

**Gui Qin Chen v Li Zhu Chen**

2021 NY Slip Op 34078(U)

July 13, 2021

Supreme Court, Queens County

Docket Number: Index No. 713183/2019

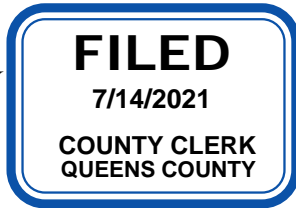
Judge: Lourdes M. Ventura

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK - QUEENS COUNTY



Present: HONORABLE LOURDES M. VENTURA, J.S.C. -----X

IAS Part 37

GUI QIN CHEN,

Index

Number: 713183/2019

Plaintiff,

Motion

-against-

Date: November 18, 2019

LI ZHU CHEN and HOUNG YUNG CHAU,  
Defendants.

Motion

Seq. No.: 1

-----X

The following numbered papers were read on this motion by defendant, Hong Yung Chau for an Order: Pursuant to CPLR 3211, entering judgment in favor of Defendant Hong Yung Chau against Plaintiff Gui Qin Chen granting the motion of Defendant Hong Yung Chau to dismiss the complaint or stay the action; or in the alternative, pursuant to CPLR 602, granting the motion of Defendant Hong Yung Chau to consolidate the above-captioned action with the prior related action, entitled *Metropolitan Life Insurance Company v. Gui Qin Chen and Sau Wan Cheung*, already pending before this Court and bearing index number 701722/2018; and for such other relief and this Court deems just and proper.

	Papers <u>Numbered</u>
Notice of Motion - Affirmation - Exhibit .....	E6-E17
Answering Affirmation - Exhibits .....	E20-E22
Reply Affirmation .....	E37

Upon the foregoing papers, it is ordered that defendant Hong Yung Chau's motion is determined as follows:

This Court sua sponte recalls the above entitled action and, upon recalling it, this court vacates its Short Form Order dated January 6, 2021 and substitutes this Short Form Order in its place as stated below.

It should be noted that motion sequence number 2 was "marked off" the court's calendar by the Honorable Salvatore J. Modica on November 18, 2019. As such, this court is unable to issue or render a decision on motion sequence 2 as it was "marked off" the court's calendar by the Honorable Salvatore J. Modica on November 18, 2019.

Plaintiff commenced this action to recover damages for an alleged conspiracy "to displace her as beneficiary" of the proceeds of a life insurance policy "by submitting the 2016 Beneficiary Designation Form, which ... is a forgery." The decedent, Chit Hing Chau, held a life insurance policy with Metropolitan Life Insurance Company (MetLife) in the face amount of \$300,000.00. The original policy was issued to Chau in 1998, with his wife, Sau Wan Cheung, as the primary

beneficiary, and their daughter, defendant Hong Yung Chau, as the sole contingency beneficiary. In 2012, Chau designated plaintiff, Qui Qin Chen, his girlfriend, as the only beneficiary under the subject life insurance policy and changed the address for the policy from his marital residence in Queens to an address in Manhattan. Thereafter, Chau moved to China, where he died on May 8, 2017, never having returned to the United States.

It is alleged that on August 10, 2016, Chau executed a Change in Beneficiary Designation form, again designating his wife as beneficiary, and his daughter, Hong Yung Chau, as the contingent beneficiary, and changed the address of the policy back to his marital residence in Queens. Defendant, Li Zhu Chen, a former insurance agent for MetLife, claims to have submitted the 2016 Change in Beneficiary form on behalf of decedent to MetLife. At the time the Change in Beneficiary form was executed, the decedent was residing in China. Li Zhu Chen allegedly brought to him, and witnessed the decedent's signature on, the Change in Beneficiary form while both were in China, and subsequently filed it with MetLife when she returned to the United States. Plaintiff alleges that the signature on the 2016 Change in Beneficiary form was forged by defendant, Hong Yung Chau, and that said defendant conspired with defendant, Li Zhu Chen, to submit the "forged" Change in Beneficiary form, for the purpose of depriving plaintiff of the proceeds of the insurance policy.

Plaintiff commenced this action in or about August 2019, alleging fraud; aiding and abetting fraud; and conspiracy to commit fraud causes of action against defendants, Li Zhu Chen, and Hong Yung Chau. Defendant, Chau, appeared and answered. Defendant, Chau, moves to, among other things, dismiss plaintiff's complaint against her for failing to state a cause of action, pursuant to CPLR 3211 (a) (7), or to consolidate the instant action with the earlier action of *Metropolitan Life Insurance Company v Gui Qin Chen and Sau Wang Cheung*, pending in this Court, under Index No. 701722/2018, pursuant to CPLR 602. Plaintiff opposes.

The first branch of defendant, Chau's motion seeks dismissal of plaintiff's Third Cause of Action, alleging fraud against her, claiming she "intentionally forged the signature of decedent" on the Change of Beneficiary form. Initially, the sole criterion to dismiss a complaint is whether the pleading, and the factual allegations contained within its four corners, manifests any cause of action cognizable at law (*see Gaidon v. Guardian Life Ins. Co. of America*, 94 NY2d 330 [1999]; *Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]). "To withstand dismissal, the requisite elements of the cause of action must be discernable from the pleadings, and the complaint must give notice of the transactions and occurrences to be proved" (CPLR 3013; *see Dolphin Holdings, Inc. v Gander & White Shipping, Inc.*, 122 AD3d 901[2014]).

