

<b>Jianyuan Yang v Bo Zhu</b>
2021 NY Slip Op 30030(U)
January 5, 2021
Supreme Court, New York County
Docket Number: 655611/2019
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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JIANYUAN YANG, and GOLDEN URBAN PROPERTY  
 MANAGEMENT LLC,

Plaintiff,

- v -

BO ZHU, WING CHAU, YI HAN, COLUMBIA LAWRENCE  
 HOLDINGS 1, LLC, and 126 COLUMBIA TOWER 1 LLC,

Defendants.

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INDEX NO. 655611/2019

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
 MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 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

were read on this motion to/for JUDGMENT - DEFAULT.

Plaintiffs Jianyuan Yang and Golden Urban Property Management LLC (Golden Urban) move, pursuant to CPLR 3215, for a default judgment against defendants Bo Zhu, Wing Chau, Yi Han, Columbia Lawrence Holdings 1, LCC, and 126 Columbia Tower 1 LCC for failure to timely respond to plaintiffs' summons and verified complaint. To date, defendants have not answered, responded, or otherwise appeared.

"On a motion for a default judgment under CPLR 3215 based upon a failure to answer the complaint, a Plaintiff demonstrates entitlement to a default judgment against a defendant by submitting: (1) proof of service of the summons and complaint; (2) proof of the facts constituting its claim; and (3) proof of the defendant's default in answering or appearing" (*Medina v Sheng Hui Realty LLC*, 2018 WL 2136441, \*6-7 [Sup Ct, NY County 2018] [citations omitted]).

### Proof of Service

Plaintiffs provide proof of service of the summons and verified complaint upon all defendants, as well as service of this motion (NYSCEF Doc. Nos. [NYSCEF] 53-63, Affidavits of Service and Affidavits Additional Service; NYSCEF 87, Affidavit of Service of Motion).

### Proof of Facts

"When the defendant defaults, all the factual allegations of the complaint, and the reasonable inferences to be drawn from them, are considered admitted insofar as they relate to liability. Nonetheless, some proof of liability is ... required to satisfy the court as to the prima facie validity of ... uncontested causes of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts. While the default may resolve all liability questions against the defendant, plaintiff's legal conclusions with respect to damages are not deemed admitted and are reserved for the court's determination"

(*IMG Intl. Mktg. Group, Inc. v SDS William St., LLC*, 32 Misc 3d 1233[A], 1233A, 2011 NY Slip Op 51561[U], \*2-3 [Sup Ct, NY County 2011] [internal quotation marks and citations omitted]).

In addition to the verified complaint, plaintiffs submit the affidavit of plaintiff Yang, member of plaintiff Golden Urban, and accompanying exhibits (NYSCEF 64, Yang aff; NYSCEF 65-86, Exhibits).

### *Breach of Contract*

The essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]).

Plaintiffs allege defendants breached their contract with plaintiff Golden Urban. Specifically, plaintiff Yang initially loaned defendants Bo Zhu, Wing Chau and Yi Han

(collectively, Zhu Group) \$1,400,000 (Plaintiff made a loan of \$900,000, followed by a loan of \$500,000) (NYSCEF 64, Yang aff ¶¶ 6-9). Zhu executed a promissory note and agreed to repay the loans on January 28, 2017 (NYSCEF 67, Promissory Note). On January 26, 2017, instead of the Zhu Group repaying the promissory notes, Golden Urban enter into a contract with Zhu and 126 Columbia Tower 1, LLC (Columbia Tower) in which Golden Urban agreed to provide an additional \$2,000,000.00 in exchange for a 50% member interest in Columbia Tower (NYSCEF 64, Yang aff ¶ 11; NYSCEF 69, Contract ¶¶ 1, 4; NYSCEF 68, Check). If Golden Urban was not able to close on this purchase, it could cancel the contract and its \$3.4 million contract deposit would be returned (NYSCEF 69, Contract ¶ 10). Golden Urban could also demand its deposit back if any representation by seller in the contract was untrue or inaccurate (*id.* ¶ 9). Columbia Tower owned real property located at 402 to 422 West 126<sup>th</sup> Street, New York, New York (Columbia Tower Property) (*id.*; NYSCEF 64, Yang aff ¶ 13).

On October 20, 2017, Columbia Lawrence Holdings 1, LLC (Columbia Lawrence), as the sole member of Columbia Towers, signed a deed transferring title to the Columbia Tower Property to Columbia International LLC for \$28,000,000.00 (NYSCEF 70, Deed). Plaintiffs did not know that Columbia Lawrence was the sole member of Columbia Towers (NYSCEF 64, Yang aff ¶¶ 18, 20). On November 24, 2017, the Zhu Group paid plaintiffs \$650,000.00 (NYSCEF 64, Yang aff ¶ 22). Golden Urban did not receive a 50% membership in Columbia Tower (*id.*). The remaining profits from the transfer of the Columbia Tower Property were divided among the Zhu Group and their “shell entities” (*id.* ¶ 23).

Plaintiffs have sufficiently presented proof that Zhu and Columbia Tower breached the contract by refusing transfer 50% of the ownership interest in Columbia Towers or pay plaintiffs \$2,750,000.00, the balance of the \$3,400,000.00 investment, and that Golden Urban has suffered damages as a result.

#### *Unjust Enrichment*

“[T]o successfully plead unjust enrichment [a] plaintiff must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered” (*Georgia Malone & Co., Inc. v Rieder*, 86 AD3d 406, 411 [1st Dept 2011] [internal quotation marks and citations omitted]).

As to plaintiffs' claim for unjust enrichment against Zhu and Columbia Tower, there is an existing valid contract precluding recover under this theory (*Vital Spark Found., Inc. v N. Am. Globex Fund, LP*, 2013 NY Slip Op 30223[U], \*10 [Sup Ct, NY County 2013]). Thus, this claim is dismissed as to these defendants. However, plaintiffs have sufficiently shown that defendants Columbia Lawrence, Chau, and Han were enriched at plaintiff's expense, and it would be against good conscience and equity to allow these parties to retain the monies sought.

#### *Fraud and Aiding and Abetting Fraud*

“The elements of fraud are a material misrepresentation of fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff, and damages” (*Art Capital Group, LLC v Neuhaus*, 70 AD3d 605, 607 [1st Dept 2010]). Factual allegations supporting a fraud claim must be stated with particularity under CPLR 3016 (b).

Plaintiffs have sufficiently presented proof of liability as to their fraud and aiding and

abetting fraud claims. Plaintiffs state that defendant Zhu induced the plaintiff into loaning Zhu the original \$1.4 million and induced Golden Urban into entering into the contract and depositing the additional \$2 million dollars by misrepresenting that Golden Urban would receive the benefit of a membership in Columbia Tower. Instead, Zhu and the other defendants were using the money to pay off other investors in a larger Ponzi scheme that the defendants were engaged in and after the transfer of the Columbia Tower Property had no intention to transfer a 50% membership of Columbia Tower to Golden Urban.

#### *Breach of Fiduciary Duty and Aiding and Abetting in Breach of Fiduciary Duty*

To state a claim for breach of fiduciary duty, plaintiffs must allege that “(1) defendant owed them a fiduciary duty, (2) defendant committed misconduct, and (3) they suffered damages caused by that misconduct” (*Burry v Madison Park Owner LLC*, 84 AD3d 699, 700 [1st Dept 2011] [citation omitted]). To establish a fiduciary relationship, the plaintiff must show that the defendant was “under a duty to act for or to give advice for the benefit of the plaintiff upon matters within the scope of the relation” (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). There must be a “fiduciary, special or privity-like relationship” (*135 Bowery LLC v Sofer*, 2016 NY Slip Op 31012[U], \*20 [Sup Ct, NY County 2016]) Here, plaintiffs have not established this relationship and the claim must be dismissed (*see id.*). Thus, a default judgment on the aiding and abetting claims is also dismissed.

#### *Punitive Damages*

In general, in order for punitive damages to be awarded, the plaintiff must demonstrate that the defendant's conduct is intentional and deliberate, has fraudulent or

evil motive, and has the character of outrage frequently associated with crime (*Prozeralik v Capital Cities Communications*, 82 NY2d 466, 479 [1993]).

Plaintiffs claim that defendants intentionally and deliberately operated an investment scam while intentionally ignoring dangers posed to the public (NYSCEF 51, Complaint ¶ 134). The court declines to award plaintiffs punitive damages as plaintiffs do not contend that punitive damages have been found appropriate in comparable cases or were awarded for similar fraudulent conduct upon a default, and provide no basis or explanation for the amount of punitive damages requested, and cites no cases in which similar figures were awarded to penalize a party under circumstances such as those presented on this motion.

#### Proof of Default

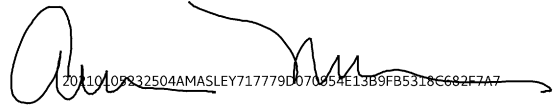
Plaintiffs' attorney asserts that defendants have not appeared or responded to plaintiffs' summons and verified complaint (NYSCEF 50, Berfond aff ¶ 26).

Accordingly, it is

ORDERED that plaintiffs' motion for a default judgment is granted in part and the Clerk of the Court is directed to enter judgment in favor of plaintiffs and against defendants Bo Zhu, Wing Chau, Yi Han, Columbia Lawrence Holdings 1, LCC, and 126 Columbia Tower 1 LCC in the sum of \$2,750,000.00 plus interest, as calculated by the Clerk; together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs, for a total sum of \$\_\_\_\_\_, and plaintiff shall have execution thereof; and it is further

ORDERED that the fifth (breach of fiduciary duty), sixth (aiding and abetting breach of fiduciary duty), seventh (aiding and abetting breach of fiduciary duty), eighth

(aiding and abetting breach of fiduciary duty), and ninth (punitive damages) causes of action are dismissed.



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1/5/2021  
DATE

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ANDREA MASLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" 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