

Yang v Knights Genesis Group
2023 NY Slip Op 30098(U)
January 5, 2023
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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<p>YUNJIE FRANK YANG, YING SHEN, LIHANG XU, LIANG ZHAO,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>KNIGHTS GENESIS GROUP, JIANGCHENG JASON YUAN, KATIE CHEN, TINA TANG, 1989 INVESTOR LLC, KG BAYSIDE LLC, JIANFEI CHEN, SILVER CITY CAPITAL INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>INDEX NO. <u>651118/2021</u></p> <p>MOTION DATE <u>06/08/2022,</u> <u>11/06/2022</u></p> <p>MOTION SEQ. NO. <u>010 011</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 209, 210, 213, 214, 215, 216, 217, 218, 219, 221

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 255, 256, 257, 296, 297, 298, 299, 300, 301, 302

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, Ying Shen, Liang Zhao, and Lihang Xu's (collectively, the **Plaintiff-Intervenors**) motion for preliminary injunction and temporary restraining order (Mtn. Seq. No. 010) must be granted. The Preliminary Injunction (hereinafter defined) attached the Bankruptcy Distribution and required it to be held in escrow pending the adjudication of the matter. Thus, the argument that CPLR 5234 provides for priority of judgment creditors based on who seeks execution first is quite simply irrelevant at this time. Mr. Yang may not execute on the Bankruptcy Distribution until this matter is finally adjudicated as this Court ordered.

Knights Genesis Investment Limited's (**Knights Genesis**) motion (Mtn. Seq. No. 011) to vacate the Default Judgement Decision must be denied because it was properly served and Knights Genesis does not present either a reasonable excuse of a meritorious defense. It is demonstrably false that Knights Genesis had no notice of this action.

DISCUSSION

Reference is made to a certain (i) Decision and Order of this Court dated April 22, 2021 (the **Preliminary Injunction**; NYSCEF Doc. No. 45), pursuant to which the Court granted Mr. Yang's motion for a preliminary injunction by restraining any distribution of funds from the company, including the bankruptcy distribution made in the case of *In re 1989 3Ave, LLC*, Case No. 1-18-47234-nhl (Bankr. ED NY), until (x) a final resolution of the plaintiffs' claims in this action and (y) ordering the sum of \$1,473,345.69 (the bankruptcy distribution) to be placed in escrow pending adjudication of this matter, and a certain (ii) Decision and Order dated October 18, 2021 (the **Yang Default Judgment**; NYSCEF Doc. No. 111), pursuant to which Mr. Yang is entitled to a default judgment against Knights Genesis Group and 1989 Investor LLC.

I. The motion for preliminary injunction and temporary restraining order (Mtn. Seq. No. 010) must be granted

The Plaintiff-Intervenors argue that Mr. Yang violated the Preliminary Injunction by filing an execution of the Yang Default Judgment to collect against the Bankruptcy Distribution, and that injunctive relief is appropriate because (i) Plaintiff-Intervenors will suffer irreparable harm without injunctive relief, (ii) the equities balance in their favor, and (iii) they are likely to succeed on the merits (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]).

In his opposition papers, Mr. Yang argues in sum and substance that he was first to serve an

execution based on the Yang Default Judgment and that as such he has priority to the Bankruptcy Distribution. To wit, CPLR 5234(b) provides:

Where two or more executions or orders of attachment are issued against the same judgment debtor or obligor and delivered to the same enforcement officer or issued by the support collection unit designated by the appropriate social services district, they shall be satisfied out of the proceeds of personal property or debt levied upon by the officer or by the support collection unit in the order in which they were delivered, such executions for child support shall have priority over any other assignment, levy or process

(CPLR 5234[b]).

The argument is fatally flawed. The Court issued the Preliminary Injunction to prevent any dissipation of assets by Knights Genesis Group, Jiangchen Yuan, Katie Chen, Tina Tang and nominal investor 1989 Investor **and** ordered that the Bankruptcy Distribution was attached and ordered to be placed in escrow pending the adjudication of the matter. To wit, it was clear to this Court when it issued the Preliminary Injunction that Mr. Yang was not the only investor in this alleged fraud and that as such the money needed to be set aside as potential other plaintiffs came out of the woodwork:

ORDERED that motion seq. no. 001 is granted and defendants Knights Genesis Group, Jiangcheng Yuan, Katie Chen, Tina Tang, and nominal defendant 1989 Investor LLC, are restrained from distributing any funds from the company, including any amounts received by the company from distributions made in the case of *In re 1989 3Ave, LLC*, Case No. 1-18-47234-nhl (Bankr. ED NY) until a final resolution of the plaintiff's claims in this action, ***and the sum of \$1,473,345.69 (the bankruptcy distribution) is hereby attached and ordered to be placed in escrow pending the adjudication of this matter***

(NYSCEF Doc. No. 45 [emphasis added]).

Thus, no execution based on the Yang Default Judgment was appropriate. The only steps which were appropriate were attachment and escrow of the Bankruptcy Distribution until the final adjudication of this matter.

II. The motion to vacate the Default Judgement Decision (Mtn. Seq. No. 011) must be denied

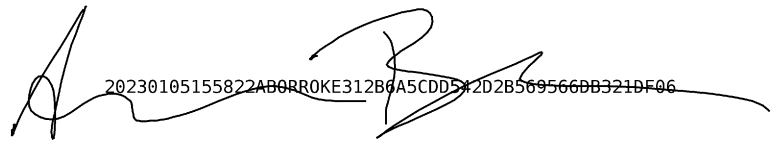
Knights Genesis argues that the Court should vacate the Yang Default Judgment because (i) it received no notice of this action, and (ii) it has a meritorious defense. To wit, Knights Genesis asserts certain conclusory denials of the claims made against it and indicates that certain other entities are liable for the alleged scheme.

The arguments fail. Pursuant to CPLR 5015, a Court may vacate a default judgment upon a reasonable excuse and a meritorious defense. Pursuant to CPLR 317, a Court may vacate a default judgment where the movant lacked notice of the claims levelled against them. It is simply false that Knights Genesis had no notice of this action. Jiangcheng Yuan, the majority shareholder and president of Knights Genesis, was served on behalf of Knights Genesis on April 23, 2021 (NYSCEF Doc. No. 54). In addition, Knights Genesis itself was served more than one year ago on September 2, 2021 by personal service on its President, Mr. Yuan (NYSCEF Doc. No. 149) and he has participated in this action since such time. Nor does Knights Genesis present prima facie evidence that a meritorious defense exists (*Peacock v Kalikow*, 239 AD2d 188, 190 [1st Dept 1997]; *East N.Y. Sav. Bank v Sun Beam Enters.*, 234 AD2d 131, 132 [1st Dept 1996]). This is required (CPLR 5015[a][1]; *Matter of Santander Consumer USA, Inc. v Kobi Auto Collision & Paint Ctr., Inc.*, 166 AD3d 1365, 1365 [3d Dept 2018]; *Nulty v Wolff*, 291 AD2d 763, 764 [3d Dept 2002]; *U.S. Bank Natl. Assn. v Kaufman*, 187 AD3d 1456, 1457 [3d

Dept 2020]; *Toyota Motor Credit Corp. v Impressive Auto Ctr., Inc.*, 80 AD3d 861, 863 [3d Dept 2011]; *Bergen v 791 Park Ave. Corp.*, 162 AD2d 330, 331 [1st Dept 1990]). All Knights Genesis essentially indicates in conclusory fashion is that someone else is responsible for the alleged fraud. This is plainly insufficient. Therefore, the motion to vacate the Yang Default Judgment must be denied.

It is hereby ORDERED that the Plaintiff-Intervenors' motion for preliminary injunction and temporary restraining order (Mtn. Seq. No. 010) is granted; and it is further

ORDERED that Knights Genesis Investment's motion to vacate the Yang Default Judgement (Mtn. Seq. No. 011) is denied.



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1/5/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: