

Yunjie Yang v Knights Genesis Group

2022 NY Slip Op 32126(U)

July 6, 2022

Supreme Court, New York County

Docket Number: Index No. 651118/2021

Judge: Andrew Borrok

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

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YUNJIE YANG, YING SHEN, LIHANG XU, LIANG ZHAO,
Plaintiff,

- v -

KNIGHTS GENESIS GROUP, JIANGCHENG YUAN,
KATIE CHEN, TINA TANG, 1989 INVESTOR LLC, KG
BAYSIDE LLC, JIANFEI CHEN, SILVER CITY CAPITAL
INC.,

Defendant.

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INDEX NO. 651118/2021

MOTION DATE _____

MOTION SEQ. NO. 006 008

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 100, 101, 102, 112, 116

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 113, 114, 134, 135, 137, 138, 139

were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons set forth on the record (7.6.22), Tina Tang’s motion (Mtn. Seq. No. 006) to dismiss the Intervenor Complaint (NYSCEF Doc. No. 73) as against her must be denied because (i) the well pled Intervenor Complaint properly states causes of action against Ms. Tang for fraudulent inducement, aiding and abetting fraud, breach of fiduciary duty, money had and receive, unjust enrichment, fraudulent conveyance, and access to books and records, and does not otherwise improperly group plead (*Stewart Tit. Ins. Co. v Liberty Tit. Agency, LLC*, 83 AD3d 532, 533 [1st Dept 2011]) and (ii) the Intervenor (hereinafter defined) sufficiently allege their corporate piercing claims because they allege, among other things, that Ms. Tang, Jiangcheng Yuan, and Katie Chen abused the corporate form and exercised control and dominion over Knights Genesis Group (**Knights Genesis**), 1989

Investor LLC (**the Company**), and KG Bayside LLC (**KG Bayside**) because the three entities (a) shared a single office, (b) have overlapping personnel, ownership, and directors, (c) all use Knights Genesis emails to conduct business, (d) comingled funds of the entities, and (e) were used to fraudulently induce investments, which were transferred for the Defendants' personal use, and that the Defendants used such three entities to commit a fraud on the Intervenors by inducing them to invest in the Company and KG Bayside with the intent to defraud them and keep their investments for the Defendants' personal use. Ms. Tang signed the subscription agreements for the Company (NYSCEF Doc. No. 12). She alleges in her affidavit that the Company had no operating agreement and that she was not the manager (Tang Aff., ¶ 4 [NYSCEF Doc. No. 101]). Either, the Company was properly formed and this is *prima facie* evidence of her abuse of the corporate form, or it was not, in which case she signed personally. Either way dismissal is not appropriate.. Ms. Tang's motion (Mtn. Seq. No. 008) to dismiss the cross-claim for common-law indemnification (Mtn. Seq. No. 008) however must be granted because the Intervenors do not allege any predicate liability against any of the other defendants pursuant to which Ms. Tang could be vicariously liable (*Richards Plumbing & Heating Co., Inc. v Washington Group Intl., Inc.*, 59 AD3d 311, 312 [1st Dept 2009]). The Intervenors seek to hold the other defendants liable for their own alleged misconduct.

The Relevant Facts and Circumstances

The Intervenors allege that in 2015, Mr. Yuan solicited them to invest in the Company (Intervenor Complaint, ¶ 1). The Company's purpose was to fund a real estate development project that was being managed by another of Mr. Yuan's companies, Knights Genesis Group (**Knights Genesis**; *id.*). According to the Intervenor Complaint, Mr. Yuan guaranteed the

Intervenors a minimum 60% return on their investment within three years regardless of whether the project was completed (*id.*). Based on this guaranteed minimum return, the Intervenors each invested \$500,000 in the Company and executed a subscription agreement (*id.*, ¶ 2). By executing the subscription agreement, the Intervenors each received an ownership interest and preferred stock in the Company (*id.*, ¶ 25). The subscription agreements were countersigned on behalf of the Company by Ms. Tang (*see, e.g.*, NYSCEF Doc. No. 12).

