

Xiuwen Qi v Hang & Assoc., PLLC

2025 NY Slip Op 30306(U)

January 24, 2025

Supreme Court, New York County

Docket Number: Index No. 151821/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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XIUWEN QI,

Plaintiff,

- v -

HANG & ASSOCIATES, PLLC, JIAN HANG, JIAJING FAN, SHAN ZHU, ZHANGYUXI WANG,

Defendant.

-----X

HANG & ASSOCIATES, PLLC, JIAN HANG, JIAJING FAN, SHAN ZHU, ZHANGYUXI WANG

Plaintiff,

-against-

TROY LAW PLLC, JOHN TROY, TIFFANY TROY, AARON SCHWEITZER

Defendant.

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DECISION + ORDER ON MOTION

Third-Party Index No. 595524/2023

The following e-filed documents, listed by NYSCEF document number (Motion 003) 56, 57, 58, 59, 60, 61, 63, 64

were read on this motion to/for RENEWAL.

Upon the foregoing documents, and after a final submission date of November 12, 2024, Plaintiff/Counterclaim Defendant Xiuwen Qi's ("Plaintiff") motion seeking leave to renew, and upon renewal seeking dismissal of Defendants/Third-Party Plaintiffs Hang & Associates, PLLC and Jian Hang's (collectively "Defendants") counterclaim, or in the alternative leave to reargue this Court's Decision and Order dated May 2, 2024, is granted in part and denied in part.

Plaintiff, who was a former client of Defendants, is seeking damages arising from Defendants' alleged malpractice in a wage and hour lawsuit. In response to Plaintiff's Complaint,

Defendants asserted a counterclaim alleging quantum meruit damages arising from 134 hours of labor representing Plaintiff in his wage and hour dispute and \$1,172.70 in costs (*see* NYSCEF Doc. 10).

In Motion Sequence 001, Plaintiff moved to dismiss Defendants' counterclaim arguing that this Court lacks subject matter jurisdiction over the quantum meruit counterclaim pursuant to the mandatory arbitration requirements of the Attorney Fee Dispute Resolution Program. In opposition, Defendants argued that the quantum meruit counterclaim is not subject to arbitration as resolution of the quantum meruit counterclaim involves resolving legal issues which are intertwined with Plaintiff's non-arbitrable malpractice claim. At oral argument dated October 31, 2023, this Court declined to rule on the motion to dismiss until the parties' retainer agreement was produced. In a Decision and Order dated May 2, 2024 (NYSCEF Doc. 55), this Court denied the motion to dismiss, without prejudice, with leave to renew upon production of the retainer agreement. Plaintiff has produced the retainer agreement and seeks leave to renew his motion to dismiss. Defendants oppose Plaintiff's renewed application and argues nothing in the retainer agreement should change this Court's decision to deny dismissal of Defendants' counterclaim.

The Court grants leave to renew, as it stated it would in its Decision and Order on Motion Sequence 001 upon production of the retainer agreement, which has now been produced. However, upon renewal the Court denies dismissal of Defendants' counterclaim. Claims and counterclaims involving substantial legal questions, including professional malpractice or misconduct, are not subject to arbitration under 22 NYCRR 137.1(b)(3) (*see also Peters v Collazo Florentino & Keil LLP*, 117 AD3d 432 [1st Dept 2014]). Whether Defendants have a quantum meruit claim necessarily hinges on whether they were terminated for cause, which is inextricably intertwined with the issues being litigated in this legal malpractice case (*see also Brill & Meisel v Brown*, 113

AD3d 435, 436 [1st Dept 2014]). Because the counterclaim's existence is dependent on the resolution of the legal malpractice claim being litigated in this Court, the Court retains subject matter jurisdiction, and upon renewal, Plaintiff's motion to dismiss is denied. The branch of Plaintiff's motion seeking leave to reargue is denied as Plaintiff has failed to show that the Court overlooked any dispositive issues of fact or law.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion seeking leave to renew, and upon renewal seeking dismissal of Defendants/Third-Party Plaintiffs Hang & Associates, PLLC and Jian Hang's counterclaim, or in the alternative seeking leave to reargue, is granted in part and denied in part; and it is further

ORDERED that Plaintiff is granted leave to renew, but upon renewal Plaintiff's motion to dismiss Defendants/Third-Party Plaintiffs Hang & Associates, PLLC and Jian Hang's counterclaim is denied; and it is further

ORDERED that the branch of Plaintiff's motion seeking leave to reargue this Court's Decision and Order dated May 4, 2024 is denied; and it is further

ORDERED that on or before March 17, 2025, the parties shall meet and confer and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33@nycourts.gov. If the parties are unable to agree to a proposed preliminary conference order, they shall appear for an in-person preliminary conference on March 19, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York; and it is further

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ORDERED that within ten days of entry, counsel for Defendants/Third-Party Plaintiffs Hang & Associates, PLLC and Jian Hang shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>1/24/2025</u> DATE		<u>Mary V Rosado Jsc</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE