

Lin Sing Assn., Inc v Shiao

2022 NY Slip Op 33076(U)

September 9, 2022

Supreme Court, New York County

Docket Number: Index No. 161138/2021

Judge: Richard Latin

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD LATIN PART 46V

Justice

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LIN SING ASSOCIATION, INC, HON POON LEUNG,

Plaintiff,

- v -

JERRY SHIAO, XUE YUAN DENG, JUSTIN YU, WADE
GUOWEI LI, MAU LAM HO, LARRY SETO, WEN HUI
ZHAO, YUK CHEUNG CHOW, XIE HUAN LIAO, ZU DONG
GUAN, KING CHEUNG AU,

Defendant.

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INDEX NO. 161138/2021

MOTION DATE 09/01/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is ordered that defendants Jerry Shiao, Xue Yuan Deng, Justin Yu, Mau Lam Ho, Larry Seto, Wen Hui Zhao, Yuk Cheung Chow, Xie Huan Liao, Zu Dong Guan, and King Cheung Au’s motion to, inter alia, dismiss plaintiffs’ complaint pursuant to CPLR 3211(a)(4), (5), and/or (7) and co-defendant Wade Guo Li’s cross motion for the same relief are determined as follows:

As way of background, this matter is one of a number of actions related to who controls the Ling Sing Association, Inc. (“Lin Sing”). With this action, Lin Sing and Hon Poon Leung, current president of Lin Sing, allege that defendants converted assets, committed a prima facie tort, were unjustly enriched, breached their fiduciary duty, tortiously interfered with its 1st floor tenant, defamed President Leung, and committed injurious falsehood. With these motions, defendants essentially argue that the complaint should be dismissed as some claims are time

barred, other claims are duplicative to claims against defendants in other litigation, and some claims are lacking in specificity.

On a motion to dismiss pursuant to CPLR 3211(a)(4), the movant must demonstrate that there is another action pending with a substantial identity of parties with the same cause of action (*see Sprecher v Thibodeau*, 148 AD3d 654 [1st Dept 2017]).

On a motion to dismiss pursuant to CPLR 3211(a)(5), the movant has the burden of demonstrating when the cause of action accrued and that the time to sue has expired (*see Lebedev v Blavatnik*, 144 AD3d 24 [1st Dept 2016]).

On a motion to dismiss pursuant to CPLR 3211(a)(7), the facts alleged in the complaint must be accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court's function is to determine only whether the facts alleged fit within any cognizable legal theory (*see Leon*, 84 NY2d at 87-88; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]).

Plaintiffs' first cause of action sounding in conversion carries with it a three-year statute of limitations. Here, it is undisputed that that checks totaling \$83,192.00 that defendant Deng allegedly converted correspond to checks negotiated in 2015. Thus, this cause of action is untimely and must be dismissed as to defendant Deng. Moreover, this cause of action may also be dismissed as to defendant Ho since this cause of action is duplicative of plaintiff Lin Sing's conversion claims against defendants Deng and Ho in the related action commenced on April 25, 2022.

Plaintiffs' second cause of action for prima facie tort must also be dismissed as it is based upon the same allegations and duplicative of the other causes of action in the complaint (*see Woytisek v JP Morgan Chase & Co.*, 46 AD3d 331 [1st Dept 2007]).

Plaintiffs' third cause of action for unjust enrichment must also be dismissed for the same reasons as the cause of action for conversion. Contrary to plaintiffs' argument, despite the fact that there is no identifiable statute of limitations for unjust enrichment, where the claim is based upon the same allegations of economic conversion, the same three-year statute of limitations would apply (*see generally Maya NY, LLC v Hagler*, 106 AD3d 583 [1st Dept 2013]).

As to plaintiffs' fourth cause of action for breach of fiduciary duty, the complaint stating generally that defendants' self-dealt and took property/money belonging to the plaintiff for themselves is lacking in specificity (CPLR 3106[b]; *see Hyman v New York Stock Exch., Inc.*, 46 AD3d 335 [2007]). Moreover, it is a duplicative claim of the April action against Deng and Ho, if not duplicative of the other causes of action for conversion and unjust enrichment.

As to plaintiffs' claim for tortious interference, it is unclear as plead whether plaintiffs are asserting that defendants interfered with a contractual relationship, business relationship, or economic relationship. Plaintiffs merely articulate that a third-party would have settled its litigation with plaintiffs if not for the defendants' interference. This pleading, thus, fails to state whether plaintiffs and the third-party had a contractual relationship or, if as a result of the settlement, would have had entered into or continued a business relationship (*see generally Kronos, Inc. v AVX Corp.*, 81 NY2d 90 [1993]). Accordingly, this cause of action must also be dismissed as plead.

Plaintiffs' sixth cause of action sounds in defamation. They allege that defendants have made false statements about President Leung that he committed crimes like taking money, has a loathsome disease like dementia, poorly manages the Ling Sing building, runs Lin Sing like a dictatorship, and other related general statements. To state a cause of action for defamation the complaint must state the words complained of with particularity, should not be generalized, and


should specify the time, manner, and persons to whom the specific words were said (see *Geddes v Princess Props. Intl.*, 88 AD2d 835 [1st Dept 1982]; CPLR 3016[a]). Here, without the specific words stated, dismissal of plaintiffs’ defamation claim is required (see *Manas v VMS Assoc., LLC*, 53 AD3d 451, 454-55 [1st Dept 2008]).

The last cause of action for injurious falsehood must also be dismissed for similar reasons as the defamation claim. Claims for injurious falsehood must specify with particularity the alleged falsehood uttered and must also plead special damages with particularity (see *BCRE 230 Riverside LLC v Fuchs*, 59 AD3d 282 [1st Dept 2009]). Here, in addition to failing to state the specific utterance stated, mere general statements that President Leung was injured or injured in his trade, business, and/or profession are inadequate to make out a cause of action for injurious falsehood (*id.*).

In opposition to the motion, plaintiffs, among other things, seek leave to amend their complaint. However, in their opposition they fail to attach the proposed amended pleadings or clearly describe with particularity what details would cure their deficiencies. Moreover, the procedural defects raised by the plaintiffs are insufficient reasons to deny the motion and cross motion (CPLR 2001).

Accordingly, for the reasons state above, defendants’ motion and cross motion are granted to the extent that plaintiffs’ complaint is dismissed in its entirety and denied in all other respects.

This constitutes the decision and order of the Court.

<u>9/9/2022</u> DATE	 RICHARD LATIN, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>	