

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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U.S. IMMIGRATION FUND LLC, et al.,

Petitioners,

Index # 159222/2018

-against-

DOUGLAS LITOWITZ, ESQ, et al.,

Respondents.

**RENEWED MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION
AND FOR FEES AND COSTS**

Respondent Douglas Litowitz (“Litowitz”) once again appears solely for the purposes of contesting personal jurisdiction under CPLR 3211(a)(8) and for an award of attorney fees and costs. Litowitz states as follows:

In its Amended Complaint, USIF now asserts that New York state has personal jurisdiction over Litowitz because once upon a time – in a case that has since settled and is not at issue here – Litowitz signed a two-page Confidentiality Agreement having a New York forum selection clause. No breach of that Confidentiality Agreement has ever been declared or claimed by USIF. But suddenly it has been dragged up from the depths of nowhere as a pretense for USIF to assert personal jurisdiction. Now – without a shred of proof, without any well-pleaded facts, in pure conjecture and guesswork, with no investigation, USIF now suddenly asserts that Litowitz breached this Confidentiality Agreement from a prior case that

has already settled, thereby triggering the forum selection clause in *that* case, which somehow subjects him to New York jurisdiction in *this* case.

Let's be clear. USIF is asserting, without logic or precedent, that the forum selection clause in *that* contract subjects him to New York jurisdiction in *this* case, even though *that* contract is not at issue here, no breach was ever declared, and it was never even mentioned in the original Complaint. In other words, they have suddenly declared a breach of an old contract to artificially trigger a forum selection clause in a contract in Case X in order to invoke jurisdiction in Case Y. This is an insult to this Court's intelligence.

The background facts are as these: earlier this Summer, USIF was sued by 117 of its investors, and the matter was heard by Justice Saliann Scarpulla (*Yang Ang v. U.S. Immigration Fund LLC*, Index #156339-2018). In the *Yang Ang* case, 117 investors alleged that USIF breached its fiduciary duty to them. As that case was in settlement negotiations, Litowitz asked to see the settlement terms that were being negotiated, since he represented about 9 investors who were not parties to the case but were separately negotiating with USIF to get released from the same fund. Judge Scarpulla approved the lawyers to send Litowitz a copy of the settlement negotiation term sheet confidentially.

So in the *Yang Ang* case, following the Judge's orders, the parties drafted a Confidentiality Agreement which allowed Litowitz to see the settlement terms, and it happened to have a New York forum selection clause which only applied to "disputes arising out of this Confidentiality Agreement." A copy of the Confidentiality Agreement is attached as Exhibit 1. An email from counsel for USIF

made clear that Litowitz could “share the terms with his clients, just the document itself would be limited to you.” See Email from USIF Counsel Lari Shahzeb to Litowitz, attached as Exhibit 2.

Litowitz honored the Confidentiality Agreement and did not show it to anyone. The case settled. No one accused Litowitz of breaching anything. In point of fact, the settlement terms given to Litowitz under the Confidentiality Agreement that were supposedly so confidential were in fact leaked by the 117 plaintiffs, so they were an open secret and there was no need for Litowitz to even mention to anyone the terms of the settlement, let alone show anyone the actual Confidentiality Agreement. The cat was out of the bag, and Litowitz never breached the Confidentiality Agreement, nor even had any reason to show the document to anyone let alone share it or distribute it.

Despite these facts – and with no investigation whatsoever, completely out of the blue, months after the fact, and with no supporting documentation or evidence – USIF now suddenly appears before this Court to assert that Litowitz in fact breached the Confidentiality Agreement in the *Yang Ang v. U.S. Immigration Fund* case by showing it to a certain Ms. Zoe Ma, thereby invoking the forum selection clause and triggering New York jurisdiction in this case. This accusation is untrue, unsupported by evidence or affidavit, not well-pleaded, and is merely a conclusion without anything more. USIF is making a pure conjecture. This supposed breach of the Confidentiality Agreement was never raised before Justice Scarpulla in the *Yang Ang v. U.S. Immigration Fund* case, where it would belong. It is only being argued to this court as a groundless way to assert jurisdiction over Litowitz.

The forum selection clause at issue in the *Yang Ang v. U.S. Immigration Fund* case applied by its own terms only to disputes arising out of “this Confidentiality Agreement.” See Exhibit 1. New York law only allows personal jurisdiction for breach of contract where the dispute arises directly out of the very contract containing the forum selection clause.

But here, the Amended Complaint only has one count for breach of contract, and that is for a contract that Litowitz did not sign. I will say that again. The Amended Complaint only has one count for breach of contract, and that is for a contract that Litowitz did not sign. To reach Litowitz, USIF asserts that Litowitz is bound by contracts that his clients signed, since he is somehow their “legal representative.” This is the strangest theory of contract law ever advanced.

In their ongoing effort to find something – anything – on which to base personal jurisdiction, Petitioner USIF has dug up an old contract that is not at issue in this case. There is no credible reason for this Court to accept as true (even for the sake of pleading) that Litowitz breached the Confidentiality Agreement, nor is there any clear allegation of causation or damage. Merely signing an agreement that happened to have a New York forum selection clause does not allow a party to suddenly allege a breach of that contract in Case X to get personal jurisdiction in Case Y. Here there is no count for breach of the Confidentiality Agreement, it is a non-issue.

As before, there is not a single allegation putting Litowitz in New York. The New York courts are clear that a forum selection clause only applies to disputes “arising out of” the contract at issue. See, e.g., *Prod. Res. Group v. Martin Professional*,

907 F. Supp. 2d 401 (S.D.N.Y. 2012), quoting *TradeComet.com v. Google, Inc.*, 693 F. Supp. 2nd 370, 378 (S.D.N.Y. 2010)(noting that term “arising out of” is narrow and has been applied to cases where the gravamen of the dispute arises from rights granted in that particular contract at issue). Here, the Confidentiality Agreement is not even related to the dispute, and not mentioned in any count of the Complaint as a basis for liability.

USIF is grasping at straws to find some connection to keep this lawsuit in New York for their own convenience. If they want to sue Litowitz they can do it in Federal Court in Chicago, and that will open them wide to federal securities law counterclaims. So they are sneaking around in State Court in New York to play hide-and-seek 800 miles away from Litowitz, at the expense of this Court’s valuable time. The Court should not take kindly to being abused in this way.

Gratuitous Accusations

In addition to meritless arguments, USIF asserts “upon information and belief” that Litowitz violated the **Illinois** Rules of Professional Responsibility (see para. 52). They assert that Litowitz violated numerous canons of ethics, that he acted as an investment advisor without being registered in **Illinois**, that he practiced law in **Hong Kong** without a license, that he was a “principal” for a Hong Kong company, and so forth – all of which are totally untrue, totally conclusory, have no bearing on this case, and which have no point other than to insult Litowitz. USIF seeks no relief for these wild accusations, they are not part of any count for damages, they are only meant as gratuitous insults.

There is no claim here based on Illinois or Hong Kong law. So it isn't the job of a New York State Court to enforce the **Illinois** Rules of Professional Conduct, nor to enforce **Illinois** law, nor to even entertain pure conjecture and speculation about **Hong Kong law**. Let it be said again: USIF is using this Court as a platform to spew invective on another lawyer. This Court should not tolerate such behavior.

WHEREFORE, Respondent Litowitz again asks that the Complaint be dismissed with prejudice for lack of personal jurisdiction, and that attorney fees and costs be assessed against Plaintiffs and/or their counsel.

Dated: October 26, 2018

Respectfully Submitted,



Douglas Litowitz

Douglas Litowitz
Attorney at Law
413 Locust Place
Deerfield, IL 60015
312-622-2848

Exhibit 1

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is entered into as of September 6, 2018, by and among the undersigned counsel for the individuals named on Exhibit A and signatory hereto (the "Petitioners"), U.S. Immigration Fund-NY LLC, (the "Regional Center"), 701 TSQ 1000 Funding GP, LLC (the "Manager"), 701 TSQ 1000 Funding, LLC (the "Company"), and Nicholas Mastroianni ("Mastroianni") and together with the Regional Center, the Manager and the Company, the "Respondents"), and Douglas Litowitz ("Litowitz"), as counsel for Ling Xue Yajuan Chen, Yu Zhang, Xuezheng Ding, Jiangman Chen, Juan Wang, Lina Yan, Yu Wang, Xiaohong Li (the "Litowitz Clients"). Each of the foregoing is a "Party" and they are collectively referred to herein as "the Parties."

Recitals

WHEREAS the Petitioners filed a petition (the "Petition") for injunctive relief against the Respondents in aid of arbitration encaptioned *Yang Ang et al. v. U.S. Immigration Fund LLP et al.* before the Supreme Court of the State of New York, County of New York (Index No. 156339/2018) (the "Proceeding"), and submitted and served a demand for arbitration (the "Demand") against the Respondents before JAMS (the "Arbitration");

WHEREAS Petitioners and Respondents, on August 26, 2018, executed a Compromise Term Sheet (the "Term Sheet") outlining the terms pursuant to which Petitioners and Respondents agreed to proceed to negotiation of a definitive settlement agreement to settle the Proceeding and the Arbitration;

WHEREAS Litowitz, on August 27, 2018, notified the court in the Proceeding that his clients seek to intervene in the Proceeding;


WHEREAS on August 31, 2018, the court before which the Proceeding is pending ordered Petitioners and Respondents to provide Litowitz with the terms of their agreed-upon settlement subject to an "attorney-eyes only" confidentiality agreement; and

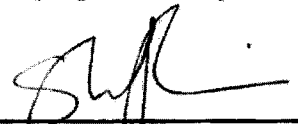
THEREFORE, in consideration of the above recitals and the mutual covenants contained herein, the receipt and sufficiency of which is acknowledged by the undersigned, the Parties hereby agree as follows:

1. Any documents provided to Litowitz by Petitioners or Respondents will be treated as "Attorneys' Eyes Only" material, which Litowitz may not disclose to any other person or party, including the Litowitz Clients, although Litowitz is permitted to discuss the substance of information contained in "Attorneys' Eyes Only" material with the Litowitz Clients, subject to their written agreement not to disclose any such information to any other party or person.
2. Any "Attorneys' Eyes Only" material shall be utilized by Litowitz solely for purposes of determining whether the Litowitz Clients will join the agreed-upon settlement between Petitioners and Respondents, and for no other purposes.
3. Nothing herein shall be deemed to waive any privilege recognized by law, or shall be deemed an admission as to the admissibility of evidence of any facts or documents revealed in the course of disclosure.

4. By Monday, September 10, 2018, Litowitz shall either return any "Attorneys' Eyes Only" material to Petitioners and Respondents, or destroy that material, at the option of Petitioners and Respondents. In the event that Litowitz destroys physical objects and documents, he shall certify in writing within fifteen (15) days after destruction that he has undertaken its best efforts to destroy such physical objects and documents, and that such physical objects and documents have been destroyed to the best of his knowledge.

5. This Confidentiality Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York without regard to any conflict of law provisions thereof that would cause the application of the laws of any jurisdiction other than the state of New York. The Parties hereby irrevocably: (a) submit to the jurisdiction of any court of the State of New York or any federal court sitting in the State of York for the purposes of any suit, action or other proceeding arising out of this Confidentiality Agreement which is brought by or against either Party; (b) agree that all claims in respect of any suit, action or proceeding may be heard and determined in any such court; and (c) to the extent that any Party has acquired, or hereafter may acquire, any immunity from jurisdiction of any such court or from any legal process therein, such Party hereby waives, to the fullest extent permitted by law, such immunity. The Parties hereby waive, and the Parties agree not to assert in any such suit, action or proceeding, in each case, to the fullest extent permitted by applicable law, any claim that: (i) it is not personally subject to the jurisdiction of any such court; (ii) it is immune from any legal process (whether through service or notice, attachment prior to judgment, attachment in the aid of execution, execution or otherwise) with respect to it or its property; (iii) any such suit, action or proceeding is brought in an inconvenient forum; (iv) the venue of any such suit, action or proceeding is improper; or (v) this Confidentiality Agreement may not be enforced in or by any such court.


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Attorney for the Litowitz Clients

EXHIBIT A
LIST OF PETITIONERS

No.	First Name	Last Name	No.	First Name	Last Name	No.	First Name	Last Name
1	Yang	Ang	43	Yufei	Luo	85	Guofen	Xu
2	Renyi	Cao	44	Kai	Luo	86	Dongyan	Xu
3	Fenghua	Chen	45	Zhenbin	Mo	87	Pei	Xu
4	Weilun	Chen	46	Yongkun	Pan	88	Zixi	Xu
5	Jiang	Chen	47	Qingli	Pang	89	Jiewei	Xu
6	Jingke	Chen	48	Jing	Peng	90	Yan	Yang
7	Weiqi	Chen	49	Yan	Ren	91	Zhiwei	Yao
8	Xiuling	Chen	50	Anqi	Shi	92	Jianjun	Yin
9	Guojian	Chen	51	Yujia	Shi	93	Jia	Yu
10	Jian	Cheng	52	Li	Shi	94	Liu	Yuan
11	Jihong	Cui	53	Ling	Su	95	Hu	Zeng
12	Wenting	Cui	54	Haitao	Sun	96	Haiying	Zeng
13	Chengling	Deng	55	Zhaohong	Sun	97	Xiaolin	Zeng
14	Yihong	Ding	56	Yanfu	Sun	98	Meiling	Zhan
15	Jing	Fu	57	Jian	Sun	99	Wei	Zhang
16	Juanjuan	Fu	58	Li	Sun	100	Yanping	Zhang
17	Hongmei	Fu	59	Li	Sun	101	Weifan	Zhang
18	Rao	Fu	60	Wei	Sun	102	Jie	Zhang
19	Dan	Gao	61	Xiangqiong	Tang	103	Jianbo	Zhang
20	Ziming	Gu	62	Rujun	Tao	104	Jieyun	Zhang
21	Yan	Gu	63	Jing	Tian	105	Jinsong	Zhang
22	Jianghong	He	64	Airong	Tian	106	Qi	Zhang
23	Jun	He	65	Xiaonan	Wang	107	Xiaohui	Zhang
24	Mingyuan	Hua	66	Fubao	Wang	108	Yan	Zhang
25	Zehong	Huang	67	Ye	Wang	109	Yan	Zhang
26	Bei	Huang	68	Xiaoting	Wang	110	Yuchi	Zhang
27	Xiaoyan	Huang	69	Aihua	Wang	111	Ying	Zhang
28	Jianping	Jiang	70	Zhen	Wang	112	Mumu	Zhao
29	Yan	Jin	71	Biqing	Wang	113	Zichu	Zheng
30	Xiaonan	Jing	72	Qun	Wang	114	Qun	Zhou
31	Guilan	Ju	73	Yiyu	Wang	115	Juan	Zhou
32	Lihua	Kui	74	Shan	Wang	116	Jingxing	Zhou
33	Huiqiang	Li	75	Xiaohong	Wu	117	Yamin	Zhu
34	Qin	Li	76	Shuzhen	Wu			
35	Yunshan	Li	77	Jiaping	Wu			
36	Xiaohong	Li	78	Zhaohui	Wu			
37	Zhen	Li	79	Dong	Wu			
38	Haojun	Ling	80	Zuohan	Xiahou			
39	Xiaoyang	Liu	81	Yan	Xiao			
40	Fen	Liu	82	Xiao	Xiao			
41	Yihua	Liu	83	Chun	Xie			
42	Jin	Liu	84	Hong	Xie			

Exhibit 2



Dlitowit . <litowitz@gmail.com>

from Doug Litowitz

Lari, Shahzeb <shahzeblari@paulhastings.com> Fri, Aug 31, 2018 at 3:23 PM
To: "Dlitowit ." <litowitz@gmail.com>
Cc: "Zuppone, Michael" <MichaelZuppone@paulhastings.com>, "Baker, Jessica" <jessicabaker@paulhastings.com>

Doug, this would allow you to share the terms with your clients, just the document itself would be limited to you. This is not uncommon in litigation where confidentiality is a concern.

On Aug 31, 2018, at 3:52 PM, Dlitowit . <litowitz@gmail.com<mailto:litowitz@gmail.com>> wrote:

What does "attorneys eyes only" mean? How can I communicate it to my clients?

On Fri, Aug 31, 2018 at 2:42 PM Zuppone, Michael <MichaelZuppone@paulhastings.com<mailto:MichaelZuppone@paulhastings.com>> wrote:

Doug
Thanks for this. We are working up the attorneys-eyes-only confidentiality agreement referenced by the Judge and will circulate shortly. Please add Shahzeb and Jessica to your communications since I am currently out of the country travelling on holiday in Spain.

Michael Zuppone
From: Dlitowit . [mailto:litowitz@gmail.com<mailto:litowitz@gmail.com>]
Sent: Friday, August 31, 2018 3:38 PM
To: Zuppone, Michael
Subject: [EXT] from Doug Litowitz

We are pulling out the retainers, but we had these investors at hand, we will send more soon, so please send the settlement agreement:

- Yajuan Chen
- Yu Zhang
- Xuezheng Ding (chose option 1 by July 5th)
- Jiangman Chen
- Juan Wang

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