The Intervenors allege that, as the three-year deadline approached, the Defendants advised the Intervenors that the Company's real estate project had been highly profitable (Intervenor Complaint, ¶ 3) and encouraged the intervenors to reinvest their capital into KG Bayside, which was another entity controlled by Knights Genesis, Mr. Yuan, and Ms. Chen, to earn an even larger return in a real estate project being developed in Queens (*id.*). To wit, Mr. Yuan and Ms. Chen allegedly represented that the Intervenors would be given an ownership interest in KG Bayside and earn a guaranteed 9% return per year to be paid out within the next two years (*id.*, ¶¶ 3, 29). The Intervenors allege that instead of reinvesting the money as the Defendants promised that they would do, they fraudulently transferred some of those funds without consideration to Mr. Yuan's father-in-law, Jianfei Chen, and his company, Silver City Capital Inc. (**Silver City**) (*id.*, ¶ 4) so that Mr. Yuan and his wife Ms. Chen together with their business partner Ms. Tang could defraud the intervenors and convert the money for their personal use (*id.*, ¶¶ 29-30, 35).

As relevant to the instant motions, the Intervenors allege that Ms. Tang is a manager of Knights Genesis, the Company, and KG Bayside (Intervenor Complaint, ¶ 13). According to the

Intervenors, Mr. Yuan and Ms. Tang were to advise the Intervenors of all material developments and provide them with financial information and reporting in connection with the Company and its real estate project (*id.*, ¶ 21). This they failed to adequately do other than to offer false assurance (*id.*, ¶¶ 24, 27 and 28). In fact, among other things, according to the Intervenor Complaint, Ms. Tang and Mr. Yuan had Yi Ling advise the Intervenors that, due to a zoning change at the Company's project, further profitability would increase, and that Knights Genesis would redeem the Intervenors' investments when due (*id.*, ¶¶ 24 and 28).

The Intervenors further allege that Knights Genesis, KG Bayside, and the Company are alter egos of Mr. Yuan, Ms. Chen, and Ms. Tang because (i) they share the same office address, (ii) have an overlap in ownership, directors, and personnel, (iii) the owners, directors, and employees all use Knights Genesis email addresses to conduct business for all three entities, (iv) Mr. Yuan, Ms. Chen, and Ms. Tang do not treat the entities as independent profit centers and funds are comingled, and (v) they do not deal at arm's length with each other, but rather use each other's property and pay and guarantee the debts of each other (*id.*, ¶ 15). Notably, there is no operating agreement for the Company (*see*, Del. LLC Law § 18-201[d]).

Yunjie Yang sued Knights Genesis, Mr. Yuan, Ms. Chen, and Ms. Tang as defendants and the Company as a nominal defendant by Summons and Complaint, dated February 17, 2021 (NYSCEF Doc. No. 1) asserting causes of action for breach of the subscription agreements (first cause of action), breach of fiduciary duty (second cause of action), fraudulent inducement (third cause of action), breach of the covenant of good faith and fair dealing (fourth cause of action), piercing the corporate veil (fifth cause of action), an accounting (sixth cause of action), an

equitable accounting (seventh cause of action), to compel arbitration (eighth cause of action), to appoint an arbitrator (ninth cause of action), and for a preliminary injunction (tenth cause of action). Mr. Yang discontinued the complaint against Ms. Tang by stipulation of discontinuance dated August 10, 2021 (NYSCEF Doc. No. 69).

