

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 54

18STCV05750

WEICHOU HUANG vs XIANGJIE ZHOU, et al.

June 24, 2021

9:15 AM

Judge: Honorable Maurice A. Leiter

CSR: None

Judicial Assistant: L. Gomez

ERM: None

Courtroom Assistant: R. Manzo

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Christopher Lee (Telephonic) via LACC

For Defendant(s): Helen Quan via LACC (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Motion for Judgment on the Pleadings

The Court's tentative ruling is posted online for parties/counsel to review.

The Motion is heard.

The Court considers the moving, opposition, and reply.

The Court adopts the tentative ruling as the final order of the Court as follows:

BACKGROUND

This is a shareholder derivative action brought by Plaintiff Weichou Huang on behalf of Kanan International, Inc. against its officer and director, Defendant Xiangjie Zhou aka Johnny Zhou. Kanan imports wholesale seafood products. Huang is a 40% owner, officer and director of Kanan; Zhou is a 60% part owner, officer and director of Kanan. Zhou allegedly abused his position of control by diverting Kanan's corporate assets and opportunities for personal gain, failing to maintain accurate accounting records and/or providing supporting documents, and failing to collect past due outstanding third party loans.

On November 20, 2018, Plaintiff filed a complaint against Defendants Zhou, Chinese International, Inc., Nautica & Co., Inc., and Does 1-5 for (1) breach of fiduciary duty, (2) abuse of control, (3) conversion, and (4) accounting.

On June 5, 2019, Plaintiff filed an amendment to complaint, substituting in Zhedong Zhou for Doe 1.

ANALYSIS

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A defendant may move for judgment on the pleadings when the “complaint does not state facts sufficient to constitute a cause of action against that defendant.” (CCP § §§ 438(b)(1) and (c)(1)(B)(ii).) The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (CCP § 438(d).) Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings. (Cloud v. Northrop Grumman Corp. (1998) 67 Cal.App.4th 995, 999.)

Defendant Chinese International, Inc. (“CII”) moves for judgment on the pleadings as to the third and fourth causes of action.

A. Third Cause of Action for Conversion

To plead a cause of action for conversion, one must allege (1) the plaintiff’s ownership or right to possession of personal property; (2) defendant’s disposition of the property inconsistent with plaintiff’s rights; and (3) resulting damages. (Fremont Indemnity Co. v. Fremont General Corp. (2007) 148 Cal.App.4th 97, 119.)

“Money cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved, such as where an agent accepts a sum of money to be paid to another and fails to make the payment.” (McKell v. Washington Mutual, Inc. (2006) 142 Cal.App.4th 1457, 1491.) “A ‘generalized claim for money [is] not actionable as conversion.’” (PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP (2007) 150 Cal.App.4th 384, 395 (quoting Vu v. California Commerce Club, Inc. (1997) 58 Cal.App.4th 229, 235) (alteration in original).) “[A]ctions for the conversion of money have not been permitted when the amount of money involved is not a definite sum.” (Id. at 396.) “[M]oney can only be treated as specific property subject to being converted when it is ‘identified as a specific thing.’” (Id. (quoting Baxter v. King (1927) 81 Cal.App. 192, 194).)

Plaintiff’s conversion claim is based on the alleged conversion of money paid to Plaintiff by its business customers “in the approximate amount of \$384,000.00.” (Complaint, ¶ 42.) The alleged amount is not a definite sum that can be the subject of a conversion claim.

The motion is granted with leave to amend as to the third cause of action.

B. Fourth Cause of Action for Accounting

“A cause of action for accounting requires a showing of a relationship between the plaintiff and

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the defendant, such as a fiduciary relationship, that requires an

accounting or a showing that the accounts are so complicated they cannot be determined through an ordinary action at law.” (Fleet v. Bank of America N.A. (2014) 229 Cal.App.4th 1403, 1413.) “The right to an accounting can arise from the possession by the defendant of money or property which, because of the defendant’s relationship with the plaintiff, the defendant is obliged to surrender.” (Teselle v. McLoughlin (2009) 173 Cal.App.4th 156, 179-80.) “An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation.” (Id. (quoting Teselle v. McLoughlin (2009) 173 Cal.App.4th 156, 179).)

Plaintiff seeks an accounting as to Defendant CII’s accounts based on its wrongful taking of money. (Complaint, ¶¶ 48-49.) Plaintiff has failed to allege facts showing that Plaintiff and Defendant CII’s relationship is such that an accounting is appropriate. Plaintiff also has failed to allege facts showing the accounts are so complicated that they cannot be determined through an ordinary action at law. In fact, the incorporated allegations demonstrate that CII is in possession of approximately \$384,000 that was paid from Plaintiff’s business customers. (Id., ¶¶ 41, 43, 47.) It appears Plaintiff has alleged the right to recover a sum that can be made certain by calculation, and an accounting claim is not available against Defendant CII.

The motion is granted with leave to amend as to the fourth cause of action.

CONCLUSION

The Motion for Judgment on the Pleadings filed by Chinese International, Inc., a on 06/02/2021 is Granted. with 30 days leave to amend.

Moving Party is to give notice.