On a motion to dismiss the complaint, pursuant to CPLR 3211 (a) (7), for failure to state a cause of action, the court must afford the pleading a liberal construction, accept as true all the facts alleged therein, give the nonmoving plaintiff the benefit of all favorable inferences, and determine only whether the alleged facts fit within any cognizable legal theory, and not whether plaintiff can ultimately prove such facts (*see J.P.Morgan Securities, Inc. v Vigilant Ins. Co.*, 21 NY3d 324 [2013]; *People ex rel. Cuomo v Coventry First LLC*, 13 NY3d 108 [2009]; *Odierna v RSK, LLC*, 171 AD3d 769 [2d Dept 2019]; *Ramirez v Donado Law Firm, P.C.*, 169 AD3d 940 [2d Dept 2019]; *Webster v Sherman*, 165 AD3d 738 [2d Dept. 2018]; *Murphy v Department of Educ. of the City of N. Y.*, 155 AD3d 637 [2017]; *Bank of New York Mellon Trust Co., N.A. v Universal Dev., LLC*, 136

AD3d 850 [2016]). A motion to dismiss merely addresses the adequacy of a pleading, and does not reach the substantive merits of plaintiff's cause of action (*see Kaplan v New York City Dep't. of Health and Mental Hygiene*, 142 AD3d 1050 [2016]; *Lieberman v Green*, 139 AD3d 815 [2016]). Whether the pleading will later survive a summary judgment motion, or plaintiff will ultimately prevail on the claims, is not relevant on a pre-discovery motion to dismiss (*see Lieberman v Green*, 139 AD3d 815; *Tooma v Grossbarth*, 121 AD3d 1093 [2014]).

A CPLR 3211 (a)(7) motion may be employed to dispose of an action in which the plaintiff has failed to state a claim cognizable at law, or an action in which plaintiff has identified a cognizable cause of action, but failed to assert a material allegation necessary to support the cause of action.

The elements of a cause of action to recover damages for fraud are “a misrepresentation or a material omission of fact which was false and known to be false by [the] defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury’ ” (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 178 [2011], quoting *Lama Holding Co. v Smith Barney*, 88 NY2d 413, 421 [1996]). Moving defendant contends that the necessary material allegation of “reliance” has not been properly pleaded herein, as same was allegedly made to a third party. The complaint states that defendant, Chau, “intended to defraud by forging the Change of Beneficiary in order to have Metlife pay the death benefits to her mother, rather than the lawful beneficiary, namely the Plaintiff.” Plaintiff's reliance on the cases of *Buxton Mfg. Co. v Valiant Moving & Stor.*, 239 AD2d 452 (2d Dept 1997) and *Ruffing v Union Carbide Corp.*, 308 AD2d 526 (2d Dept 2003), for the determination that fraud may exist when a misrepresentation is made to a third party, resulting in injury to the plaintiff, is unavailing, as those opinions were factually overruled by the decisions in *Pasternack v Laboratory Corp of America Holdings*, 27 NY3d 817 (2016), and its progeny.

As a result, in the case at bar, plaintiff failed to state a cause of action sounding in fraud based on its allegation that defendant's misrepresentations were made to third party, MetLife, because she failed to also allege that the third party “acted as a conduit to relay the false statement to plaintiff, who then relied on the misrepresentation to his detriment” (*Pasternack v Laboratory Corp of America Holdings*, 27 NY3d at 828; *see Robles v Patel*, 165 AD3d 858 [2d Dept 2018]; *New York Tile Wholesale Corp. v Thomas Fatato Realty Corp.*, 153 AD3d 1351 [2d Dept 2017]). Further, plaintiff has failed to assert in what way the alleged forgery was “relied upon” by her, and what her “detriment” was (*see CPLR 3013 and 3016[b]*). Consequently, the branch of defendant, Chau's motion seeking dismissal of the Third Cause of Action, for fraud against her, is granted.

The motion also seeks to dismiss the remaining two causes of action against defendant, Chau, *i.e.*, aiding and abetting fraud, and conspiracy to commit fraud. “To recover for aiding and abetting fraud, the plaintiff must plead the existence of an underlying fraud, knowledge of the fraud by the aider and abettor, and substantial assistance by the aider and abettor in the achievement of the fraud” (*Fox Paine & Co., LLC v Houston Cas. Co.*, 153 AD3d 678, 679 [2d Dept 2017]; *see Land v Forgione*, 177 AD3d 862 [2d Dept 2019]; *Betz v Blatt*, 160 AD3d 689 [2d Dept 2018]). Here, the complaint did not meet the specificity requirements to sufficiently plead the existence of an underlying fraud, and, as a result, the cause of action for aiding and abetting cannot survive, and this branch of the motion to dismiss plaintiff's first Fourth Cause of Action is granted.

The branch of defendant, Chau's motion seeking dismissal of plaintiff's second Fourth Cause of Action, for "conspiracy to commit fraud," is granted. New York does not recognize an independent tort cause of action for civil conspiracy (*see Vetro v Middle Country Cent. School Dist.*, 148 AD3d 964 [2d Dept 2017]; *Oseff v Scotti*, 130 AD3d 797 [2015]; *Rose v Different Twist Pretzel, Inc.*, 123 AD3d 897 [2014]).

The parties' remaining requests for relief, contentions, and/or arguments, are either without merit, or need not be addressed in light of the foregoing determinations.

Accordingly, defendant, Hong Yung Chau's motion to dismiss, pursuant to CPLR 3211 (a) (7), is granted, and the complaint is dismissed as against said defendant. Any other requested relief not expressly addressed herein has nonetheless been considered by this Court and is hereby denied.

This shall constitute the Decision and Order of the Court.

Dated: July 13, 2021



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LOURDES M. VENTURA, J.S.C.

