

**Qin Chen v Dian Jiao Chen**

2023 NY Slip Op 30649(U)

February 27, 2023

Supreme Court, Kings County

Docket Number: Index No. 508006/2022

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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QIN CHEN, individually and as a shareholder  
derivatively in the name of Mr. Q's Grill  
House Inc.,

Plaintiffs,

Decision and order

- against -

Index No. 508006/2022

DIAN JIAO CHEN QING WEI,

Defendants,

MR. Q'S GRILL HOUSE INC.,  
Nominal Defendant,

February 27, 2023

-----X  
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1

The plaintiff has moved seeking to strike the defendant's answer pursuant to CPLR §3126 for the failure to provide discovery, specifically corporate books and records. The defendant has opposed the motion arguing there is no evidence the plaintiff is an owner of the corporation. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the complaint filed the plaintiff asserts she is a one third owner of the defendant Grill House, a restaurant located at 5302A 8th Avenue in Kings County. The complaint alleges the plaintiff was not awarded any profits and that in fact the business had been sold without her consent. The complaint alleges causes of action for breach of contract, breach of fiduciary duty, misappropriation, conversion, unjust enrichment, a declaratory judgement, an accounting and an

inspection of books and records. Indeed, the crux of this motion is that the defendant has not provided plaintiff with any of the corporate books and records. As noted, the defendant asserts the plaintiff is not an owner and consequently is not entitled to any books and records.

#### Conclusions of Law

It is well settled that the trial court maintains broad discretion concerning the discovery process and any sanction for any violation (Bouri v. Jackson, 177 AD3d 947, 113 NYS3d 232 [2d Dept., 2019]). The severe sanction of striking a pleading is appropriate where it can be demonstrated that the failure to comply with discovery was the result of wilful and contumacious conduct (Rosenblatt v. Franklin Hospital Medical Center, 165 AD3d 862, 85 NYS3d 488 [2d Dept., 2018]). Such conduct may be inferred from a party's actions, specifically a long period of time passing without complying with the discovery coupled with the absence of any reasonable excuse to explain such failure to comply (Morson v. 5899 Realty LLC, 171 AD3d 916, 98 NYS3d 127 [2d Dept., 2019]). Generally, the failure of either party to provide sought after discovery and to follow the express order of the court demonstrates a pattern of wilful default and neglect concerning the outstanding discovery (Espinal v. New York City Health and Hospitals Corp., 115 AD3d 641, 981 NYS2d 569 [2d Dept., 2014]).

A preliminary examination whether the plaintiff maintains standing is now required.

It is well settled that the right to inspect corporate books and records under the common law can only be asserted when a corporate shareholder is acting in good faith and has established that the inspection is for a proper purpose (Matter of Crane Co. v. Anaconda Co., 39 NY2d 14, 382 NYS2d 707 [1976]).

A review of the exchanges between the parties demonstrates sufficient evidence the plaintiff may be an owner of the restaurant. Although it is difficult to follow the flow of the conversation among people where English is not a first language it is clear legitimate questions have been raised concerning ownership. Thus, on page nine of the text messages submitted, concerning the restaurant in question a text states "you can bring the contract of 59 and 53 together, and I'll do the shareholder contract" (see, Page 9 of Translated Texts [NYSCEF Doc. No. 22]). While this does not conclusively establish ownership, at this juncture, the plaintiff has presented evidence she may be an owner and should be entitled to the books and records.

Therefore, based on the foregoing the motion seeking to strike the answer is resolved as follows: the defendants must provide the outstanding discovery related to the books and records of the restaurant within thirty days of receipt of this

order. The plaintiff is ordered to maintain discretion when reviewing such documents and cannot disclose the documents to any third party other than counsel or perhaps other experts to assist with this litigation.

So ordered.

ENTER:

DATED: February 27, 2023  
Brooklyn N.Y.



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Hon. Leon Ruchelsman  
JSC