

Baozhen Liang v Siu Ying Lau
2022 NY Slip Op 32789(U)
August 19, 2022
Supreme Court, New York County
Docket Number: Index No. 161399/2017
Judge: Lynn R. Kotler
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

BAOZHEN LIANG

INDEX NO. 161399/2017

- v -

MOT. DATE

SIU YING LAU et al

MOT. SEQ. NO. 7-9

The following papers were read on this motion to/for _____	
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits	ECFS DOC No(s). _____
Notice of Cross-Motion/Answering Affidavits — Exhibits	ECFS DOC No(s). _____
Replying Affidavits	ECFS DOC No(s). _____

In this action, plaintiff seeks to collect on money judgments entered on December 5, 2017 and January 14, 2019 against nonparties to this action, Stephen W. Yue ("Yue") and against Kelly Yeap ("KY") in an action captioned Liang vs. Yeap, Index No. 51333/2015 (Supreme Court, Kings County). There are three motions presently pending before the court, which are hereby consolidated for the court's consideration and disposition in this single decision/order. In motion sequence 7, plaintiff moves for a default judgment against Leon Yeap, as the Administrator of the Estate of Nam Hin Yeap ("LY") as to liability. There is no opposition to the motion.

In motion sequence 8, defendant Corey Yeap ("CY") moves for summary judgment dismissing plaintiff's complaint against him. Plaintiff opposes that motion.

Finally, in motion sequence 9, defendant CY moves to strike "scandalous or prejudicial matters unnecessarily inserted in the opposition filed by plaintiff" in connection with motion sequence 8. Plaintiff also opposes that motion.

The court will consider each motion in sequence. Defendant LY has defaulted in this proceeding. Indeed, in motion sequence 10, LY moved to vacate his default and for leave to file a late answer. Subsequently, LY withdrew that motion in a stipulation dated May 6, 2022. While a default in answering the complaint constitutes an admission of the factual allegations therein, and the reasonable inferences which may be made therefrom (*Rokina Optical Co., Inc. v. Camera King, Inc.*, 63 NY2d 728 [1984]), plaintiff is entitled to default judgment in its favor, provided it otherwise demonstrates that it has a prima facie cause of action (*Gagen v. Kipany Productions Ltd.*, 289 AD2d 844 [3d Dept 2001]). An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim (*Zelnick v. Biderman Industries U.S.A., Inc.*, 242 AD2d 227 [1st Dept 1997]; and CPLR § 3215[f]) or a complaint verified by a person with actual knowledge of

Dated: 8/19/22


HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: CASE DISPOSED NON-FINAL DISPOSITION
- 2. Check as appropriate: Motion is GRANTED DENIED GRANTED IN PART OTHER
- 3. Check if appropriate: SETTLE ORDER SUBMIT ORDER DO NOT POST
- FIDUCIARY APPOINTMENT REFERENCE

the facts surrounding the claim (*Hazim v. Winter*, 234 AD2d 422 [2d Dept 1996]; and CPLR § 105 [u]).

Plaintiff's motion is only supported by an attorney's affirmation who lacks personal knowledge of the underlying allegations. Therefore, the motion is granted only to the extent that LY's default in appearing is hereby noted. All issues regarding LY's liability and plaintiff's damages against LY shall be determined at inquest to be held at the time of trial.

The court now turns to CY's motion for summary judgment. Plaintiff has asserted the following causes of action against CY: "joint enterprise liability", fraudulent conveyances and attorneys fees and "civil conspiracy". This is CY's second request for relief pursuant to CPLR § 3212. CY's first application was denied in a decision/order dated October 7, 2019 wherein the court stated, *inter alia*, "[n]umerous issues of fact abound on this record." The facts relevant to the instant motion are as follows. KY is CY's mother. Plaintiff states in her sworn affidavit that "I have come to discover through my attorney and our expert's efforts that some if not all my money that [] Yue and [KY] stole from me was given by KY to her sons CY and LY. ... I ask the court to assist me in finally recovering my money by allowing me to have my day in Court again with another trial."

Meanwhile, plaintiff's counsel claims, that CY is liable to plaintiff for tuition monies paid by KY to Fordham University for CY's undergraduate education and for other living expenses paid by KY on behalf of CY between the years 2006 and 2011 when he was a student at Fordham. Plaintiff's counsel further states that CY accepted fraudulent property transfers from defendant John Yuen ("JY") which occurred in 2013 and 2014. The properties at issue relating to CY are 252 W. Madison Street, Easton PA and 1221 Lehigh Street, Easton, PA.

