

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

**Gary Liang, as assignee of Yeechiu Chung Liang, individually and as
a shareholder of EW Studio, Inc. v. Yi Jing Tan, et al.**

2017 NY Slip Op 08364 (App. Div. 2017) · No. 2016-02097; 2016-06192 · Decided November 29, 2017

SUMMARY

The Appellate Division, Second Department, dismissed the appeal from an order directing a hearing because no appeal lies as of right from such an order, and affirmed the denial of the defendants' request for costs and counsel fees. It reversed the order holding nonparty attorney Wei Ji in civil contempt, concluding that contempt was unavailable for nonpayment of counsel fees because execution could be awarded for collection of the sum.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Randall T. Eng, P.J.; Reinaldo E. Rivera, J.; Sheri S. Roman, J.; Francesca E. Connolly, J.
JURISDICTION	New York
DECIDED	November 29, 2017
DOCKET	2016-02097; 2016-06192
DISPOSITION	other
PROCEDURAL POSTURE	Defendants appealed from an order denying their cross motion for costs and counsel fees and directing a hearing on contempt; nonparty attorney Wei Ji appealed from a subsequent order adjudging her in civil contempt and directing her to pay \$2,000 in counsel fees.
STANDARD OF REVIEW	Whether an appeal lies as of right from an order directing a hearing; review of the exercise of discretion concerning costs and counsel fees; and review for legal error in imposing civil contempt.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Yi Jing Tan, et al., Wei Ji, nonparty-appellant v. Gary Liang, as assignee of Yeechiu Chung Liang, individually and as a shareholder of EW Studio, Inc.

TOPICS

contempt attorney fees appellate procedure civil procedure fiduciary duty

PRACTICE AREAS

civil procedure appellate procedure remedies commercial litigation corporate law

QUESTIONS PRESENTED

1. Whether an appeal lies as of right from an order directing a hearing to aid in the disposition of a motion.
2. Whether defendants established that plaintiff engaged in frivolous conduct warranting costs and counsel fees under 22 NYCRR 130-1.1.
3. Whether civil contempt was an available remedy for the attorney's nonpayment of counsel fees where execution could be awarded to collect the sum.

HOLDINGS

1. No appeal lies as of right from an order directing a hearing to aid in the disposition of a motion; the court declined to grant leave to appeal.
2. Defendants were not entitled to costs and counsel fees because they failed to establish that plaintiff engaged in frivolous conduct within the meaning of 22 NYCRR 130-1.1(c).
3. Civil contempt was unavailable because the counsel-fee obligation was a sum for which execution could be awarded.

KEY QUOTATIONS

"This is not a case where, by law, execution cannot be awarded. Therefore, the remedy of contempt is unavailable"

FACTUAL BACKGROUND

Plaintiff obtained an order awarding counsel fees against the defendants. Plaintiff then sought to hold defendants' attorney, nonparty Wei Ji, in civil contempt for failing to pay those fees. The Supreme Court directed a hearing, later held Ji in civil contempt, and ordered her to pay \$2,000 in counsel fees; the defendants separately sought costs and counsel fees based on alleged frivolous conduct by plaintiff.

PROCEDURAL HISTORY

In an action involving claims including conversion and breach of fiduciary duty, the Supreme Court, Queens County, denied defendants' request for costs and counsel fees under 22 NYCRR 130-1.1 and directed a hearing on plaintiff's contempt motion. After the hearing, the court granted the contempt motion against defendants' attorney and ordered her to pay \$2,000 in counsel fees. The Appellate Division dismissed the portion of the first appeal seeking review of the hearing order, affirmed the first order insofar as reviewed, and reversed the contempt order.

DISPOSITION

other

CASES CITED

- Serraro v. Staropoli, 94 AD3d 1083, 1084
- 4504 New Utrecht Ave. Corp. v. Pita Parlor, 143 AD2d 171
- Cantalupo Constr. Corp. v. 2319 Richmond Terrace Corp., 141 AD3d 626, 627-628
- Moore v. Davidson, 57 AD3d 862
- Agunloye Dev. Corp. v. Buckingham Owners, Inc., 132 AD3d 927, 928

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