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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART: 12

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WILLIAM NG and CHOUK NG,

Plaintiffs,

-against-

STEVEN NG and WILSON NG, both individually
and as fiduciaries of Chouk King Co., Inc.,
and Tien Yick Co., Inc.,

Defendants.

-----X
Index No. 114291/10
ORAL ARGUMENT

60 Centre Street
New York, N.Y.
January 4, 2012

B E F O R E:

HONORABLE PAUL G. FEINMAN,
Justice

A P P E A R A N C E S:

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ALAN F. BOWIN, CSR, RMR, CRR
Official Court Reporter

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2 THE COURT: All right. This is a motion to
3 quash the subpoena of a nonparty, having to do with the
4 accountant, Mr. Fong. Anybody want to be heard?

5 MR. POCH: Would you want me to speak? I'm
6 happy to.

7 THE COURT: I'm sorry?

8 MR. POCH: If your Honor wishes, I will argue
9 the motion.

10 Howard Poch. I'm arguing the motion on
11 behalf of defendants.

12 Your Honor, yes, it is my motion to quash
13 and/or seek a protective order against a subpoena
14 served on a nonparty; i.e., the accountants.

15 Your Honor, I raised certain procedural
16 issues with the subpoena. It was not servable on me,
17 as it had to be by the CPLR. Nowhere in the subpoena
18 does it state the grounds or reasons for the subpoena
19 being served. All these procedural issues, if correct,
20 could be corrected in the future with a subsequent
21 subpoena.

22 The main -- while I'm not withdrawing those
23 arguments, the main thrust of my arguments, your
24 Honor -- look at the complaint. Plaintiff is not
25 saying he's a shareholder; he's saying he has a
26 beneficial interest in two corporations. He doesn't

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2 state where this beneficial interest comes from. He
3 claims he's an officer, doesn't say what officer.
4 Claims he receives money from the corporations, doesn't
5 say how or when. Claims that he signed documents and
6 checks on behalf of the corporations. The
7 corporations -- all he submits are two or three
8 documents submitted to HPD in which he claims he's an
9 officer of the corporations.

10 Plaintiff acknowledges that he has been
11 excluded from the corporations for more than 11 years.
12 Plaintiff has no standing, no reason, has shown no
13 material interest, not only in the corporations but in
14 the tax documents in the possession of the accountants.
15 What does he hope to see in these tax documents?
16 Plaintiff claims he has a beneficial interest. What
17 would the corporate tax documents of my clients'
18 corporation show to buttress his case?

19 All this is is putting the cart before the
20 horse. They're acting as though they've already won
21 and they want to see what the corporations have. It's
22 none of his business. We don't want him to see our
23 corporate tax records at this juncture.

24 Let him show the Court how and in what manner
25 he has a beneficial interest in the corporations and
26 then perhaps the subpoena, or these documents, would be

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2 relevant; they are not so now.

3 MR. BELFIORE: Your Honor, plaintiff started
4 this action for an accounting of the corporate affairs
5 of two separate corporations. It so happens, plaintiff
6 and defendant are family members --

7 THE COURT: Yeah, they're brothers. And then
8 the sister, I guess, was also a plaintiff but she's
9 withdrawn from the action.

10 MR. POCH: There's a father, your Honor.

11 THE COURT: A father?

12 MR. POCH: Chouk Ng --

13 I'm sorry for interrupting.

14 THE COURT: I know everybody has the same
15 name -- same last name -- and there's a female, so I
16 just assumed it was a female.

17 MR. BELFIORE: He actually has withdrawn, so
18 the only plaintiff is actually William Ng; one brother
19 against two.

20 Basically, on a -- on a motion to quash, the
21 only heart of the matter is relevance and materiality
22 of the documents. As an accounting action, the
23 documents we've asked for are inherently material and
24 relevant. We haven't asked for anything outside --

25 THE COURT: But what about his whole point
26 of, you know, the action is for an accounting;

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2 granting -- you know -- denying the motion to quash
3 means, in essence, that you have won the action --

4 MR. BELFIORE: That's not true.

5 THE COURT: -- you know, and that you haven't
6 established any connection to the corporations at this
7 point, such that it would entitle you to inspect those
8 books and records?

9 In other words, if I fail to quash the
10 subpoena, that I've, in essence, granted you summary
11 judgment on the complaint.

12 MR. BELFIORE: I don't -- the documents are
13 only going to -- to determine who owns what, how much
14 it's worth; and if they say nothing, they say nothing.
15 If the plaintiff isn't involved or have any interest in
16 these documents, then the documents will speak for
17 themselves.

18 The only reason we sought the subpoena was to
19 avoid frivolous discovery motions, depositions of the
20 defendants, who are just going to say, "It's with the
21 accountant." We're getting to the root cause here
22 right away. If the documents say nothing, then the
23 documents will say nothing.

24 The defendant is basically trying to make us
25 prove an accounting before any discovery is sought. We
26 don't have any documents that tell us -- to prove the

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2 interest, clear and outright. We don't have access to
3 them; the defendant has access to them. He's looking
4 at them and basing his arguments on --

5 THE COURT: How do the tax returns establish
6 your client's interest?

7 MR. BELFIORE: Tax returns --

8 We've asked for more than that. We've
9 asked --

10 THE COURT: The accountant, in particular.

11 MR. POCH: A beneficial interest; not even an
12 interest. The corporate records may show shares but --

13 THE COURT: The whole issue is that they deny
14 that your client, William, has any sort of shares or
15 officer status with these corporations. So it seems to
16 me, either you have certificates showing shares or some
17 other corporate resolution or some minutes that elect
18 him as an officer.

19 MR. POCH: The father even submitted an
20 affidavit. The father, who was a plaintiff, who
21 dropped out of the case, even submitted an affidavit
22 saying his son is not a shareholder.

23 MR. BELFIORE: It's questionable whether the
24 father is even involved in these corporations anymore.
25 The man is elderly; he just had a heart surgery. It's
26 the defendants, it's the brothers, who have captured

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2 control of these corporations. We need an inkling of
3 discovery to be able to make our claims out.

4 Plaintiff has proven that he has been
5 involved with these corporations over the course of his
6 lifetime.

7 THE COURT: All right. Specifically, what
8 documents --

9 What I'm trying to get you to agree is what
10 documents are discoverable and what documents aren't
11 discoverable.

12 MR. BELFIORE: Right.

13 THE COURT: All right? It doesn't seem to me
14 that the --

15 MR. BELFIORE: K-1 documents are relevant.

16 THE COURT: -- tax returns --

17 But how are they going to show your client's
18 ownership interest of either shares or his position as
19 a director --

20 MR. BELFIORE: Payments --

21 THE COURT: -- or officer?

22 MR. BELFIORE: Payments to members of the
23 corporation through K-1 schedules, beneficial
24 interests. These --

25 THE COURT: If your client got a K-1,
26 wouldn't he have that?

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2 MR. POCH: Thank you.

3 MR. BELFIORE: The defendant hasn't paid the
4 plaintiff in over ten years. We need to see --

5 THE COURT: Okay, so that's the point. The
6 point is, they're not going to --

7 If he hasn't received a K-1 --

8 MR. BELFIORE: We've asked for one.

9 THE COURT: -- asking him to show that there
10 were K-1's to five other people doesn't prove your
11 client's position with respect to the corporation.

12 MR. BELFIORE: But it's just a starting
13 point, to look at these documents. And we've asked for
14 other documents, as well. If we get them from the
15 defendant, it's going to be -- we'll be back here in
16 two months.

17 We want independent documents from the
18 accountant to get to the heart of the matter, and if
19 they say nothing, we'll enter a confidentiality
20 agreement. We -- we only have an interest in resolving
21 this. We've offered the confidentiality olive branch
22 already. If they --

23 THE COURT: Okay.

24 MR. POCH: Eleven years after the fact.

25 THE COURT: Why don't you have the accountant
26 produce them for an in camera review as to whether or

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2 not they have anything that's relevant to the causes of
3 action? Can you live with that?

4 MR. BELFIORE: I would be amenable to that,
5 your Honor.

6 MR. POCH: I would be amenable to that, and
7 the only thing I would point out, in my -- okay. Yeah,
8 let the accountant produce, in camera -- but I don't
9 want --

10 The point, from our perspective, is, like
11 what the Judge said, he's acting as though he won:
12 "Now, let me see what the corporation has been making,
13 so I'll see whether this" --

14 THE COURT: I understand that.

15 MR. POCH: It's none of his business.

16 THE COURT: But if it doesn't have anything
17 in there that proves that he has an ownership interest;
18 i.e., you know, he has some shares in the corporation,
19 or a director or other status with the corporation, he
20 doesn't get the documents.

21 MR. POCH: First of all, he's not saying he's
22 a shareholder. A, shares would appear on a K-1. He
23 says, "I have a beneficial interest."

24 MR. BELFIORE: Your Honor --

25 MR. POCH: He's basically --

26 Let me finish.

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2 He's basically saying, "I have an equitable
3 share." How is that going to appear on a K-1, in any
4 case? Have you ever seen a K-1 that says, "beneficial
5 interest, 13 percent"? It would say, "shares."

6 THE COURT: Have I ever seen? I don't think
7 I've ever actually seen a K-1. All right? I know what
8 they are but I've never seen a K-1. You know, I'm not
9 involved in corporations, never have been.

10 MR. POCH: All right.

11 Okay, how about the accountant producing an
12 affidavit saying whether or not --

13 THE COURT: And I'm not an accountant. That
14 would be my brother.

15 MR. POCH: Mine's a dentist.

16 How about an affidavit from the accountant
17 stating whether or not William is listed on a K-1 or
18 any document for the tax -- for the corporate records?

19 Why should he get to poke his fingers through
20 the tax records?

21 MR. BELFIORE: We need discovery on this
22 issue.

23 THE COURT: Well, it doesn't seem like I can
24 get you to agree, so, eventually, you'll get a
25 decision.

26 MR. POCH: Okay.

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THE COURT: It's going to take about four months.

MR. POCH: Okay.

MR. BELFIORE: Thank you, your Honor.

(Pause.)

THE COURT: Hold on a second.

On that one, you need to get the transcript. Make sure you e-file it.


Okay.

MR. POCH: Thank you, your Honor.

MR. BELFIORE: Thank you, your Honor.

* * *

CERTIFIED to be a true and accurate transcript of the proceedings.


ALAN F. BOWIN, CSR, RMR, CRR
Official Court Reporter