

**Beijing Haohan Tianyu Inv. Consulting Co., Ltd. v  
ETAO Intl. Co., Ltd.**

2024 NY Slip Op 34608(U)

December 30, 2024

Supreme Court, New York County

Docket Number: Index No. 654056/2023

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 48

-----X

<p>BEIJING HAOHAN TIANYU INVESTMENT CONSULTING  CO., LTD.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>ETAO INTERNATIONAL CO., LTD. and WENSHENG LIU,</p> <p style="text-align: center;">Defendants.</p>	<p><b>INDEX NO.</b>            <u>654056/2023</u></p> <p><b>MOTION DATE</b>        <u>--</u></p> <p><b>MOTION SEQ. NO.</b>    <u>003</u></p> <p style="text-align: center;"><b>DECISION + ORDER ON  MOTION</b></p>
--	--

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 103

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Defendants ETAO International Co. Ltd (ETAO) and Wensheng Liu move<sup>1</sup> pursuant to CPLR 5015(a)(1) and 317<sup>3</sup> to vacate both the default judgment entered against them and the restraining notice levied against a bank account at Chase in the name of non-party, ETAO International Group, Inc. (Group).<sup>4</sup> (NYSCEF 56, Notice of Motion to Reargue and Relate Relief [mot. seq. no. 003].) However, it appears from the

<sup>1</sup> Liu also challenges plaintiff's fraud and conversion claims, but this is not a motion to dismiss.

<sup>3</sup> CPLR 317 provides: "A person served with a summons other than by personal delivery to him or to his agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment, but in no event more than five years after such entry, upon a finding of the court that he did not personally receive notice of the summons in time to defend and has a meritorious defense." CPLR 317 does not apply since defendants were properly served by personal delivery as discussed *supra*.

<sup>4</sup> Group is controlled by defendant Liu. (NYSCEF 81, ETAO's SEC form 20-Fs Item 7 filing.) ETAO is owned and controlled by Liu who owns 49 million of ETAO's 102 million shares outstanding and controls another 35.8 million shares held by companies he controls, including Group which holds 11.8 million shares of ETAO. (*Id.*)

papers that the motion is, as an initial matter, a motion pursuant to CPLR 2221(d) to reargue Liu's motion to vacate the default. (NYSCEF 58, Liu ¶1.)

On August 22, 2023, plaintiff Beijing Haohan Tianyu Investment Consulting Co. Ltd. (BHTIC) initiated this action alleging that defendants failed to issue stock shares in exchange for performing due diligence as part of a reverse merger (aka SPAC) between ETAO and Mountain Crest Acquisition Corp. III (MCAE), and thus violating the advisory agreement. (See NYSCEF 1, Complaint.)

On March 19, 2024, the court granted plaintiff's motion for a default judgment against defendants. (NYSCEF 27, Decision and Order [mot. seq. no. 001].) Judgment was entered on March 27, 2024, in the amount of \$32,988,610.95. (NYSCEF 30, Judgment at 2.)

In motion 002, Liu moved to vacate the default against him because the amount of the judgment was exorbitant and plaintiff mixed up the parties, among other defenses. (See generally NYSCEF 38, Liu aff.) While Liu asserted viable defenses, he failed to offer a reasonable excuse for the default. (*Id.*) Indeed, at argument on May 14, 2024, Liu admitted that he had been personally served in August: "That person handed. I got it.". (NYSCEF 62, Liu tr 3:8-23.) On May 14, 2024, the court denied Liu's motion to vacate the default; there was no motion on behalf of ETAO because ETAO was without an attorney at the time and Liu, not an attorney, cannot represent ETAO.<sup>6</sup> (NYSCEF 51, Decision and Order [mot. seq. no. 002]; NYSCEF 62, May 14, 2024 oral

---

<sup>6</sup> On October 28, 2024, the court granted Kevin T. Tung's motion to withdraw as defendants' counsel. (NYSCEF 99, Decision and Order [mot. seq. no. 004].)

argument tr at 10:14-24; see NYSCEF 103, Memorandum of Law; see also CPLR 321 [“a corporation or voluntary association shall appear by attorney”].<sup>7</sup>

At some point, plaintiff issued a restraining notice to Chase which froze \$131.9 million in Groups’ accounts. (NYSCEF 65, Chase account screenshot showing freeze.)

A party seeking to vacate a judgment or order based on a default “must demonstrate a reasonable excuse for the default and the existence of a meritorious defense.” (*Inwald Enters., LLC v Aloha Energy*, 153 AD3d 1008, 1010 [3d Dept 2017]; See CPLR 5015 [a] [1].) If the moving party fails to establish a reasonable excuse for the default, the court does not need to determine if the party has established a meritorious defense. (*Matter of Lutz v Goldstone*, 31 AD3d 449, 450 [2d Dept 2006].) If the moving party fails to establish a reasonable excuse for the default, the court does not need to determine if the party has established a meritorious defense. (*Matter of Lutz v Goldstone*, 31 AD3d 449, 450 [2d Dept 2006].)

The movant bears the initial burden on a motion to reargue a prior decision pursuant to CPLR 2221. (See *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [citations omitted].) A motion for leave to reargue pursuant to CPLR 2221 (d) “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion.” (CPLR 2221 [d] [2].) However, “[r]eargument is not designed to afford the unsuccessful party successive

---

<sup>7</sup> Defendants are directed, again, to file the May 14, 2024, transcript in NYSCEF. (NYSCEF 51, Decision and Order at 2 [Liu was ordered to file the transcript in NYSCEF].) The transcript is currently filed as an exhibit to mot. seq. no 003, not as an transcript from an oral argument during which mot. seq. no. 002 was decided on the record. Moreover, it is incorrectly labeled as a conference transcript. (See NYSCEF 62, May 14 Conference Transcript.)

opportunities to reargue issues previously decided ... or to present arguments different from those originally asserted.” (See *William P. Pahl Equip. Corp.*, 182 AD2d 22 at 27.)

Liu argues that the court overlooked that Liu’s admission that he was served was on the record not in writing. However, Liu also admitted in his affidavit in support of this motion that “that he does not remember anyone served him a copy of the complaint or he may have been given a copy of the complaint by someone or he may have overlooked or misplaced the lawsuit papers given to him in his office in August 2023, because he was very busy looking for a new office space and he started to pack things up in boxes. His office was very messy in August of 2023.” (NYSCEF 57, Tung aff ¶17.) Liu also argues that the court overlooked defendants’ meritorious defenses. However, the court did not reach the defenses because defendant failed to provide any excuse. (See *Matter of Lutz v Goldstone*, 31 AD3d 449, 450 [2d Dept 2006].) The court denies Liu’s motion to the extent it is one to reargue.

Defendants challenge service of process because they moved offices. The affidavit of service provides that defendants were served personally on August 24, 2023, at 6:46 pm at 1460 Broadway 14th floor, New York, New York County, NY 10036 with Liu accepting service. (NYSCEF 69, Affidavit of Service.) Liu asserts that the process server could not have entered the building to serve defendants but provides no documentary proof of his assertion. Defendants leased space at 1460 Broadway from April 1, 2023 to March 31, 2024. (NYSCEF 64, WeWork Lease.) There is no evidence in the record that the WeWork lease was terminated prior to its expiration. Liu called plaintiff in September 2023 and requested an extension of time to answer which would

demonstrate proof of service. (NYSCEF 72, emails regarding extension at 5<sup>8</sup>; NYSCEF 66, Holas aff ¶11<sup>9</sup>.) The term of Liu's lease for 1270 Avenue of the Americas, 8<sup>th</sup> floor is from November 1, 2023 to October 31, 2024. (NYSCEF 63, October 25, 2023 Lease at 4.) In May 2024, ETAO submitted a form 20-F and Form 6-K to the Securities and Exchange Commission (SEC) listing 1460 Broadway as ETAO's address. (See NYSCEF 79, 20-F form; see *also* NYSCEF 80, 6-K form.) Moreover, Liu admitted that he was personally served on August 24, 2023. (NYSCEF 62, oral argument tr 3:16-23; see NYSCEF 69, Affidavit of Service.)<sup>10</sup> Because the complaint was properly served on defendants, they must provide a reasonable excuse for their failure to answer. (*IBM Corp. v Murphy & O'Connell*, 172 AD2d 157, 158 [1st Dept 1991] [holding that evidence of a summons served on defendant creates a presumption that service was effected].)

