

**BFAM Asian Opportunities Master Fund, LP v China
Huiyuan Juice Group Ltd.**

2023 NY Slip Op 32810(U)

August 11, 2023

Supreme Court, New York County

Docket Number: Index No. 656689/2021

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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BFAM ASIAN OPPORTUNITIES MASTER FUND, LP,

Plaintiff,

INDEX NO. 656689/2021

MOTION DATE 05/30/2023

- v -

MOTION SEQ. NO. 004

CHINA HUIYUAN JUICE GROUP LIMITED, HUIYUAN
BEIJING HOLDINGS LIMITED, HUIYUAN SHANGHAI
HOLDINGS LIMITED, CHINA HUIYUAN INDUSTRY
HOLDING LIMITED, CHINA HUIYUAN INDUSTRY
LIMITED

**DECISION + ORDER ON
MOTION**

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 59, 60, 61, 62, 63, 64

were read on this motion for TURNOVER ORDER.

Plaintiff BFAM Asian Opportunities Master Fund, LP (“Plaintiff”) moves for a Turnover Order Pursuant to CPLR 5225(a) requiring Defendants to turn over to Plaintiff (i) all cash on hand, or so much of it as is sufficient to satisfy the Judgment; and (ii) to the extent such cash on hand is insufficient to satisfy the Judgment, Defendants’ ownership interests in certain subsidiaries identified below, or so much as is of sufficient value to satisfy the Judgment.

Pursuant to CPLR 2217(b), Plaintiff previously moved for similar relief in Motion Sequence Number 3, which was denied without prejudice in a Decision and Order dated May 9, 2023 (NYSCEF 58) that directed Plaintiff to “serv[e] notice of this motion and all accompanying papers on Defendants by registered or certified mail, return receipt requested.” Plaintiff has now refiled its motion in compliance with the Court’s Decision and Order (*see* NYSCEF 63-64 [affirmation of service and receipts]). No parties have responded to this motion.

CPLR 5225(a) provides “that a judgment creditor may obtain an order from a New York court, requiring a defendant who is in possession or custody of money or other personal property in which a judgment debtor has an interest to turn over the property or pay the money to the judgment creditor” (*Koehler v Bank of Bermuda Ltd.*, 12 NY3d 533, 540–41 [2009]). “A summary judgment analysis may be employed where, as here, a party is seeking a turnover order pursuant to CPLR 5225(a)” (*Indo-Med Commodities, Inc. v Wisell*, 2014 NY Slip Op 33918[U], 5 [Sup Ct, Nassau County 2014]).

First, to obtain a turnover order, a petitioner must establish the existence of personal jurisdiction over the Defendants (*Ruth Kassover as Co-Ex'r of the Estate of Nathan Kassover v Prism Ventures Partners, LLC*, 2017 NY Slip Op 31933[U], 8-9 [Sup Ct, NY County 2017], *aff'd sub nom.*, 2019 NY Slip Op 01175 [1st Dept 2019]). Here, Defendants have submitted to jurisdiction in this Court with respect to this dispute, and agreed that venue is proper here (*see* NYSCEF 3 § 12.07(b)).

Furthermore, CPLR Article 52 has no express territorial limitations. So long as the court has personal jurisdiction over the judgment debtor, a turnover order can direct a defendant “to bring its own property into New York” (*Gryphon Domestic VI, LLC v APP Int'l Fin. Co.*, B.V., 41 AD3d 25, 31 [1st Dept 2007]). “In addition, CPLR § 5201 (b) states that the right to obtain a debtor’s personal property encompasses any property ‘which could be assigned or transferred, whether it consists of a present or future right or interest.’ And, New York Consolidated Laws, Limited Liability Company Law § 601, states that “[a] membership interest in the limited liability company is personal property.” (*Ruth Kassover as Co-Ex'r of the Estate of Nathan Kassover v Prism Ventures Partners, LLC*, 2017 NY Slip Op 31933[U], 8-9 [Sup Ct, NY County 2017], *aff'd sub nom.*, 2019 NY Slip Op 01175 [1st Dept 2019]).

Plaintiff has identified Defendants' personal property which they seek to be turned over. Specifically, Plaintiffs allege that they are entitled to cash on hand, as well as all other personal property of Defendants in the form of ownership interests in various subsidiaries. Plaintiff has confirmed that those ownership interests remain current through public records searches on government databases (*see, e.g.*, NYSCEF 42-44). This is sufficient evidence for Plaintiff to satisfy its initial burden.

Accordingly, since Defendants failed to respond or to produce evidence that raises a triable issue as to these facts, Plaintiff is entitled to an order directing Defendants to turn over to Plaintiff (1) all cash on hand (including but not limited to all cash in accounts numbered XXXXXXXXXXXX4310 at Bank of China (Hong Kong) Limited, XXXXXXXXXXXX8435 at Bank of China (Luxembourg) S.A., XXXXXXXX7489 at Standard Chartered Bank, and XXXXXXXXXXXXXXXX8745 at Ping An Bank Co., Ltd.), or so much of it as is sufficient to satisfy the Judgment, and (2) to the extent such cash on hand is insufficient to satisfy the Judgment, the corporate ownership interests listed in the Offering Memorandum for the Notes, *see supra* at 4-5, or so much as is of sufficient value to satisfy the Judgment.

Finally, Plaintiff requests that to effect the turnover, the Court should require Defendants Huiyuan Beijing, Huiyuan Shanghai, and Huiyuan Industry to replace the Legal Representatives and any "Chop" or Seal of relevant PRC subsidiaries (*see Deutsch v ZST Digital Networks, Inc.*, 2018 WL 3005822, at *8 [Del Ch 2018] ["A company's 'chops' are the Chinese equivalent of a corporate seal, but have greater significance as a source of legal authority under Chinese law"]) with respect to the assets to be turned over. Under the Court's broad authority pursuant to CPLR 5240, the Court finds these steps necessary to effect the CPLR 5225(a) turnover.

Accordingly, it is

ORDERED that Plaintiff's Motion for a Turnover Order Pursuant to CPLR 5225(a) and CPLR 5240 is **GRANTED**; it is further

ORDERED that Defendants China Huiyuan Juice Group Limited, Huiyuan Beijing Holdings Limited, Huiyuan Shanghai Holdings Limited, China Huiyuan Industry Holding Limited, and China Huiyuan Industry Limited ("Defendants") shall turn over to Plaintiff all cash on hand (including but not limited to all cash in accounts numbered XXXXXXXXXXXX4310 at Bank of China (Hong Kong) Limited, XXXXXXXXXXXX8435 at Bank of China (Luxembourg) S.A., XXXXXXXX7489 at Standard Chartered Bank, and XXXXXXXXXXXXXXXX8745 at Ping An Bank Co., Ltd.), or so much of it as is sufficient to satisfy the Judgment [NYSCEF 32]; it is further

ORDERED that, to the extent such cash on hand is insufficient to satisfy the Judgment, Defendants shall turn over to Plaintiff the following corporate ownership interests, or so much as is of sufficient value to satisfy the judgment:

1. Any shares, membership interests, or other ownership interests that Defendant China Huiyuan Juice Group Limited possesses, receives, owns, or controls in the following five subsidiaries, sufficient to satisfy the Judgment [NYSCEF 32]:

- A. Huiyuan Beijing Holdings Limited;
- B. Huiyuan Asia Pacific Holding Pte. Ltd.;
- C. Huiyuan Shanghai Holdings Limited;
- D. Huiyuan Chengdu Holdings Limited;
- E. China Huiyuan Industry Holding Limited;
- F. Huiyuan Italia S.R.L.; and

2. Any shares, membership interests, or other ownership interests that Defendant Huiyuan Beijing Holdings Limited possesses, receives, owns, or controls in the following nine subsidiaries, sufficient to satisfy the Judgment [NYSCEF 32]:

