

Yang v Knights Genesis Group

2024 NY Slip Op 32387(U)

July 8, 2024

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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YUNJIE FRANK YANG, YING SHEN, LIHANG XU, LIANG ZHAO,

Plaintiff,

- v -

KNIGHTS GENESIS GROUP, JIANGCHENG JASON YUAN, KATIE CHEN, TINA TANG, 1989 INVESTOR LLC, KG BAYSIDE LLC, JIANFEI CHEN, SILVER CITY CAPITAL INC.,

Defendant.

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INDEX NO. 651118/2021

MOTION DATE 04/17/2024

MOTION SEQ. NO. 016

DECISION + ORDER ON MOTION

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 016) 517, 518, 519, 520, 521, 522, 523

were read on this motion to/for PAYMT OUT OF COURT OF PROPERTY.

Upon the foregoing documents and on the record before the Court, Ying Shen, Liang Zhao, and Lihang Xu (the **Plaintiff-Intervenors**)’s motion (Mtn. Seq. No. 016) requesting that this Court release to the Plaintiff-Intervenors their 60% *pro rata* share of the \$1,403,157.80 Bankruptcy Distribution (hereinafter defined) that the Court previously ordered be deposited with the Court, is granted to the extent and the Plaintiff-Intervenors are to settle an order taking into account all other monies received by Yunjie “Frank” Yang and the Plaintiff-Intervenors such that there is a fair *pro rata* distribution of the Bankruptcy Distribution.

For the reasons set forth below, Mr. Yang is not entitled to rely on CPLR 5234 as to the execution he prematurely served which was previously vacated by this Court as having violated the injunction that Mr. Yang himself obtained requiring the escrow of the Bankruptcy

Distribution **until final adjudication of this matter** (and not simply until resolution of his

claims). The Court did not grant him the **immediate** right to seek execution and merely indicated that upon final adjudication of the matter (per the injunction) and release of the escrow he could serve execution pursuant to CPLR 5234. His opportunistic behavior can not serve to defeat the rights of the Intervenor-Plaintiffs who Mr. Yang does not dispute invested more money and suffered a greater loss than he.

More specifically, Yunjie “Frank” Yang brought this lawsuit on February 17, 2021. On March 15, 2021, in a related case, the United State Bankruptcy Court for the Eastern District of New York authorized a \$1,473,345.69 **pro rata** distribution (the **Bankruptcy Distribution**) to Defendant 1989 Investor (*In re 1989 3Ave, LLC*, Case No. 1-18-47234-nhl [Bankr. ED NY]) to ensure that the creditors were treated appropriately and in accordance with their respective loss:

Upon the notice of presentment filed on December 2, 2020 [ECF No. 181], together with the motion, dated January 29, 2021 [ECF No. 189], of the above-captioned Debtor, by and through its counsel, Robinson Brog Leinwand Greene Genovese & Gluck P.C. (collectively, the “Application”), for entry of an Order, pursuant to sections 105, 502, 507 and 1141 of the Bankruptcy Code, and the Chapter 11 Plan (the “Plan”) and Order of Confirmation thereof [ECF Nos. 102, 118], approving and authorizing interim distributions of escrowed funds as contemplated under the Plan; and due and sufficient service of the Application and the hearing thereon having been provided; and a telephonic hearing on the Application having been held on February 16, 2021, at which appeared, among others, Robert Sasloff, Esq. and William X. Zou, Esq. (Counsel to Debtor), Tom M. Fini, Esq.(Counsel to ZLZ 33Inc, Chung Sum Cheng, Ji Juan Lin), and Rachel Wolf, Esq. (Office of the United States Trustee) (the “Hearing”) and no objections to the relief requested in the Application having been interposed; and upon entry of the Stipulation and Order on March 15, 2021 [ECF No. 195], which, among other things, resolves the objections filed to Claims 4 and 5, and provides ZLZ 33 Inc. with an allowed claim as an equity holder; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

ORDERED, that the Application is approved, and the Disbursing Agent, by and through its counsel, Robinson Brog Leinwand Greene Genovese & Gluck P.C. and the Law Office of Xian Feng Zou, is hereby authorized to make interim distributions in accordance with Schedule A annexed hereto.

(NYSCEF Doc. No. 215). Schedule A to the bankruptcy court's decision listed the *pro rata* distributions of the proceeds of the 1989 3Ave LLC bankruptcy including, as relevant here, the *pro rata* portion due 1989 Investor of the Bankruptcy Distribution to 1989 Investor (*id.*).

Mr. Yang moved by Order to Show Cause for a temporary restraining order and preliminary injunction seeking to restrain the defendants from distributing the Bankruptcy Distribution until final adjudication (NYSCEF Doc. No. 22) because Mr. Yang was concerned that certain of the creditors had already been repaid in full and because that if additional funds were advanced prior to final adjudication of the matter when it could be insured that everyone received their fair share of the proceeds it would be difficult if not impossible to claw back money taken out of the jurisdiction as he believed that the other investors were Chinese nationals:

ORDERED that Defendants show cause at Courtroom 238 in the New York Supreme Court Courthouse, Commercial Division for New York County at 60 Centre Street New York, NY 10007 on the 22 day of April, 2021 at 11:30 a.m., or as soon thereafter as counsel can be heard, why an order should not be made and entered (a) restraining Defendants and Nominal Defendant 1989 Investor LLC (the "Company") from disbursing any funds from the Company, including any amounts received by the Company from distributions made in the case of *In re 1989 3Ave, LLC*, Case No. 1-18- 47234-nhl (Bankr. E.D.N.Y.) (the "Bankruptcy Case"), until a final resolution of Plaintiff's claims; and (b) attaching the sum of one million, four hundred and seventy-three thousand, three hundred and forty-five dollars and sixty-nine cents (\$1,473,345.69) (the "Bankruptcy Distribution") plus interest and/or requiring such amount to be retained and placed in an escrow account ***pending the adjudication of this matter.*** (NYSCEF Doc. No. 22 [emphasis added]).

The Emergency Affirmation of Jacob M. Kaplan, Esq., indicated:

5. Immediate judicial review of the Order to Show Cause is appropriate. It is my understanding that 1989 3Ave LLC (the "Project Company"), a New York limited liability company, was to develop a property with the investment of Plaintiff Yunjie "Frank" Yang through 1989 Investor LLC (the "Company"), the nominal defendant and a Delaware limited liability company. The Project Company has since filed for bankruptcy. On February 16, 2021, the Bankruptcy Court for the

Eastern District of New York held a hearing and granted a motion authorizing the estate to make an interim payment to creditors of the Project Company (the “Bankruptcy Distribution”), including the Company. Defendants, who control the Company and its bank accounts, have indicated to Mr. Yang that they intend to allocate the Company’s share of the Bankruptcy Distribution pro rata to the Company’s members, despite the fact that four out of the six members of the Company have already been repaid in full for the principal and interest on their investments in the Company. Under the applicable subscription agreements, and pursuant to Defendants’ fiduciary duties to the Company members, the Company should not have repaid other members in full before repaying Mr. Yang, and there is absolutely no justification for making further payments to these already satisfied investors from the Bankruptcy Distribution at the cost of failing to repay Mr. Yang. If effectuated, this planned allocation would irreparably harm Mr. Yang. The other investors are, upon information and belief, all Chinese nationals and residents of China, such that this allocation would be difficult, if not impossible, to recover if made. *Plaintiff seeks to maintain the status quo* and ensure that no actions are taken by Defendants or the Company to disperse the Bankruptcy Distribution, pending an adjudication of Mr. Yang’s claims to those funds.

6. This application could not have been brought earlier because Plaintiff only recently learned that Defendants intend to allocate these funds on a pro rata basis to all members of the Company, including those already paid in full, rather than providing them to Mr. Yang, as Defendants had previously represented they would do.

(NYSCEF Doc. No. 19, at ¶¶ 5-6 [emphasis added]). Although Mr. Kaplan does not appear to have understood this when he filed his affirmation, as discussed, it is unequivocal that Mr. Yang was not the only person who was promised to be repaid first. The Intervenor-Plaintiffs were also promised to be repaid first. Both were defrauded and any payments made to others before repaying Mr. Yang did not result in full repayment to the Plaintiff-Intervenors who had invested more money than Mr. Yang.

On April 22, 2021, the Court relying on Mr. Yang and his attorneys’ representations (including that there were other investors [at least one other] who may have rights to this Bankruptcy Distribution and that in fact the *status quo* needed to be preserved [and, as such, no execution

would take place until final adjudication of the matter to ensure that everyone received their fair share as Mr. Yang had in fact indicated was the basis for the preliminary injunction]) issued a preliminary injunction to preserve the status quo and, significantly, required escrow of the funds until **final adjudication of the matter** (and not merely Mr. Yang's claims) but otherwise permitted attachment of the Bankruptcy Distribution (among other things, to ensure that the Bankruptcy Distribution, was in fact escrowed with the Court).

On August 31, 2021, the Plaintiff-Intervenors filed their claims against the original defendants and a number of other defendants. It was immediately apparent from the Plaintiff-Intervenors' papers that Mr. Yang did not necessarily have priority to the Bankruptcy Distribution because he was not the only person who had been promised "first dibs" on repayment.

Subsequently, on October 18, 2021, the Court granted Mr. Yang's motion for a default judgment against 1989 Investor and indicated in the order that Mr. Yang could have execution thereon in the order. Given the injunction and requirement that the funds be escrowed until final adjudication of the matter, the Court's intent was that execution could occur following final adjudication of the matter. Significantly, and to this end, the Court did not indicate that Mr. Yang could have "immediate" execution thereon and the Court did not modify or vacate the injunction requiring that the Bankruptcy Distribution be escrowed with the Court **until final adjudication of the matter**. The Court notes that, at that time, Mr. Yang did not seek a modification of the injunction designed to maintain the *status quo* or otherwise to seek a modification of the injunction such that the Bankruptcy Distribution would no longer be held in escrow and otherwise allowing him to have the right to seek **immediate** execution on the

judgment. Nonetheless, and despite the Court's prior preliminary injunction requiring all funds to be held in escrow **pending final adjudication of this case**, on January 27, 2022, Mr. Yang jumped the gun and issued an execution and delivered it to the Sheriff's office in attempt to ensure that he would be paid as much as possible first notwithstanding the claims of the Plaintiff-Intervenors who he then knew had invested more money than he did. Put another way, Mr. Yang disrupted the very *status quo* he obtained by preliminary injunction by opportunistically preempting the escrowing of the Bankruptcy Distribution when he served an execution on the sheriff in attempt to be paid more than his *pro-rata* share and to the detriment of the Intervenor-Plaintiffs who invested more money in the flop than he did. This opportunistic behavior both violated this Court's order and should not otherwise be rewarded.

Thereafter, the Plaintiff-Intervenors sought a preliminary injunction to restrain Mr. Yang from taking further action in support of its judgment and based on the April order where the Court had indicated that all proceeds were to be held until final adjudication of the Court. In granting the injunction the Court vacated the execution and indicated:

the Bankruptcy Distribution was attached and ordered to be placed in escrow pending the adjudication of the matter. To wit, it was clear to this Court when it issued the Preliminary Injunction that ***Mr. Yang was not the only investor in this alleged fraud and that as such the money needed to be set aside as potential other plaintiffs came out of the woodwork*** ... Thus, no execution based on the Yang Default Judgment was appropriate.

(NYSCEF Doc. No. 304). By supplemental order, the Court further clarified that Mr. Yang's execution was not proper because the Court had sought to have all proceeds placed in escrow to

preserve the status quo as Mr. Yang had petitioned this Court to do, until final adjudication of the matter and on a fully developed record:

Thus, no execution based on the Yang Default Judgment was appropriate. The only steps which were appropriate were attachment and escrow of the Bankruptcy Distribution until the final adjudication of this matter.

(NYSCEF Doc. No. 309).

Subsequently, the Sheriff deposited \$1,403,157.80 from the Bankruptcy Distribution with the Court. On June 15, 2022, the Clerk of the Court entered judgment in favor of the Plaintiff Intervenor in the amount of \$2.4 million. By order dated March 8, 2024, the Court granted the Plaintiff-Intervenor's motion for summary judgment against Yuan, Katie, Jianfei, KG Bayside and Silver City. On March 28, 2024, the Court signed a judgment in favor of the Plaintiff-Intervenor, which Judgment is either entered or awaiting entry.

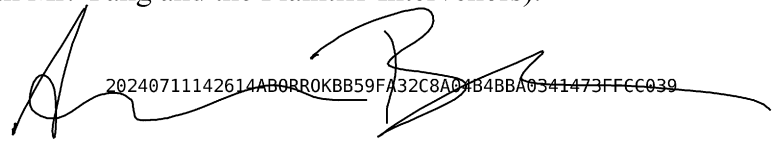
Now, the Plaintiff-Intervenor moves to have the distribution of the property from the escrow in the amount of 60% in favor of the Plaintiff-Intervenor. In his opposition papers, Mr. Yang argues, that among other things, that the Clerk should be directed to distribute the Bankruptcy Distribution to him based on his prior premature execution pursuant to CPLR 5234(b) in violation of the Court's order requiring the money to be placed in escrow to preserve the status quo as Mr. Yang himself had requested which this Court vacated. Mr. Yang's argument fails. CPLR 5234 provides for the orderly distribution of proceeds to creditors and assigns priority based on the order in which the executions were delivered. The rule is predicated on the notion that relative diligence is reflected by the speed in which creditors present their orders of attachment to the sheriff (11 Weinstein-Korn-Miller, NY Civ Prac ¶ 5234.05.) The Plaintiff-

Intervenors have not lacked any diligence in the prosecution of their rights. They immediately sought to intervene in this action. They did not oppose the entry of judgment as against 1989 Investor because they understood from the prior orders of this Court granted in Mr. Yang's favor that no execution could take place during the pendency of this matter and that in fact the money was required to be escrowed with the Court. Separately, they diligently pursued their own rights and sought judgment against the defendants, which they obtained. As discussed above, although the Court could have granted Mr. Yang "immediate" execution in support of his unopposed default judgment obtained against 1989 Investor, it did not. Nor did this Court modify its prior order requiring the Bankruptcy Distribution be held in escrow pending final adjudication of this matter. It did not because final adjudication of the matter had not yet occurred. To the extent of any confusion, this was addressed in subsequent order where the Court indicated that CPLR 5234 might provide a basis for relief **after final adjudication of the case.** Having jumped the gun, Mr. Yang can not now rely and seize upon CPLR 5234 to frustrate the intent of the injunction granted at his request to preserve the *status quo* and to ensure that all creditors were paid their fair share so that Mr. Yang receives more than his pro-rata share of the Bankruptcy Distribution. However, to the extent that Mr. Yang alternatively argues that true *pro-rata* distribution must take into account all monies received by both parties, he is correct. This was the intent of the prior relief granted by the Court and what both parties expressed to the Court that they sought. The parties similarly situated must be treated fairly and equitably taking into account all reasonable attorneys fees and expenses.

Accordingly, it is hereby

ORDERED that the Plaintiff-Intervenors' motion is granted to the extent set forth above; and it is further

ORDERED that the Plaintiff-Intervenors shall settle order providing for pro-rata distribution (taking into account all monies received by both Mr. Yang and the Plaintiff-Intervenors).



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7/8/2024
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