

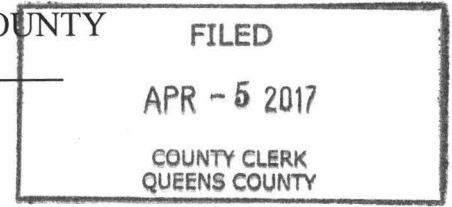
Hong Qin Jiang v Ai Yun Chen
2017 NY Slip Op 30781(U)
March 27, 2017
Supreme Court, Queens County
Docket Number: 712008/2016
Judge: Leonard Livote
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE LEONARD LIVOTE
Acting Supreme Court Justice

Part 33



Hong Qin Jiang, x
Plaintiff

Index
Number 712008 2016

- against -

Motion
Date January 17, 2017

Ai Yun Chen,
Defendant

Motion Seq. No. 1

The following papers numbered 1 to 10 read on this motion by plaintiff Hong Qin Jiang for a preliminary injunction requiring defendant Ai Yun Chen to give her and her attorneys ten business days advance written notice of any sale, etc. of shares of 37 81 Realty, Inc. currently held by the defendant

	Papers <u>Numbered</u>
Order to Show Cause- Affidavits - Exhibits.....	1-6
Answering Affidavits - Exhibits.....	
Reply Affidavits.....	7-8
Memoranda of Law	9-10

Upon the foregoing papers it is ordered that the motion is granted. The plaintiff shall give an undertaking in the amount of \$10,000.

I. The Plaintiff's Allegations

Plaintiff Hong Qin Jiang alleges the following:

Plaintiff Jiang, a real estate developer, owned 25% of the shares of 37-81 Realty, Inc. (Realty, Inc.), which held title to a condominium located at 37-49 81st Street, Jackson Heights, New York and a hotel located at 37-59 81st Street, Jackson Heights, New York. Jiang also held a 99% interest in Shirokia Development LLC, the owner of a building located at 142/28-30 -32 38th Avenue, Flushing, New York.

In 2011, a lender began an action to foreclose on a mortgage encumbering the Flushing property, causing Shirokia to file for bankruptcy protection. On March 18, 2015, the bankruptcy court ordered that if Shirokia did not refinance the mortgage by April 1, 2015,

the lender could sell the Flushing property at public auction the next day. On April 1, 2016, Madison Capital LLC refinanced the mortgage up to \$14,000,000, leaving Shirokia \$4,300,000 short and also in need of \$780,000 to pay off tax arrears.

Jiang asked Wing Fung Chau for financial assistance, and he provided her with several cashier's checks, including one in the amount of \$2,785,632. Chau told Jiang that \$2,414,000 of this sum had been loaned by defendant Ai Yun Chen, who was demanding that Jiang post as collateral her 25% interest in Realty, Inc. Chau required Jiang to place the stock in escrow and further required her to repay the loan in six months with 100% (one hundred per cent) interest per annum. Chen insisted that Jiang sign a "Share Transfer Agreement" and "Buy Back and Escrow Agreement." Paragraph 1 of the Buy Back and Escrow Agreement provided in relevant part: "It is agreed that in consideration that Transferee [Chen] paid \$2,413,933.00 upon Transferor's [Jiang's] request and to Transferor's order to 38th Avenue Realty LLC *** in order for Transferor to avoid being foreclosed on one of Transferor's propert[ies] *** the price for a buyback of said share shall be Three Million Six Hundred Twenty Thousand Nine Hundred dollars (\$3,620,900)." Paragraph 2 of the escrow agreement provided that Jiang would have to pay this sum if she exercised her buyback rights within six months. Chen allegedly structured the deal in this manner to conceal a usurious loan requiring Jiang to pay 50% interest on a loan of six months duration. In order to avoid the foreclosure sale ordered by the bankruptcy court for the next morning, Jiang signed the documents.

Jiang did not have the money to buy back the stock at the end of the six month period, and the escrow agent delivered the stock of Realty, Inc. to Chen, who thereby acquired through the company an interest in the condominium and hotel having an approximate gross value of \$12,500,000.

Chau also loaned money to Jiang at the time of the pending foreclosure, and this loan became the subject of another action brought in this court, asserting, inter alia, usury (*Jiang v. Chau*, Index No. 705619/16). The parties settled the case pursuant to a stipulation dated June 24, 2016 whereby Chau agreed to accept the repayment of the principal with interest at 9% per annum. Jiang has fully repaid Chau.

II. Discussion

In order to obtain a preliminary injunction, plaintiff Jiang had to show (1) a likelihood of ultimate success on the merits, (2) irreparable injury if provisional relief is withheld, and (3) a balance of the equities in her favor. (*See, Aetna Insurance Co. v. Capasso*, 75 NY2d 860; *McNeil v. Mohammed*, 32 AD3d 829). The plaintiff successfully carried this burden.

In regard to the first requirement, the plaintiff established a likelihood of ultimate success on the merits by making a prima facie showing that she can prove one of her causes of action. (See, *McNeil v. Mohammed*, supra; *Trimboli v. Irwin*, 18 AD3d 866; *Four Times Square Associates, L.L.C. v. Cigna Investments, Inc.*, 306 AD2d 4.) The plaintiff has a viable cause of action for a judgment declaring that the documents she signed are void for usury. (See, General Obligations Law § 5-511[2].) The maximum yearly interest rate for a loan is sixteen per cent under New York's civil usury statute (General Obligations Law §5-501) and twenty-five per cent under New York's criminal usury statutes (Penal Law §§ 190.40 and 190.42). A corporation or a limited liability company may only assert criminal usury as a defense to repayment. (See, GOL § 5-521[3]; Limited Liability Company Law § 1104; *Fred Schutzman Co. v. Park Slope Advanced Med., PLLC*, 128 AD3d 1007; *Manganello v. Park Slope Advanced Medical PLLC*, 42 Misc.3d 1222[A] [Table], 2014 WL 503575 [Text].) “ A usurious contract is void and relieves the plaintiff of the obligation to repay principal and interest thereon ***.” (*Abir v. Malky, Inc.*, 59 AD3d 646, 649; see, General Obligations Law § 5-511[2].) Although there may be issues of fact in this case, such as whether the transaction constituted a cover for usury (see, *Abir v. Malky, Inc.*, supra; *Ujueta v. Euro-Quest Corp.*, 29 AD3d 895), they do not preclude a finding of the likelihood of ultimate success on the merits. (See, *Ruiz v. Meloney*, supra.) Moreover, contrary to the argument made by defendant Chen, a debtor may offer parol evidence showing that a transfer purporting to be absolute was in fact made for security. (*Liberatore v. Olivieri Dev.*, 294 AD2d 894.) A party may offer parol evidence to show the illegal nature of a contract such as one which is usurious. (*Stransky v. DiPalma*, 137 AD3d 1734.) The plaintiff also made a prima facie showing that the affirmative defenses raised by the defendant have no merit.

In regard to the second requirement, the plaintiff demonstrated that equitable relief is a more efficient remedy than monetary damages. (See, *People by Abrams v. Anderson*, 137 AD2d 259; *Poling Transp. Corp. v. A & P Tanker Corp.*, 84 AD2d 796.

Moreover, there is a danger that absent a preliminary injunction, the plaintiff will lose her substantial interest in real property directly or indirectly. (See, *Concourse Rehab. & Nursing Ctr., Inc. v. Gracon Assocs.*, 64 AD3d 405.)

In regard to the third requirement, the balance of the equities tips in favor of the plaintiff in order to maintain the status quo pending the resolution of the action. (See, *Masjid Usman, Inc. v. Beech 140, LLC*, 68 AD3d 942.) Moreover, in contrast to the plaintiff's showing of irreparable harm, the defendant will suffer no significant hardship from the minimal relief she seeks here. (See, *Bell & Co., P.C. v. Rosen*, 114 AD3d 411.)

Accordingly, the motion is granted and it is,

Ordered, that defendant and her agents, are required to give plaintiff and plaintiff's attorney 10 (ten) business days advance written notice of any sale, donation, pledge, hypothecation, encumbrance, or other transfer of, or entering into any agreement, offer, or commitment to

transfer, all or any portion of the shares of 37 81 Realty Inc., currently held by defendant; and it is further,

Ordered, that plaintiff shall post a bond in the amount of \$10,000.

This constitutes the Order of the Court.

Dated: *MARCH 27, 2017*



A.J.S.C.

FILED
APR - 5 2017
COUNTY CLERK
QUEENS COUNTY