- A. Anhui Huiyuan Food & Beverage Co., Ltd.;
- B. Qiqihar Huiyuan Food & Beverage Co., Ltd.;
- C. Guilin Huiyuan Food & Beverage Co., Ltd.;
- D. Yongchun Huiyuan Food & Beverage Co., Ltd.;
- E. Dezhou Huiyuan Food & Beverage Co., Ltd.;
- F. Beijing Xinyuan Food & Beverage Co., Ltd.;
- G. Huiyuan (Yunhe) Beverage & Food Co., Ltd.;
- H. Hebei Huiyuan Food and Beverage Co., Ltd.;
- I. Beijing Huiyuan Biotechnology Co., Ltd.; and

3. Any shares, membership interests, or other ownership interests that Defendant Huiyuan Shanghai Holdings Limited possesses, receives, owns, or controls in the following three subsidiaries, sufficient to satisfy the Judgment [NYSCEF 32]:

- A. Huiyuan Shanghai Holdings (Hong Kong) Limited;
- B. Jiujiang Huiyuan Food & Beverage Co., Ltd.;
- C. Hebei Huiyuan Food and Beverage Co., Ltd.; and

4. Any shares, membership interests, or other ownership interests that Defendant China Huiyuan Industry Holding Limited possesses, receives, owns, or controls in China Huiyuan Industry Limited, sufficient to satisfy the Judgment [NYSCEF 32]; and

5. Any shares, membership interests, or other ownership interests that Defendant China Huiyuan Industry Limited possesses, receives, owns, or controls in Beijing Huiyuan Total Fruit Industry Limited, sufficient to satisfy the Judgment [NYSCEF 32]; it is further

ORDERED that Defendant China Huiyuan Beijing Holdings Limited, in relation to its subsidiaries incorporated in the People's Republic of China, shall: (a) replace the legal representatives of those subsidiaries with one of Plaintiff's choosing and register the change with the relevant company registry, (b) replace any "chop" or seal currently registered with a new "chop" or seal, and (c) provide Plaintiff with such new "chop" or seal, including:

1. Anhui Huiyuan Food & Beverage Co., Ltd.;
2. Qiqihar Huiyuan Food & Beverage Co., Ltd.;
3. Guilin Huiyuan Food & Beverage Co., Ltd.;
4. Yongchun Huiyuan Food & Beverage Co., Ltd.;
5. Dezhou Huiyuan Food & Beverage Co., Ltd.;
6. Beijing Xinyuan Food & Beverage Co., Ltd.;
7. Huiyuan (Yunhe) Beverage & Food Co., Ltd.; and
8. Hebei Huiyuan Food and Beverage Co., Ltd.; it is further

ORDERED that Defendant Huiyuan Shanghai Holdings Limited, in relation to its subsidiaries incorporated in the People's Republic of China, shall: (a) replace the legal representatives of those subsidiaries with one of Plaintiff's choosing and register the change with the relevant company registry, (b) replace any "chop" or seal currently registered with a new "chop" or seal, and (c) provide Plaintiff with such new "chop" or seal, including:

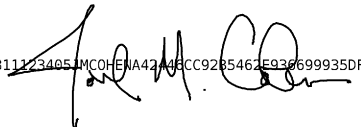
1. Jiujiang Huiyuan Food & Beverage Co., Ltd.; and
2. Hebei Huiyuan Food and Beverage Co., Ltd.; it is further

ORDERED that Defendant China Huiyuan Industry Limited, in relation to its subsidiaries incorporated in the People’s Republic of China, shall: (a) replace the legal representatives of those subsidiaries with one of Plaintiff’s choosing and register the change with the relevant company registry, (b) replace any “chop” or seal currently registered with a new “chop” or seal, and (c) provide Plaintiff with such new “chop” or seal, including Beijing Huiyuan Total Fruit Industry Limited; and it is further

ORDERED that Defendants shall execute and deliver any document or initiate any steps necessary to affect the foregoing.

This constitutes the Decision and Order of the Court.

8/11/2023
 DATE

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 JOEL M. COHEN, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
 GRANTED DENIED GRANTED IN PART OTHER
 APPLICATION: SETTLE ORDER SUBMIT ORDER
 CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE