

Jingyue Wei v SMI USA Group LLC
2022 NY Slip Op 31438(U)
May 2, 2022
Supreme Court, New York County
Docket Number: Index No. 160659/2021
Judge: Andrew Borrok
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X

JINGYUE WEI, BULIN ZHANG, XIANGHUA CHEN,
QIQIANG WANG, XIN LIU, YUKMAN LEE, GUO WU,
HAIFENG JIANG, JIE FENG, YONGHONG WEN,
JIANGKUI LUO, YAN'E LIU, RINA LU, MEIQI GU, QING
YANG, CAIBAO XU, JIPING MA, CHUN ZENG, WENZHU
LU, LEI LU, XIAOCHUAN GONG, XIWEN PENG, WENHU
ZHU, HAN ZHU, YUNTAO WANG, LAMEI WU, NA
ZHANG, YUN SU, JIAQUN YANG, XUBO ZHANG, QIANG
WU, GUIFANG DENG, JIAN CHEN, AIHUA MU, PARTY
PLAY LIMITED, GENESIS INTERNATIONAL GROUP
CO., LTD., HONGKONG SEA STAR SPORTS GOODS
LIMITED, EAGER GLOBAL LIMITED,

INDEX NO. 160659/2021
MOTION DATE 04/06/2022
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Plaintiff,

- v -

SMI USA GROUP LLC, SMI 138 E 50 ST LLC,50 LEX
DEVELOPMENT LLC, FORISE FLUSHING (NY), LLC,KG
MANHATTAN 126 FINANCE LTD., GDC 138 E 50
LLC,KNIGHTS GENESIS INVESTMENT LIMITED,
GENESIS DEVELOPMENT COMPANY, IC 50
DEVELOPMENT LLC,50 LEX DEVELOPMENT
HOLDINGS LLC,50 LEX DEVELOPMENT MEZZ
LLC,CERUZZI HOLDINGS LLC,CERUZZI PROPERTIES
LLC,DUNFEI CHEN, JIA TAO, FENG GAO, JINCHENG
YUAN, QIANYI XIE, CORPORATE DOES 1 THROUGH
10, JOHN DOES ONE THROUGH TEN,

Defendant.

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 67

were read on this motion to/for ALTERNATE SERVICE

Upon the foregoing documents, the motion for alternate service is granted solely to the extent of authorizing plaintiffs to serve Jincheng "Jason" Yuan by service through email and on Mr. Yuan's counsel and and Qianyi "Vincent" Xie by service through email. The branch of the motion seeking alternate service on Knights Genesis Investment Limited (Knights Genesis) by serving Knights Genesis's counsel and by email, the motion is denied because Knights Genesis's

counsel is seeking to withdraw as counsel in another action. This likely includes a breakdown in communication such that it can not be said that service on outgoing counsel is reasonably calculated to provide notice to Knights Genesis. Compliance with the Hague Convention is required.

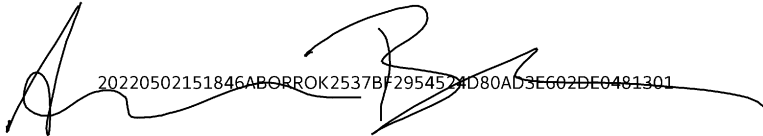
Reference is made to two pending actions in this court, (i) *Yang, Yunjie Frank v Knights Genesis Group*, Index No. 651118/2021 (Borrok, J.) (the **Yang Action**), in which Mr. Yuan is represented by Offit Kurman, P.A., and (ii) *Dragons 516 Limited v Knights Genesis Investment Limited et al*, Index No. 653187/2021 (Reed, J.) (the **Dragons Action**), in which Knights Genesis Investment Limited (**Knights Genesis**) is represented by Thompson Coburn Hahn & Hessen LLP. Counsel for Knights Genesis has filed a motion to withdraw as counsel because Knights Genesis has ceased communications with its counsel (Index No. 653187/2021, NYSCEF Doc. No. 149, ¶ 4). In the Yang Action, this court authorized alternate service upon Mr. Yuan by email based on affirmations that showed that the plaintiffs in that case had attempted service at all known and discoverable addresses and were unable to effectuate service.

CPLR 308(5) allows for personal service on an individual in a manner directed by the court when service by the other statutory methods prove to be impractical. Service by email is an acceptable alternative method of service as long as plaintiff has established that service by email is “reasonably calculated to apprise defendants of the pendency of the action” (*Alfred E. Mann Living Trust v ETIRC Aviation S.A.R.L.*, 78 AD3d 137, 142 [1st Dept 2010]).

The motion is granted solely to authorize alternative service of Mr. Yuan and Mr. Xie. Attempts to serve Mr. Yuan by conventional means have not been successful as demonstrated by this court's decision in the Yang Action and based on plaintiffs' unsuccessful efforts to find an address at which to serve him. The plaintiffs have demonstrated that Mr. Yuan is actively being represented by counsel in the related Yang Action. The plaintiffs have demonstrated that, as in the Yang Action, service by conventional methods would be impracticable, and service on Mr. Yuan's counsel is the surest method to provide notice of the action to Mr. Yuan (*Matter of Renren Inc. Derivative Litig. v XXX*, 2020 NY Misc LEXIS 2132 *63-64 [Sup Ct, NY County 2020]). The plaintiffs also represent that a request is pending in the Dragons Action to allow for alternate service on Mr. Xie. The plaintiffs represent that they have searched unsuccessfully for a valid address at which to serve Mr. Xie, and that they only have an active email address for him. Service upon Mr. Xie by that email is therefore appropriate.

The motion is denied as to the alternative service of Knights Genesis. The plaintiffs have an overseas address at which to serve Knights Genesis, and service must be effectuated pursuant to the Hague Convention. It is of no moment that the address is unconfirmed or that service by the Hague Convention may take a few months. The Court has now been made aware that service on Knights Genesis's counsel in the Dragon Action is also not authorized and that counsel for Knights Genesis' has sought to withdraw in that action because of a breakdown in communication. Service on counsel is therefore not reasonably calculated to apprise the defendant of the action (*Alfred E. Mann Living Trust*, 78 AD3d at 142; *In re GLG Life Tech Corp. Sec. Litig.*, 287 FRD 262, 267 [SD NY 2012] [requiring adequate "recent contact" between a client and counsel for authorization to seek leave to serve by counsel]).

It is accordingly hereby ORDERED that the plaintiffs' motion for alternate service is granted solely to the extent of permitting alternate service on Mr. Yuan by email and by service on Mr. Yuan's counsel and on Mr. Xie by email.


20220502151846ABORROK2537B72954524D80AD3E602DE0481301

5/2/2022
DATE

ANDREW BORROK, J.S.C.

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