

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE, JOSEPH RISI, A.J.S.C. IA Part 3

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PENG SHENG HUANG, Index No.: 706696/2017

Plaintiff(s), DECISION/ORDER

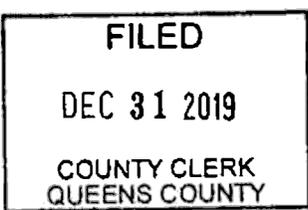
-against-

Mot. Seq. No.: 1

AIR CHINA LIMITED, XUE WENG YU, and
HUI YU,

Defendant(s).

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The following papers EF numbered below read on this motion by Defendant Air China Limited for summary judgment dismissing the complaint against it.



Papers
Numbered

Notice of Motion - Affidavits - Exhibits	29-79
Answering Affidavits - Exhibits	81-99, 100-114
Reply Affidavits	136-157
Memorandum of Law.....	80 - 158

Upon the foregoing papers it is ordered that the motion is decided as follows:

I. The Allegations of Plaintiff Peng Sheng Huang

Plaintiff Peng Sheng Huang alleges the following:

In November 2010, Defendant Hui Yu (“Hui Yu”) and Plaintiff Peng Sheng Huang (“Huang”) created the entity, LB Oceanside Corp. (“LB Oceanside”), for the purpose of entering into a contract with Defendant Air China Limited (“Air China”) to manage

property located at 485 West Broadway, Long Beach, New York that would be used as a dormitory for Defendant Air China's air crews.

Plaintiff and Defendant Hui Yu organized LB Oceanside as equal shareholders wherein they would divide the company's revenue equally. They also agreed not to engage in any other business or conduct that might potentially harm LB Oceanside. Defendant Hui Yu testified uncontested during his deposition that their agreement was never put into writing. Defendant Hui Yu further testified that his father, Co-Defendant Xue Weng Yu, was the *de facto* owner of LB Oceanside wherein he only "represented [Defendant Hui Yu's] interests" and had no other role within the corporation.

Defendant Air China ultimately selected LB Oceanside to manage its dormitory. Defendant Hui Yu was the only party from LB Oceanside to sign the agreement along with Zhou Yue Long ("Mr. Zhou"), an official at Defendant Air China's New York office in December 2010. Plaintiff claims that Mr. Zhou was aware of the business relationship between plaintiff and Defendant Hui Yu and their roles within LB Oceanside. LB Oceanside and Defendant Air China entered into a second agreement to continuously manage the dormitory at the end of the first contract dated April 2013.

In 2014, Defendant Air China appointed Congtao Li ("Mr. Li") to be its onsite representative at LB Oceanside. However, plaintiff alleges that once there, Mr. Li disregarded food quality standards while he directed and ordered food for meal preparation at the dormitory. Plaintiff also claims that Mr. Li sexually harassed Huan Wang ("Ms. Wang"), one of LB Oceanside's female employees that worked at the front desk.

Since plaintiff and Defendant Hui Yu were unable to stop the alleged harassment themselves, they reported the misconduct to Mr. Li's supervisor, Mr. Zhou, but the allegations were not resolved even after a meeting with all parties involved. Thereafter, in August 2015, plaintiff shared pictures of dead lobsters that Mr. Li had purchased on a WeChat account, a messaging application. Mr. Zhou testified during his examination before trial that when he saw the pictures, he sent a letter to LB Oceanside stating in relevant part: "On August 17, one of the shareholders of your company, Huang Pengsheng [plaintiff], published a message in his Moments alleging that there was a food safety issue at the Long Beach Flight Unit." Plaintiff asserts that this statement made by Mr. Zhou indicates his knowledge of the business relationship between plaintiff and Defendant Hui Yu.

Mr. Zhou went on to recommend that LB Oceanside suspend plaintiff's involvement in managing Defendant Air China's flight unit. LB Oceanside agreed and plaintiff was temporarily suspended at work although he continued to receive the same amount of compensation as an equal shareholder in LB Oceanside.

In September 2015, while on a trip in China, plaintiff reported the problems at the dormitory to Defendant Air China's disciplinary committee at its headquarters in Beijing. He submitted a complaint letter to the committee which started an investigation. Upon learning of plaintiff's complaint, Mr. Zhou interviewed Ms. Wang about her allegations of sexual harassment. Thereafter, Defendant Air China suggested to Defendant Hui Yu that Ms. Wang be replaced by a male employee.

Defendant Air China terminated the management contract with LB Oceanside in or about December 2016 and subsequently entered into another contract with LB Oceanfront Corp., owned solely by Defendant Hui Yu. Plaintiff alleges that this new corporation employed most of the same personnel as LB Oceanside and as such, Mr. Zhou and Defendant Hui Yu conspired to exclude plaintiff from contracting with Defendant Air China. Plaintiff claims that Defendant Hui Yu breached their oral agreement that he and plaintiff would jointly own the company that would manage the dormitory and that, Mr. Zhou, acting as an agent for Defendant Air China, induced that breach and therefore, tortiously interfered with their oral contract.

II. The Allegations of Defendant Air China Limited

Defendant Air China owns real property located at 485 West Broadway, Long Beach, New York, which houses its airline crews while they are in New York. In 2010, Defendant Air China entered into an at-will contract with LB Oceanside to manage the property and to provide food and housing needs to its airline crews. Defendant Air China alleges that it did not know of the oral agreement between plaintiff and Defendant Hui Yu, whereby they agreed to be joint owners of LB Oceanside and to split the revenues evenly.

In 2010, Mr. Zhou signed the first management contract on behalf of Defendant Air China, and in 2013, he signed the renewed management contract. Both contracts were terminable at will upon a thirty-day notice.

In or about December 2016, Defendant Air China notified LB Oceanside that it would not renew the management contract and subsequently entered into a management contract with LB Oceanfront Corp., owned solely by Defendant Hui Yu.

III. Relevant Procedural History

The plaintiff began the instant action by the filing of a summons and a complaint on or about May 16, 2017. The only cause of action asserted against Defendant Air China is for tortious interference with a contract. The twenty-fifth paragraph of the complaint alleges: "Upon information and belief, Defendant Air China wrongfully, maliciously and without justification induced Defendant Hui Yu to repudiate his shareholders agreement with Plaintiff Huang for the purpose to retaliate Plaintiff Huang [sic: of retaliating against

plaintiff Huang] for his complaint filed with [the] Disciplinary Committee of Air China in Beijing.”

III. Discussion

Although plaintiff opposes this motion based on Defendant Hui Yu’s breach of fiduciary duty to plaintiff, there is no cause of action for breach of fiduciary duty. Moreover, plaintiff, failed to move for leave to amend the complaint to include this cause of action, at the time of this motion.

Nevertheless, Defendant Air China has successfully made a *prima facie* showing of its entitlement to summary judgment.

Tortious interference of a contract arises where: (1) there exists a valid contract between the plaintiff and a third party; (2) the defendant has knowledge of the contract; (3) the defendant’s intentional procurement of the third party’s breach of the contract is without justification; (4) there was an actual breach of the contract; and (5) damages resulting therefrom. (*Lama Holding Co. v. Smith Barney*, 88 NY2d 413, 424 [1996]; *Flushing Expo, Inc. v. New World Mall, LLC*, 116 AD3d 826, 826 [2nd Dept 2014]; *see, Farkas v. River House Realty Co.*, 173 AD3d 405, 406 [1st Dept 2019]).

Firstly, while it is apparent that some sort of agreement to create LB Oceanside exists, it is unnecessary to discuss the validity of the oral agreement at this juncture because even assuming *arguendo*, it was a valid contract, it is clear through deposition testimony that Defendant Air China did not have knowledge of said agreement between plaintiff and Defendant Hui Yu. Consequently, plaintiff’s assertion in his opposition that Defendant Air China had knowledge of this oral agreement fails to create an issue of fact sufficient enough to defeat this summary judgment motion by Defendant Air China.

Here, plaintiff attempts to create a contradiction in his affidavit submitted in support of his opposition. According to deposition testimonies of all parties submitted to the court, it appears that neither Mr. Zhou nor Defendant Air China were aware of the nature of Plaintiff and Defendant Hui Yu’s oral agreement or LB Oceanside’s shareholder agreement. However, plaintiff attests in his affidavit in opposition that he and Defendant Hui Yu met with Mr. Zhou and another officer from Defendant Air China in charge of the bidding process to discuss their contractual agreement to form LB Oceanside and their respective roles in the company.

This inconsistency however, does not raise a triable issue of fact just because the plaintiff’s affidavit contradicts the deposition testimonies. The plaintiff seems to merely raise what appears to be feigned issues of fact designed to avoid the consequences of the parties’ earlier deposition testimonies. (*Ackerman v. Iskhakov*, 139 A.D.3d 987, 988 [2nd Dept. 1993]; *Bryant v. Loft Bookstore Caffe, LLC*, 138 AD3d 664, 666 [2nd Dept. 2016]).

There was no other evidence submitted to the court aside from plaintiff's affidavit in his opposition to indicate Defendant Air China's knowledge of the oral agreement. Thus, plaintiff has failed to raise a triable issue of fact to defeat Defendant Air China's motion for summary judgment in his opposition.

Consequently, even if plaintiff can prove the existence of a valid oral contract, Defendant Air China has sufficiently proved that it had no knowledge of this relationship and therefore, it is unnecessary to address the the remaining elements of this claim.

"[T]he proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*Alvarez v. Prospect Hospital*, 68 NY2d 320, 324 [1986]). Here, Defendant Air China has made a successful *prima facie* showing of its entitlement to summary judgment, but plaintiff has failed to raise a triable issue of fact sufficient to defeat this defendant's motion.

Accordingly, Defendant Air China's motion for summary judgment is granted and the complaint is dismissed as to Defendant Air China only.

This is the decision and order of the Court.

Dated: December 17, 2019

12/17/19 
Hon. Joseph Risi, A.J.S.C.

FILED
DEC 31 2019
COUNTY CLERK
QUEENS COUNTY