

Chang Yi Wang v United Biomedical, Inc.
2024 NY Slip Op 35656(U)
August 8, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 614745/2022
Judge: James Hudson
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Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision

PRESENT:

HON. JAMES HUDSON
Acting Justice of the Supreme Court

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DR. CHANG YI WANG,

Plaintiff,

-against-

UNITED BIOMEDICAL, INC.; MEI MEI HU;
LOUIS GARFIELD REESE IV; JOHANNES a/k/a
JOOP SISTERMANS; and JAMES JIE CHIU,

Defendants.

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MOTION DATE: 5/10/24 (#004)

MOTION DATE: 5/17/24 (#005)

SUBMIT DATE: 6/26/24

Motion Seq. #: **004 – MD**
005 – MG

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United Biomedical, Inc. ("UBI"), Mei Mei Hu, Louis Garfield Reese IV, Johannes a/k/a Joop Sistermans and James Jie Chui, move (**CPLR 6301, 6312, 6313**) for a temporary restraining order and preliminary injunction enjoining and restraining Dr. Chang Yi Wang from: 1) acting as the owner or holder of a majority of the shares of UBI; 2) representing to third parties that she is the owner or holder of the majority of the shares of UBI; 3) voting any shares of UBI or instructing any person or entity to vote any UBI shares on her behalf; 4) directly or indirectly purporting to act as the owner or holder of the majority of the shares of UBI, including but not limited to, voting on behalf of any shares of UBI or instructing officers or directors of any affiliate, including UBI Pharma, Inc., UBI TW Holdings, LLC, UBI International Group, LLP, United Biomedical, Inc. (Asia), and United Biopharma, Inc., to take any action, including but not limited to, voting at any shareholders meeting of any affiliate of UBI; 5) interfering or preventing the current officers and directors of UBI from carrying out their duties on behalf of UBI; interfering with the business or business activities of UBI; 6) destroying, falsifying, tampering with, or hiding any documents, whether in hard paper form or in electronic form, which pertain to UBI.

The aforementioned movants also request an order, pursuant to **CPLR 3212**, granting them summary judgment against the plaintiff and dismissing the complaint.

This is an action regarding the ownership and control of United Biomedical, Inc. UBI is a foreign corporation doing business in New York and Texas. The corporation is a biomedical research company which develops vaccines, immunotherapy treatments and medical screening protocols. A comprehensive discussion of the relationship between the

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plaintiff and the defendants is contained within the Court's May 30th, 2023 order (NYSCEF Doc. No. 44).

In light of it being a dispositive motion, the Court will initially consider the application (seq. no. 005) by the defendants, United Biomedical, Inc., Mei Mei Hu, Louis Garfield Reese IV, Johannes a/k/a Joop Sistermans and James Jie Chui (collectively, "Defendants") for summary judgment against the plaintiff, Dr. Chang Yi Wang (CPLR 3212).

In the recent case *Gluck v. Mapfre Ins. Co. of New York*, 221 AD3d 662, 663, 198 NYS3d 758, 760 (2nd Dept 2023) the learned Court relying on the oft cited rule found in *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 325, 508 NYS2d 923 [1986] stated:

A motion for summary judgment shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.

A perusal of the moving papers and supporting documents clearly satisfy the requirement that Defendants make a prima facie showing which lay bare the paucity of the claims asserted against them (*Gluck v. Mapfre, supra* at 663). At this stage is it of critical importance for the Plaintiff to come forward and articulate a triable issue of fact (*Stukas v. Streiter*, 83 AD3d 18, 25, 918 NYS2d 176, 182 (2nd Dept 2011)). She has failed to do so.

Indeed, the Plaintiff has not interposed any opposition to this motion for summary relief (*see Deutsche Bank Natl. Trust Co. v. Islar*, 122 AD3d 566, 996 NYS2d 130 [2d Dept 2014]; *Plaza Equities, LLC v. Lamberti*, 118 AD3d 688, 986 NYS2d 814 [2d Dept 2014]; *Jessabell Realty Corp. v. Gonzalez*, 116 AD3d 908, 985 NYS2d 897 [2d Dept 2014]).

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When a motion is unopposed, there effectively is a concession that no question for fact exists and that the facts as alleged in the moving papers may be admitted (*see Kuehne & Nagel v. Baiden*, 36 NY2d 539, 369 NYS2d 667, 330 NE2d 624 [1975]; *HSBC Bank USA v. Simms*, 16 AD3d 930, 81 NYS3d 517 [2d Dept 2018]).

The Court notes that on December 26th, 2023, United Biomedical, Inc. filed separate counterclaims (NYSCEF Doc. No. 58). The counterclaims were not appended to the answer and were filed more than six (6) months post answer and will be dismissed as untimely and procedurally improper (CPLR 3011 *Rubin v. Napoli Bern Ripka Shkolnik, LLP*, 151 AD3d603, 604, 58NYS3d 320 [1st Dept 2017]).

Under the circumstances presented, the motion for summary judgment will be granted.

The Court will next consider the defendants' motion (seq. no. 004) for a temporary restraining order and preliminary injunction. The motion came before the Court by Order to Show Cause. On May 15th, 2024, the Court granted a Temporary Restraining Order which continues in effect. The TRO enjoined and restrained the plaintiff from conducting any business on behalf of UBI, both directly and by proxy, and through any affiliate company. The request for a preliminary injunction continuing those restrictions is rendered moot by the granting of summary judgment to the defendants.

Accordingly, it is

ORDERED, that the motion (seq. no. 004) by the defendants, United Biomedical, Inc., Mei Mei Hu, Louis Garfield Reese IV, Johannes a/k/a Joop Sistermans and James Jie Chui, which requests, pursuant to **CPLR 6301, 6312, 6313**, a preliminary injunction

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enjoining and restraining the plaintiff, Dr. Chang Yi Wang from personally or through a proxy or a related or affiliated company or corporation acting as the owner or as the holder of the majority of shares of United Biomedical, Inc., is denied as moot; and it is further

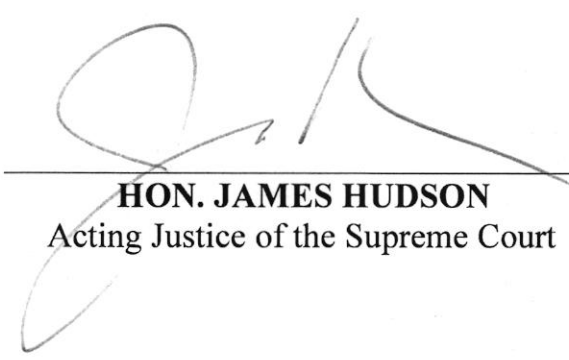
ORDERED, that the motion (seq. no. 005) by the defendants, United Biomedical, Inc., Mei Mei Hu, Louis Garfield Reese IV, Johannes a/k/a Joop Sistermans and James Jie Chui, which requests, pursuant to **CPLR 3212**, granting the defendants summary judgment against the plaintiff, Dr. Chang Yi Wang, and the dismissal of the complaint, is granted; and it is further

ORDERED, ADJUDGED and DECREED, that the counterclaims of United Biomedical, Inc., are dismissed.

This memorandum also constitutes the Order of the Court.

Submit Judgment.

Dated: August 8th, 2024
Riverhead, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court