

Se W. Ban v Chul Hong Park

2023 NY Slip Op 32541(U)

July 20, 2023

Supreme Court, New York County

Docket Number: Index No. 656588/2022

Judge: Lucy Billings

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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: PART 41

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SE W. BAN,

Index No. 656588/2022

Plaintiff

- against -

DECISION AND ORDER

CHUL HONG PARK a/k/a RAY PARK, HENRY B.
KIM, JEE YOUNG KIM, and DONG HE SHIN,

Defendants
-----x

LUCY BILLINGS, J.S.C.:

Defendants Park and Shin move to dismiss the complaint's second and third claims against these defendants. The court may not consider their affidavits' contents to support dismissal pursuant to C.P.L.R. § 3211(a)(7), Serao v. Bench-Serao, 149 A.D.3d 645, 646 (1st Dep't 2017); Calpo-Rivera v. Siroka, 144 A.D.3d 568, 568 (1st Dep't 2016); Asmar v. 20th & Seventh Assoc., LLC, 125 A.D.3d 563, 564 (1st Dep't 2015); City of New York v. VJHC Dev. Corp., 125 A.D.3d 425, 426 (1st Dep't 2015), but may consider documents their affidavits authenticate, pursuant to C.P.L.R. § 3211(a)(1). Those documents, on which plaintiff also relies, establish that Park and Shin are members of BBRH, LLC, which purchased 70% of the shares of S&D Wave Group, Inc., in 2019. Plaintiff alleges that Park and Shin are President and Vice President of S&D Wave Group, but they are not parties to the December 2019 Shareholder Agreement governing S&D Wave Group.

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The complaint's second claim alleges that S&D Wave Group received a loan in May 2018 from Noah Bank; that in the Shareholder Agreement among plaintiff Ban, BBRH, and defendants, defendants agreed to be personally liable for 50% of the principal and interest due for the loan; and that defendants breached their agreement to repay their 50%. The third claim is for defendants' unjust enrichment based on the same facts.

Not only are Park and Shin not parties to the Shareholder Agreement, but it expressly provides that plaintiff is personally liable for 50% of the remaining principal and interest for a corporate loan from Noah Bank and 50% of the monthly mortgage payments to Noah Bank, and BBRH is to pay the remaining 50% of the monthly mortgage payments. The Shareholder Agreement does not mention Park or Shin. Although Park and Shin executed the Shareholder Agreement in their capacities as BBRH's members on its behalf, their membership in BBRH does not render them liable for the limited liability company's debt. N.Y. Lim. Liab. Co. Law § 609(a); Board of Mgrs. of 325 Fifth Ave. Condominium v. Continental Residential Holdings LLC, 149 A.D.3d 472, 475 (1st Dep't 2017); Kellogg v. All Sts. Hous. Dev. Fund Co., Inc., 146 A.D.3d 615, 617 (1st Dep't 2017); Moshan v. PBM, LLC, 141 A.D.3d 496, 497 (1st Dep't 2016); Broadway 26 Waterview LLC v. Bainton, McCarthy & Siegel, LLC, 94 A.D.3d 506, 507 (1st Dep't 2012).

By comparison, as plaintiff points out, Park and Shin

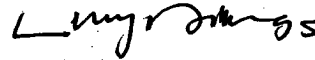
personally guaranteed S&D Wave Group's obligations under its lease. Park and Shin did not personally guarantee BBRH's obligations under the Shareholder Agreement.

To the extent that plaintiff alleges Park or Shin orally agreed to be liable for BBRH's debt, such an oral agreement to answer for another person's or entity's debt is unenforceable. N.Y. Gen. Oblig. Law § 5-701(2); Paul, Weiss, Rifkind, Wharton & Garrison v. Westergaard, 75 N.Y.2d 755, 756 (1989); Reddy v. Mihos, 160 A.D.3d 510, 514 (1st Dep't 2018); Abyssinian Dev. Corp. v. Bistricher, 127 A.D.3d 537, 538 (1st Dep't 2015); Matter of Press, 30 A.D.3d 154, 156 (1st Dep't 2006). To the extent that plaintiff alleges Park or Shin misappropriated S&D Wave Group's funds or refused to provide plaintiff access to its books and records, the second and third claims that these defendants move to dismiss do not encompass those allegations. Plaintiffs' allegations that Park and Shin disregarded the corporate form and that might support piercing the corporate veil to reach them pertain to the corporation S&D Wave Group and not BBRH, to which plaintiff's second and third claims pertain.

Consequently, the court grants the motion by defendants Park and Shin to dismiss the complaint's second and third claims against these defendants. C.P.L.R. § 3211(a)(1) and (5). The

complaint's second and third claims against the other defendants and the complaint's other claims remain.

DATED: July 20, 2023



LUCY BILLINGS, J.S.C.

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J.S.C.