

Xueduan Chen v Fukien Am. Assn., Inc

2025 NY Slip Op 30406(U)

January 28, 2025

Supreme Court, New York County

Docket Number: Index No. 652811/2019

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

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INDEX NO. 652811/2019

XUEDUAN CHEN, GUANGYI SHU, JIN FU LIU,

MOTION DATE 01/15/2025

Plaintiff,

MOTION SEQ. NO. 004

- v -

FUKIEN AMERICAN ASSOCIATION, INC, KIN K PUN,
SHUI LEI CHAN, SZE KEI CHENG, JIAN SHUN LU, JOHN
DOE, JANE DOE

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 119, 120, 121, 122, 123

were read on this motion to/for ATTORNEY - DISQUALIFY/RELIEVE/SUBSTITUTE/WITHDRAW

APPEARANCES:

Law Offices of Kenneth K. Ho, New York, NY (Kenneth K. Ho, of counsel), for plaintiffs XUEDUAN CHEN, GUANGYI SHI, and JIN FUR LIU.

EMILY MORALES-MINERVA, J.S.C.

In this action, non-party Law Offices of Kenneth K. Ho (counsel) moves, by notice of motion (seq. no. 004), for, among other things, an order pursuant to CPLR § 321 (b), permitting counsel to withdraw from representing plaintiffs XUEDUAN CHEN, GUANGYI SHI, and JIN FU LIU. Neither plaintiffs nor defendants appear or submit opposition.

For the reasons set forth below, the application is denied without prejudice.

"An attorney of record may withdraw . . . by order of the court in which the action is pending, upon motion on such notice to [a] the client of the withdrawing attorney, to [b] the attorneys of all other parties in the action or, [c] if a party appears without an attorney, to any other person, as the court may direct" (CPLR § 321 [b] [2]).

Where counsel moves to be relieved, by regular motion, as here, counsel shall serve the interlocutory papers pursuant to CPLR § 2103. Rule 2103 (c) explicitly governs service of papers on a party "[i]f a party has not appeared by an attorney or the party's attorney cannot be served." In such circumstances, "service shall be upon the party by a method specified" in CPLR § 2103 (b) (1), (2), (4), (5) or (6).

These subdivisions of CPLR § 2103 (b) -- when read in tandem with Rule 2103 (c) -- provide as follows:

"Except where otherwise prescribed by law or order of court, papers to be served upon a party in a pending action shall be served . . . :

"1. by delivering the paper to the [party] personally; or

"2. by mailing the paper to the [party] at the address designated by that [party] for that purpose of, if none is designated, at the [party's] last known address . . . ; or

"4. by leaving it at the [party's] residence within the state with a person of a suitable age and discretion. Service upon [a party] shall not be made at the [party's] residence unless service at the [party's] office cannot be made . . . ; or

"5. by transmitting the paper to the [party] by facsimile transmission, provided that a facsimile telephone number is designated by the [party] for that purpose . . .; or

"6. by dispatching the paper to the [party] by overnight delivery service at the address designated by the [party] for that purpose of, if none is designated, at the [party's] last known address . . ."

(CPLR § 2103 [b]).

Applying these standards here, counsel fails to establish proper service of this motion on plaintiffs XUEDUAN CHEN, GUANGYI SHI, and JIN FU LIU. Counsel provides no affidavit or affirmation of service to show that it effectuated service on the three individual plaintiffs. Instead, page 3 of counsel's "Motion for Withdrawal by Plaintiff's Counsel" simply states:

"TO:XUEDUAN CHEN
GUANGYI SHIPO
JIN FUR LIU
Via email: xueduanchen@gmail.com, and
Fujianassociation6688@gmail.com"¹

(NY St Cts Elec Filing [NYSCEF] Doc. No. 119, Motion for Withdrawal of Plaintiff's Counsel, dated January 13, 2025).

Notwithstanding the lack of an affidavit or affirmation of service, email is not an authorized method for service, and this too is improper (Alfred E. Mann Living Trust v ETIRC Aviation

¹ Counsel misspells two of the three plaintiffs' names -- "GUANGYI SHIPO" is correctly spelled "GUANGYI SHU" and "JIN FUR LIU" is correctly spelled "JIN FU LIU."

S.A.R.L., 78 AD3d 137, 141 [1st Dept 2010] [holding that service of process by e-mail is not authorized by the CPLR]).

Further, counsel requests that email service upon the three individual plaintiffs to the two email addresses provided "be deemed good and sufficient service" (NYSCEF Doc. No. 120, Affirmation in Support of Counsel's Motion). This request is denied -- not only are there only two email addresses provided for three individual plaintiffs, but there is also no indication that the email addresses listed therein are active and/or used recently, if at all, by plaintiffs. The proof submitted by counsel in support of this request includes three emails from counsel to "xueduanchen@gmail.com" and "fujianassociation6688@gmail.com", all of which went unanswered (see NYSCEF Doc. No. 121, Emails to Plaintiffs).

Accordingly, it is

ORDERED that non-party Law Offices of Kenneth K. Ho's motion (seq. no. 004) for an order permitting it to be relieved as counsel is denied without prejudice to renewal upon proper service in accordance with this Order; and it is further

ORDERED that counsel shall serve this Order with notice of entry on all parties within ten days of such entry.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

1/28/2025
DATE



EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER				
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	REFERENCE