

Qin Yu v Guoqing Guan
2022 NY Slip Op 34047(U)
November 28, 2022
Supreme Court, New York County
Docket Number: Index No. 655186/2019
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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QIN YU,

Plaintiff,

- v -

GUOQING GUAN, XIDONG FANG, SHANGHAI
QINGYANG CONSTRUCTION ENGINEERING (GROUP)
CO., LTD, JIANQIANG GUAN, JIANYUN GUAN, JIANFANG
GUAN, XYZ, LLCS 1-10, XYZ CORPS 1-10, and JOHN AND
JANE DOES 1-10,

Defendants.

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INDEX NO. 655186/2019

MOTION DATE 10/12/2021

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, and 81

were read on this motion to DISMISS.

LOUIS L. NOCK, J.

Upon the foregoing documents, the motion is granted for the reasons set forth in the moving and reply papers of moving defendants Guoqing Guan (“Guan”), Xidong Fang (“Fang”), and Jianqiang Guan (“Jianqiang”) (NYSCEF Doc. Nos. 64, 74, and 79), and the exhibits attached thereto, in which the court concurs to the extent set forth below. The court assumes familiarity with the facts and procedural history of this action as set forth in its prior decisions issued in this matter dated September 10, 2020, and September 14, 2021 (NYSCEF Doc. Nos. 12 and 62).

As more specifically set forth in the above-cited papers, plaintiff does not successfully allege any of its four causes of action for breach of contract. The first two causes of action assert breaches of two conciliation statements between plaintiff Qin Yu (“plaintiff”) and defendants Guan, Fang, and Shanghai Qingyang Construction Engineering (Group) Co. Ltd. (“Shanghai”) issued by the Intermediate People’s Court of Fuzhou City, Jiangxi Province, in the People’s

Republic of China (Complaint, NYSCEF Doc. No. 1, Exhibits 3 and 4) as part of plaintiff's action against defendants for breach of the underlying loan contracts between plaintiff and Guan (the "Chinese Action"). These documents are issued under the seal of that court, and the signatures of the judges who heard the case. Plaintiff's affiant, Qiong Lu, offered as an expert in Chinese law, states that while a conciliation statement is not exactly the same as a judgment, it is "final and not appealable" and "enforceable by court enforcement division with [the] same effect as [a] judgment" (Lu Affirmation, NYSCEF Doc. No. 77, ¶ 50). Plaintiff asserts that it is not attempting to recognize the conciliation statements as judgments in New York pursuant to Article 53 of the CPLR, but provides no alternative basis on which to enforce these statements as mere contracts.

The third and fourth causes of action for breach of the loan contracts are barred by the Chinese Action. Defendants argue that the issue of whether the contracts were breached has already been litigated to conclusion in China, an argument that sounds in *res judicata*. "The doctrine of *res judicata* bars the litigation of a claim or defense if, in a former litigation between the parties . . . in which there was a final conclusion, the subject matter and the causes of action are identical or substantially identical" (*Williams v City of Yonkers*, 160 AD3d 1017, 1018 [2d Dept 2018]). Here, both the Chinese Action (Chinese Civil Complaints, NYSCEF Doc. Nos. 66 and 67), and the third and fourth causes of action herein assert claims that Guan and Shanghai breached the underlying loan contracts. As noted above, the conciliation statements are final and not appealable per plaintiff's own affiant, represented to be an expert in Chinese law. Accordingly, *res judicata* bars plaintiff's attempt to relitigate the breach of contract claims here.

The fifth through eighth causes of action sound in fraud related to both the conciliation statements and the underlying loan contracts. The fifth and sixth causes of action must be

dismissed, as the allegation that defendants entered into the conciliation statements without intending to perform them is insufficient to sustain a fraud claim (*e.g.*, *New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 318 [1995]). Regarding the seventh and eighth causes of action for fraud in the inducement of the underlying loan contracts, plaintiff does allege that Guan affirmatively misrepresented the nature of his and Shanghai's assets in order to induce plaintiff to enter into the contracts, a misrepresentation of present fact collateral to the contract (*see, Manas v VMS Assocs., LLC*, 53 AD3d 451, 453 [1st Dept 2008]). However, plaintiff fails to allege that she reasonably and justifiably relied on such misrepresentations in agreeing to loan Guan money.

Where the subject of a misrepresentation is not peculiarly within the knowledge of the party making it:

and the other party has the means available to him of knowing, by the exercise of ordinary intelligence, the truth or the real quality of the subject of the representation, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations.

(*DDJ Mgt., LLC v Rhone Group L.L.C.*, 15 NY3d 147, 154 [2010].)

As the complaint alleges, when Guan and Shanghai ceased making payments on the loan, plaintiff began investigating their finances and discovered that they had "limited properties and assets . . . [which were] mortgaged or pledged as collateral, with some appearing to have mezzanine debt" (NYSCEF Doc. No. 1, ¶ 20). Plaintiff does not allege in the complaint that she took any reasonable steps to ascertain this information prior to entering into the loan contracts, that this information was peculiarly within Guan and Shanghai's knowledge, or why she was unable to ascertain this information prior to agreeing to lend the money. Moreover, she does not submit an affidavit in opposition to the motion regarding any of those issues. Because plaintiff made no effort to ascertain

the truth of Guan and Shanghai's representations regarding their assets prior to the deal, she "will not be heard to complain that [s]he has been defrauded when it is [her] own evident lack of due care which is responsible for [her] predicament" (*Rodas v Manitaras*, 159 AD2d 341, 343 [1st Dept 1990]).

Finally, the ninth and tenth causes of action allege constructive and actual fraudulent conveyance in violation of Debtor and Creditor Law §§ 273, 273-a, 275, and 276, and aiding and abetting fraud and fraudulent conveyance. As to the claims of fraudulent conveyance, plaintiff fails to make the necessary specific factual allegations against any individual defendant (*NTL Capital, LLC v Right Track Rec., LLC*, 73 AD3d 410, 412 [1st Dept 2010]). Broad allegations of fraudulent transfers against groups of defendants are not entitled to the presumption of truth on a motion to dismiss (*3 E. 54th St. New York, LLC v Patriarch Partners, LLC*, 90 AD3d 418, 419 [1st Dept 2011]). Since both the fraud and fraudulent conveyance claims must be dismissed, so too, must the aiding and abetting claim (*Kagan v HMC-New York, Inc.*, 94 AD3d 67, 73 [1st Dept] ["Finally, in the absence of a viable claim for breach of fiduciary duty, the related claims of aiding and abetting such a breach were also properly dismissed"], *appeal dismissed* 19 NY3d 918 [2012]).

Accordingly, it is hereby

ORDERED that the motion of defendants Guoqing Guan, Xidong Fang, and Jianqiang Guan to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendants, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)].

This constitutes the decision and order of the court.

ENTER:



<u>11/28/2022</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input type="checkbox"/>	GRANTED IN PART <input type="checkbox"/> OTHER
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"/> REFERENCE