

Matter of Lu Ming Li v Asian Am. Coalition for Educ.
2025 NY Slip Op 35386(U)
January 21, 2025
Supreme Court, Queens County
Docket Number: Index No. 724302/2023
Judge: Anna Culley
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Short Form Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

FILED & RECORDED
1/22/2025
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COUNTY CLERK *CP*
QUEENS COUNTY

Present: HONORABLE ANNA CULLEY IA Part 27
Justice

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In the Matter of the Application of

Index
Number 724302 /2023

LU MING LI, on behalf of herself and on behalf of
ASIAN AMERICAN COALITION for EDUCATION
("AACE"),

Motion
Dates April 19, 2024

Petitioner, Motion Seq. Nos. 1, 2 & 3

-against-

ASIAN AMERICAN COALITION for EDUCATION
("AACE"), YEVGENIY KARSHIGEYEV, MUQING
ZHU, YANA BORUKHOVA and ELEAZAR
JACOBS,

Respondents.
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The following numbered papers read on this motion (Seq. No. 1) by petitioner Lu Ming Li (Li), on behalf of herself and on behalf of Asian American Coalition for Education (AACE) for a judgment, pursuant Education Law § 216-a, voiding certain documents executed to transfer ownership and control of AACE to respondents Yevgeniy Karshigeyev (Karshigeyev), Muqing Zhu (Zhu) and Yana Borukhova (Borukhova); removing respondents Karshigeyev, Zhu and Borukhova from their positions as directors and officers of AACE; restoring Li and non-parties Xiaojing Li and Hua Guo as directors and officers of AACE; and related relief; a motion (Seq. No. 2) by respondent Eleazar Jacobs (Jacobs) to dismiss the petition pursuant to CPLR 3211 (a) (1) and (7) or, in the alternative, converting the special proceeding to a plenary action pursuant to CPLR 103 (c); and a separate motion (Seq. No. 3) by respondents AACE, Karshigeyev, Zhu and Borukhova to dismiss the petition pursuant to CPLR 3211 (a) (1) and (7).

Papers
Numbered

Notice of Petition - Petition - Affidavits - Exhibits..... EF 1-7; 9-14
Notices of Motion - Affidavits - Exhibits EF 17-21; 23-34

Answering Affidavits - Exhibits	EF 35-46
Reply Affidavits	EF 47-57

Upon the foregoing papers, it is ordered and adjudged that the petition and these motions are consolidated for purposes of disposition and are determined as follows:

Petitioner was the founder and one of the three original board members of AACE, a non-profit organization incorporated in 1998 by the Board of Regents of the New York State Department of Education. AACE operated as a non-profit educational corporation between 1998 and 2022, providing daycare services and educational programs to enhance students’ school performance in the Asian community. In this special proceeding, petitioner alleges that she was formally removed as director and president of AACE on November 28, 2022 as a result of respondents’ fraud.

Petitioner, a native speaker of Mandarin Chinese, avers that she has limited English speaking skills, and was interested in partnering with someone to assist with operating AACE and developing more programs. She became acquainted with Zhu in August 2022 and felt comfortable conversing with her in Mandarin. Zhu introduced petitioner to Karshigeyev, who operated a daycare program in Queens.

Petitioner alleges that Zhu and Karshigeyev “prevailed upon petitioner to agree to meet to sign a memorandum on [October 7, 2022]” (the 10/7/22 Memo). This memo purported to add Zhu (Vice President) and Karshigeyev (President) as new board members, and remove the two remaining original board members of AACE, non-parties Xiaojing Li and Hua Guo, from office (illogically, while also requiring the unanimous vote of petitioner and the two original board members in addition to those of Zhu and Karshigeyev). Zhu translated for petitioner, but petitioner asserts that Zhu misrepresented the terms of the 10/7/2022 Memo in order to fraudulently transfer control of AACE to respondents.

Jacobs, the attorney who drafted the 10/7/2022 Memo, told petitioner that it was created only for the purpose of adding board members. When petitioner and the other original board members asked if they should get a lawyer to review the transaction, he said that was unnecessary because he was representing them. When they told Jacobs they did not understand the document, he told them not to worry.

Allegedly with the intent of fully turning over AACE to respondents, Jacobs then prepared new documents with a scheduled execution date of November 28, 2022. Petitioner again asked Jacobs if she needed a lawyer to review the documents, but he assured her that he was representing petitioner and the two other board members. Zhu also emphatically agreed that Jacobs was representing petitioner’s interests. On November 28, 2022, petitioner and the two original board members met at Jacobs’ office, along with Borukhova, to sign two new documents (the 11/28/2022 Documents). The 11/28/2022 Documents effectively appointed Zhu as a director (Vice President) a second time, added Borukhova as Treasurer, removed petitioner from the board and instead appointed her as Secretary (a non-voting position), and removed Xiaojing Li and Hua Guo from the

board. Karshigeyev remained as director/President. Additionally, the Bylaws dated May 2, 2020 were voided and replaced with November 28, 2022 bylaws.

Petitioner then gave Zhu and Karshigeyev access to AACE's bank accounts by making them account holders. Petitioner asserts that she only realized that she no longer had access to AACE's bank accounts when she attempted to access certain funds deposited by the Department of Education (DOE) on or about December 22, 2022. She further alleges that respondents had gained access to petitioner's DOE password and made unauthorized adjustments to the DOE budget, including the creation of a \$40,000 job for herself. These transactions allegedly occurred between November 2022 and May 2023, during the period when petitioner claims she was effectively removed from the board, with only a Secretary title that did not carry voting power.

Petitioner also alleges learning in July 2023 that her signature had been forged on at least two documents, including a Certificate of Assumed Name which created the doing-business name of Around the World for AACE as the parent entity. She claims that her signature was forged by an accountant whose name she did not recognize. She avers that she was contacted by an investigator from the Department of State, who advised her to cancel the doing-business certificate, which she did.

On a motion to dismiss, the court is not called upon to determine the truth of the allegations (*see AG Capital Funding Partners v State St. Bank & Trust Co.*, 5 NY3d 582, 591 [2005]; *see also 219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]). Rather, the complaint is to be afforded a liberal construction, the facts as alleged in the complaint are accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court's function is to determine only whether the facts as alleged fit within any cognizable legal theory (*see Lopez v Lozner & Mastropietro, P.C.*, 166 AD3d 871 872 [2d Dept 2018]; *Goldfarb v Schwartz*, 26 AD3d 462, 463 [2d Dept 2006]; *see also Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). If, from the four corners of the complaint, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, a motion to dismiss will fail (*see 255 Butler Assoc., LLC v 255 Butler, LLC*, 173 AD3d 655, 655 [2019], *quoting Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]); *Country Pointe at Dix Hills Home Owners Assn., Inc. v Beechwood Org.*, 80 AD3d 643, 649 [2011]). The court must "accept . . . each and every allegation forwarded by the plaintiff without expressing any opinion as to the plaintiff's ability ultimately to establish the truth of these averments before the trier of the facts" (*Cooper v 620 Prop. Assoc.*, 242 AD2d 359, 360 [1997], *quoting 219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]).

To state a cause of action for fraud, a plaintiff must allege, with the requisite particularity, a misrepresentation or 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 (*see Grasso v Guarino*, 227 AD3d 872, 873 [2d Dept 2024]; *Hillary Dev., LLC v Sec. Tit. Guar. Corp. of Baltimore*, 219 AD3d 815, 816 [2d Dept 2023]; *Sammy v Haupel*, 170 AD3d 1224, 1226 [2d Dept 2019]). Pursuant to

CPLR 3016 (b), a claim for fraud must be pleaded with specificity so as to inform the defendant of the alleged wrongful conduct and give notice of the allegations the plaintiff intends to prove (*see Greenberg v Blake*, 117 AD3d 683, 684 [2d Dept 2014]; *McDonnell v Bradley*, 109 AD3d 592, 593 [2d Dept 2013]). “[B]are allegations of fraud without any allegation of the details constituting the wrong are clearly not sufficient to sustain such a cause of action” (*Greenberg v Blake*, 117 AD3d 683, 684 [2014]; *accord Kline v Taukpoint Realty Corp.*, 302 AD3d 433 [2003]).

Here, petitioner asserts various claims for relief based on the underlying fraud, including to void the 10/7/2022 Memo and 11/28/2022 Documents; to remove respondents Karshigeyev, Zhu, and Borukhova as directors and officers of AACE; to restore petitioner’s access to AACE’s bank accounts and restrain respondents from involvement with AACE’s funding; to rescind all transactions effectuated by forging petitioner’s signature and to restore her authority with government entities; and against Jacobs, for his role in facilitating such fraud. In asserting such claims, petitioner fails to specify which of respondents’ representations were false, and that respondents falsely made them in order to induce petitioner’s reliance (*see Browne v Lyft, Inc.*, 219 AD3d 445, 448 [2d Dept 2023]). Moreover, petitioner fails to allege reliance, justifiably or otherwise, based upon any such misrepresentations (*see Franklin D. Nastasi Tr. v Bloomberg, L.P.*, 224 AD3d 804, 808 [2d Dept 2024]; *KNK Enters., Inc. v Harriman Enters., Inc.*, 33 AD3d 872 [2d Dept 2006]). In this regard, petitioner asserts that she did not understand what she was signing, and did not further investigate its contents due to the reassurances by Zhu and Jacobs. Where, as here, the truth of the challenged documents’ contents was not “exclusively within the knowledge of [respondents]” (*Gates Ave. Corp. v Bryan*, 225 AD3d 647, 650 [2d Dept 2024]; *cf. Etzion v Etzion*, 62 AD3d 646, 652 [2d Dept 2009]; *Auguston v Spry*, 282 AD2d 489, 490 [2d Dept 2001]), petitioner is expected to “exercise ordinary diligence . . . where he or she has means available to him or her of knowing, by the exercise of ordinary intelligence, the truth or the real quality of the subject of the representation” (*Piccoli v Cerra, Inc.*, 216 AD3d 1188 [2d Dept 2023]). A party cannot claim reliance on a misrepresentation when he or she could have discovered the truth with due diligence (*Franklin D. Nastasi Tr.*, 224 AD3d at 808; *Avery v WJM Dev. Corp.*, 197 AD3d 1141, 1144 [2d Dept 2021]).

Moreover, to the extent that petitioner’s claims are based on her assertion that she had limited understanding of the English language, such illiteracy is, in itself, insufficient to avoid the rule that a party who signs a contract without any valid excuse for having failed to read it is conclusively bound by its terms (*see Prete v Tamares Dev. 1, LLC*, 219 AD3d 1537, 1538 [2d Dept 2023]; *Emigrant Mtge. Co., Inc. v Pub. Adm’r of Kings County*, 207 AD3d 437, 442 [2d Dept 2022]). Thus, affording the petition a liberal construction, and despite petitioner’s conclusory assertions that respondents acted fraudulently to oust petitioner and the other original board members from AACE, the allegations are insufficient to state a claim for fraud with the requisite particularity (CPLR 3016[b], 3211[a][7]; *see Rosenblum v Bd. of Educ. Great Neck Union Free School Dist.*, 231 AD3d 881, 883 [2d Dept 2024]; *Asamblea De Iglesias Christianas, Inc. v DeVito*, 210 AD3d 843, 845 [2d Dept 2022]; *Cheslowitz v Board of Trustees of the Knox Sch.*, 156 AD3d 753, 756 [2017]).

Finally, with respect to the lack of a translator’s affidavit to accompany petitioner’s affidavit in opposition to the motions to dismiss, in contravention of CPLR 2101 (b), the court need not consider this issue, as raised in respondents’ replies and petitioner’s sur-replies, in order to reach a determination on these motions. Nevertheless, the court notes that Li’s affidavit in opposition to the motions to dismiss, with its footnote indicating that it was translated into English from Mandarin, also calls into question the admissibility of her verified petition, which is submitted in English, without any translator’s affidavit.

The Court has considered the parties’ remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED AND ADJUDGED that respondents’ respective motions to dismiss are granted, the petition is denied and the instant proceeding is dismissed.

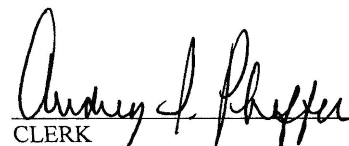
Movant is not relieved from the applicable provisions of CPLR 2220 and 202.5-b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

The foregoing constitutes the decision, order and judgment of this court.


ANNA CULLEY, J.S.C.

Dated: January 21, 2025

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