

Jian Chen v Yun Duan Teng

2023 NY Slip Op 32457(U)

June 30, 2023

Supreme Court, New York County

Docket Number: Index No. 656634/2022

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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JIAN CHEN and DONG ZHEN LIN,

Index No. 656634/2022

Plaintiffs

- against -

DECISION AND ORDER

YUN DUAN TENG, JIALI MIAO a/k/a NICOLE
MIAO, TIEN YU HEH, JOHN DOE 1-200, and
ABC COMPANY 1-10,

Defendants
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LUCY BILLINGS, J.S.C.:

I. INTRODUCTION

Defendants Miao and Heh move to dismiss the complaint against them based on expiration of the applicable statutes of limitations; noncompliance with the statute of frauds, N.Y. Gen. Oblig. Law (GOL) § 5-701(a)(1) and (2); and plaintiffs' failure to allege a viable claim against these defendants. C.P.L.R. § 3211(a)(5) and (7). The complaint alleges that plaintiffs and defendants other than Miao and Heh entered oral agreements to participate in three hui between 2013 and 2017 and that defendants Miao and Heh guaranteed payment of defendant Teng's debts to plaintiffs incurred through her participation in the hui. Plaintiffs do not allege that Miao or Heh themselves participated in the hui.

According to the complaint, a hui is an informal financial

arrangement in which a group of participants contribute specified amounts to a pool of funds at regularly scheduled intervals. At each interval the pool of funds is given to one member of the group on a rotating basis. A coordinator receives the participants' payments and disburses the pool at each interval according to the agreed rules. As the coordinator is responsible for collecting the contributions, the coordinator is also responsible for reimbursing the hui for any losses.

II. CONTRACT AND QUASI-CONTRACT CLAIMS

The complaint alleges that Teng was the coordinator of the three hui alleged in the complaint. During the three hui, Teng executed promissory notes for funds she borrowed from plaintiff Chen to reimburse hui members. Although the notes were due upon demand, the complaint does not allege that Chen demanded payment until October 2017. As plaintiffs commenced this action in June 2022, to the extent Miao or Heh guaranteed repayment of these promissory notes, plaintiffs' claims against Miao and Heh for breach of such guaranties are timely under the applicable statute of limitations of six years. C.P.L.R. § 213(2).

Nevertheless, the first hui that plaintiffs allege lasted for 61 rounds from October 1, 2013, to February 1, 2017, the second hui lasted for 63 rounds from February 1, 2015, to August 1, 2019, and the third hui lasted for 60 rounds from February 15, 2017, to October 15, 2020. Thus, for any guaranty of payments

due to plaintiffs for the course of any of the hui to be enforceable, the guaranty must have been in writing. GOL § 5-701(a)(1); D & N Boening v. Kirsch Beverages. 63 N.Y.2d 449, 457 (1984). Moreover, for any guaranty to answer for another person's debt to be enforceable, as claimed here, the guaranty also must have been in writing. GOL § 5-701(a)(2). The complaint alleges that the guaranties by Miao and Heh were via telephone and thus not in writing.

In opposition to the motion by Miao and Heh, plaintiffs present two text messages that refer to a guaranty. The first, July 11, 2013, states: "I am guarantee [sic] it. . . . In addition to my guarantee, my husband Tian Yu is also a guarantor." Aff. in Opp'n of Pablo Bustos, Esq., Ex. B, at 2. Although the second sentence referring to "my husband Tian Yu" may identify the author as Miao, she may not promise for him, and her own guaranty, even in the context of the preceding text messages, nowhere identifies what she guarantees or to whom. None of plaintiffs' affidavits authenticates the author or the recipient of any of the text messages. Clarke v. American Truck & Trailer, Inc., 171 A.D.3d 405, 406 (1st Dep't 2019); Kenneth J. v. Lesley B., 165 A.D.3d 439, 440 (1st Dep't 2018); B & H Florida Notes LLC v. Ashkenazi, 149 A.D.3d 401, 403 n.2 (1st Dep't 2017); AO Asset Mgt. LLC v. Levine, 128 A.D.3d 620, 621 (1st Dep't 2015). The second text message, August 14, 2013, "I am hereby

guarantee [sic] I will pay it back," is completely unauthenticated. Bustos Aff., Ex. B, at 3. Plaintiffs concede that their inadmissible payment receipts, for which plaintiffs lay no business record foundation, do not show any guaranties whatsoever. Id. Ex B; C.P.L.R. § 4518(a); Buffington v. Catholic Sch. Region of Northwest & Southwest Bronx, 198 A.D.3d 410, 411 (1st Dep't 2021); Doe v. Intercontinental Hotels Group, PLC, 193 A.D.3d 410, 411 (1st Dep't 2021); HSBC Bank USA, N.A. v. Greene, 190 A.D.3d 417, 418 (1st Dep't 2021).

These oral guaranties, moreover, never included a statement of a specific amount due to which Miao or Heh assented to support plaintiffs' alternative account stated claim. Dragonetti Bros. Landscaping Nursery & Florist, Inc. v. Verizon New York, Inc., 208 A.D.3d 1125, 1126 (1st Dep't 2022); Suverant LLC v. Brainchild, Inc., 191 A.D.3d 513, 513 (1st Dep't 2021); Golden Star Imports, Ltd. v. Abamov & Sons, Inc., 190 A.D.3d 602, 603 (1st Dep't 2021). Therefore the court grants these defendants' motion to dismiss plaintiffs' breach of contract and account stated claims based on the oral guaranties. C.P.L.R. § 3211(a)(5) and (7); GOL § 5-701(a)(1) and (2).

Plaintiffs' alternative claim for unjust enrichment fails because plaintiffs do not allege how Miao or Heh was enriched or received any benefit from the huis. Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 183 (2011); IDT Corp. v. Morgan

Stanley Dean Witter & Co., 12 N.Y.3d 132, 142 (2009); Barlow v. Skroupa, ___ A.D.3d ___, 2023 WL 4239667, at *2 (1st Dep't June 29, 2023); Gans v. Wilbee Corp., 199 A.D.3d 564, 564 (1st Dep't 2021). Because plaintiffs' promissory estoppel claim is based on the same alleged oral promise to guarantee payment of Teng's debts as their breach of contract claim, plaintiffs may not use promissory estoppel to circumvent the statute of frauds unless plaintiffs show an unconscionable injury, which they do not allege. Future Star Hospitality Advisors, LLC v. LaFrieda Veal & Lamb Co., Inc., 203 A.D.3d 509, 510 (1st Dep't 2022). Therefore the court grants these Miao's and Heh's motion to dismiss plaintiffs' unjust enrichment and promissory estoppel claims. C.P.L.R. § 3211(a)(7).

III. TORT CLAIMS

To the extent plaintiffs were friends with Miao or Heh and engaged in a financial transaction with either defendant, neither the parties' friendship nor their business relationship imposed a fiduciary duty on Miao or Heh. Karipaparambil v. Polus, 195 A.D.3d 515, 516 (1st Dep't 2021); Benzies v. Take-Two Interactive Software, Inc., 159 A.D.3d 629, 630-31 (1st Dep't 2018); Castellotti v. Free, 138 A.D.3d 198, 209 (1st Dep't 2016). See Jin Chai-Chen v. Metropolitan Life Ins. Co., 190 A.D.3d 635, 636 (1st Dep't 2021). Nor do plaintiffs allege that Miao or Heh possessed any superior knowledge or expertise on which plaintiffs

relied. Riggs v. Brooklyn Hosp. Ctr., 207 A.D.3d 405, 407 (1st Dep't 2022); J.P. Morgan Sec. Inc. v. Ader, 127 A.D.3d 506, 507 (1st Dep't 2015); Waterscape Resort LLC v. McGovern, 107 A.D.3d 571, 571 (1st Dep't 2013); Sebastian Holdings, Inc. v. Deutsche Bank AG, 78 A.D.3d 446, 447 (1st Dep't 2010). See New York City Waterfront Dev. Fund II, LLC v. Pier A Battery Park Assocs., LLC, 206 A.D.3d 565, 567 (1st Dep't 2022). Plaintiffs allege nothing more than a creditor-debtor relationship with Miao and Heh, which is not a fiduciary relationship. Absent any alleged facts demonstrating a fiduciary relationship, the court grants these defendants' motion to dismiss plaintiffs' claims for breach of a fiduciary duty. C.P.L.R. § 3211(a)(7).

Plaintiffs' fraudulent inducement and misrepresentation claims are indistinguishable and both fail to plead the specific misrepresentations of facts by Miao and Heh, when they made those misrepresentations, or any other circumstances of the misrepresentations, other than their promises to guarantee payment of Teng's debts. Eurycleia Partners, LP v. Seard & Kissel, LLP, 12 N.Y.3d 553, 559 (2009); Barlow v. Skroupa, ___ A.D.3d ___, 2023 WL 4239667, at *1; Principia Partners LLC v. Swap Financial Group, LLC, 194 A.D.3d 584, 584 (1st Dep't 2021). Therefore these claims fail under C.P.L.R. § 3016(b), MP Cool Invs. Ltd. v. Forkosh, 142 A.D.3d 286, 291 (1st Dep't 2016), and because, at best, they plead nothing more than an intent by Miao

and Heh not to perform their agreement. Bloom v. Papadakis & Gonzalez D.D.S., PLLC, 211 A.D.3d 455, 456 (1st Dep't 2022); 320 W. 115 Realty LLC v. All Bldg. Constr. Corp., 194 A.D.3d 511, 512 (1st Dep't 2021); Cronos Group Ltd. v. XcomIP, LLC, 156 A.D.3d 54, 62-63 (1st Dep't 2017).

