prevailed in the underlying arbitration and was provided with equitable relief to remedy the underlying wrongdoing (Dkt. 22 at 92-93 ["ESquared unlawfully converted Claimant's Membership Interest and transferred it, together with ESquared's Membership Interest, to BCHG Inc. in exchange for 41% of the common shares, all without the requisite consent of Claimant. The proper remedy—and the remedy available to the Arbitrator under the terms of the Operating Agreement—is to void the transaction whereby Chef Chloe's 50% Membership Interest was transferred to BCHG Inc., and to return it to Chef Chloe"]; *see Coscarelli*, 2021 WL 293163, at *5 [confirming liability portion of arbitration award]). Despite the protracted proceedings, there is no basis whatsoever for plaintiff to assert a claim against defendant for monetary damages, which were not even awarded as against defendant's client, merely because plaintiff prevailed and defendant's representation of its client was ultimately unsuccessful.

The court declines to reach the parties' other arguments and, in the exercise of discretion, will not impose sanctions (*see Board of Windsor Owners Corp. v Platt*, 188 AD3d 406 [1st Dept 2020]).

Accordingly, it is ORDERED that defendant's motion to dismiss is GRANTED and the Clerk is directed to enter judgment dismissing the complaint with prejudice.

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JENNIFER SCHECTER, J.S.C.

11/17/2021

DATE

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| <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION |
| <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED |
| | | <input type="checkbox"/> | GRANTED IN PART |
| | | <input type="checkbox"/> | OTHER |