

**Youge Venture Capital LLC v Xueyuan Han**

2023 NY Slip Op 34705(U)

June 23, 2023

Supreme Court, New York County

Docket Number: Index No. 654762/2022

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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YOUGE VENTURE CAPITAL LIMITED LIABILITY COMPANY, JIANZONG YANG, JINXIA LI, HONGHUA WEI, XIAOYUN ZHANG, BING LI, JI JIANG, HONGLIAN XU, SHUNQI LYU, JINGYUE MO, CHUNJI ZHONG, CHUNSHI ZHONG, LI NI, XIANGLING LI, XIAOCHEN JIANG, LILING CHI, FANG GAO, GUOFANG GU, HANYA CHEN, YING WANG, LIANG FANG, CHUNXIANG WANG, XUKUN WANG, DAMING YI, XICHAN CHEN, YANGYUAN SHI, JUAN LU, XIAOPING TANG, JIANMING YE, QINFANG HUA, HONG ZHANG, XUE WANG, QUNHUI PENG, JIE LIU, LIXIANG LUO, RONG FAN, JUAN NING, JINYING YANG, CHUNFENG ZHAO, JINGHUA CHEN, SHENGJUN HU, YUMEI HUANG, XIN HUANG, MENGXIA KAN, LIHUA SONG, LU ZHANG, YUAN XIE, HAO SUN, XIAOXU LI, RUI ZHANG, LEI ZHANG, YOU LU, YANJU SONG, XIN SUI, JUAN ZHU, XUE WANG, XUDONG SHEN, NING GE, PENG SONG, SHU TIAN, HONG CHANG, GUOQIANG WANG, MINQI ZHANG, PEIJUN YAO, LING LIU, FENGYUN GU, YUN YUN, CHENHONG LI, HUIMIN BIAN, WEIJUN WANG, ZHENWEI SU, BIN LIU, HUAMEI DU, KAIJING SHEN, XIHUA DU, LEI SUN, QUN ZHANG, YING MENG, YUBIN JIANG, PEIHUAN CAI, YIXING HUANG, GUIZHEN WANG, HAILONG LI, ZUNAN CAI, JIE PANG, LIJUN WANG, HAILING DING, YUMING ZHENG, HAIBIN SHANG, YANBING LI, GUOHUA ZHAO, SHUMIN SHAO, SHANDE LUO

INDEX NO. 654762/2022  
MOTION DATE 05/25/2023  
MOTION SEQ. NO. 003

**DECISION + ORDER ON MOTION**

Plaintiffs,

- v -

XUEYUAN HAN,

Defendant.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 85, 86, 87, 88, 89, 90, 91, 93, 94, 95, 96

were read on this motion to STAY DISCOVERY.

Defendant Xueyuan Han (“Defendant”) seeks an order pursuant to New York Civil Practice Law and Rules (“CPLR”) § 3214(b) and Rule 11(g) of the Rules of the Commercial

Division of the Supreme Court to stay discovery pending the determination of Defendant's motion to dismiss and compel arbitration.

Commercial Division Rule 11(g) provides that “[t]he court will determine, upon an application of counsel, whether discovery shall be stayed, pursuant to CPLR 3214(b), pending determination of any dispositive motion.” CPLR § 3214(b), in turn, provides: “Service of a notice of motion under rule 3211...stays disclosure until determination of the motion unless the court orders otherwise.” Thus, Rule 11(g) gives the Court discretion to determine whether discovery should go forward pending a dispositive motion.

“[I]t is the presumption of the Commercial Division that discovery continues during motion practice” (*In Re Dentsply Sirona, Inc. v XXX*, 2019 NY Slip Op 32297[U], 14 [Sup Ct, NY County 2019] [Scarpulla, J.]; *Quadriad Realty Partners, LLC v Wilbee Corp.*, 2020 NY Slip Op 30024[U], \*12 [Sup Ct, NY County 2020]), and a stay is not typically granted simply because a defendant believes its motion to dismiss is a strong one (*Hartman, David E. v Snellen, Eric*, 2014 WL 7876752 at \*1 [Sup Ct, NY County 2014] “[D]efendants filing motions to dismiss presumably deem them meritorious” and “if the filing of a motion to dismiss were sufficient to impose a stay, there would be no Rule 11([g])”).

However, there are times when a stay of discovery is appropriate. This Court has observed that one factor favoring a stay is when the motion to dismiss challenges the Court's jurisdiction to adjudicate the case (*GSCP IV Edgemark Holdings, LLC v. ETC Ne. Pipeline, LLC*, No. 652906/2019 [Sup Ct, NY County 2020] [NYSCEF #72 at 3:10-21 (noting this Court has “made exceptions” to presumption allowing discovery in cases where “the argument is that you shouldn't be here”)]). In such circumstances, a reasonable argument can be made that the Court

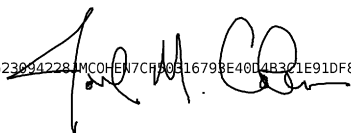
should make that threshold determination before forcing a litigant to conduct discovery in a potentially incorrect (or at least inconvenient) forum.

Here, Defendant argues that the Complaint should be dismissed because the claims are subject to mandatory arbitration in China (governed by Chinese law) and because the Complaint fails to add indispensable parties. Defendant also argues that this case should be dismissed on grounds of *forum non conveniens*. The motion to dismiss is fully briefed and is scheduled to be heard on August 1, 2023. Given the short time period involved, and the nature of the motion to dismiss, the Court finds a stay is warranted in these circumstances. (The Court, of course, expresses no opinion at this time on the ultimate merits of Defendant’s motion.)

Accordingly, it is

**ORDERED** that Defendant’s motion for a stay of discovery is **GRANTED**, and that discovery is hereby stayed pending the resolution of Defendant’s motion to dismiss and compel arbitration (Mot. Seq. 002).

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

<u>6/23/2023</u> DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE