

Yecheng Hou v Xiang Zhang

2022 NY Slip Op 30265(U)

January 10, 2022

Supreme Court, New York County

Docket Number: Index No. 655928/2020

Judge: Arthur F. Engoron

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR ENGORON PART 37

Justice

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<p>YECHENG HOU, YELEI HOU,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> <p>XIANG ZHANG, TD BANK, N.A., TRISTATE AUTO SERVICE CENTER INC., IMPERIAL MOTOR INC.,</p> <p style="text-align: center;">Defendants.</p> <p>-----X</p>	<p>INDEX NO. <u>655928/2020</u></p> <p>MOTION DATE <u>11/03/2021</u></p> <p>MOTION SEQ. NO. <u>002</u></p>
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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion for

DEFAULT JUDGMENTS

Upon the foregoing documents and for the reasons stated hereinbelow, the motion of plaintiffs' Yecheng Hou a/k/a Nebular Hou ("Nebular") and Yelei Hou a/k/a Richard Hou ("Richard," collectively "the Hous") for a default judgment against defendants Xiang Zhang a/k/a Terry Zhang ("Terry"), Tristate Auto Service Center Inc. ("Tristate"), and Imperial Motor Inc. ("Imperial," collectively "The Defaulting Defendants") only is granted.

Additionally, plaintiffs' cause of action against defendant TD Bank, N.A. ("TD Bank") is dismissed with prejudice.

Background

In mid-2017 Nebular met Terry and by October 2017 they began "a romantic relationship." NYSCEF Doc. No. 37.

Also in October 2017, Terry informed Nebular that his bank account, containing more than \$100,000, was "frozen" and that his employer, Tristate, was "struggling financially." NYSCEF Doc. No. 37.

Unfortunately, Nebular trusted Terry.

i. The Loan

In November 2017 Terry asked Nebular for a personal loan of \$100,000.00 and Nebular orally agreed to lend Terry the money "through multiple transfers and payments of money from November 2017 to February 2018." NYSCEF Doc. No. 37. In return Terry promised to repay Nebular "no later than May 2018" ("The Loan"). Id.

Nebular affirms that she honored her part of The Loan, making transfers and payments “to Terry and to others at his request” that were “largely comprised of direct bank transfers and/or check payments” as well as through “smartphone applications like Venmo, Zelle, and Quickpay.” NYSCEF Doc. No. 37.

In May 2018 Terry failed to repay The Loan; and to this day he has not. NYSCEF Doc. No. 37.

ii. The Withdrawals

In early July 2018 a “loan agent” friend of Terry’s advised Nebular that, in order to get an advantageous interest rate on a mortgage for a condominium she was trying to buy, she should open a joint checking account with someone she trusted. NYSCEF Doc. No. 37.

On or about July 9, 2018, Nebular used \$377,000.00 to open a joint bank account with Terry at TD Bank (“the TD Account”). NYSCEF Doc. No. 38. Although Terry’s name was on the account, the funds were “completely” Nebular’s. NYSCEF Doc. No. 37. According to Nebular, “Terry did not have my permission to unilaterally use, handle, or manage the funds in the TD Account.” Id.

The apartment sale soon fell through (“issues with the condominium seller”) but Nebular, on the advice of Terry’s friend, kept the TD Account open in case she found a new place to purchase. NYSCEF Doc. No. 37.

On July 26, September 24, and October 7, 2018, a person, not Nebular, went to various TD Bank branches in Flushing, Queens, and withdrew funds (specifically: \$5,000, \$15,000, and \$25,000) from the TD Account using a withdrawal slip bearing Terry’s name and what appears to be his signature on the front, and what appears to be his driver’s license number and expiration date on the back. NYSCEF Doc. Nos. 39, 40, and 41.

After learning of each unauthorized withdrawal Nebular confronted Terry, but he would deny taking the money and instead blame his identity having previously been stolen, and Nebular trusted Terry. NYSCEF Doc. No. 37.

In July 2019, Nebular, having found a new condominium to buy, asked Terry to go to TD Bank on her behalf to close out the TD Account and transfer the balance of \$335,045.60 to her personal Chase account. NYSCEF Doc. No. 37.

On July 18, 2019, Terry went to a TD Bank branch to close out the TD Account and, afterwards, presented Nebular with a check for only \$308,000.00. NYSCEF Doc. No. 37.

When confronted by Nebular about the rest of her money, Terry explained that, on the alleged advice of a bank representative, he had “held back” \$27,045.60 from the TD Account to open a separate bank account, in only his name, so that “TD Bank’s investigation concerning the previously unauthorized withdrawals from the TD Account could continue.” NYSCEF Doc. No. 37.

Nebular, for the last time, trusted Terry. NYSCEF Doc. No. 37.

In September 2019 Nebular discovered that Terry had been unfaithful and ended their romantic relationship. NYSCEF Doc. No. 37.

In October 2019, Nebular returned to TD Bank to further investigate the previous mysterious withdrawals, finally seeing the withdrawal slips with a signature appearing to match Terry's. NYSCEF Doc. No. 37.

Nebular now believes Terry was not telling the truth about his stolen identity, the TD Account withdrawals, or the held-back funds. NYSCEF Doc. No. 37.

Nebular says she has "attempted to call and message Terry (and his mother) regarding" The Loan and the TD Account withdrawals and hold back, but has failed to receive any response. NYSCEF Doc. No. 37.

Nebular now believes Terry took a total of \$72,045.60 from her. NYSCEF Doc. No. 37.

iii. Richard's Ford Edge

In September 2018, Richard, then a graduate student in Boston, decided to sell a 2014 Ford Edge, VIN 2FMDK4JC6EBB66472, he owned with his father, non-party Xingmin Hou. NYSCEF Doc. No. 44.

Knowing Richard wanted to sell his vehicle, and that Terry worked for Tristate, a car center with dealer affiliates, Nebular facilitated a conversation between the two, during which they "agreed that [Terry] would take possession of the Ford Edge on [Richard's] behalf and market it, make efforts with his employer [Tristate] and affiliates [Imperial] to find a purchaser, who, subject to [Richard's] approval, would buy" the vehicle for a price amenable to all. NYSCEF Doc. No. 44. In exchange, Richard would pay "a reasonable commission to Terry based on the sales price of the Forde Edge for his, his employer's and affiliates' marketing and sales work." Id.

On September 7, 2018, at the direction of Terry, two men met with Richard in Massachusetts and took possession of the Ford Edge and its ownership documents. NYSCEF Doc. No. 44. On September 8, 2028, Terry told Richard he was in possession of the vehicle. Id.

Between September and February 2019 Richard reached out "on a monthly basis" for updates on the vehicle and was each time told by Terry it had not yet found a buyer. NYSCEF Doc. No. 44.

According to the Certificate of Title for a 2014 Ford Edge, VIN 2FMDK4JC6EBB66472, Terry and his father (or someone signing their names) transferred ownership of the vehicle on October 1, 2018, to Imperial. NYSCEF Doc. No. 45.

According to a Certificate of Sale and a Bill of Sale for a 2014 Ford Edge, VIN 2FMDK4JC6EBB66472, the vehicle was sold for \$14,000 to Frederick Chevrolet of Lebanon, Pennsylvania, on Octobers 25, 2018. NYSCEF Doc. Nos. 46 and 47.

On February 2, 2019, Groundhog Day, Richard messaged Terry and told him he had changed his mind about selling the Ford Edge and asked Terry to hold on to the vehicle while he found new insurance and a place to park it in Boston. Terry agreed to hold on to the vehicle. NYSCEF Doc. No. 44.

Between March and August of 2019 Richard repeatedly reached out to Terry to obtain information about the Ford Edge to facilitate his hunt for insurance and parking. But each time Terry would put off answering, while still leaving Richard believing the vehicle was still with Terry and Tristate. NYSCEF Doc. No. 44.

In October 2019, a newly single Nebular inquired directly with Tristate, Terry's employer, about Richard's Ford Edge and found out that it had been sold a year before. NYSCEF Doc. No. 37.

Richard now believes that his sister's ex-boyfriend, Terry, caused the sale documents to be signed with forged signatures and, with Tristate, facilitated the sale of the Ford Edge through Tristate's affiliate Imperial. NYSCEF Doc. No. 44.

Neither Richard nor his father has ever received any compensation for the Ford Edge.

Procedural History

On November 11, 2020, plaintiffs sued Terry, Tristate, Imperial, and TD Bank, asserting fifteen causes of action: (1) breach of contract as against Terry; (2) breach of contract as against The Defaulting Defendants; (3) conversion as against Terry; (4) "breach of bailment" as against The Defaulting Defendants; (5) conversion as against The Defaulting Defendants (in the alternative); (6) money had and received as against Terry; (7) money had and received as against The Defaulting Defendants; (8) unjust enrichment as against Terry; (9) unjust enrichment as against The Defaulting Defendants (in the alternative); (10) fraud as against Terry; (11) fraud as against The Defaulting Defendants; (12) breach of fiduciary duty as against Terry; (13) breach of fiduciary duty as against Terry and Tristate; (14) aiding and abetting breach of fiduciary duty as against Imperial; and (15) negligence as against TD Bank. NYSCEF Doc. No. 1

On December 11, 2020, TD Bank was served; its time to answer was later extended by stipulation 13 times. NYSCEF Doc. Nos. 2, 6, 13, 14, 15, 16, 19, 20, 23, 24, 25, 26, 48, and 50. In a stipulation of discontinuance dated January 5, 2022, plaintiffs agreed to discontinue with prejudice their claim against TD Bank only. NYSCEF Doc. No. 51.

On December 14, 2020, pursuant to CPLR 308(2), Terry was served at his place of business, Tristate. NYSCEF Doc. 3.

On December 15, 2020, pursuant to Business Corporation Law 306(b)(1), Tristate and Imperial were served via the Secretary of State of New York. NYSCEF Doc. Nos. 4 and 5.

In documents dated July 14, 2021, Tristate and Imperial were given additional notice. NYSCEF Doc. No. 33 and 34.

In another document dated July 14, 2021, pursuant to CPLR 3215(g)(3), Terry was served additional notice. NYSCEF Doc. No. 35.

On October 12, 2021, plaintiffs moved for a default judgment against The Defaulting Defendants only. NYSCEF Doc. No. 27.

To date none of The Defaulting Defendants have appeared or responded to the instant complaint, and their time to do so has expired.

Discussion

To obtain a default judgement, a plaintiff must submit proof of service of the summons and complaint, the facts constituting the claim, the default, and the amount due. CPLR 3215.

“Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified complaint need only allege enough facts to enable a court to determine that a viable cause of action exists.” Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

Here, plaintiffs have provided proof of service and additional notice while The Defaulting Defendants have failed to appear, answer, or otherwise respond to the complaint, and their time to do so has expired. Consequently, plaintiffs are entitled to a judgement against The Defaulting Defendants. CPLR 3215(a).

In support of the first cause of action (breach of contract as against Terry) Nebular has submitted facts constituting: a claim of an orally contracted loan for \$100,000, Terry’s breach, and Terry’s default. Therefore, Nebular is entitled to a judgment in the amount of \$100,000 against Terry for breach of contract.

Furthermore, the sixth and eighth causes of action (money had and received, and unjust enrichment as against Terry) should be dismissed as duplicative of the first.

In support of the second cause of action (breach of contract as against the Defaulting Defendants) Richard has submitted facts constituting: a claim of an orally contracted agreement for Terry, Tristate, and Imperial to market and sell Richard’s Ford Edge at a mutually agreed upon price in exchange for a reasonable commission; the sale of the vehicle and The Defaulting Defendants’ default. Therefore, Richard is entitled to a judgment against The Defaulting Defendants in the amount of \$14,000.00, the amount for which Richard’s Ford Edge was sold.

Further, the fourth, fifth, seventh, ninth, eleventh, thirteenth, and fourteenth causes of action (“breach of bailment,” conversion, money had and received, unjust enrichment, fraud, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, all as against The Defaulting Defendants) should be dismissed as duplicative of the second.

In support of the tenth cause of action (fraud as against Terry) Nebular has submitted facts constituting: a claim of fraud in the amount of \$72,045.60 from the TD Account (withdrawals of \$5,000 + \$15,000 + \$25,000 + \$27,045.60 in “held back” funds) through Terry’s alleged (false)

oral agreement not to take Nebular’s money from the TD Account with an intent to deceive Nebular, an agreement she reasonably relied upon to her detriment.

The third and twelfth causes of action (conversion and breach of fiduciary duty as against Terry) should be dismissed as duplicative of the third.

And, finally, the fifteenth cause of action (negligence as against TD Bank) should be dismissed with prejudice pursuant to the stipulation of discontinuance between the parties.

Conclusion

Therefore, the Clerk is hereby directed to enter a default judgment in favor: (1) of plaintiff Yecheng Hou a/k/a Nebular Hou (“Nebular”) against defendant Xiang Zhang a/k/a Terry Zhang (“Terry”) on the first cause of action in the amount of \$100,000.00; (2) of Yelei Hou a/k/a Richard Hou against Terry, Tristate Auto Service Center Inc., and Imperial Motor Inc., jointly and severally, on the second cause of action in the amount of \$14,000.00; and (3) in favor of Nebular as against Terry on the tenth cause of action in the amount of \$72,045.60; plus statutory interest. Accordingly, the third through ninth and eleventh through fourteenth causes of action are dismissed as duplicative.

Finally, pursuant to a stipulation of discontinuance between the parties, the Clerk is hereby directed to dismiss with prejudice plaintiffs’ cause of action against TD Bank N.A..

1/10/2022
DATE

ARTHUR ENGORON, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: