

Lee v Chun Ka Luk

2025 NY Slip Op 32552(U)

July 15, 2025

Supreme Court, New York County

Docket Number: Index No. 603111/2005

Judge: James d'Auguste

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. James E. d'Auguste PART 55

Justice

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DENNIS LEE A/K/A LEE MAN FOR DENNIS, AS A
DIRECTOR AND OFFICER OF LEE-TAI ENTERPRISES
(USA) LTD., 238-240 7th AVENUE CORP. AND
BROADWAY CHINATOWN REATLY INC.,

Plaintiff,

- v -

CHUN KA LUK, AS ADMINISTRATOR OF THE ESTATE OF
NANCY LUK, DECEASED,

Defendant.

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INDEX NO. 603111/2005
MOTION DATE 06/28/2024
MOTION SEQ. NO. 009

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 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, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

In this action, plaintiff Dennis Lee ("plaintiff") as director and officer of Lee-Tai Enterprises (USA) Ltd. ("Lee Tai"), 238-240 7th Avenue Corp. ("238-240"), and Broadway Chinatown Realty Inc. ("BCR") (collectively referred to as "Corporations") challenges whether his sister, Nancy Luk ("Nancy"), was authorized to engage in certain real estate transactions in her role as the officer of the Corporations established by their parents to own and manage the family's New York real estate. Defendant Chun Ka Luk ("defendant"), as an administrator of the Estate of Nancy Luk, manages the Corporations since Nancy's death.

Plaintiff moves pursuant to CPLR 3212 for an order (1) granting summary judgment on liability on plaintiff's claims in the amended complaint; (2) permanently enjoining and restraining defendant from operating and managing Lee Tai, 238-240, BCR and the properties owned by Lee Tai, 238-240 and BCR; (3) compelling defendant to transfer all original books and records of Lee Tai, 238-240 and BCR to plaintiff; (4) compelling defendant to identify all property of Lee Tai,

238-240 and BCR, and to effectuate and cooperate in the transfer of said property; (5) directing defendant to transfer Units 1A, 10A, and PHA located at 238-240 7th Ave, New York, New York; (6) dismissing defendant's affirmative defenses with prejudice; (7) declaring that Nancy was not the sole shareholder, officer and director of Lee Tai, 238-240 and BCR; and (8) setting this matter down for a trial on damages, punitive damages, pre- and post-judgment interest, and attorneys' fees and costs.

Defendant cross-moves pursuant to CPLR 3212 for an order dismissing the amended complaint on the grounds that (1) plaintiff is not an officer and/or director of Lee Tai, 238-240 or BCR; (2) plaintiff lacks standing pursuant to Business Corporation Law § 720; (3) the causes of actions in the amended complaint are barred by the applicable statute of limitations; (4) plaintiff failed to establish any damages to any of the Corporations; and (5) pursuant to CPLR 3126 for an order dismissing the amended complaint and/or, in the alternative, precluding plaintiff from offering any evidence relating to the damage that any of the Corporations may have incurred because plaintiff has violated a prior order of this Court dated June 24, 2014, directing him to answer interrogatories relating to damages incurred by plaintiff.

I. Relevant Procedural History

This action was originally commenced in 2005 against Nancy on behalf of the Estate of Lee Chan Wun Yin ("Lee") and Li Chung ("Li") (parents of plaintiff and Nancy), Dennis, Steven, and Minnie Lee (siblings of Nancy). The parties brought the lawsuit in their individual capacities as directors, shareholders and officers of the Corporations. By decision and order dated February 6, 2007, the complaint was dismissed except for the claims asserted by Dennis as a director and officer of the Corporations pursuant to Business Corporation Law § 720. Furthermore, the court held that Dennis' Business Corporation Law § 720 claims were not barred by the statute of limitations (NYSCEF Doc No. 72 at 12-13). The court further denied Nancy's motion to dismiss Dennis' Business Corporation Law § 720 claims on the grounds for his capacity to sue as a director (*id.* at 10-11).

The amended complaint dated June 4, 2007, states seven causes of action against Nancy pursuant to Business Corporation Law § 720 for 1) breach of fiduciary duty; 2) breach of duty of loyalty; 3) corporate waste; 4) fraud and deceit; 5) conversion; 6) injunction against sale of property and directing defendant to return company properties; and 7) accounting and constructive trust (NYSCEF Doc No. 73, Amended Complaint).

Nancy's answer dated June 25, 2007, asserts a general denial and six affirmative defenses claiming 1) plaintiff lacks authority and/or standing and or capacity to maintain this action; 2) she was the sole shareholder, officer and director of the Corporations, which she acquired through inter vivos gifts from Lee and Li; 3) plaintiff's claims are barred by waiver and estoppel; 4) plaintiff's claims are barred by the doctrine of unclean hands; 5) statute of frauds, and 6) plaintiff's claim that he is a shareholder and has an ownership interest in the Corporations is barred by his own prior admission that he has no knowledge of who owns any of the shares of stock of the Corporations (NYSCEF Doc No. 74, Answer).

II. Undisputed Facts

The following facts are undisputed by the parties. Lee Tai and 238-270 were incorporated in New York in 1973 (NYSCF Doc No. 7 ¶ 1). BCR is a wholly owned subsidiary of 238-240 and was acquired by 238-240 in 1986 (*id.* ¶ 2). Lee Tai owns the property located at 420 Madison Ave, New York, New York ("420 Madison") by deed dated December 31, 1973 (*id.* ¶¶ 3-4). Lee Tai obtained title to 142 North Corona Ave, Valley Stream, New York ("142 N. Corona") by deed dated September 12, 1996 (*id.* ¶¶ 5-6). Lee Tai paid \$210,000 to Nancy and defendant for the purchase of 142 N. Corona in 1996 (*id.* ¶ 7). Nancy obtained title to 142 N. Corona from Lee Tai by deed dated February 15, 2002, transferring the property from Lee Tai to herself as the president of Lee Tai (*id.* ¶¶ 8-9). She did not pay any consideration to Lee Tai when she obtained titled to the property (*id.* ¶ 10). 238-240 obtained title to 200 West 24th St. a/k/a 238-240 7th Ave, New York, New York ("7th Ave") by deed dated November 2, 1973 (*id.* ¶ 11). Seventh Avenue Development LLC ("7th Ave. Dev.") obtained title to 7th Ave from 238-240 by deed dated August 30, 2002, and paid no consideration to 238-240 when it obtained title to 7th Ave from 238-240 (*id.* ¶¶ 12-13). Nancy signed the deed as the president of 238-240 (*id.* ¶ 14). 238-240 owns the property located at 300 East 53rd St, New York, New York ("300 E. 53rd St") by a deed dated January 29, 1986 (*id.* ¶¶ 15-16). 238-240 acquired 26 E. Broadway, New York, New York ("26 E. Broadway") when it purchased BCR in 1986 (*id.* ¶ 17). No share certificates were issued or transferred to Nancy demonstrating that she owned one hundred percent of Lee Tai, 238-240, and BCR (*id.* ¶¶ 22-24).

No shareholder meetings, board of director meetings were held for Lee Tai and 238-240 subsequent to its formation in 1973 (*id.* ¶¶ 33-36). Nancy signed tax returns and tax documents for Lee Tai and 238-240 from 1973 through 1981 (*id.* ¶¶ 52-53). Nancy was a signatory on Lee Tai's and 238-240's bank accounts (*id.* ¶ 54). Nancy was an officer of the Corporations at all relevant

times (*id.* ¶ 64). Nancy took over the management of the Corporations in 1980 and managed them until her death in April 2011 (*id.* ¶ 66). Defendant has been managing the Corporations since Nancy's death in April 2011 (*id.* ¶ 67). Nancy provided the Corporations' tax returns to Chung Li ("Li") when she started managing the Corporations and did so for nearly twenty years (*id.* ¶ 68). In approximately 1999, Nancy created and provided to Li income and expense analysis, expense comparison charts, tax expense comparison charts, rental income and income comparison charts, and income pie charts for each of the Corporations (*id.* ¶ 69). She stopped providing the financial information regarding the Corporations to Li after 1999 (*id.* ¶ 71). She commenced signing tax returns for Lee Tai as president in 1999 or prior, and in 2001 for 238-240 (*id.* ¶¶ 72-73). She signed tax returns for Lee Tai as president between 1999 and 2009, and from 2001 and 2009 for 238-249 (*id.* ¶¶ 74-75). In a letter dated August 9, 2004, plaintiff's prior counsel provided Nancy's counsel with Li's June 2004 Letter of Authorization authorizing plaintiff to obtain the Corporations' accounts from Nancy and to take legal action to protect the Corporations (*id.* ¶ 83).

Lee Tai took a loan, in the amount of \$2,500,000 on April 2, 2001, using 420 Madison as security of the loan, and a mortgage in the same amount using the property as security for the mortgage, which was signed as Nancy as the president of Lee Tai (*id.* ¶¶ 88-90). The loan commitment letter from Chinatrust Bank dated March 13, 2001, stated that the proceeds of the April 2, 2001 loan were to be used to finance the acquisition, demolition of an existing building, and the construction of a seventeen-story condominium building at 19 Park Place, New York, NY ("19 Park Place") by ABN Realty, LLC ("ABN"), and the letter was signed by Nancy stating that Lee Tai is one hundred percent owned by Nancy (*id.* ¶¶ 91-92). Lee Tai took a mortgage on 420 Madison in the amount of \$1,500,000 on November 14, 2002, which Nancy signed as the president of Lee Tai, and the property served as a guaranty of loans issued by Chinatrust Bank to 7th Ave Dev in the amount of \$12,950,000, which was utilized for the demolition of the 7th Ave property and the subsequent development of a condominium building by 7th Ave. Dev. (*id.* ¶¶ 95-97).

Lee Tai took a loan and mortgage dated September 18, 2003, in the amount of \$2,600,000, and 420 Madison was utilized as security for the loan and a mortgage, which was signed by Nancy as the president of Lee Tai, and the proceeds of the loan were utilized to finance 7th Ave Dev's development of the 7th Ave property into a condominium building (*id.* ¶¶ 103-105). A Consent of Directors dated September 18, 2002, signed by Nancy in connection with the September 18, 2003, loan and mortgage, states that she is the "sole director and sole shareholder" of Lee Tai, and a

Borrower's Certificate signed by her which states she had "full power and authority to execute documents" (*id.* ¶ 107).

Affirmation of Plaintiff

Plaintiff affirms that he was involved in the formation of the Corporations in 1973 and attended meetings with his father, Li. He states that at one meeting, his father told him that the ownership of Lee Tai and 238-240 would be structured in the same manner as the family's Hong Kong Corporations – that his father, Madam Lee (his mother), and his brother Steven and him would each own 20% and his parents' five daughters, including Nancy would own the remaining 20% (NYSCEF Doc No. 8 ¶ 6). Share certificates were created and issued reflecting the ownership of these shares of Lee Tai and 238-240 (*id.* ¶ 7). Plaintiff discovered the share certificates in Li's safe deposit box following his death on November 15, 2006, which were imprinted with corporate seals (*id.* ¶ 10).

Plaintiff states that his father, his mother, and him were appointed as directors of Lee Tai and 238-250 when the Corporations were formed in 1973, and Business Corporation Law § 404 (b) statements dated September 14, 1973, were prepared to reflect this appointment (*id.* ¶ 11). He managed the Corporations from 1973 until 1979, when he returned to Hong Kong (*id.* ¶ 17). Nancy took over management of the Corporations in 1980 and managed them until her death in April 2011 (*id.*). Plaintiff was also named as an officer of Lee Tai and 238-240 (*id.* ¶ 11). Plaintiff submitted an affidavit of Nancy sworn to on April 7, 2005, which was submitted in Lee's Hong Kong probate proceeding, where she acknowledged plaintiff's management of the Corporations from 1973 through 1979 and attached Lee Tai's 1979 federal tax return signed by plaintiff as an officer in February 1979 and 238-240's 1973 federal tax return signed by plaintiff as an officer in 1976 (*id.* ¶ 15). Plaintiff states that Nancy was never the president, and only Li was the president of the Corporations (*id.* ¶ 16).

Nancy stopped providing tax returns, or any other financial information regarding the Corporations to Li after 1999, and to plaintiff and his brother after they were appointed as trustees and executors of their mother's Hong Kong Estate in 1997 (*id.* ¶ 18-19). Plaintiff discovered that Nancy transferred 7th Ave to 7th Ave. Dev., and between 2001 and 2003, Nancy caused Lee Tai to take mortgages and loans totaling \$6.6 million and utilized 420 Madison as security to fund condominium development projects at 7th Ave and at 19 Park Place by her solely owned corporations (*id.* ¶ 23). Additionally, Nancy caused Lee Tai to be a guarantor for \$1,950,000 in

loans taken by 7th Ave. Dev. to develop the 7th Ave property into condominiums, the sale proceeds of which would go to 7th Ave. Dev., and to Nancy (*id.*). Regarding the loans and mortgages with Chinatrust Bank taken in 2001, 2002, and 2003, Nancy signed documents for the loans and the mortgage as the purported present of Lee Tai and falsely representing that she was the sole owner of Lee Tai (*id.* ¶¶ 25-28, 30).

Defendant's Affidavit

Defendant avers that Nancy exclusively managed the business affairs of the Corporations from 1980 until her death, and he helped her manage the Corporations and the properties, since her death (NYSCEF Doc No. 99 ¶ 6). According to defendant, Nancy operated the Corporations for decades as if she was the sole owner, complying with the wishes and expectations of her mother and father that no one but she had any authority to operate, manage and control these Corporations (*id.* ¶ 7). He attests that he was aware of Nancy's claim that she was gifted the shares of these Corporations by her parents (*id.*).

III. Discussion

“[T]he proponent of a summary judgment motion must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “[F]ailure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Ayotte*, 81 NY2d at 1063 [internal quotation marks and citation omitted]). “Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of act which require a trial of the action” (*Alvarez*, 68 NY2d at 324; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). “[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman*, 49 NY2d at 562). “Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is arguable” (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 315 [2004]; *see also American Home Assur. Co. v Amerford Intl. Corp.*, 200 AD2d 472, 473 [1st Dept 1994]). “On a summary judgment motion, facts must be viewed in the light most favorable to the non-moving party” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks and citation omitted]).

Defendant's Cross-Motion

A. Summary Judgment on Plaintiff's Standing Pursuant to Business Corporation Law § 720

Defendant contends that plaintiff was not lawfully appointed as a director of the Corporations, and lacks standing to maintain this action (NYSCEF Doc No. 120 at 7). He states that the Business Corporation Law § 404 (b) statements for Lee Tai and 238-250 are null, as one was signed by Li, who was not the incorporator, and one lacks a signature (*id.* at 8-9). Moreover, there is no written instrument signed by the incorporator which appointed directors (*id.* at 9). In the alternate, he argues that even if plaintiff was appointed as the director, he abandoned the position by absenting himself from any role in the operations of the Corporations (*id.* at 4). In opposition, plaintiff argues that defendant's lack of standing claim is barred pursuant to the law of the case doctrine (NYSCEF Doc No. 135 at 6). Furthermore, defendant abandoned the position that plaintiff lacked standing because he was not an officer or director of the Corporations as Nancy did not assert this in her prior motion (*id.* at 7-8). In reply, defendant contends that the prior decision does not preclude defendant from contesting plaintiff's standing as an officer and director on summary judgment as prior decision was on a liberal test for assessing the facial sufficiency of a complaint on a motion to dismiss, and defendant obtained the Business Corporation Law § 404 statements through discovery after the decision (NYSCEF Doc No. 156 at 7). Regarding plaintiff's argument that standing was waived, defendant states that Nancy and defendant have consistently taken the position that Nancy was the sole shareholder of the Corporations, which challenges plaintiff's standing, plaintiff's summary judgment obligates him to demonstrate his standing, and defendant denied plaintiff's allegation of standing in his answer, preserving that issue for litigation (*id.* at 9).

Although the issue of plaintiff's capacity to sue was decided pursuant to Justice Jane S. Solomon's decision and order in 2007, "[t]he law of the case doctrine does not apply when a motion to dismiss is followed by a summary judgment motion. . ." (*Pogil v KPMG LLP*, 228 AD3d 469, 470 [1st Dept 2024] [citations omitted]). On a motion to dismiss the complaint, the burden is on defendant to make a prima facie demonstration that plaintiff lacked standing (*see DLJ Mtge. Capital Mahadeo*, 166 AD3d 512, 512 [1st Dept 2018]). "In order to defeat the motion, plaintiff not need to affirmatively establish its standing, but only to raise a triable issue of fact as to its standing (*id.* [citations omitted]). Business Corporation Law § 102 (5) defines a director as any

member of the governing board of a corporation, whether designated as director, trustee, manager, governor, or by any other title. Business Corporation Law § 720 permits an officer or director of a corporation to bring an action against another officer or director for his neglect of, or failure to perform or other violation of his duties in the management and disposition of corporate assets committed to his charge.

Here, defendant failed to demonstrate his prima facie entitlement to judgment as a matter of law dismissing the complaint on the ground that plaintiff lacks standing, as he offered no admissible evidence relating to standing on his motion, and only submitted a self-serving affidavit with conclusory allegations and hearsay statements. Issues of testimony as self-serving or lacking credibility are for the trier of fact (*see Martin v Citibank, N.A.*, 64 AD3d 477, 478 [1st Dept 2009]). Defendant failed to cite any cases relating to plaintiff's standing. Defendant's testimony establishes he is not aware who the original officers of the Corporations were in 1973 (*see* NYSCEF Doc No. 35 at 37). Moreover, defendant failed to establish that plaintiff abandoned his position as his assertions are unsubstantiated, conclusory and unsupported by any admissible evidence. Accordingly, defendant's cross-motion for summary judgment dismissing the complaint insofar as asserted against him for lack of standing is denied.

On the other hand, plaintiff has demonstrated his entitlement to dismissal of defendant's affirmative defense of lack of standing and/or capacity to maintain this action. Plaintiff contends that based on the evidence submitted, he is an officer and director of Lee Tai and 238-240 since their inception, and therefore the defense should be dismissed (NYSCEF Doc No. 6 at 50). In support of his motion, plaintiff submitted the bylaws, which states that three directors will be appointed and will hold office until the expiration of the term and until his successor has been elected and qualified (*see* NYSCEF Doc No. 16 ¶¶ 2-3), and the minutes of the meeting of directors on August 24, 1996 for Lee Tai and 238-240, which states plaintiff is a director/vice-president and secretary for the these Corporations, and the directors will hold office until the next general meeting of shareholders (*see* NYSCEF Doc No. 19). Both tax returns and minutes of shareholder and board meetings constitute documentary evidence (*see Buttitta v Greenwich House Coop. Apts., Inc.*, 11 AD3d 250, 250 [1st Dept 2004]). The Business Corporation Law § 404 (b) statements for both Lee Tai and 234-240 lists plaintiff as a director and defendant's arguments regarding the validity of the statements are meritless (*see Haff v Long Island Fuel Corp.*, 233 AD 117, 121 [2d Dept 1931] ["In the management and affairs of a family corporation, irregularities not directly

harmful in their nature will be overlooked, and invalidity will be sought if the declaration of illegality would work injustice”]). “Courts are not to shut their eyes to the realities of business life” (*id.*). Based on the foregoing, plaintiff’s request for summary judgment on defendant’s first affirmative defense for standing is granted.

B. Plaintiff’s Causes of Actions Are Not Barred by the Statute of Limitations

Defendant contends that the action is time barred because all of the causes of action accrued in 1997, when Nancy allegedly refused to provide plaintiff with any financial or other information about the corporations (NYSCEF Doc No. 120. at 13). He further argues that the law of the case doctrine does not bar defendant from raising the defense of statute of limitations, and plaintiff alleged that Nancy refused to provide any information about the Corporations as early as 1997, yet did not commence the action until 8 years later (*id.* at 14-15).

“The doctrine of the law of the case seeks to prevent relitigation of issues of law that have already been determined at an earlier stage of the proceeding” (*Aspen Specialty Ins. Co. v RLI Ins. Co., Inc.*, 194 AD3d 206, 212 [1st Dept 2021] [citations omitted]). “It generally operates to preclude successive motions by the same party upon the same proof” (*id.* at 212-213 [citations omitted]). Here, the issue of statute of limitations defense was previously addressed by Justice Solomon on February 6, 2007, and Justice Cynthia S. Kern on September 14, 2015, where it was found that the claims were not time-barred. The law of the case bars defendant from raising affirmative defenses of statute of limitations that was already asserted and denied in a pre-answer motion to dismiss the complaint (*see Lee v Chun Ka Luk*, 127 AD3d 612, 613 [1st Dept 2015]; *see also GG Mgrs. v Fidata Trust Co. N.Y.*, 215 AD2d 241, 241 [1st Dept 1995], *lv dismissed* 8 NY2d 896 [1995] [barring relitigation of the statute of limitation claims under a subsequent CPLR 3212 summary judgment motion]).

C. Plaintiff is Not Required to Establish Damages

Defendant’s argument that the causes of action should be dismissed because plaintiff did not establish the damages to the Corporations is meritless (*see* NYSCEF Doc No. 199 at 11-12). “[B]ecause plaintiff moved for partial summary judgment on liability, he did not have to establish damages” (*MacArthur v Doeblin*, 224 AD3d 482, 483 [1st Dept 2024], citing *Gordon v Schaeffer*, 176 AD3d 431, 431 [1st Dept 2019] [holding that “[c]ontrary to defendant’s contention, plaintiff’s motion as to liability need not be denied because he failed to demonstrate damages as a result of the breach”]).

D. Plaintiff is Not Precluded from Establishing Damages Pursuant to CPLR 3126

Defendant contends that plaintiff should be precluded from establishing the element of damages because he failed to comply with a court order, dated June 24, 2024, which required him to provide answers to interrogatories served by defendant on August 16, 2013, seeking information as to the alleged damages (NYSCEF Doc No. 120 at 17-18). In opposition, plaintiff asserts that plaintiff served his response to the interrogatories on January 27, 2014 (NYSCEF Doc No. 135 at 43). Furthermore, on March 1, 2014, the court denied defendant's January 2014 cross-motion to compel responses to the second set of interrogatories as moot because of the fact that plaintiff had provided the responses (*id.*). He further argues that at the conference on June 24, 2014, plaintiff was directed to provide supplemental responses to the interrogatories to the extent he is able to (*id.* at 44).

The branch of defendant's cross-motion pursuant to CPLR 3126 to preclude plaintiff from offering evidence on the issue of damages at trial is denied. Precluding a party from presenting evidence is a drastic remedy which generally requires a showing that the party's conduct is willful and contumacious (*see Siegman v Rosen*, 270 AD2d 14, 15 [1st Dept 2000]). Here defendant failed to make such a showing.

Plaintiff's Motion**A. Summary Judgment on the First, Second, Third, and Fifth Causes of Action for Breach of Fiduciary Duty, Breach of the Duty of Loyalty, Corporate Waste and Conversion**

Plaintiff contends that Nancy, as an officer, stood in a fiduciary relationship to the Corporations and its shareholders, and was required to exercise the utmost good faith and was forbidden from deriving personal profit at the expense of the Corporations (NYSCEF Doc No. 6 at 34). Additionally, as an officer, she may be held accountable for waste, misappropriation and conversion of corporate assets under Business Corporation Law § 720 (*id.* at 35). Furthermore, defendant engaged in the waste, misappropriation and conversion of the Corporations' assets for his personal benefit by claiming that he is the sole shareholder and director of the Corporations, claiming that he and his children are the officer of the Corporations, by causing Lee Tai to take loans and mortgages in the tens of millions of dollars to fund the 19 Park Place project and by utilizing 420 Madison as security, by using the proceeds of these loans to payoff ABN's building and project loans in the sum of over \$14 million, by retaining and misappropriating the

Corporations' rental and other income, and by using the Corporations to make millions of dollars' worth of payments and advances directly to or on behalf of 7th Ave. Dev. (*id.* at 38). In opposition, defendant argues that Nancy reasonable and in good faith believed she was the sole shareholder of the Corporations, plaintiff failed to show the deceitful intent on her party as a fiduciary, and plaintiff's motion is based on hearsay statements made by Li, unauthenticated and incomplete documents, and an attorney affirmation not based on personal knowledge. (NYSCEF Doc No. 120 at 19-22).

Under New York law, elements of a claim for breach of fiduciary duty require "(1) the existence of a fiduciary duty; (2) breach of that duty; (3) and a showing that the breach was a substantial factor in causing an identifiable loss" (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008], *aff'd* 11 NY3d 64 [2008]). "It is and has always been general law that a director may be held accountable for the waste of corporate assets whether intentional or negligent without limitation to transactions from which he benefits" (*Rapoport v Schneider*, 29 NY2d 396, 403 [1972] [citations omitted]). The "[t]ransfer of assets without consideration" [and permitting] "[c]orporate property [to be] given to a foreign corporation without consideration" are classic examples of waste (*Aronoff v Albanese*, 85 AD2d 3, 5 [2d Dept 1982] [citations omitted]). "The essence of a waste claim is the diversion of corporate assets for improper or unnecessary purposes" (*SantiEsteban v Crowder*, 92 AD3d 544, 546 [1st Dept 2012] [citations omitted]). "To disprove a waste claim, a director who had a personal interest in a challenged payment has the burden of showing that they were made in good faith and were fair to the corporation" (*id.*).

"Corporate waste occurs when assets are used in a manner so far opposed to the true interests of the corporation so as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests" (*Patrick v Allen*, 355 F Supp 2d 704, 714-715 [SD NY 2005] [internal quotation marks and citations omitted]).

The fiduciary duty of loyalty imposes on corporate directors an obligation not to assume and engage in the promotion of personal interest which are incompatible with the superior interests of their corporation . . . as they [directors] owe the corporation their undivided and unqualified loyalty (*see Foley v D'Agostino*, 21 AD2d 60, 66-67 [1st Dept 1964]). Accordingly, directors should not be permitted to "[p]rofit personally at the expense of the corporation, or must they allow their private interests to conflict with corporate interests" (*id.* at 67). Director conflicts of interest

are typically found where either a director stands to receive a personal benefit from the transaction at issue that is different from that received by all shareholders, or where there is a loss of independence insofar as a director with no personal interest in a transaction is otherwise controlled by an interested director (*see Marx v Akers*, 88 NY2d 189, 200–202 [1996]).

Family members stand in a fiduciary relationship toward one another in a co-owned business venture (*see Castellotti v Free*, 138 AD3d 198, 209 [1st Dept 2016]). Plaintiff met his burden to establish liability for breach of fiduciary duty, by submitting documentary evidence establishing that Nancy had diverted assets from Lee-Tai and 238-240 to her solely owned Corporations (*see MacArthur v Doebelin*, 224 AD3d 482, 483 [1st Dept 2024]). Defendant in opposition failed to raise a triable issue of fact. He is barred by the law of the case in asserting any defense related to Nancy's defense that her parents had given the Corporations to her via oral inter vivos gifts, as the First Department held in the decision and order dated April 23, 2015, that defendant did not make an adequate showing that the proposed defense had any arguable merit, and plaintiff was unable to elicit information from Nancy on this new defense because she died in April 2011, prior to defendant raising this theory (*see* NYSCEF Doc No. 144). Additionally, defendant's arguments regarding Nancy's reasonable and good faith belief that she was the sole shareholder of the Corporations is meritless. Although "[t]he existence of such a good faith belief, as well as the question of whether the belief was reasonable are ordinarily questions for the factfinder," (*Argentina v Otsego Mut. Fire Ins. Co.*, 86 NY2d 748, 750 [1985] [internal quotation marks and citations omitted]), "[m]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman*, 49 NY2d at 562). Additionally, defendant has undisputed Nancy's actions in transferring the properties to her own corporations, and using the properties as collateral for loan transactions. Based on the foregoing, plaintiff's motion for summary judgment on the causes of action for breach of fiduciary duty, duty of loyalty, corporate waste and conversion are granted.

B. Summary Judgment on the Fourth Cause of Action for Fraud

Plaintiff contends that Nancy willfully and intentionally failed to disclose material financial information and documents regarding the Corporations and remained silent regarding the alleged gift from her parents and concealed the transfer of 7th Ave to 7th Ave. Dev., the Chinatrust transactions, and the transfer of 142 N. Corona to herself and misappropriated Corporations' funds (NYSCEF Doc No. 6 at 39). He further argues that Nancy's concealment was intentional as it

began the exact time that her conversion and misappropriation of the family assets commenced (*id.* at 41). As to damages, plaintiff states that because of her fraud, Nancy was able to transfer 238-240's property at 7th Ave to 7th Ave. Dev., demolish the property and develop it into condominiums for her personal benefit, and cause Lee Tai to take millions of dollars in loans and mortgages, utilizing 420 Madison as security (*id.* at 42). In opposition, defendant claims that Nancy reasonably and in good faith believed that she was the sole shareholder of the Corporations, and plaintiff cannot establish that she acted with the scienter that is necessary to sustain either a cause of action for fraud or for breach of fiduciary duty (NYSCEF Doc No. 120 at 18-19). In reply, plaintiff states that defendant is estopped from changing his defense to this action regarding Nancy's claim of sole ownership as it is being asserted for the first time in this action, and the only evidence cited is defendant's claim that Li allegedly told Nancy that the Corporations and properties are hers and that she would have to handle the financing and redevelopment on her own (NYSCEF Doc No. 135 at 37). Furthermore, Nancy acknowledged that the Corporations are family owned in her 1990 deposition testimony, in the 1996 proposed Corporate Resolutions, and during the resolution of the audit with the IRS in 1996 (*id.* at 38). Additionally, defendant does not dispute that Nancy's conduct was not in violation of her duties as an officer or failed to disclose material financial information, remained silent regarding the alleged gift from her parents, and concealed the transfer of the properties, and Chinatrust transactions (*id.* at 39-41). Moreover, defendant cannot rely on Nancy's good faith belief to excuse his own misconduct (*id.* at 41-42).

“The elements of a fraud cause of action consist of a misrepresentation or a material omission of fact which was false and known to be false by the defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury” (*Pasternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 827 [2016] [internal quotation marks and citations omitted]).

Fraud may be predicated on acts of concealment where the defendant had a duty to disclose material information (*see Kaufman v Cohen*, 307 AD2d 113, 119-120 [1st Dept 2003]). “Although a cause of action for fraud may be predicated on acts of concealment, there must first be proved a duty to disclose material information” (*Dembeck v 220 Cent. Park S., LLC*, 33 AD3d 491, 492 [1st Dept 2006] [citations omitted]). “Concealment with intent to defraud of facts which one is duty-bound in honesty to disclose is of the same legal effect and significant as affirmative misrepresentations of fact” (*Nasaba Corp. v Harfred Realty Corp.*, 287 NY 290 [1942] [citations

omitted)). “It is well settled that when there is a duty to speak, silence may very well constitute fraudulent concealment, which is itself the equivalent of affirmative misrepresentations of fact” (*Schindler v Issler & Schrage, P.C.*, 262 AD2d 226, 229 [1st Dept 1999] [citations omitted]).

Here, Nancy was in a fiduciary relationship and had a duty to disclose material information, and plaintiff’s fraud claim was sufficient as it was based on the concealment of material facts by her (*see MacArthur*, 224 AD3d at 483). Plaintiff’s moving papers contain evidentiary facts, as opposed to conclusions, to prove fraud (*see Benedict v Browne*, 289 AD2d 433, 433 [2001]). Defendant failed to raise a triable issue of fact because he admitted that no share certificates were issued or transferred to Nancy demonstrating that she owned one hundred percent of Lee Tai, 238-240 and BCR (*see* NYSCEF Doc No. 7 ¶¶ 22-24). The court declines to further consider plaintiff’s conclusory allegations regarding Nancy’s “intentions” and “good faith” belief in opposition for the aforementioned reasons. As such, plaintiff’s motion for summary judgment on the cause of action for fraud is granted.

C. Summary Judgment on the Sixth Cause of Action for Permanent Injunctive Relief

Regarding that portion of plaintiff’s motion seeking summary judgment on his fourth cause of action, which seek various permanent injunctive relief, such request is granted. To demonstrate an entitlement to a permanent injunction, plaintiff must demonstrate a probability of success on the merits, the danger of irreparable injury, and a balance of equities in its favor (*see P360 Spaces LLC v Orlando*, 160 AD3d 561, 562 [1st Dept 2018]). “[A] permanent injunction is a type of final judgment that is issued on the merits of the claims asserted” (*R.C. v City of New York*, 229 AD3d 173, 176 [1st Dept 2024] [citations omitted]). Since plaintiff established the merits of all of his causes of action, he is directed to submit an order of permanent injunction for this court to sign.

D. Summary Judgment on Defendant’s Remaining Affirmative Defenses

This court notes that defendant only opposes the branch of the motion seeking dismissal of the first affirmative defense of lack of standing and/or capacity to sue. Defendant’s second affirmative defense of gift is barred by the doctrine of law of the case as discussed above. The remaining defenses were not opposed and are deemed waived.

Accordingly, it is hereby

ORDERED that plaintiff Dennis Lee as director and officer of Lee-Tai Enterprises (USA) Ltd., 238-240 7th Avenue Corp., and Broadway Chinatown Realty Inc.’s motion for summary

judgment on liability pursuant to CPLR 3212 is granted on the first, second, third, fourth and fifth causes of action; and it is further

ORDERED that plaintiff Dennis Lee as director and officer of Lee-Tai Enterprises (USA) Ltd., 238-240 7th Avenue Corp., and Broadway Chinatown Realty Inc.’s motion for summary judgment pursuant to CPLR 3212 for permanent injunction on the sixth cause of action is granted, and plaintiff is directed to submit an order for permanent injunction within 30 days of entry of this decision and order; and it is further

ORDERED that plaintiff Dennis Lee as director and officer of Lee-Tai Enterprises (USA) Ltd., 238-240 7th Avenue Corp., and Broadway Chinatown Realty Inc.’s motion for summary judgment pursuant to CPLR 3212 to dismiss defendant’s first affirmative defenses is granted as to the first and second affirmative defenses, and the remaining affirmative defenses are deemed waived; and it is further

ORDERED and ADJUDGED that Nancy Luk was not the sole shareholder, officer and director of Lee Tai, 238-240 and BCR; and it is further

ORDERED that defendant Chun Ka Luk, as an administrator of the Estate of Nancy Luk, deceased’s motion for summary judgment pursuant to CPLR 3212 and for preclusion pursuant to CPLR 3126 is denied in its entirety; and it is further

ORDERED that the parties shall appear in IAS Part 55, Room 103, 71 Thomas Street, New York, New York for a pre-trial conference on October 22, 2025, at 2:15pm.

ORDERED that plaintiff shall serve a copy of this order with notice of entry on defendant, on the County Clerk, who shall enter judgment accordingly.

This constitutes the decision and order of the Court.

<u>7/15/2025</u> DATE					<u>James d'Auguste, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input 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