

**Hsiung v Zhang Jiang Lin**

2025 NY Slip Op 33071(U)

July 18, 2025

Supreme Court, New York County

Docket Number: Index No. 650855/2025

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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ANN HSIUNG,

Plaintiff,

- v -

ZHANG JIANG LIN, YA HONG CHEN, YANG YING ZHU,  
YING JIE LI, PIN DUAN LI, CHU CHENG PENG, FRANK  
ZHENG NI HAI, JIAN LI CHEN, XING PING LEE, ALIC KAI  
MEI CHEN, WAI YU CHENG, YUK YAN CHEUNG,  
WILLIAM TAM, JIA YI OU YANG, LI QI FENG, SING TAT  
CHEN, SHU ZHEN ZHENG, CATHERINE TANG, XI HUI  
WU, PEOPLE OF THE STATE OF NEW YORK

Defendant.

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INDEX NO. 650855/2025  
MOTION DATE 04/08/2025  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 44, 45 were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after a final submission date of May 7, 2025, Defendant Xi Hui Wu a/k/a Steve Wu’s (“Mr. Wu”) motion to dismiss Interpleader Plaintiff Ann Hisung’s (“Ms. Hsiung”) Complaint pursuant to CPLR 3211(a)(1) and (7) is denied.

**I. Background**

Non-party 345 Ovington LLC (“Ovington”) was the sponsor of a condominium project and sole owner of a 25-unit condominium located at 345 Ovington Avenue, Bay Ridge, New York (the “Condominium”). Allegedly, Mr. Wu was a principal and manager member of Ovington. In November of 2016, Mr. Wu gave Ms. Hsiung \$90,000.00 in escrowed funds, which were allegedly security deposits given to Mr. Wu by various potential purchasers of Condominium units. Ever since, these funds have remained in an escrow account controlled by Ms. Hsiung.

On July 27, 2022, an involuntary petition of bankruptcy was filed against Ovington in the Eastern District of New York, and on September 6, 2022, Gregory M. Messer was appointed the Chapter 7 Trustee over the estate of Ovington. Meanwhile, on November 2, 2022, the People of the State of New York (the “Attorney General”) filed a Complaint against Mr. Wu and Ovington in this Court based on an alleged multi-year scheme to defraud purchasers, occupants, tenants, New York City, and State agencies (*see People of the State of New York v. Wu, et al.*, Index No. 452904/2022). That action remains pending.

This CPLR 1006 interpleader action was commenced by Ms. Hsiung asking the Court for a determination as to whom the escrow funds belong, allowing Plaintiff to deposit the escrow funds into a Court registry, discharging her of liability for the escrow funds to any of the defendants, and seeking attorneys’ fees, costs, expenses, and disbursements from the escrowed funds. Mr. Wu moves to dismiss the Complaint claiming documentary evidence conclusively establishes the escrow funds belong to him. Ms. Hsiung opposes, as does the Attorney General.

## **II. Discussion**

### **A. Standard**

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must accept the factual allegations as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). However, conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

Pursuant to CPLR § 1006(a), a person who may be exposed to multiple liabilities as the result of adverse claims may commence an interpleader action against two or more of the claimants. An interpleader plaintiff does not have to assess the legal validity of the competing claims against it – interpleader is appropriate where the party requesting it has a reasonable fear of vexatious or conflicting claims to the assets held (*see Bank of New York v First Millennium, Inc.*, 607 F3d 905, 922 [2d Cir 2010]).

#### **B. CPLR 3211(a)(7)**

Accepting the allegations as true, as this Court must, Ms. Hsiung has adequately alleged an interpleader Complaint pursuant to CPLR § 1006. Specifically, Ms. Hsiung alleges that she is holding \$90,000.00 in escrow which she believes consists of security deposits given to Mr. Wu by “residents” of the Condominium (NYSCEF Doc. 1 at ¶ 10). The Bankruptcy Trustee of Ovington opined that the escrowed funds do not belong to Ovington (NYSCEF Doc. 6). Thus, Plaintiff has alleged a reasonable belief that the numerous interpleader defendants may have competing claims to the \$90,000.00 in escrow. Accordingly, Mr. Wu's CPLR 3211(a)(7) motion fails, and the Complaint can only be dismissed if Mr. Wu's proffered documentary evidence establishes conclusively the \$90,000.00 belongs to him.

### C. CPLR 3211(a)(1)

Mr. Wu's motion to dismiss Ms. Hsiung's Complaint pursuant to CPLR 3211(a)(1) is denied. The evidence proffered by Mr. Wu is either (a) not documentary evidence, or (b) does not establish conclusively that he is the sole owner of the \$90,000.00 held in escrow. As a preliminary matter, Mr. Wu's affidavit does not constitute documentary evidence (*Bou v Llamaza*, 173 AD3d 575 [1st Dept 2019]). Moreover, the purported documentary evidence produced by Mr. Wu does not establish definitively his entitlement to the funds as a matter of law. According to a deposition transcript filed by the Attorney General, Mr. Wu admitted the \$90,000.00 held by Ms. Hsiung consisted of \$5,000 deposits held collectively for eighteen apartments in the Condominium (NYSCEF Doc. 32 at 101-02). Mr. Wu's affidavit in support of his motion to dismiss states that he was told by his attorney at the time to "take the five thousand dollars from the Purchaser Defendants and deposit them into the escrow account held by Hsiung." (NYSCEF Doc. 13 at ¶ 37). This prior testimony raises issues as to ownership of the funds in escrow which warrants denial of Mr. Wu's motion.

Moreover, in *People of the State of New York v. Wu, et al.*, Index No. 452904/2022, Justice Margaret A. Chan found the Attorney General adequately alleged that Mr. Wu misappropriated deposits and downpayments, impermissibly commingled deposits and downpayments, and allegedly used the deposits and downpayments (NYSCEF Doc. 29 at p. 10). These allegations continue to be litigated before Justice Chan highlighting Ms. Hsiung's reasonable belief that the \$90,000.00 of escrowed funds may be subject to multiple claimants. Further, Mr. Wu admits that the numerous named purchaser defendants have obtained judgments against him arising out of Mr. Wu's misconduct related to the Condominium (*see, e.g. Chen v 345 Ovington LLC, et al.* Index

No. 509606/2019). Mr. Wu fails to state that the judgments have been satisfied, showing that the numerous named judgment creditors may have a claim to the \$90,000.00 in escrowed funds.

Mr. Wu's argument that because his name is on the check which was deposited in escrow that he owns the funds is without merit. The check does not establish conclusively he is the rightful owner of the \$90,000.00 considering the ongoing litigation against him alleging he improperly commingled funds, and the numerous judgments which may remain unsatisfied against him. Mr. Wu's argument that he is entitled to the funds because the escrow agreement is signed by him, but not by Ms. Hsiung is also without merit. Ms. Hsiung is expressly named in the escrow agreement, and she has performed for years pursuant to the agreement (*see, e.g. Kowalchuk v Stroup*, 61 AD3d 118, 125 [1st Dept 2009] [unsigned contract may be enforceable where there is objective evidence establishing the parties intended to be bound]). The parties' performance and the existence of an escrow agreement raise issues of fact as to whether there exist underlying purchase agreements, which cannot be determined on a pre-answer motion to dismiss. Therefore, Mr. Wu's motion to dismiss is denied.

Accordingly, it is hereby,

ORDERED that Defendant Xi Hui Wu a/k/a Steve Wu's motion to dismiss Interpleader Plaintiff Ann Hisung's Complaint pursuant to CPLR 3211(a)(1) and (7) is denied; and it is further

ORDERED that within twenty days of entry, counsel for Defendant Xi Hui Wu a/k/a Steve Wu shall file his Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties are directed to meet and confer and immediately submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov, but in no event shall the proposed order be submitted any later than September 17, 2025; and it is further

ORDERED that should the parties independently resolve the issue of ownership of the \$90,000.00 in escrow, they shall notify the Court immediately with a proposed order for the release and distribution of said funds; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff 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.

7/18/2025  
DATE

Mary V Rosado Jsc  
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 checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE
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