Plaintiffs' failure to allege that Miao or Heh ever possessed any funds or other property that belonged to plaintiffs, as well as the applicable statute of limitations of three years, C.P.L.R. § 214(3), bars plaintiffs' conversion claim. Barlow v. Skroupa, ___ A.D.3d ___, 2023 WL 4239667, at *2; Dragons 516 Ltd. v. GDC 138 E 50 LLC, 201 A.D.3d 463, 464 (1st Dep't 2022); Metropolitan Bank & Trust Co. v. Lopez, 189 A.D.3d 443, 444 (1st Dep't 2020). This claim accrued once Chen demanded repayment in October 2017, well more than four years before plaintiffs commenced this action. C.P.L.R. § 214(3); Ndemenoh v. City Univ. of N.Y., 180 A.D.3d 576, 577 (1st Dep't 2020); Underground Utils., Inc. v. Comptroller of the City of N.Y., 170 A.D.3d 481, 481-82 (1st Dep't 2019). Since none of plaintiffs' tort claims, for breach of a fiduciary duty, for fraud, or for conversion, survives, neither does their claim of conspiracy to commit a tort survive. An independent claim for conspiracy is not legally cognizable. Carlson v. American Intl. Group, Inc., 30 N.Y.3d 288, 310 (2017); Barlow v. Skroupa, ___ A.D.3d ___, 2023 WL 4239667, at *1; ALP, Inc. v. Moskowitz, 204

A.D.3d 454, 456 (1st Dep't 2022); Dragons 516 Ltd. v. GDC 138 E 50 LLC, 201 A.D.3d at 464. Even if plaintiffs pleaded a tort, they do not identify with whom Miao or Heh conspired or what agreement either defendant made to commit the tort. Gregor v. Rossi, 120 A.D.3d 447, 449 (1st Dep't 2014); 1766-68 Assoc., LP v. City of New York, 91 A.D.3d 519, 520 (1st Dep't 2012); Abacus Fed. Sav. Bank v. Lim, 75 A.D.3d 472, 474 (1st Dep't 2020).

Therefore the court grants Miao's and Heh's motion to dismiss plaintiffs' conversion and civil conspiracy claims. C.P.L.R. § 3211(a)(7).

IV. EQUITABLE CLAIMS

Although plaintiffs' claim for an accounting does not mention Miao or Heh, to the extent plaintiffs seek an accounting from Miao and Heh, absent a fiduciary relationship between them and plaintiffs or these defendants' possession of plaintiffs' funds, their claims for an accounting and for a constructive trust fail. Metropolitan Bank & Trust Co. v. Lopez, 189 A.D.3d at 446. Their accounting claim also lacks any allegation that plaintiffs demanded an accounting. Family Health Mgt., LLC v. Rohan Developments, LLC, 207 A.D.3d 136, 144 (1st Dep't 2022); Marcal Fin. SA v. Middlegate Sec. Ltd., 203 A.D.3d 467, 467 (1st Dep't 2022); SH575 Holdings LLC v. Reliable Abstract Co., L.L.C., 195 A.D.3d 429, 430 (1st Dep't 2021). The absence of any allegation that plaintiffs transferred funds or other property

that unjustly enriched Miao and Heh, in reliance on their promise, also eliminates plaintiffs' constructive trust claim. Therefore the court grants Miao's and Heh's motion to dismiss plaintiffs' accounting and constructive trust claims. C.P.L.R. § 3211(a)(7).

V. STATUTORY CLAIM

Nor do plaintiffs allege consumer-merchant transactions for the purchase of merchandise or services for personal, family, or household use or allege other than peer-peer financial arrangements without any impact on the public or consumers besides the parties, to implicate New York General Business Law (GBL) § 349. Barlow v. Skroupa, ___ A.D.3d ___, 2023 WL 4239667, at *2; Koblence v. Modern Pawn Brokers, Inc., 182 A.D.3d 496, 497 (1st Dep't 2020); Bitsight Tech., Inc. v. SecurityScorecard, Inc., 143 A.D.3d 619, 621 (1st Dep't 2020). See Plavin v. Group Health Inc., 35 N.Y.3d 1, 10 (2020); Koch v. Acker, Merrall & Condit Co., 18 N.Y.3d 940, 941 (2012). Therefore the court also grants the motion by Miao and Heh to dismiss plaintiffs' claim for violation of GBL § 349. C.P.L.R. § 3211(a)(7).

VI. CONCLUSION

In sum, for the reasons explained above, the court grants the motion by defendants Miao and Heh to dismiss each of the complaint's claims against these defendants.

DATED: June 30, 2023



LUCY BILLINGS, J.S.C.