In his sworn affidavit, CY maintains that he does not know the other judgment debtor, Yue, nor has he ever "met and or known the plaintiff in this matter." Further, CY states the following:

I do not understand what conduct is being cited in paragraph 26 of the Amended Complaint which speaks of delivery of checks involving myself and others. I have never delivered checks or participated in any of the illegal conduct cited in the Amended Complaint.

I am informed by my attorney that none of Plaintiff's discovery contains any evidence whatsoever to support their allegations of any fraud or illegal act on my part.

The Amended Complaint that has been filed against me says that it "focuses on the involvement of the family members in the fraud."

I am informed that the Amended Complaint alleges that my mother and Stephen W. Yue, neither of whom are parties hereto, are "adjudicated fraudsters" and that judgments in the amount of approximately \$450,000 were entered against them.

The Amended Complaint says as well that there was some sort of Ponzi Scheme or scam that netted \$10 million dollars. I have no knowledge whatsoever of any such scams, Ponzi schemes or fraud, and the Amended Complaint does not even allege that I or the other defendants participated in those vaguely described schemes that supposedly took place, at unspecified times.

While the Amended Complaint fails to specify the nature of the fraud that is alleged against me, I categorically swear under oath that I have never participated in any fraud or scheme nor have I ever participated in money laundering or illegal transfers of property.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

As for the so-called Fordham University transfers, these claims are dismissed. To state a claim for fraudulent conveyance, plaintiff must establish that defendant: (1) made a conveyance, (2) without fair consideration, (3) by a person who is insolvent or who becomes insolvent as a consequence of the transfer (*Zanani v. Meisels*, 78 AD3d 823 [2d Dept. 2010]). There is no allegation contained in the amended complaint that CY's mother was "rendered insolvent" by virtue of making payments towards CY's education. Further, there can be no dispute on this record that payment for CY's college education was without fair consideration. Therefore, the seventh cause of action for fraudulent conveyance is severed and dismissed to the extent it is premised upon KY's payment of CY's education at Fordham University.

The balance of the motion is denied. The court agrees with plaintiff's counsel that CY has not met his burden on this motion and established that he played "no role in any of the alleged illegal activity". CY's barebones affidavit is insufficient to demonstrate that the properties were not fraudulent conveyances. Accordingly, CY's motion for summary judgment dismissing the remainder of the causes of action asserted against him is denied.

The court now turns to the last motion, sequence 9, by CY to strike "scandalous matters [that] appear in the following papers filed by Plaintiff in connection with our motion: (1) Affidavit In Opposition, dated October 4, 2021 of Baozhen Liang; DOC 289 (2) Affirmation in Opposition, dated October 6, 2021, of B. Shamus O'Donniley; DOC 286; (3) Affidavit dated February 19, 2019, of Christopher Mukon, previously submitted to this court as DOC 103 and DOC 190 and now submitted as DOC 287; Affidavit of Zhanna Kelley, dated December 31, 2018, previously submitted to this court as DOC 85, DOC 102, DOC 166, DOC 191, and now submitted as DOC 288."

Under CPLR 3024[b], a party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading. Here, while the allegations may indeed be scandalous or prejudicial as concerns the non-party, the court cannot say that the subject allegations are unnecessary. Rather, the subject claims provide a factual basis for plaintiff's retaliation claim in violation of Labor Law §215 and the New York City and State Human Rights Laws. Since the challenged allegations are relevant to plaintiff's cause of actions, the motion must be denied (see i.e. *New York City Health and Hospitals Corp. v. St. Barnabas Community Health Plan*, 22 AD3d 391 [1st Dept 2005]).

CONCLUSION

In accordance herewith, it is hereby:

ORDERED that motion sequence 7 is granted only to the extent that LY's default in appearing is hereby noted. All issues regarding LY's liability and plaintiff's damages against LY shall be determined at inquest to be held at the time of trial; and it is further

ORDERED that motion sequence 8 is granted only to the extent that the seventh cause of action for fraudulent conveyance against CY is severed and dismissed to the extent it is premised upon KY's payment of CY's education at Fordham University; and it is further

ORDERED that motion sequence 9 is denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated:

8/17/22
New York, New York

So Ordered:



Hon. Lynn R. Kotler, J.S.C.