By decision and order dated August 30, 2021 (NYSCEF Doc. No. 71), this Court granted Ying Shen, Liang Zhao, and Lihang Xu's (collectively, hereinafter, the **Intervenors**) motion to intervene and file a complaint (the **Intervenor Complaint**) against Knights Genesis, the Company, KG Bayside, Mr. Yuan, Ms. Chen, Ms. Tang, Mr. Chen, and Silver City. The Intervenor Complaint asserts causes of action for fraudulent inducement (first causes of action), aiding and abetting fraud (second cause of action), breach of fiduciary duty (third cause of action), aiding and abetting breach of fiduciary duty (fourth cause of action), breach of contract (fifth and sixth causes of action), breach of the covenant of good faith and fair dealing (seventh and eighth causes of action), money had and received (ninth cause of action), unjust enrichment (tenth cause of action), fraudulent conveyance pursuant to Debtor and Creditor Law (**DCL**) §§ 273-275 (eleventh, twelfth, and thirteenth causes of action), conveyance made with intent to defraud pursuant to DCL § 276 (fourteenth cause of action), and statutory and equitable access to books and records (fifteenth and sixteenth causes of action). As relevant to the instant motions, causes of action 1-3 and 9-16 are asserted against Ms. Tang.

Mr. Yuan, Ms. Chen, Mr. Chen, KG Bayside, and Silver City (collectively, hereinafter, the **Answering Defendants**) filed an answer to the Intervenor Complaint asserting a cross-claim against Ms. Tang (NYSCEF Doc. No. 103). The cross-claim is for common-law

indemnification. The Answering Defendants allege that (i) Ms. Tang was the managing member of the Company, (ii) that she incorporated the Company, (iii) that she opened and controlled the Company's bank accounts, (iv) that she maintained the Company's books and records, and (v) that she drafted and prepared the subscription agreements by which the Plaintiffs invested in the Company. The Answering Defendants seek common-law indemnification from Ms. Tang if they are ultimately found liable for any wrongdoing with respect to the Plaintiffs' investment in the Company or the transfer of funds from the Company's bank accounts.

Discussion

On a motion to dismiss, the Court must afford the pleading a liberal construction and accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Pursuant to CPLR 3211(a)(7), a party may move to dismiss where the pleading fails to state a cause of action.

I. Dismissal of the Intervenor Complaint is denied

Ms. Tang argues that the Intervenor Complaint impermissibly engages in group pleading because certain allegations are leveled against the so-called "Fraud Defendants" and the Defendants generally. The argument fails. Where, as here, pleading against a group alleges that each defendant engaged in the same wrongdoing, such pleading is permissible (*Stewart Tit. Ins. Co. v Liberty Tit. Agency, LLC*, 83 AD3d 532, 533 [1st Dept 2011]). As to Ms. Tang, given her execution of the subscription agreements, dismissal is particularly inappropriate.

Ms. Tang also argues that the claims to pierce the corporate veil must be dismissed. To pierce the corporate veil, a plaintiff must demonstrate that (i) the owners exercise complete domination of the corporation in respect to the transaction attacked, and (ii) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in the plaintiff's injury (*Franklin v Daily Holdings, Inc.*, 135 AD3d 87, 95 [1st Dept 2015]). At the pleading stage, a plaintiff must do more than merely allege that an individual engaged in improper acts or acted in bad faith, but must allege facts that, if proved, indicate that the individual exercised complete domination or control and abused the privilege of doing business in the corporate form to perpetuate a wrong or injustice (*East Hampton Union Free School Dist. v Sandpebble Builders, Inc.*, 16 NY3d 775, 776 [2011]). The well pled Intervenor Complaint easily satisfies this standard. As discussed above, the Intervenor Complaint has pled that Ms. Tang, Mr. Yuan and Ms. Chen exercise dominion and control over Knights Genesis, KG Bayside, and the Company and that they have abused the corporate form to perpetrate a wrong or injustice because the three entities (i) all share a single office, (ii) have overlapping personnel, ownership, and directors (Intervenor Complaint, ¶ 15), (iii) all use Knights Genesis emails to conduct business (*id.*), (iv) comingled funds of these three entities (*id.*) and (v) used these entities to fraudulently induce investments and then transferred them to another for their own personal use (*id.*, ¶ 45). The undisputed fact that the Company did not have an operating agreement and that Ms. Tang acted on its behalf may also constitute *prima facie* evidence of abuse of the corporate form. Thus, the motion must be denied.

