

Chung v Xie
2022 NY Slip Op 33486(U)
October 7, 2022
Supreme Court, Kings County
Docket Number: Index No. 503139/2020
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS ; CIVIL TERM: COMMERCIAL 8

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YOUNG S. CHUNG, individually and on behalf of
URBAN FRESH CORP. and 11 UM FOOD CORP.,

Plaintiffs, Decision and order

- against -

Index No. 503139/2020

COLIN K. XIE, BARBARA JANUS, JUICEBROTHERS,
LLC, AND DOES 1-100

October 7, 2022

Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking partial summary judgement pursuant to CPLR §3212. The defendant has cross-moved seeking summary judgement. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, the plaintiff Young Chung and the defendant Colin Xie are equal owners of two grocery stores, one located in Queens County and the other in Kings County. Each party has accused the other of essentially stealing money from the corporations. Specifically, the plaintiff alleges the defendant used over one million dollars of business money to pay for personal debts from August 2018 through June 2019. The plaintiff now moves seeking summary judgement arguing there are no questions of fact the defendant misappropriated corporate funds for personal use. The defendant has likewise moved seeking summary judgement on the counterclaim that there are no questions of fact the plaintiff likewise converted corporate funds for

personal use.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any issue, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021]).

The plaintiff has presented evidence that defendant Xie paid himself approximately \$821,000 from corporate accounts and seeks a summary determination concluding the use of those funds was improper and must be returned. Mr. Xie argues that he had loaned the companies funds and the withdrawal of the amounts noted in this motion were merely the return of those loans. Thus, Xie argues there are significant questions of fact whether any misappropriation took place at all. Furthermore, Xie disputes the contention that the expenses noted in the motion were all personal and asserts many of them were in fact business related expenses.

Thus, in an affidavit dated November 2, 2020 Mr. Xie provided information that he loaned the companies significant sums of money. Mr. Xie's affidavit dated August 17, 2022

substantially confirms his earlier assertions. There is no evidence supporting the argument the two affidavits contradict each other and should therefore be ignored. On the contrary, they provide consistent evidence the funds Xie took were merely repayments of loans he made. Whether that explanation is true or suffices to justify taking any funds is a matter that must be resolved as a trier of fact. Further, whether the precise amounts allegedly loaned and taken equal each other are matters that must be decided by a jury. Thus, there is no basis to conclude there are no questions of fact whether Xie stole corporate funds.

Likewise, the plaintiff's motion seeking summary judgement is similarly denied. While the court did state in an earlier decision the plaintiff opened an account without the defendant's knowledge the plaintiff asserts he utilized that account to pay corporate expenses including salaries.

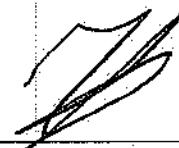
There is no indisputable evidence establishing as a matter of law that any party committed any conversion that a summary determination can be made thereto. As noted in prior orders each party has accused the other of stealing funds. Each party insists they did no such thing and in fact only sought to infuse the corporations with funds to salvage their ability to continue operations. No evidence has been presented that conclusively resolves any of these issues.

Consequently, all motions seeking summary judgment are denied.

So ordered.

ENTER:

DATED: October 7, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC