

Yang v Knights Genesis Group

2023 NY Slip Op 30770(U)

March 14, 2023

Supreme Court, New York County

Docket Number: Index No. 651118/2021

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

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>12/09/2022,</u> <u>12/10/2022</u></p> <p>MOTION SEQ. NO. <u>012 013</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 012) 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 307, 308, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 350, 351

were read on this motion to/for

STRIKE PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 013) 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 311, 312, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 352, 353, 354

were read on this motion to/for

DISCOVERY

Upon the foregoing documents and for reasons set forth on the record (3.10.23), Ying Shen, Liang Zhao, and Lihang Xu's (collectively, the **Intervenor-Plaintiffs**) motion (Mtn. Seq. No. 12) seeking (i) to strike answers of Jiangcheng (Jason) Yuan and Jianfei Chen (collectively, the **Individual Defendants**) and (ii) a protective order is granted solely to the extent that Messrs. Yuan and Chen must appear for depositions by April 30, 2023 and if they fail to do so, the Court may issue a supplemental order striking their answers.

In this instant motion, the Intervenor-Plaintiffs claim that Messrs. Yuan and Chen willfully and inexcusably failed to appear for the depositions scheduled for November 27 and 28, 2022 on the

last business day before the start of those depositions, and as such, the striking of their answers is warranted. In their opposition papers, the Individual Defendants contend that their adjournment of the depositions was reasonable because one of the defendants Knights Genesis Investment Ltd. (**Knight Genesis**), who moved to vacate its default, requested to participate in the scheduled depositions but was refused by other parties in this action.

Pursuant to CPLR 3126, a party may move for an order to strike a pleading where a party refuses to obey an order for disclosure or fails to disclose information that the court finds ought to have been disclosed. Such failure to comply must be willful, contumacious, or in bad faith (*Palmenta v Columbia University*, 266 AD2d 90, 91 [1st Dept 1999]). The Intervenor-Plaintiffs have not identified any order for disclosure that the Individual Defendants have failed to comply with as the Court has not yet issued any such order. As such, the motion to strike is premature.

However, Knight Genesis's frivolous pending motion at that time is irrelevant to the Individual Defendants' scheduled depositions and their unilateral cancellation is baseless. As such, they must appear for depositions by April 30, 2023. If they fail to do so, the Court may issue a supplemental order striking their answers. Counsel are directed to email Part 53 (sfc-part53@nycourts.gov) dates certain for these depositions by March 15, 2023 at 5 pm and appear for a status conference on March 16, 2023 at 12 pm.

The Intervenor-Plaintiffs also seek a protective order for Mr. Xu, directing the defendants to conduct any examination via written interrogatories. Mr. Xu resides in mainland China and because Chinese laws prohibit giving a deposition in mainland China for use in a foreign proceeding, the defendants can not take Mr. Xu's deposition at his residence. Mr. Xu now

claims to be under an enormous burden to travel to Macau, China for a remote deposition due to his 85 years of age and failing health. Under the circumstances, counsel for the defendants have agreed to serve written interrogatories to Mr. Xu and reserve his rights to depose him if Mr. Xu intends to testify at trial and the Intervenor-Plaintiffs have agreed to make Mr. Xu available for a deposition under those circumstances.

Jincheng Yuan, Katie Chen, Jianfei Chen, KG Bayside LLC and Silver City Capital Inc.'s (collectively, the **Defendants**) motion (Mtn. Seq. No. 13) to compel (i) the Intervenor-Plaintiffs' depositions and (ii) communications between Mr. Zhao, Ying Li and Hong Li must be denied because the motion is wholly without merit. The Defendants unilaterally cancelled the deposition without appropriate basis on the eve of the deposition for Ms. Shen after she had traveled to Macau at great expense and after they were warned that cancelling her deposition would result in waiver. Having failed to proceed, the Defendants have waived any right to depose her and therefore are precluded from taking any further deposition. Mr. Zhao's deposition was taken on November 11 and 14, 2022 and the Defendants have no legitimate basis to re-open his deposition now. The branch of the motion seeking communications from Mr. Zhao is also meritless because Mr. Zhao was deposed on November 11, 2022 and had provided an affidavit that he does not possess any other responsive documents (NTSCEF Doc. No. 327). Nothing on the record before the court suggests otherwise.

It is hereby ORDERED that the Intervenor-Plaintiffs' motion (Mtn. Seq. No. 12) is granted solely to the extent that Messrs. Yuan and Chen must appear for depositions by April 30, 2023

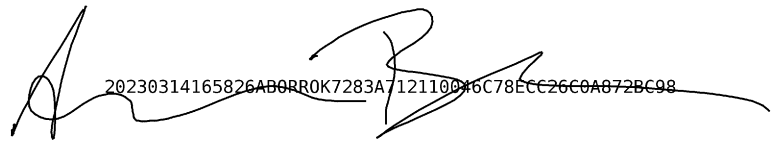
and if they fail to do so, the Court may issue a supplemental order striking their answers; and it is further

ORDERED that counsel are directed to email Part 53 (sfc-part53@nycourts.gov) dates certain for Messrs. Yuan and Chen’s depositions by March 15, 2023 at 5 pm; and it is further

ORDERED that counsel are directed to appear for a status conference on **March 16, 2023 at 12 pm**; and it is further

ORDERED that the Defendants’ motion (Mtn. Seq. No. 13) to compel is denied; and it is further

ORDERED that the Defendants are precluded from taking Ying Shen’s deposition.



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3/14/2023

DATE

ANDREW 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