The causes of action sounding in fraud satisfy 3016(b)

To state a cause of action for fraudulent inducement, there must be a knowing misrepresentation of material fact which is intended to deceive another party and induce that party to act on it,

resulting in injury (*Genger v Genger*, 144 AD3d 581, 582 [1st Dept 2016]). To allege a cause of action for aiding and abetting fraud, a plaintiff must allege the existence of the underlying fraud, actual knowledge, and substantial assistance (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 503 [1st Dept 2018]). Causes of action sounding in fraud must be pled with particularity (CPLR 3016[b]).

The Intervenor allege that Ms. Tang, along with the other “Fraud Defendants”, represented to the Plaintiffs that they would earn 9% interest per year over two years if they invested the proceeds of their investment in the Company into KG Bayside. They also allege that Ms. Tang and the other Defendants never intended for that money to remain in KG Bayside. Instead, they always intended to transfer the money without consideration to Mr. Chen and Silver City. The Intervenor further allege that Ms. Tang acted as a manager of and exercised control over the Company and KG Bayside, and that she used this position to induce the Intervenor to make their investments. Ms. Tang also undisputedly signed the subscription agreements on behalf of the Company, which set forth the agreement that the Intervenor allege the Defendants never intended to honor. The Intervenor also allege that Ms. Tang worked with Mr. Yuan and Ms. Chen and as a manager of the Company, Knights Genesis, and KG Bayside to help perpetuate the underlying fraud. This is sufficient. For the avoidance of doubt, these allegations are not duplicative of the breach of contract claims, because (i) the breach of contract claims are made solely as against the Company and KG Bayside (not as against Ms. Tang) and (ii) the alleged fraudulent statements are misrepresentations of facts to induce the Plaintiffs to invest, not merely statements regarding performance under the contract.

The Intervenor Complaint sufficiently pleads causes of action for fraudulent conveyance

To state a cause of action for fraudulent conveyance pursuant to DCL § 273, a plaintiff must allege that (i) a transfer was made, (ii) without fair consideration, (iii) that rendered the conveyor insolvent (*ABN AMRO Bank, N.V. v MBIA Inc.*, 17 NY3d 208, 228 [2011]). Under DCL § 274, a plaintiff must allege that (i) the defendant made conveyances, (ii) without fair consideration, (iii) leaving it with unreasonably small capital (*id.*). To state a cause of action pursuant to DCL § 275, a plaintiff must allege that (i) the defendant made conveyances, (ii) without fair consideration, (iii) where the defendant intends or believes that they will incur debts beyond their ability to pay (*CIT Group/Commercial Services, Inc. v 160-09 Jamaica Ave. Ltd. Partnership*, 25 AD3d 301, 302 [1st Dept 2006]). To state a claim for fraudulent conveyance under DCL § 276, a plaintiff must allege that (i) a transfer was made (ii) with the actual intent to hinder, delay or defraud either present or future creditors (*ABN AMRO Bank*, 17 NY3d at 228). The Intervenor Complaint alleges that (i) the Plaintiffs are creditors of the Company and KG Bayside by virtue of their investments, (ii) the Defendants transferred funds without fair consideration, and (iii) such transfers left the Company and KG Bayside either insolvent or with unreasonably small amounts of capital to operate the businesses, and unable to pay their debts. The Intervenor Complaint also sets forth the allegations that transfers were made so that Ms. Tang and the other Defendants could access the funds for their personal use. This states a cause of action under DCL §§ 273-276.

The Intervenor Complaint sufficiently alleges causes of action for breach of fiduciary duty, money had and received, and unjust enrichment

To state a claim for breach of fiduciary duty, a plaintiff must allege that a defendant owed them a fiduciary duty, that the defendant committed misconduct, and that the plaintiff suffered damages

caused by that misconduct (*Besen v Farhadian*, 195 AD3d 548, 549-550 [1st Dept 2021]). In support of her argument for dismissal, Ms. Tang adduces only her own affidavit in which she indicates that she disputes the facts set forth in the complaint. On a CPLR 3211 motion, the Court must accept the facts as set forth in the complaint as true (*Leon*, 84 NY2d at 87-88) – *i.e.*, that she is a managing member and does owe fiduciary duties and that she and her cohorts absconded with the investment money. The Intervenor Complaint alleges a fiduciary relationship between Ms. Tang and the Intervenors because of her status as a managing member and their ownership interests in the Company and KG Bayside. Thus, her motion must be denied.

