IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

LIHUA ZHANG,	§	
	§	
Plaintiff,	§	
V.	§	
	§	
MARGARET MONROE; SCOTT MONROE; CENTRAL MINING AMERICA, INC., a/k/a CENTRAL MINING AMERICA GROUP, CORP.; AND U.S. SALT INTERNATIONAL, INC., a/k/a FTC U.S. SALT MANAGEMENT LTD.,	§	**CIVIL ACTION NO. 6:13-CV-811**
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff Lihua Zhang's Motion for Summary Judgment (Doc. No. 114). Defendants Margaret Monroe and Scott Monroe ("the Monroes"), Central Mining America, Inc. ("CMA"), Central Mining America Group, Corp. ("CMA Group"), and U.S. Salt International, Inc. ("US Salt") (collectively, "Defendants") filed a Motion to Strike/Response (Doc. No. 116). Having considered the parties' arguments and the applicable law, the Court **GRANTS-in-part** and **DENIES-in-part** Plaintiff's Motion. To the extent Defendants assert any counterclaims in their Motion to Strike/Response, the Court **DENIES** Defendants' claims.

I. BACKGROUND

This is a diversity action arising out of an ongoing business relationship between Plaintiff and Defendants. CMA was created in 2004 to offer salt mining production and operations services in connection with the Monroe Salt Mine located in the Grand Saline Salt Dome in East Texas. (P's MSJ, Doc. No. 114 at 8). On September 28, 2007, Mr. Monroe, acting as President of CMA, entered into an agreement to lease the Monroe Salt Mine from his wife, Mrs. Monroe, "for

the purpose of continuing the Developing, Constructing, Mining, Drilling, Producing, Operating, Transporting, Selling, and Exporting, of that salt minerals that are mined and Produced from underground." (Land and Salt Mineral Lease Agreement, Ex. 9, Doc. No. 114).

Ms. Zhang was first introduced to the Monroes and CMA through her husband who is involved with the mining services industry in China. (Unsworn Dec. of Lihua Zhang, Ex. 13 at ¶ 2-3, Doc. No. 114). According to Ms. Zhang, the Monroes represented to her that they had salt mine interests in East Texas that would prove profitable to potential investors. (*Id*. ¶ 4). In May of 2011, Ms. Zhang met with Mrs. Monroe in Beijing, China, to discuss the possibility of investing directly into CMA. (*Id*. ¶ 5). In December of 2011, Ms. Zhang traveled to the United States, and stayed with the Monroes at their home in Canton, Texas. (*Id*. ¶ 6). During her stay, the Monroes allegedly represented to her that she would be able to invest directly into CMA and maintain a 5% stake in the company by entering into a Subscription Agreement. (*Id*. ¶ 6; *see* Subscription Agreement, Ex. 14, Doc. No. 114). Ms. Zhang was further told that CMA was on course to receive a $45 million capital injection from Mr. Andrew Garner, an English investor, within the first six months of 2012 to jumpstart operations. (*Id*. ¶ 6).

Ms. Zhang entered into the Subscription Agreement on December 20, 2011, which in relevant part states:

> I, Li Hua Zhang [omitted] hereby subscribe for and purchase (5%) five percent of the common stock from Margaret Monroe of Central Mining America, Inc. a Texas corporation. The purchase price is USD 580,000 (five hundred eighty thousand US dollars) in cash plus other consideration and works.

(Ex. 14, Doc. No. 114). On December 28, 2011, Ms. Zhang wired approximately $80,000 to Mrs. Monroe's individual account. According to Ms. Zhang, the Defendants required $80,000 to pay off a debt to Dynatec, a mining services company, and that until such a debt was paid, CMA would be unable to secure the funding from Mr. Garner. (Ex. 13 at ¶ 6, Doc. No. 114).

On February 12, 2012, CMA's charter was forfeited for its failure to file a franchise tax return and/or pay a state franchise tax. (Ex. 7, Doc. No. 114).

In March of 2012, Ms. Zhang returned to the United States to apply for a green card under the EB-5 Immigrant Investor Program[1], under the alleged representation from the Monroes that her investment in a U.S.-based enterprise would qualify her for such a program. (*Id*. ¶ 6, 9). On March 16, 2012, Ms. Zhang wrote a check directly payable to Mrs. Monroe for $420,000 in fulfillment of the Subscription Agreement. (*Id*. ¶ 11). That same day, Mrs. Monroe acting as the CEO of CMA signed an agreement which stated:

> "Li Hua Zhang [omitted] has made a payment of US$500,000.00 (five hundred thousand US Dollars) according to the subscription agreement signed on Dec 20, 2011."

(Ex. 18, Doc. No. 114).

Ms. Zhang states that by October of 2012, it had become clear to her that there were numerous issues with the original Subscription Agreement and her investment in CMA. (Ex. 13 at ¶ 13, Doc. No. 114). Later that month, Ms. Zhang states she met with the Monroes in Beijing, who "expressed confidence that CMA would be up and running in the near future and would be able to pay me." (*Id*. ¶ 13). Ms. Zhang states that because of the Monroes' assurances she agreed to enter into a Convertible Notes Agreement (Ex. 18, Doc. No. 114) which converted her initial investment into a $500,000 loan to CMA, and which the company would be required to pay over a period of three years at a 30% interest rate. (*Id*. ¶ 13). Mrs. Monroe is the signatory to this agreement on behalf of CMA. (*Id*.).

[1] The EB-5 Immigrant Investor Program is administered by the United States Citizenship and Immigration Services and allows foreign investors to apply for a green card if they make an investment of a statutory amount in a commercial enterprise in the United States, and the investment plans to create or preserve 10 permanent full-time jobs for qualified U.S. workers; *See EB-5 Immigrant Investor Program*, https://www.uscis.gov/eb-5.

On March 20, 2013, Ms. Zhang sent Mrs. Monroe a letter demanding a payment of $650,000 ($500,000 principal and $150,000 interest) by March 30, 2013. (Ex. 19, Doc. No. 114). In response, CMA sent a letter to Ms. Zhang on April 9, 2013, notifying Ms. Zhang that neither CMA nor its representative issued or signed the Convertible Notes Agreement. (Ex. 20, Doc. No. 114).

On October 24, 2013, Ms. Zhang filed the instant case claiming a breach of contract, common law fraud (fraudulent misrepresentation), negligent misrepresentation, and violations of § 27.01 of the Texas Business & Commerce Code against the Defendants stemming from the Subscription Agreement and the Convertible Notes Agreement. Ms. Zhang further seeks to hold the Monroes individually liable for the acts of CMA through piercing the corporate veil and through § 171.255 of the Texas Tax Code.

II. APPLICABLE LAW

A. Summary Judgment Under Rule 56

Summary judgment is appropriate if there is no genuine issue as to any material fact, and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). The movant bears the initial burden of informing the court of the basis for its motion and identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Only when the moving party has discharged this initial burden does the burden shift to the non-moving party to demonstrate that there is a genuine dispute of material fact. *Celotex*, 477 U.S at 322.

A dispute is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986);

Cooper Tire & Rubber Co. v. Farese, 423 F.3d 446, 454 (5th Cir. 2005). A dispute is "material" if its resolution could affect the outcome of the action. *Anderson*, 477 U.S. at 248.

Once a proper motion has been made, the nonmoving parties may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to show the existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. 322 n.3 (quoting Fed. R. Civ. P. 56(e)). All the evidence must be construed in the light most favorable to the nonmoving party, and the court will not weigh the evidence or evaluate its credibility. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

Furthermore, "only reasonable inferences in favor of the nonmoving party can be drawn from the evidence." *Mills v. Warner-Lambert Co.*, 581 F.Supp.2d 772, 779 (E.D. Tex. 2008) (citing *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 469 n. 14 (1992). "If the [nonmoving party's] theory is… senseless, no reasonably jury could find in its favor, and summary judgment should be granted. *Eastman*, 504 U.S. at 468-69. "Unsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment." *Brown v. City of Houston*, 337 F.3d 539, 541 (5th Cir.2003).

Summary judgment is mandated if the nonmovant fails to make a showing sufficient to establish the existence of an element essential to their case on which they bear the burden of proof at trial. *Nebraska v. Wyoming*, 507 U.S. 584, 590 (1993); *Celotex Corp.*, 477 U.S. at 322. "In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex Corp.*, 477 U.S. at 322–23.

Defendants are proceeding *pro se* in this action. "A document filed *pro se* is 'to be liberally construed' and a *pro se* complaint, however inartfully pleaded, must be held to less

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