

**Zhengjun Dong v GTV Media Group, Inc.**

2022 NY Slip Op 33114(U)

September 15, 2022

Supreme Court, New York County

Docket Number: Index No. 652190/2021

Judge: Andrew S. 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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ZHENGJUN DONG, WEN LIN, KAIXIN HONG, CHENGLONG WANG,	INDEX NO. <u>652190/2021</u>
Plaintiff,	MOTION DATE <u>N/A, N/A, N/A, N/A</u>
- v -	MOTION SEQ. NO. <u>004 005 007 008</u>
GTV MEDIA GROUP, INC., SARACA MEDIA GROUP, INC., WENGUI GUO,	
Defendant.	<b>DECISION + ORDER ON MOTION</b>
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HON. ANDREW S. BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 67, 68, 69, 70 were read on this motion to/for AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 72, 73, 74, 75, 76, 84, 85, 86, 87, 88, 89, 90, 91, 92 were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 77, 78, 79, 80, 81, 105 were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121 were read on this motion to/for SEVER.

Upon the foregoing documents, the plaintiffs’ motion to sever the action as against Wengui Guo (Mtn. Seq. No. 008) is granted because the avoidance of delay and prejudice to the plaintiffs outweighs any benefits of joinder. By way of background, at the parties’ request, the Court provisionally stayed this case (NYSCEF Doc. No. 101) when the parties indicated that Mr. Guo had filed a petition for bankruptcy (NYSCEF Doc. No. 99) to permit the parties to file appropriate papers and develop the record.

Having reviewed the papers, it is clear that there is no basis for a stay and that the case should be severed. Section 362 of the Bankruptcy Code imposes an automatic stay of an action to obtain possession of property of the estate or of property from the bankruptcy estate. The stay works as an injunction to halt actions of creditors and potential creditors to collect pre-bankruptcy debts. It simply does not operate as a panacea to shield the company in this case from defending this action which is not in bankruptcy and not threatening bankruptcy. Mr. Guo will not suffer any prejudice. Among other things, discovery in this case is relevant to the administration of his bankruptcy estate where his creditors have a right to discover facts broadly under Bankruptcy Rule 2004. Mr. Guo must be kept on notice of discovery in this case and he is entitled to participate in discovery in this case and in depositions. He will not be permitted to redo discovery later in the severed case. As the plaintiffs correctly argue, the prejudice to the plaintiffs if they are not able to proceed against the defendants other than Mr. Guo outweighs any prejudice to Mr. Guo if he later participates in this action upon the resolution of the bankruptcy proceeding. Nor is the availability of the Fair Fund a reason to deny the motion to sever. The motion to sever must therefore be granted and the stay must be vacated.

The motion to amend the complaint (Mtn. Seq. No. 004) was withdrawn. Counsel for the plaintiffs indicated that he was not sure whether one of the proposed additional plaintiffs had received a return of their funds such that they no longer had standing and that he intends to file an amended complaint after he confirms the same or otherwise identifies other nominal plaintiffs. Leave to file any such proposed amended complaint shall be filed by Order to Show Cause on or before October 14, 2022.

The motions to quash the subpoena served on Crane Advisory Group LLC (**Crane**) (Mtn. Seq. Nos. 005, 007) is granted. The subpoena merely indicates that it seeks information that is “material and necessary for the prosecution of the claims” in this action (NYSCEF Doc. No. 75). This is insufficient. It does not matter that counsel for the plaintiffs indicates that the subpoena was the product of a negotiation between counsel for Crane and the plaintiffs. This is not clear because Crane has objected to the subpoena. Nor does it matter that G-Club objects to the subpoena on the basis of inadequate notice and Crane does not. Thus, the motion to quash must be granted and leave is granted to the plaintiffs to address the notice issue raised by the defendants.

For the avoidance of doubt, as explained on the record (9.14.22), the plaintiffs seek these documents because they are material and necessary to the elements of numerosity and commonality required for Article 9 class certification and their allegations that the defendants directed investors in GTV to send money to G-Club using Crane’s account at Citibank and that members of G-Club would be entitled to shares in GTV based on their membership in G-Club. The subpoena served on Crane seeks documents concerning wire transfers into and out of Crane’s Citibank account in connection with the GTV offering and communications between Crane and the defendants concerning the GTV offering. The plaintiffs have alleged in this case that the defendants used various bank accounts under different names and directed investors to those accounts to purchase shares. As alleged, when accounts were flagged for suspicious activities, the defendants created new accounts to continue selling shares. The documents sought by this subpoena demonstrate the flow of funds and are necessary and relevant to identifying the size and otherwise defining the class of people affected by this scheme. It cannot be seriously

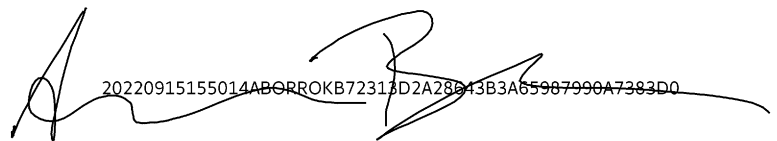
disputed that these documents are relevant or material and necessary and this is not improper pre-class certification merits discovery. Finally, quashing the subpoena based on the fact that the information is confidential would be equally inappropriate. There is a confidentiality order in place in this case that addresses any such concerns.

It is hereby ORDERED that the motion to sever (Mtn. Seq. No. 008) is granted; and it is further

ORDERED that the motion to amend the complaint (Mtn. Seq. No. 004) is withdrawn; and it is further

ORDERED that the motions to quash (Mtn. Seq. Nos. 005, 007) are granted solely to the extent set forth above; and it is further

ORDERED that the plaintiffs may move by order to show cause to amend the complaint by October 14, 2022.



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9/15/2022  
DATE

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ANDREW S. BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE