

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

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U.S. IMMIGRATION FUND LLC, U.S. IMMIGRATION :  
FUND-NY LLC, 701 TSQ 1000 FUNDING, LLC, and : Index No. 159222/2018  
701 TSQ 1000 FUNDING GP, LLC, :  
: :  
Plaintiffs, :  
: :  
- against - :  
: :  
DOUGLAS LITOWITZ, ESQ., XUEJUN MAKHSOUS :  
a/k/a MA XUEJUN a/k/a ZOE MA, and REVIV-EAST :  
LEGAL CONSULTANTS (HK) LTD. a/k/a HONG KONG :  
ZHENDONG LEGAL SERVICES CONSULTING CO., :  
LTD., :  
: :  
Defendants. x  
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STATE OF FLORIDA )  
) ss.:  
COUNTY OF PALM BEACH )

JASON METULA, being duly sworn, deposes and says:

1. I am Senior Attorney of U.S. Immigration Fund, LLC, U.S. Immigration Fund LLC. I submit this affidavit in opposition to the motions by Defendant Douglas Litowitz (“Litowitz”) pursuant to (a) CPLR 3211(a)(8) to dismiss the action against him on the ground that the court has no jurisdiction of the person; (b) CPLR 3024(b) to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading; and (c) 22 NYCRR 130-1.1 for sanctions. I submit this affidavit based upon my own personal knowledge and upon knowledge obtained by reading the appropriate files.

2. As more fully discussed in the accompanying Memorandum of Law in opposition to the motions by Litowitz , the motions should be denied because Litowitz consented to

personal jurisdiction in this court by executing a certain “Attorney’s Eyes Only Confidentiality Agreement” and by virtue of his serving as the legal representative of certain clients who entered into “Withdrawal Agreements” that on its face provided that Litowitz was to be bound, and which also conferred personal jurisdiction in this court. He is also subject to jurisdiction because the harm caused by his misconduct was most critically realized in New York. Furthermore, the motions to strike and to impose sanctions asserted in connection with what Litowitz maintains was scandalous or frivolous allegations is belied by the fact that each allegation in the Verified Amended Complaint was relevant to the causes of action, were of colorable merit, and were not made in bad faith.

3. Plaintiffs filed this action because the misconduct of Litowitz and Zoe Ma, together with Reviv-East -- the entity they created to further their fraud -- not only harmed Plaintiffs, but they also harmed Plaintiffs' investors. Defendants' misrepresented their false “expertise” in the EB-5 field, they breached agreements of confidentiality with Plaintiffs and they defamed the people, the work and the results of Plaintiffs' EB-5 real estate developments in two projects ongoing in Times Square, New York City (the "701 Project" and the "702 Project"). They denigrated Plaintiffs, the 701 Project and the 702 Project so as to scare Plaintiffs' immigrant investors under the EB-5 Program into believing that Plaintiffs' business is a sham and that they will lose their substantial investment. They harmed Plaintiffs in that some Chinese investors were motivated by Defendants misconduct and withdrew their investments from these New York projects. They further harmed Plaintiffs in New York and elsewhere because their defamatory statements were false facts that tend to injure a plaintiff in its business, trade or profession. They also harmed the Chinese investors who, because of Defendants, received withdrawals of their EB-5 investments, but were unable to get the green cards for which they

strived so long to attain. A full and complete copy of the Verified Amended Complaint is attached hereto as Exhibit A.

4. Plaintiffs' investors at issue are all Chinese nationals who each invested \$500 thousand and for years have maintained demanding requirements under EB-5 investment requirements to reach the ultimate goal of receiving a coveted green card for themselves and immediate family members. The EB-5 Program, which was created by the government to promote investment in U.S. real estate development and to create jobs in the United States for American workers, requires that the EB-5 investment remain "at risk" during the visa process, which means it must stay deployed in an ongoing job creating enterprise. In recent years an administrative backlog for approvals of EB-5 visas for Chinese nationals has resulted in the completion of some development projects, resulting in a repayment of EB-5 investments, before the green cards are approved. Rather than start from the beginning in a brand new undertaking the onerous bureaucratic process for green card approval, which was already undergone by the immigrant investors, EB-5 regulations under these circumstances permit the redeployment of the same EB-5 investment into another qualified project, so as to maintain the investment "at risk" until the ongoing visa process is approved.

5. It is against this backdrop that Defendants' egregious conduct entered the picture. At a time when these Chinese investors were most vulnerable, Defendants told lies to them that Plaintiffs' business was all a sham. They lied that the Times Square project they had been invested in during this entire time, the 701 Project, was a bad investment. They lied that the second qualified project that Plaintiffs recommended for redeployment of their EB-5 investment, the 702 Project -- also in Times Square -- was also a bad investment. They did so without any regard for the truth.

6. They did so to try and scoop up these Chinese investors as legal clients, with promises that solely because of their faux expertise they will succeed in rescuing their EB-5 investments, which they further lied Plaintiffs will not permit them to withdraw. They did so in order to take an exorbitant fee for their "services" when the truth is that the withdrawal of EB-5 funds could have been accomplished without use of legal services and without these Chinese investors paying any fee, let alone an exorbitant one.

7. Plaintiffs filed the Verified Amended Complaint in this action and set forth the allegations revealing these Defendants as frauds. It shows that Litowitz and Zoe Ma had recently experienced severe financial hardship, which gave rise to their scheme to defraud and defame so as to make money off these Chinese investors. (Exhibit A, Verified Amended Complaint ¶¶ 1, 4, 31-34). It alleges facts that exposed the misrepresentations that Defendants made in their website and in a chat room that was created and reserved for these Chinese investors, which was infiltrated by Zoe Ma, who spoke their language. (*Id.*, Verified Amended Complaint ¶¶ 1-4, 34-38, 42-44). It revealed the lies that they were experts in the field of EB-5 investments, that Litowitz is a law professor and Zoe Ma is a Chief Investigator for Litowitz, and that their business has been successfully rescuing EB-5 investments since 2017, when in fact in 2017 Litowitz worked as an in-house counsel for two companies, from both of which he was fired and had to declare bankruptcy, that Zoe Ma was actually a manager of a health care facility in Wisconsin, which was in fact a failed business in which she had lost her life savings. (*Id.*, Verified Amended Complaint ¶¶ 29-44). And far from designs to embarrass Defendants, the facts alleged concerning the pressures that arose from Defendants' immense financial hardships, which gave rise to a high level of malicious conduct by Defendants, was set forth in the Verified

Amended Complaint to provide the legal basis for certain claims where a demonstration of malice is an important component.

8. Plaintiffs also alleged facts that demonstrated that Zoe Ma touted to these Chinese Investors in the online chat room that Litowitz had successfully joined an ongoing lawsuit brought in Supreme Court, New York County (the “NY Action”) to champion the cause of EB-5 investors, but where the truth was that Litowitz’s attempt to intervene in that NY Action was never litigated. The Verified Amended Complaint further alleged the fact that what Litowitz did accomplish was that he was able to get his hands on a confidential term sheet setting forth the proposed (now finalized) settlement of the NY Action, which was brought by other Chinese Investors against some of the Plaintiffs and affiliates of the Plaintiffs in this action. (*Id.*, Verified Amended Complaint ¶¶ 29-44).

9. The NY Action was commenced by those other Chinese investors to enjoin the redeployment of their EB-5 investments into the 702 Project while the parties arbitrate the merits of the redeployment of over \$200 million. The terms of the settlement of the NY Action were provided to Litowitz, as ordered by Hon. Saliann Scarpulla, pursuant to the “Attorneys’ Eyes Only Confidentiality Agreement,” which Litowitz promptly breached by revealing it to Zoe Ma, who then made statements about it in the chat room. A copy of the Attorneys’ Eyes Only Confidentiality Agreement is annexed hereto as Exhibit B. The pertinent provisions of the Attorneys’ Eyes Only Confidentiality Agreement provides:

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.

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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.**

10. But that is not the only breach committed by Litowitz. The Verified Amended Complaint further alleges that in its dealings with Defendants separate and apart from the NY Action, in connection with the withdrawals being sought for three of Defendants' clients<sup>1</sup>, Plaintiffs stood by the terms of the agreements with their investors and upon proper documentation and proceedings it processed the return of withdrawals to some of those who engaged Defendants. In doing so, each such investor signed documents that included a release and a confidentiality agreement that was binding upon both them and their "legal

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<sup>1</sup> Exhibit A, Verified Amended Complaint ¶ 61 alleges Zoe Ma's comments in the chat room revealing refunds of "3 in total" clients, which at \$500,000 each combines to a total of \$1.5 million.

representatives” (the “Withdrawal Agreements”). A copy of one of the Withdrawal Agreements, which is in the same form for all of Litowitz’s clients that signed one, is annexed hereto as Exhibit C.

11. More specifically, the Withdrawal Agreements all provide the following terms:

“This Agreement shall be binding upon . . . the Parties hereto, **and their respective . . . legal representatives....**”

\* \* \*

Governing Law; Jurisdiction provides:

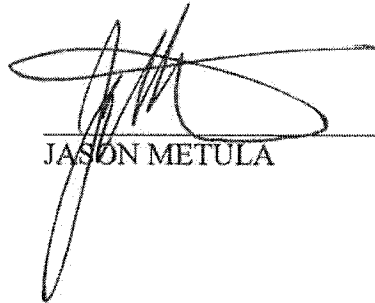
This Agreement shall be interpreted construed, enforced and administered in accordance with the laws of the State of New York. **Each of the Parties consents to the jurisdiction of any court in New York, New York for any action arising out of matters related to this Agreement.** Each of the Parties hereby waives the right to commence an action in connection with this agreement in any court outside of New York County, New York.

*See* Exhibit A, Verified Amended Complaint ¶¶ 56-57(emphasis added). It also set forth terms in the Withdrawal Agreements that emphasized the confidential nature of the Withdrawal Agreements and further prohibited disparaging remarks, both of which Litowitz breached by allowing Zoe Ma to describe the terms in the chat room, while continuing to disparage Plaintiffs:

Confidentiality; Non-disparagement provides:

The terms and conditions of this agreement are absolutely confidential between the parties and shall not be disclosed to anyone else, except as shall be necessary to effectuate its terms. **Any disclosure in violation of this section shall be deemed a material breach of this agreement.** The investor further agrees he/she will not disparage the Releasees or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of the Releasees. Please be advised that the information contained in the documents previously provided to you is confidential and such documents should be destroyed immediately or returned to the Company. Effective as of the date of the Company's countersignature, the Investor shall cease to be a Member of the Company.

(Exhibit C).

  
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JASON METULA

Sworn to before me this  
2nd day of November, 2018

Shakuntala Devi Jaisi  
Notary Public

