

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

----- X Index No.: 706139/2021

LING & YIN HOLDING CORP.,

Plaintiff,

- against -

VERIFIED ANSWER

**MA & TANG MANAGEMENT LLC and
DAVID YAN,**

Defendants.

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Defendants, MA & TANG MANAGEMENT LLC (“Ma & Tang”) and DAVID YAN (“Yan”) (collectively as “Defendants”), *via the undersigned counsel*, answer the Plaintiff’s Verified Complaint upon information and belief as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the paragraph designated 2 of the Verified Complaint.
2. Neither admit nor deny the allegations contained in the Verified Complaint designated 3, 4, 9, 10, 11, 14, 15, and 33 and respectfully beg leave of Court to refer all questions of law and all allegations of fact contained therein to the Court upon the trial of this action.
3. Admit the allegation contained in the Verified Complaint designated 5.
4. Deny each and every allegation in the paragraphs of the Verified Complaint designated 16, 28, 31, 34, 37, 49, and 50.
5. Deny each and every allegation in the paragraphs of the Verified Complaint designated 19, 22, and 42 to the extent the Plaintiff’s citations of the documents referred thereto are out of the context and to the extent the Plaintiff’s failure to recite true, accurate and complete documents referred thereto, and respectfully beg leave of Court to refer all questions of law and all allegations of fact contained therein to the Court upon the trial of this action..

6. Deny each and every allegation in the paragraphs of the Verified Complaint designated 1, 6, 7, 8, 12, 13, 17, 18, 20, 21, 23, 24, 25, 26, 27, 29, 30, 32, 35, 36, 39, 40, 41, 43, 44, 45, 46, 47, and 48 and respectfully beg leave of Court to refer all questions of law and all allegations of fact contained therein to the Court upon the trial of this action.

7. Other than admitting “that the fair market value of the Unit has substantially increased from the amount of the purchase price set forth in the Contract”, deny each and every allegation in the paragraphs of the Verified Complaint designated 38 and respectfully beg leave of Court to refer all questions of law and all allegations of fact contained therein to the Court upon the trial of this action.

AS AND FOR A FIRST SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT YAN ALLEGES:

8. This Court lacks subject matter jurisdiction over Defendant Yan because Defendant Yan is not a party to the Plaintiff’s Contract of Sale of the subject premises and does not own the subject premises.

AS AND FOR A SECOND SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT YAN ALLEGES:

9. Plaintiff has failed to state a cause of action against Defendant Yan since Defendant Yan was and is still an escrowee under the Contract and has not acted in bad faith or gross negligence.

AS AND FOR A THIRD SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

10. Plaintiff failed to state a cause of action against Defendants upon which relief may be granted.

AS AND FOR A FOURTH SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT MA & TANG ALLEGES:

11. If Plaintiff sustained or suffered any injury or damage as alleged in the Verified Complaint, which Defendant Ma & Tang expressly denies, such damages were caused in whole or in part by the Plaintiff's negligence, culpable conduct, comparative negligence or assumption of risk, and to the extent of their culpability, the Plaintiff is barred from recovery or, *alternatively*, shall have its damages reduced or diminished in the proportion that its culpable conduct and/or negligence bears to all conducts causing or attributable to such damages and want of care under the common law.

AS AND FOR A FIFTH SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT MA & TANG ALLEGES:

12. Plaintiff's action is barred by the doctrine of *laches*.

AS AND FOR A SIXTH SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT MA & TANG ALLEGES:

13. Plaintiff's action is barred by the implied *force majeure* clause contained in the Contract that has excused Defendant Ma & Tang from performing temporarily under the Contract of Sale caused by the pandemic.

AS AND FOR A SEVENTH SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT MA & TANG ALLEGES:

14. Plaintiff's action is barred by the common law doctrines of frustration of business under the circumstances caused by the pandemic.

AS AND FOR A EIGHTH SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT MA & TANG ALLEGES:

15. Plaintiff's action is barred by the common law doctrines of impossibility under the circumstances caused by the pandemic.

AS AND FOR A NINETH SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT MA & TANG ALLEGES:

16. Plaintiff's action is barred by the Plaintiff's default under the Contract.

AS AND FOR A TENTH SEPARATE, COMPLETE, AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

17. This Court lacks personal jurisdiction over Defendants in that they were not served with the Summons and Verified Complaint in accordance with CPLR.

WHEREFORE, Defendants demand judgment dismissing the Plaintiff's Verified Complaint in its entirety, together with reasonable attorney fees, costs, expenses, and disbursements incurred in defense of this action, and for such other and further relief as the Court deems just and proper.

Dated: Flushing, New York
April 21, 2021

LAW OFFICES OF DAVID YAN

/s/ David Yan

David Yan, Esq.
136-20 38th Avenue, Suite 11E
Flushing, New York 11354
Telephone: (718) 888-7788

*Attorney for Defendants
Ma & Tang Management LLC, David Yan*

TO: THE BRESKY LAW FIRM PLLC
Marc Bresky, Esq.
*Attorney for Plaintiff
Ling & Yin Holding Corp.*
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Elmhurst, NY 11373
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COMPANY VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The undersigned, Keyan Ma, managing member of Defendant, Ma & Tang Management LLC., being duly sworn, deposes and says that the deponent has read the answer, and the contents of the answer is true to the deponent's own knowledge, except as to those matters which are alleged upon information and belief, and as to such matters the deponent believes them to be true; and that the reason this verification is not made by Defendant in person is that Defendant is a limited liability corporation and the deponent is a managing member thereof, and that the above information is from the books and records of the limited liability corporation.

Dated: New York, New York
April 21, 2021

Keyan Ma (with handwritten signature)

Sworn to before me this
21 day of April, 2021

(with handwritten signature)
Notary Public

DAVID YAN
Notary Public, State of New York
No. 02YA6085218
Qualified in New York County
Commission Expires December 23, 2022
By Executive Order 202.7 and 202.97

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VERIFIED ANSWER

LAW OFFICES OF DAVID YAN

/s/ David Yan

David Yan, Esq.

136-20 38th Avenue, Suite 11E

Flushing, New York 11354

Telephone: (718) 888-7788

Attorney for Defendants

Ma & Tang Management LLC, David Yan

Certification pursuant to 130-1.1a of the Rules of the Chief Administrator (22NYCRR)
