

**Wise Winner USA Corp. v Sunrise Capital Partners
Mgt. LLC**

2022 NY Slip Op 31075(U)

April 1, 2022

Supreme Court, New York County

Docket Number: Index No. 652347/2018

Judge: Louis L. Nock

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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. LOUIS L. NOCK PART 38M

Justice

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WISE WINNER USA CORPORATION and CHANG
SHENG-DEAN,

Plaintiffs,

INDEX NO. 652347/2018

MOTION DATE 08/12/2021

MOTION SEQ. NO. 003

- v -

SUNRISE CAPITAL PARTNERS MANAGEMENT LLC,
PROJECT TRI-FORCE LLC, HEMANG MEHTA, and SCP
VENTURES LLC,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 74, and 75 were read on this motion to REARGUE.

LOUIS L. NOCK, J.

Upon the foregoing documents, it is ordered that defendants’ motion to reargue their motion for summary judgment to dismiss the second cause of action, for an account stated, in connection with the Sheng-Dean Note,¹ which was denied in this court’s underlying Decision and Order filed July 13, 2021 (NYSCEF Doc. No. 70) (the “Underlying Order”), is granted, per the following memorandum.²

Plaintiff Chang Sheng-Dean asserted two causes of action seeking to enforce the Chang Sheng-Dean Note: (i) breach of contract; and (ii) an account stated. The Underlying Order granted defendants summary judgment dismissing the breach of contract claim, holding that the Chang Sheng-Dean Note was criminally usurious. However, the Underlying Order refrained from dismissing the account stated claim, holding that “defendants failed to advance any

¹ Defined terms selected in this court’s underlying Decision and Order filed July 13, 2021 (NYSCEF Doc. No. 70), carry over into this Decision and Order.

² Familiarity with the Underlying Order is presumed.

arguments in support of dismissing this cause of action in their initial moving [papers]; instead waiting until their reply to argue that plaintiffs cannot circumvent the usury statute by pleading an account stated claim” (NYSCEF Doc. No. 70 at 11). However, upon reflection, it appears that the Underlying Order overlooked the fact that the initial moving papers actually did apply defendants’ usury defense against both of plaintiff Chang’s claims, not just his first claim for breach of contract. The Notice of Motion (NYSCEF Doc. No. 25) requested that the court grant SCP Ventures summary judgment “on its Eighth Affirmative Defense of usury (Penal Law §§ 190.40, 42) and dismissing *Chang Sheng-Dean v. Sunrise Capital Partners Management, LLC d/b/a SCP Ventures LLC*, Index No. 652349/2018” (NYSCEF Doc. No. 25 at 2.)³ The clear indication is – dismissal of *both* causes of action asserted; not just the first cause of action. The referenced Eighth Affirmative Defense makes particular reference to the violation of “applicable usury laws” (NYSCEF Doc. No. 8 ¶ 8).

Consonant with the foregoing observations, defendants’ moving brief in the underlying summary judgment motion practice (NYSCEF Doc. No. 42) addressed itself to all causes of action and did not constrain itself to only the first cause of action for breach of contract. Thus, the Underlying Order’s impression that dismissal of the second cause of action for an account stated was never raised in the initial moving papers was in error.

As the Underlying Order held, the Sheng-Dean Note is criminally usurious. There is persuasive authority for the premise that a plaintiff “may not circumvent New York’s usury laws through an account stated claim” (*Professional Merchant Advance Capital, LLC v C Care Servs., LLC*, 2015 WL 4392081 at *6 [SD NY, July 15, 2015]; *see also, In re Falk*, 83 F Supp 817, 821

³ The captioned case-in-chief (index No. 652347/2018), naming Wise Winner USA Corporation as the party plaintiff, is, in fact, consolidated with a second action (index No. 652349/2018), which names Chang Sheng-Dean as the party plaintiff.

[SD NY 1949] [“The bargains of 1931 and 1937 providing as they did for a greater rate of interest than that permitted by law were illegal. They were void in toto. They cannot be separated into two parts – one invalid providing for the payment of compound interest from the dates of the notes, and the other legal providing for an account stated and the creating of a new and different obligation superseding and extinguishing the prior debt. The entire transactions of 1931 and 1937 were a nullity.”], *affd* 180 F2d 562 [2d Cir 1950]).

CPLR 2221 (d) (2) provides for reargument when an underlying order overlooked or misapprehended matters of fact or law in its determination. This is such an instance, as the Underlying Order overlooked the fact that defendants had applied their usury argument to not only the first cause of action for breach of contract; but to the entirety of the causes of action, including the second cause of action for an account stated. Therefore, the motion for reargument is granted and, upon reargument, the second cause of action with regard to the Sheng-Dean Note is similarly dismissed.

Accordingly, it is

ORDERED that the defendants’ motion to reargue their motion for summary judgment to dismiss the second cause of action, for an account stated, in connection with the Sheng-Dean Note, which was denied in this court’s underlying Decision and Order filed July 13, 2021 (NYSCEF Doc. No. 70), is granted; and it is further

ORDERED that, upon reargument, the second cause of action for an account stated, in connection with the Sheng-Dean Note, is dismissed; and it is further

ORDERED that the portion of said Decision and Order denying dismissal of said second cause of action is hereby vacated.

This will constitute the decision and order of the court.

ENTER:



<u>4/1/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE