Cheng Rui v One Clinton, LLC
2025 NY Slip Op 32975(U)
August 7, 2025
Supreme Court, New York County
Docket Number: Index No. 652480/2025
Judge: Lyle E. Frank
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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CHENG RUI,

Plaintiff,

- v -

ONE CLINTON, LLC,THE HUDSON COMPANIES INCORPORATED, DAVID KRAMER, MARK REED, WHITFARM REALTY, LLC,JOHN DOES 1-99,

Defendant.

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INDEX NO. 652480/2025

MOTION DATE 05/13/2025, 05/22/2025, 05/28/2025

MOTION SEQ. NO. 001 002 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 48, 49, 50, 51, 57

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 34, 35, 59, 60, 61

were read on this motion to/for SANCTIONS.

Upon the foregoing documents, motion sequence 001 and 002 are granted and motion sequence 004 is denied.

Background

This underlying proceeding is one of several actions that have been filed regarding the redevelopment of the Brooklyn Public Library and that project's funding. Brooklyn Public Library Funding 100, LLC ("BPL" or "Nominal Defendant"), a Delaware company, made a mezzanine loan of $110 million to One Clinton LLC ("One Clinton" or "Borrower"). BPL had raised capital for the loan through the EB-5 Immigrant Program from investors such as plaintiff Cheng Rui. The loan was secured by a Mezzanine Guaranty signed by David Kramer, Mark

Reed, and Whitfarm Realty LLC (collectively, the "Guarantors"). Plaintiff alleges that One Clinton is owned and controlled by defendant The Hudson Companies Incorporated ("Hudson").

The loan agreement originally had a maturity date in January of 2024, but in February of 2024 notice was sent to BPL members that the maturity date had been extended to February 28, 2024. Concerned that the loan agreement had been breached, Plaintiff and other BPL members who are all represented by the same counsel sent a series of letters to the BPL manager starting February 28, 2024 (the "Member Letters"). These letters inquired about the status of the Brooklyn Public Library project, expressed dismay at the lack of repayment on the Mezzanine Loan, made certain demands for information, and (starting with the letter dated April 5, 2024) demanded that the manager commence litigation against One Clinton if certain conditions were met. The members and BPL's manager engaged in a series of discussions about the loan situation and litigation policy over the following months.

On May 31, 2024, a BPL member, unhappy with the response to the alleged loan default, commenced an arbitration against BPL and the manger (the "Zhou Lijun Arbitration"). Plaintiff was involved in the arbitration, having submitted a declaration there stating that he had "offered substantial assistance" to Zhou Lijun. On July 18, 2024, while arbitration was ongoing, Zhou Lijun brought a purportedly derivative action against One Clinton and Hudson in New York Supreme Court (the "Zhou Lijun Action"). BPL did not become aware of that action until October. A few months later on December 4, BPL brought an action against the Guarantors (the "BPL Action"). On March 5, 2025, this Court dismissed the Zhou Lijun Action based on a lack of derivative standing. That dismissal is pending appeal. A few weeks later, Plaintiff filed this present proceeding, largely repeating the same claims and allegations as the Zhou Lijun action but with an additional claim asserted against the Guarantors.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a "defense founded upon documentary evidence." Dismissal is only warranted under this provision if "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Leon v. Martinez,* 84 N.Y.2d 83, 88 [1994].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg,* 43 N.Y. 2d 268, 275 [1977].

Discussion

In motion seq. 001, One Clinton, Hudson, and the Guarantors (collectively, the "Named Defendants") bring a motion to dismiss the complaint. BPL as a nominal defendant (collectively with the Named Defendants, the "Defendants") also moves to dismiss the complaint in motion seq. 002. Motion seq. 004 is BPL's motion for sanctions against Plaintiff and Plaintiff's counsel.

Plaintiff opposes all motions. For the reasons that follow, motions 001 and 002 to dismiss are granted on multiple, independent grounds. The motion for sanctions is denied.

Plaintiff's Claims Are Barred Due to a Prior Action Pending

BPL argues that Plaintiff's claims are barred under the doctrines of res judicata, collateral estoppel, and prior action pending. CPLR § 3211(a)(4) permits a party to seek dismissal of claims asserted against them because of a "another action pending between the same parties for the same cause of action", and the court "may make such order as justice requires" in response. Here, the claims asserted by Plaintiff on behalf of BPL against the Guarantors are clearly duplicative of the claims asserted in the first-filed BPL Action against the Guarantors, and dismissal as to them is proper.

That the BPL Action does not pursue the claims against One Clinton and Hudson does not make CPLR § 3211(a)(4) unavailable, as when "a plaintiff seeks the same damages for the same alleged injuries relating to the same transaction from close corporate affiliates, a court may properly make a finding that the parties have 'substantially similar' identities for the purposes of the first-in-time rule." *Syncora Guar. Inc. v. J.P. Morgan Sec. LLC*, 110 A.D.3d 87, 96 [1st Dept. 2013]; *see also Nurlybayev v. SileDirectClub, Inc.*, 205 A.D.3d 455, 455 [1st Dept. 2022]; *Wietschner v. Dimon*, 139 A.D.3d 461, 462 [1st Dept. 2016]. Nor do the legal theories and specific claims need to be identical between the actions. *Syncora* at 96. The BPL Action seeks to recoup the loan amount from the Guarantors, and this later-filed action seeks to recoup the loan amount from the Guarantors and the original Borrower on behalf of BPL. Under the first-in-time rule the Court finds that dismissal in the interests of justice would be warranted.

Plaintiff Lacks Derivative Standing Under Delaware Law

Defendants have moved to dismiss on the basis that Plaintiff lacks derivative standing to pursue an action on behalf of BPL. A member cannot pursue a derivative suit under Delaware law unless "the stockholder: (a) has first demanded that the directors pursue the corporate claim, and the directors have wrongfully refused to do so; or (b) establishes that pre-suit demand is excused" as a demand would be futile due to the directors' lack of impartiality. *Wood v. Baum*, 953 A.2d 136, 140 [Del. 2008]. Defendants argue that the business judgment rule protects BLP's decision to institute a suit solely against the Guarantors and not against One Clinton, who is believed to be insolvent, and that therefore Plaintiff has not established a wrongful refusal to pursue claims. Plaintiff argues that the business judgment rule is a factual question that is not suitable for a motion to dismiss.

The case of *Rich* lays out the relevant standard under Delaware law. When a plaintiff has made a demand, they may then bring a derivative action "where he raises a reasonable doubt that the board's failure to acquiesce to his demand is in compliance with its fiduciary duties; that is, was wrongful." *Rich ex rel. Fuqi Int'l, Inc. v. Yu Kwai Chong*, 66 A.3d 963, 975 [Del. Ch. 2013]. Furthermore, the company is entitled to "a reasonable period of time to respond to the demand" and a derivative action cannot be brought until they have responded. *Id*., at 976. And when a demand is made and the directors have "taken some action in response", then the "methods and manner in which the board has chosen to act on the demand represent judgments entitled to the benefit of the business judgment rule if taken in a manner that was informed and in good faith." *Id*., at 977. A plaintiff must raise a reasonable doubt of compliance with fiduciary duties by particularized pleading in order to proceed derivatively. *Id*.

Plaintiff here fails to plead facts that would raise a reasonable doubt that BPL failed to comply with their fiduciary duties. BPL's manager responded in a reasonable time to the

Member Letters, and between those responses and their actions in the Zhou Lijun Action, the BPL manager has taken some action in response to the members' concerns and their demand for action on the alleged loan default. Furthermore, BPL has filed a proceeding against the Guarantors, seeking to recoup BPL's losses. That Plaintiff disagrees with BPL's reasoning in pursuing claims against the Guarantors and not One Clinton (related to both One Clinton's alleged financial status and the non-recourse nature of the loan) does not, even on a motion to dismiss standard, constitute facts pled that raise a reasonable doubt of compliance with fiduciary duties. Nowhere does the complaint plead any facts that show bad faith or partiality by the BPL manager in their response to the demand, only that Plaintiff and some other members were frustrated by and disagree with the specific litigation choices made by BPL in responding to the failure to repay the Mezzanine Loan.

Plaintiff here is not pursuing claims of breach of fiduciary duty against the BPL manager in his personal capacity but attempting to bring a derivative action. As explained above, to establish standing he would therefore need to plead with sufficient particularity facts that, if true, would raise a reasonable doubt as to the good faith efforts by BPL's manager. As that has not been pled, Plaintiff fails to establish that he has derivative standing to bring this action and it should be dismissed. Plaintiff and the other members demanded that the BPL manager pursue claims related to the failure to repay the mezzanine loan, and the manager investigated the situation, and BPL has brought claims attempting to recoup the money. On the facts as pled by Plaintiff, there are no grounds for a derivative action on behalf of BPL. The particulars of BPL's litigation strategy and how BPL attempts to recover the investors' money are sheltered by the business judgment rule, and there has been no showing or facts pled with particularity that show a breach of fiduciary duty by BPL's manager. *See, e.g.*, *Drachman v. Cukier*, 2021 Del. Ch.

LEXIS 259, *14 – 15 [Del. Ch. 2021] (explaining that wrongful refusal is a heightened pleading standard and that a plaintiff must show that the directors' decision was "so inexplicable that a court may reasonably infer that the directors must have been acting for a purpose unaligned with the best interest of the corporation.").

There Is an Additional Reason Why Dismissal as To Hudson Is Proper Here

In the interests of thoroughness, the Court also notes that there are other substantive reasons why this action should be dismissed as to Hudson. The complaint seeks to pursue claims against Hudson on an alter ego or veil-piercing theory, imputing One Clinton's liability to Hudson. But the complaint merely pleads in a conclusory fashion that Hudson exercised dominion and control over One Clinton. This is not sufficient to allow a plaintiff to pierce the corporate veil. *See, e.g., Morris v. State Dep't. of Taxation & Fin.*, 82 N.Y.2d 135, 141 – 42 [1993]; *Cortland St. Recovery Corp. v. Bonderman*, 226 A.D.3d 103, 104 [1st Dept. 2024]. Therefore, dismissal of the complaint as pled against Hudson is proper.

The Court Declines to Issue Sanctions Here

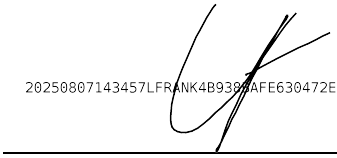
Finally, BPL has moved for sanctions against Plaintiff and his counsel for bringing this action. They argue that by bringing the same purported derivative claims against the same party, and by using the same Member Letters as a basis for derivative standing, Plaintiff and their counsel were wasting judicial resources. Plaintiff opposes the motion, arguing that this action would not be barred by res judicata and collateral estoppel. Sanctions for frivolous conduct are discretionary under 22 NYCRR § 130-1.1(a). The Court here declines, at this time, to impose sanctions, as due to the wording of the order that granted the motion to dismiss in the Zhou Lijun Action, there could be a good faith basis for Plaintiff to believe that the BLP members were not forestalled from bringing derivative actions in this matter. The Court notes, however, that despite

Plaintiff's arguments against res judicata and collateral estoppel relating to the Zhou Lijun Action, Plaintiff fails to address why they bring a breach of guaranty against the Guarantors in this action that is clearly duplicative of the claims asserted in the BPL Action, which was filed before this proceeding. Accordingly, it is hereby

ADJDUGED that motions sequence 001 and 002 are granted; and it is further

ORDERED that the complaint be dismissed in its entirety; and it is further

ADJUDGED that motion sequence 004 is denied.



8/7/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**		
		GRANTED		**DENIED**	X	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**		**REFERENCE**