As discussed on the record on November 26, 2024, the motion was granted as to Liu only because he has offered excuses for failing to timely move, answer or hire an attorney. He is not an attorney. Though highly educated, English is not his first language, and he claims to be confused as to what he was to do.

Liu also asserts viable defenses. He signed the contract, which is not before the court, in a corporate capacity, not personally.<sup>11</sup> (*Georgia Malone & Co., Inc. v Rieder*, 86 AD3d 406, 408 [1st Dept 2011] ["officers or agents of a company are not personally

---

<sup>8</sup> NYSCEF pagination.

<sup>9</sup> The court questions the source of this information since Sean Holas began working for plaintiff's law firm in April 2024. (NYSCEF 61, Holas email at 4.)

<sup>10</sup> It appears to the court that Liu was making a distinction between service of process and service of the judgment which came later, after defendants alleged move to 1270 Avenue of the Americas. (NYSCEF 62, Liu tr 3:10-12.)

<sup>11</sup> The court relies on the SEC's disclosure of the agreement since neither party provided the contract to the court. (NYSCEF 17, SEC Registration Statement at 58.)

liable on a contract if they do not purport to bind themselves individually”], *affd sub nom. Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511 [2012].) Further, plaintiff’s alter ego theory is missing allegations that Liu used the corporate form improperly. Plaintiff alleges that MCAE, not ETAO, engaged plaintiff. (NYSCEF 1, Complaint ¶8.) Liu asserts that the agreement, which is not before the court, is with Group, not ETAO. (See NYSCEF 14, form F-4 Part 1 at 2 [defining “Company” as Group].) Moreover, the shares to be issued to plaintiff as an advisory fee were MACE shares, not ETAO shares. (NYSCEF 15, form F-4 Part 2 at 49.) While some of defendants’ defenses are contradicted by other documentary proof, defendants’ other documents are not conclusive. (See NYSCEF 78, February 24, 2023, ETAO’s Instruction Letter [letter signed on behalf of ETAO by Liu instructing Continental Stock Transfer & Trust Co to issue 3,000,000 Ordinary Shares to plaintiff].) nevertheless Liu has some viable defenses.

Liu argues that plaintiff is not registered to do business in NY and thus has no standing to bring this action in New York. (BCL 1312 (a) [“A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees and taxes imposed under the tax law or any related statute....”].) Plaintiff fails to address this argument.

Liu argues that plaintiff provided no services to defendants and thus is not entitled to compensation. Plaintiff fails to address this argument. Therefore, the court finds it equitable to vacate the default against Liu considering his viable defenses.

Upon reflection, the court finds that if it considers this motion as ETAO's initial motion to vacate the default, ETAO has also satisfied CPLR 5015 for the same reasons that Liu has established a reasonable excuse for the default and good defenses.

The motion is thus also granted as to Chase's freeze of Group's accounts. Though neither Group nor Chase is before the court, the restraining notice is based on the judgment which is vacated against Liu and conditionally vacated against ETAO.

Accordingly, it is

ORDERED that defendants' motion is granted and the default judgment is vacated against the individual Wensheng Liu who filed an answer on December 13, 2024 (NYSCEF 105); and it is further

ORDERED that ETAO's motion is granted on the condition that ETAO files an answer or moves within 10 days of this decision. Otherwise, the motion will be denied, and the judgment will stand. ETAO shall contact the court by email as soon as the answer is filed and the court will issue a supplemental order vacating the judgment; and it is further

ORDERED that defendants are directed to file the oral argument transcript deciding mot. seq. no. 002 for the court to so ordered; and it is further

ORDERED that the parties are directed to read the Part 48 procedures and comply with them.

12/30/2024  
DATE

\_\_\_\_\_  
ANDREA MASLEY, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT		

APPLICATION:

CHECK IF APPROPRIATE: