

Joyous JD Ltd. v Greenland Asset Mgt. Corp.

2024 NY Slip Op 33736(U)

October 10, 2024

Supreme Court, New York County

Docket Number: Index No. 651108/2023

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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JOYOUS JD LIMITED, MICROCLOUD HOLOGRAM, INC.,MC HOLOGRAM INC. <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> GREENLAND ASSET MANAGEMENT CORPORATION, ZHIGUO ZHANG, SHAOSHEN CHENG, <p style="text-align: center;">Defendant.</p>	<table border="0"> <tr> <td style="padding-right: 20px;">INDEX NO.</td> <td style="border-bottom: 1px solid black; text-align: right;">651108/2023</td> </tr> <tr> <td>MOTION DATE</td> <td style="border-bottom: 1px solid black; text-align: right;">03/22/2024</td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black; text-align: right;">002</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	651108/2023	MOTION DATE	03/22/2024	MOTION SEQ. NO.	002
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, Greenland Asset Management (**Greenland**), Zhiguo Zhang, and Shaoshen Cheng (collectively, hereinafter, the **Defendants**)’ motion (Mtn. Seq. No. 2) to dismiss is DENIED.

I. Greenland and Zhiguo Zhang are Subject to Personal Jurisdiction in New York

Both Greenland and Zhiguo Zhang argue that dismissal is required because they are not subject to personal jurisdiction. In support of their motion, among other things, they adduce the affidavits of Zhiguo Zhang (the **Zhang Affidavit**; NYSCEF Doc. No. 8) and Shaosen Cheng (NYSCEF Doc. No. 12; the **Cheng Affidavit**). As discussed further below, many of the assertions in the Zhang Affidavit and the Cheng Affidavit are however irreconcilably at odds with other documents in the record, and their arguments otherwise fail.

According to the Zhang Affidavit, Mr. Zhang is the principal shareholder of Greenland (owning 520,000 of the 1,437,500 shares of Greenland's common stock and 120,000 of the 270,500 of Greenland's investment stocks; NYSCEF Doc. No. 8 ¶ 11). According to him, Greenland has no employees, officers, or office in New York (*id.* ¶¶ 13-16). According to Shaosen Cheng, who lives in Rego Park, New York (NYSCEF Doc. No. 12 ¶ 3), he is not and has never been the CEO or any other executive of Greenland and has no responsibility over the day-to-day operations of Greenland (*id.*, ¶¶ 6-8).

Although that is what Messrs. Zhang and Cheng tell this Court now, this is not what they told the Securities and Exchange Commission or the investing public. As discussed above, these assertions are irreconcilably at odds with the other documents in the record that Mr. Cheng signed. To wit, Mr. Cheng signed both (i) the Registration Rights Agreement (NYSCEF Doc. No. 25) and (ii) the Golden Path Acquisition Corporation Private Placement Unit Subscription Agreement (NYSCEF Doc. No. 34) as Greenland's Chief Executive Officer. In the Schedule 13D for Greenland (NYSCEF Doc. No. 23) as to Greenland's Golden Path Acquisition Corporation holdings, Greenland lists Mr. Cheng, 100 Park Avenue, New York, New York 10017 (917-267-4569). When Greenland transferred shares in MicroCloud Hologram Inc. & G55032109 from Greenland to Mr. Cheng, Greenland listed 9940 63RD 9G Rego Park, NY 11374 as its address – *i.e.*, the same address Mr. Cheng listed on the same form as being his own address. As Greenland's authorized agent and apparent CEO is located in New York, Mr. Cheng owns stock in New York through VStock Transfer, signed numerous documents on behalf of Greenland in New York, regularly conducts business on behalf of Greenland in New York and has otherwise held itself out as maintaining at least two offices in New York (100 Park Avenue

and Mr. Cheng's Rego Park, New York apartment), the Plaintiff has at a bare minimum made out a prima facie case that Greenland is subject to CPLR 301 general jurisdiction (CPLR 301; *In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000*, 230 F Supp 2d 403, 407 [SDNY 2002] [listing factors]; NYSCEF Doc. Nos. 4 ¶¶ 8, 10; 56 at 2-3). This *prima facie* showing is sufficient to survive a motion to dismiss (*PC-16 Doe v Hill Regional Career High Sch.*, 223 AD3d 518, 518 [1st Dept 2024]). It would also appear as to this integrated transaction that specific jurisdiction under CPLR 302 is also properly asserted. According to the AC, Greenland transacted business in New York through (i) the Nasdaq IPO sponsored by Greenland through its CEO Cheng in New York, (ii) the de-SPAC process during which Greenland breached, among other things, the SPA and the SSPA, and (iii) attempted to remove restrictive legends by mailing transfer requests from its New York office to a New York transfer agent. Thus, having acted through its resident agent, jurisdiction pursuant to CPLR 302(a) is also properly asserted. In addition, the causal connection between conduct outside of the jurisdiction which had the effect of causing alleged torts inside of the jurisdiction is readily apparent. The SPA (hereinafter defined) and SSPA (hereinafter defined) were aimed at funding the New York SPAC IPO. Indeed, the whole point of the deal was to facilitate a New York listing. There is no question that there is substantial nexus between the claims asserted and New York.

Mr. Zhang is likewise subject to this Court's jurisdiction. According to the Amended Complaint (the **AC**; NYSCEF Doc. No. 4), Mr. Zhang is alleged to have been Greenland's primary actor as he (i) was Greenland's principal shareholder and controller and he executed the Share Purchase Agreement (the **SPA**; NYSCEF Doc. No. 57) and the Supplemental Share Purchase Agreement (the **SSPA**; NYSCEF Doc. No. 58) on Greenland's behalf, (ii) engaged in numerous

communications with the plaintiffs to further the SPAC transactions and the listing of Golden Path on NASDAQ, and (iii) he was allegedly compensated for those efforts (NYSCEF Doc. Nos. 4 ¶¶ 9, 13; 8 ¶¶ 3-4; 51, at 4). This is sufficient at his stage of the litigation (*Kreutter v. McFadden Oil Corp.*, 527 N.Y.S.2d 195, 199 [1988]).¹

II. Dismissal Based on Forum Non Conveniens is Also Not Warranted

CPLR 327 codifies the common law doctrine of *forum non conveniens*. Under CPLR 327, a court may dismiss an action if it “finds that in the interest of substantial justice the action should be heard in another forum.” The resolution of a motion to dismiss on *forum non conveniens* grounds is left to the sound discretion of the trial court (*Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478-479 [1984]).

Courts consider the burden on New York courts, potential hardship to the defendant, the unavailability of an alternative forum in which the plaintiff may bring suit, the residence of the parties, and whether the transaction at issue arose primarily in a foreign jurisdiction (*id.*). The plaintiff’s choice of forum should rarely be disturbed unless the balance is strongly in favor of the defendant and a substantial nexus between New York and the action is lacking (*Waterways, Ltd. v Barclays Bank PLC*, 174 AD2d 324, 327 [1st Dept 1991]; *Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 208 [1st Dept 2013]).

¹ The Court refers to an action captioned *Joyous JD Limited, Microalga Inc., VIYI Algorithm Inc. v. Yolanda Asset Management Corporation, Zhiguou Zhang, Yanming Liu*, Index No. 652028-2023 where the Court rejected similar arguments made by Mr. Zhang in favor of a different SPAC/IPO transaction that he facilitated in New York.

Significantly, Greenland filed another suit here in New York against one of the plaintiffs in this case (MicroCloud Hologram, Inc.) captioned *Greenland Asset Management Corporation v MicroCloud Hologram, Inc. f/k/a and as Successor-in-Interest to Golden Path Acquisition Corporation et al*, Index No. 651701/2023. Insofar as Mr. Zhang is alleged to be the actual controller of Greenland, this fact weighs heavily against any finding of hardship on Greenland or Mr. Zhang as a result of having to litigate this case in New York. As discussed above, Mr. Cheng resides in New York.

Although the defendants argue that much of the conduct at issue occurred in China and concerns foreign entities, this is insufficient to warrant dismissal pursuant to CPLR 327. As discussed above, the primary purpose of the transaction at issue was to facilitate the New York IPO of Golden Path (which, like Greenland, also kept its offices at 100 Park Avenue, New York, NY 10017) and its listing on the NASDAQ, followed by a merger pursuant to a Business Combination and Merger Agreement which provides that it is governed by New York law (*see* NYSCEF Doc. No. 60 at 63). The transaction itself was accomplished by the use of various New York businesses and professionals. As discussed above, Mr. Cheng, Greenland's CEO, is located and conducted business here in New York. Thus, many of the documents and witnesses necessary to adjudicate this case are in English or are otherwise located in New York.

Moreover, Joyous contends that China would provide an inadequate forum for this dispute because Chinese courts cannot conduct discovery on U.S. parties, nor exercise jurisdiction over Mr. Cheng, as a New York resident, or Greenland, as a British Virgin Islands corporation (NYSCEF Doc. No. 21 ¶¶ 5-6). The adequacy of an alternative forum is the "most important"

factor in considering dismissal on the grounds of *forum non conveniens*, and here it weighs against granting dismissal (*Islamic Republic of Iran v Pahlavi*, 62 NY2d at 481). Accordingly, this branch of the motion is also denied. For the avoidance of doubt, as to a *forum non conveniens* argument, it is of no significance that China would not be an inconvenient forum for Joyous because they brought a lawsuit there. What matters is that the defendants are not entitled to dismissal of this case based on *forum non conveniens* because New York simply is not an inconvenient forum for them or the claims asserted in this case to be litigated.

III. The Plaintiffs State a Claim Under Sections 11 and 12 of the 1933 Act

The defendants are also not entitled to dismissal of Joyous' claims brought pursuant to Sections 11 and 12 of the Securities Act of 1933 (the **1933 Act**) based on their arguments that (i) Joyous' Section 11 claim fails because the plaintiffs fail to show that their purchases of Golden Path shares are traceable to Golden Path's S-1 Registration Statement and (ii) Joyous otherwise lacks standing to bring their Section 12 claims.

A. Joyous Properly Alleges Section 11 Standing

Section 11 claims contain a statutory standing requirement, as Section 11 expressly limits recovery only to "any person acquiring such security" under the registration statement (15 USC § 77k [a]). This requirement is generally referred to as the "tracing requirement." The tracing requirement "is satisfied where, for example, 'all of a company's shares have been issued in a single offering under the same registration statement'" (*In re Ariad Pharm., Inc. Sec. Litig.*, 842 F3d 744, 755 [1st Cir 2016]).

Such is the case here. The shares purchased by Joyous are traceable to the S-1 Registration Statement, because all the shares then on the market were issued in the Golden Path IPO pursuant to the S-1 Registration Statement (*id.*; *see also Mahar v Gen. Electric Co.*, 65 Misc 3d 1121, 1125 [Sup Ct 2019], *affid*, 188 AD3d 534 [1st Dept 2020]). Thus, Joyous has standing to bring its Section 11 claim (*Mahar*, 65 Misc 3d at 1125).

B. Joyous Properly Alleges Section 12 Standing

Under Section 12, “liability extends [] to the person who successfully solicits the purchase, motivated at least in part by a desire to serve his own financial interests or those of the securities owner” (*Pinter v. Dahl*, 486 U.S. 622, 642 [1988]). Joyous’ allegation that it purchased Golden Path’s securities in connection with the IPO is sufficient to establish standing at this stage of the proceeding under Section 12(a)(2) (*PPDAI Group Sec. Litig. v XXX*, 66 Misc 3d 1226(A) [Sup Ct 2020] [“[I]t is sufficient to allege that [Plaintiffs] purchased [ADSs] in connection with the IPO”]; *In re iDreamSky Tech. Ltd. Sec. Litig.*, 236 F Supp 3d 824, 832 [SDNY 2017]).

IV. Dismissal Pursuant to LLCL 808(a) is Not Warranted

The Defendants argue that the AC must be dismissed pursuant to Limited Liability Company Law (LLCL) 808(a), which provides “[a] foreign limited liability company doing business in this state without having received a certificate of authority to do business in this state may not maintain any action, suit or special proceeding in any court of this state unless and until such limited liability company shall have received a certificate of authority in this state.”

The argument fails for two reasons. First, the plaintiffs are not limited liability companies, and thus LLCL 808(a) is inapplicable. Second, even if the Defendants argued dismissal was warranted pursuant to the similar requirements applying to foreign corporations under Business Corporation Law (BCL) 1312(a), the failure to register is curable and does not require dismissal of the complaint (*Apollo Global Management, Inc. v Cernich*, 2022 WL 2612429, at * 5 [Sup Ct, NY County 2022]; citing *Uribe v Merchant Bank of New York*, 266 AD2d 21, 22 [1st Dept 1999]).

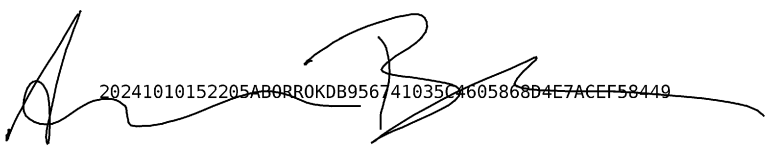
The Court has considered the parties' remaining arguments and found them unavailing.

Accordingly, it is hereby

ORDERED that the Defendants' motion to dismiss (Mtn. Seq. No. 002) is denied; and it is further

ORDERED that the Defendants' shall file an answer within 20 days of the date of this decision and order.

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10/10/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER REFERENCE

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT

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CORPORATION ET AL
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