

<b>Fang Dong Huang v Esquivel</b>
2022 NY Slip Op 32734(U)
July 29, 2022
Supreme Court, New York County
Docket Number: Index No. 650620/2017
Judge: Nancy M. Bannon
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY BANNON PART 42

Justice

-----X

FANG DONG HUANG and QING HUANG,

Plaintiffs,

- v -

PAUL ESQUIVEL, LIPING CUI and THE LAW OFFICES OF PAUL A ESQUIVEL

Defendants.

-----X

INDEX NO. 650620/2017

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION, ORDER and JUDGMENT AFTER INQUEST

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for JUDGMENT - DEFAULT

I. BACKGROUND

In this declaratory judgment action, plaintiffs Fang Dong Huang and Qing Huang seek a judgment declaring that they are the rightful owners of \$50,000 in bond proceeds they gave to the defendants, Paul A. Esquivel, Liping Cui and The Law Offices of Paul A. Esquivel, the now defunct law firm he had hired to secure his release from immigration authorities in the State of Texas in October 2009. The defendants failed to answer or appear in this action.

The court granted a motion by the plaintiffs pursuant to CPLR 3215 for leave to enter a default judgment to the extent of scheduling an inquest on liability and damages. At the inquest, plaintiff Fang Dong Huang testified and presented documents which were admitted into evidence, including:

(1) A series of ten cashier's checks in the total sum of \$50,000.00 all made payable to the United States Department of Homeland Security and all dated in October 2009.

(2) a “Notice of Custody Determination” from the U.S. Department of Homeland Security dated October 2, 2009, stating that plaintiff Fang Dong Huang was to be released from custody upon a bond in the amount of \$50,000.

(3) a letter dated October 19, 2009, from defendant Paul A. Esquivel of the defendant firm Law Office of Paul A. Esquivel, acknowledging receipt of the checks sent by the plaintiff “to post an immigration bond.” The letter also states that “when Department of Homeland Security cancels the bond in the future, this office will send a check for \$50,000 to you and you only.”

(4) an order of the Supreme Court of Texas August 28, 2015, canceling the law license of defendant Paul A. Esquivel.

(5) a letter dated February 5, 2016, from an “Associate Legal Advisor” at the Department of Homeland Security, Immigration and Customs Enforcement (ICE), to the plaintiffs’ New York counsel stating that the Department of Homeland Security could not release the bond proceeds to anyone other than defendant Cui absent a court order stating that plaintiff Fang Dong Huang is “the proper legal owner” of the proceeds and that “Financial Operations – Burlington would honor such a court order.”

The plaintiff thereafter filed a Proposed Findings of Fact and Conclusions of Law, along with a transcript of the inquest.

## II. FINDINGS OF FACT

Plaintiff Fang Dong Huang first arrived in the United States in 2009 seeking political asylum and, being undocumented, was detained by immigration authorities at the South Texas Detention Complex in Pearsall, Texas. With the help of his older sister, plaintiff Qing Huang, he

hired the defendant attorney, Paul A. Esquivel of San Antonio, Texas, and gathered \$50,000 to secure an immigration bond. The plaintiffs provided the funds in a series of ten cashier's checks from various banks and various accounts and in various amounts, all dated in October 2009, and all made payable to the U.S. Department of Homeland Security. Defendant Esquivel sent a letter to plaintiff Qing Huang dated October 29, 2009, confirming that he had received a total of \$50,000 in cashier's checks to post the immigration bond for plaintiff Fang Dong Huang and that that "when Department of Homeland Security cancels the bond in the future, this office will send a check for \$50,000 to you and only you."

The subject bond, which was posted by an employee of the law firm, identified as defendant Liping Cui, was canceled in 2015 upon the conclusion of the plaintiff's immigration proceedings, when his application was approved. However, the same year, defendant Esquivel, licensed in the State of Texas, resigned as an attorney in lieu of disciplinary action, his license was canceled for misconduct by the Supreme Court of Texas by order dated August 28, 2015, and the defendant law firm closed. The defendants failed to secure the return of the proceeds on behalf of the plaintiffs and the plaintiffs' numerous attempts to locate and contact the defendants were unsuccessful. The bond proceeds remained in the possession of the Department of Homeland Security.

Upon inquiry by the plaintiffs' attorneys, the Department of Homeland Security informed them by letter dated February 5, 2016, that they had retained the proceeds from the canceled bond (SNAC008846) and absent a court order stating otherwise, the proceeds could be released only to the employee of the defendant law firm, Cui, the record obligor on the bond, who had not claimed them. This action ensued.

### III. CONCLUSIONS OF LAW

CPLR 3001 provides that the Supreme Court “may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.” The decision to grant or decline a declaratory judgment rests within the sound discretion of the court. See Merch. Ins. Co., Inc. v Long Island Pet Cemetery, Inc., 206 AD2d at 827 (4<sup>th</sup> Dept. 1994). However, it has been held that a “default judgment in a declaratory judgment action will not be granted on the default and pleadings alone for it is necessary that [the plaintiff] establish a right to the declaration.” JBBNY, LLC v Dedvukaj, 171 AD3d 898, 012 (2<sup>nd</sup> Dept. 2019) *quoting* Dole Food Co., Inc. v Lincoln General Ins. Co., 66 AD3d at 1493 (4<sup>th</sup> Dept. 2009). For that reason, this court granted the plaintiffs’ motion to the extent that a hearing be held to provide an opportunity for the plaintiffs to further establish their right to the declaration by competent and admissible proof. They have met that burden. Compare Ameriprise Ins. Co. v Kim, 185 AD3d 995 (2<sup>nd</sup> Dept. 2020) [insufficient proof of entitlement to declaration].

First, the plaintiffs established a “justiciable controversy” over their right to the bond proceeds being held by the Department of Homeland Security. Compare Bey v Sobro Local Dev. Corp., 177 AD3d 448 (1<sup>st</sup> Dept. 2019) [no justiciable controversy presented]; Schmidt v Davidson, 260 A.D. 148 (1<sup>st</sup> Dept. 1940) [declaration would not affect any present controversy]. The defendants failed to recover the bond proceeds from the Department of Homeland Security as required upon the conclusion of plaintiff Fang Dong Huang’s immigration proceedings. In light of defendant Esquivel’s letter dated October 29, 2009, it is probable that the defendants, had they answered or appeared, would have conceded that at least one of the plaintiffs, Qing Huang, was entitled to the proceeds. However, as they did not appear and presented no proof, they are

deemed to have admitted all of the plaintiff's allegations and undisputed proof. See Woodson v Mendon Leasing Corp., 100 NY2d 62 (2003). Moreover, the plaintiffs submitted, as part of their proof, the letter from Homeland Security stating that the Fang Dong Huang, on whose behalf the bond was posted, could be entitled to receive the proceeds that had not been claimed by defendant Cui. Cui, like the other defendants, failed to answer or appear in this action as well. Even assuming Cui remained employed by the defendant firm after 2009, in light of the aforementioned letter of Esquivel and the circumstances under which the defendant firm closed in 2015, it would be unreasonable to believe Cui would assert any ownership rights of her own.

Indeed, under the circumstances presented, where a detained asylum seeker with the assistance of his family manages to gather \$50,000 in cash for a bond to secure his release from custody and the law firm he entrusted to represent him and secure the bond is thereafter dissolved due to misconduct of his attorney and fails to retrieve the funds when his application is finally granted, and then fails to appear in this action, to not grant the declaration sought by the plaintiffs would be patently unfair and unjust.

Accordingly, it is

ORDERED that the plaintiffs' motion is granted in its entirety, and it is further

ADJUDGED and DECLARED that the plaintiffs, Fang Dong Huang and Qing Huang, are the rightful owners of the proceeds of cancelled bond SNAC008846, issued in favor of plaintiff Fang Dong Huang in 2009 in the amount of \$50,000.00, currently held by the U.S. Department of Homeland Security, and that the plaintiffs are entitled to receive such proceeds upon presentation of this Decision, Order and Judgment.

This constitutes the Decision and Order of the court.

**Dated: July 29, 2022**

  
\_\_\_\_\_  
NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**