The essential elements of a cause of action for money had and received are that the defendant received money belonging to the plaintiff, that the defendant benefited from receipt of the money, and that under principles of equity and good conscience, the defendant should not be permitted to keep the money (*Lebovits v Bassman*, 120 AD3d 1198, 1199 [2d Dept 2014]). The elements of a cause of action for unjust enrichment are that a plaintiff conferred a benefit upon a defendant and that the defendant obtained such benefit without adequately compensating the plaintiff (*Alpert v M.R. Beal & Co.*, 162 AD3d 491, 492 [1st Dept 2018]).

The Intervenors allege that they invested their money with the Defendants, that the Defendants misappropriated that money for their own benefit, and that it would be against good conscience for the Defendants to keep the misappropriated funds. This is sufficient to state a cause of action for money had and received and for unjust enrichment. The cause of action for money had and received is not duplicative of the breach of contract claims, because those claims are asserted solely against the Company and KG Bayside, not Ms. Tang. Thus, her motion must be denied.

The causes of action for access to books and records and an accounting are not dismissed

Pursuant to CPLR 1102(b), any member of an LLC may inspect and copy, at their own expense and for any purpose reasonably related to their interest as a member, among other things, (i) the company's financial statements, including income tax returns and reports, (ii) a member list, (iii) the articles of organization and all amendments thereto, and (iv) the operating agreement and any amendments thereto. A member of an LLC has an independent statutory right to conduct an inspection of books and records (*Gartner v Cardio Ventures, LLC*, 121 AD3d 609, 610 [1st Dept 2014]). The elements of an equitable accounting are (i) a fiduciary or confidential relationship, (ii) money entrusted to the defendant imposing the burden of an accounting, (iii) the absence of a legal remedy, and (iv) in some cases, a demand and refusal (*Metropolitan Bank & Trust Co. v Lopez*, 189 AD3d 443, 446 [1st Dept 2020]).

It cannot be seriously disputed that the Intervenor has a statutory right to access to books and records. Ms. Tang's argument that she is not in possession of books and records is unavailing. She is alleged to be the manager of the Company and KG Bayside. She also allegedly was to provide the Intervenor with financial information for the Company and failed to do so. Her argument that she is not in a confidential or fiduciary relationship is unavailing as set forth above. The Intervenor are also entitled to an accounting because they allege that a demand was made and denied and that they have no adequate remedy at law. Ms. Tang's motion to dismiss the Intervenor Complaint therefore must be denied in its entirety.

II. The Cross-Claim for common-law indemnification must be dismissed

The cross-claim for common-law indemnification must be dismissed. The Intervenor has not alleged that any of the Answering Defendants should be held vicariously liable for the wrongdoing of Ms. Tang or any other defendant. The Intervenor seeks to hold each of the Defendants responsible for their own alleged misconduct and does not allege liability against any of the Defendants for the conduct of the other Defendants.. Where such allegations are not alleged by the Intervenor, the cross-claim for indemnification must be dismissed (*Bd. of Managers of the St. Tropez Condominium v JMA Consultants, Inc.*, 2021 WL 1909759, * 3 [Sup Ct, NY County 2021], *citing Richards Plumbing & Heating Co., Inc. v Washington Group Intl., Inc.*, 59 AD3d 311, 312 [1st Dept 2009]). Ms. Tang’s motion to dismiss the cross-claim must therefore be granted.

It is hereby ORDERED that Ms. Tang’s motion to dismiss the Intervenor Complaint is denied; and it is further

ORDERED that Ms. Tang’s motion to dismiss the cross-claim is granted; and it is further

ORDERED that counsel for Ms. Tang shall order a copy of the transcript of the proceedings (7.6.22) and shall have it uploaded to NYSCEF.



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7/6/2022
DATE

ANDREW BORROK, JSC

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

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