

**Access Advance LLC v Zhejiang Dahua Tech. Co.,  
Ltd.**

2024 NY Slip Op 31896(U)

May 30, 2024

Supreme Court, New York County

Docket Number: Index No. 654061/2021

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NANCY M. BANNON PART 61M**

*Justice*

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ACCESS ADVANCE LLC,

Plaintiff,

- v -

INDEX NO. 654061/2021

MOTION DATE 05/02/2024

MOTION SEQ. NO. 012

ZHEJIANG DAHUA TECHNOLOGY CO., LTD., DAHUA  
TECHNOLOGY USA INC.

Defendant.

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**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 012) 354, 355, 356, 357, 358, 359, 360, 361, 362, 372, 373, 374, 375, 376

were read on this motion to/for PRECLUDE.

This breach of contract action arises from a series of license agreements executed by the plaintiff, Access Advance LLC (“Access Advance”), and defendant Zhejiang Dahua Technology Co. Ltd. (“Zhejiang Dahua”) for digital video compression technology. Access Advance accuses Zhejiang Dahua of breaching these contracts and, as part of that claim, alleges that defendant Dahua Technology USA Inc. (“Dahua USA”) is the agent and alter ego of Zhejiang Dahua. Access Advance now moves *in limine* to preclude the defendants from introducing expert testimony opining on the issue of whether Dahua USA is an alter ego of Zhejiang Dahua. The defendants oppose the motion. The motion is granted.

On September 28, 2023, following oral argument on a number of unrelated motions, the parties raised and the court (Ostrager, J. [Ret.]) addressed the issue of the defendants’ anticipated expert testimony with respect to alter ego liability, stating that “[a]lter ego is ... it’s not a topic for expert opinion ...” (Transcript, Sept. 28, 2023, p. 29, line 10; NYSCEF Doc. No. 326) and that “you can have the expert opine about the relationship of the [defendant] companies, but you can’t have the expert express the expert opinion that one company is [or is

not] the alter ego of the other ...” (Transcript, Sept. 28, 2023, p. 30, line 13; NYSCEF Doc. No. 326).

Notwithstanding Justice Ostrager’s ruling on the record, the defendants thereafter produced the two expert reports. The first is authored by Mei Zhe, an expert in Chinese law (the “Mei Zhe Report”). See NYSCEF Doc. No. 356. The Mei Zhe Report opines regarding the application of Chinese corporate law to the facts of this case and concludes the two defendant entities do not have an alter ego relationship under Chinese Law. Id. Stephen B. Presser, an emeritus professor at Northwestern University’s law school, authored the second report (the “Presser Report”), which opines regarding the legal standard for piercing the corporate veil and alter ego liability, and the application of that standard to the facts of this case. See NYSCEF Doc. No. 357. It concludes that the applicable legal standard is not met with respect to the defendant entities here, and thus, in effect, that Dahua USA is not an alter ego of Zhejiang Dahua. Id.

In moving to preclude the reports, Access Advance argues that the experts improperly engage in legal analysis and opine as to legal conclusions insofar as they conclude that Dahua USA is not an alter ego of Zhejiang Dahua and, in the case of the Mei Zhe Report, that its discussion of Chinese law is inapplicable and irrelevant to this case. As such, it seeks an order precluding the defendants’ experts from testifying as to the legal conclusion of whether Dahua USA is an alter ego of Zhejiang Dahua. See NYSCEF Doc. No. 362.

In opposition, the defendants maintain (i) the motion is premature, (ii) the subject expert reports follow applicable law, and (iii) the Mei Zhe Report is necessary to aid the court in interpreting Chinese law. See NYSCEF Doc. No. 372.

First, the court notes that Justice Ostrager’s ruling that alter ego liability is not a topic for expert opinion is law of the case. The doctrine of law of the case is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned.” Martin v City of Cohoes, 37 NY2d 162, 165 (1975). Nor do the defendants proffer any cogent reason on this motion for admitting the proposed testimony.

As a general rule, the admissibility and scope of expert testimony is a determination within the discretion of the trial court. See De Long v Erie Cnty., 60 NY2d 296, 307 (1983); Williams v Perez 150 AD3d 1314 (2<sup>nd</sup> Dept. 2017). “The guiding principle is that expert opinion is proper when it would help to clarify an issue calling for professional or technical knowledge, possessed by the expert and beyond the ken of the typical juror.” De Long v Erie Cnty., *supra*. It is well established, however, that “[e]xpert testimony as to a legal conclusion is impermissible.” Measom v Greenwich & Perry St. Hous. Corp., 268 AD2d 156, 159 (1<sup>st</sup> Dept. 2000).

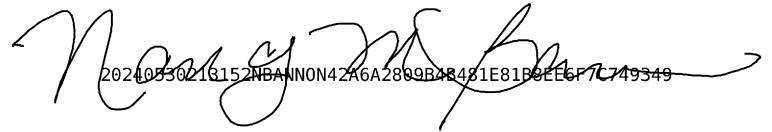
Here, it is evident that the defendants’ experts exceed the proper scope of expert testimony. They impermissibly opine as to legal conclusions—i.e., that Dahua USA is not an alter ego of Zhejiang Dahua—as well as to questions of law that are reserved to the court, such as the applicable legal standard for determining the alter ego issue. In so doing, they violate the court’s prior ruling as to the admissibility of expert testimony on the alter ego issue. Consequently, the Presser’s opinion as to the applicable legal standard for determining alter ego liability, his legal analysis in applying that standard to the facts of this case, and his conclusion that the standard is not met with respect to the defendant entities, are all improper. Likewise, Mei Zhe’s opinion that the defendant entities’ lack an alter ego relationship under Chinese law. While courts have sometimes allowed experts on foreign law to testify to legal conclusions (*see e.g.*, ROAM Cap., Inc. v Asia Alternatives Mgmt., LLC, 215 AD3d 604 [1<sup>st</sup> Dept. 2023]), there is no basis for doing so in this case. The law applicable to the issue of alter ego is generally the law of the state in which the company whose veil is to be pierced was incorporated. See Resorts Grp., Inc. v Cerberus Cap. Mgmt., L.P., 213 AD3d 621 (1<sup>st</sup> Dept. 2023). Here, that is Dahua USA, which was incorporated in California. Alternatively, the licensing agreements that were allegedly breached both contain New York choice of law provisions. Regardless, however, of whether the controlling law for determining the alter ego issue is that of California or New York, it evidently not Chinese law, and the defendants offer no cogent argument to the contrary.

The defendants’ remaining arguments are unavailing.

Accordingly, upon the foregoing papers, it is

ORDERED that the plaintiff’s motion to preclude is granted and the defendants are precluded from presenting the proposed expert testimony on the issue of alter ego liability.

This constitutes the Decision and Order of the court.



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5/30/2024

DATE

NANCY M. BANNON, 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