

Software developer's suit against Winklevoss twins may go forward

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Rose, Chinitz & Rose's Alan Rose Jr.

A Massachusetts state court judge has ruled that a Boston software developer's case against defunct social media site ConnectU Inc. and its founders and key shareholders, including the Winklevoss twins, can move forward.

Software developer Wayne Chang and his former company, the i2hub Organization Inc., [sued ConnectU](#), its principals and its law firm in December 2009, for actions that allegedly deprived him of a cut of Facebook's \$65 million settlement with ConnectU's founders.

The order in *Chang v. Winklevoss* was dated April 28 and filed in Suffolk County Superior Court in Massachusetts on May 3. In the order, Justice Peter Lauriat of the court's business session ruled that some claims may proceed against ConnectU; its co-founders, Cameron and Tyler Winklevoss; and its directors and shareholders, Howard Winklevoss and Divya Narendra.

Lauriat dismissed claims against ConnectU's law firm, Washington-based Finnegan, Henderson, Farabow, Garrett & Dunner, and against Scott Mosko, a Palo Alto, Calif., partner at the firm.

Lauriat rejected the defendants' argument that the court lacks jurisdiction because the settlement with Facebook hasn't been distributed and therefore Chang hasn't suffered an injury.

"The flaw in this argument is that defendants appear to conflate loss of the settlement

proceed with loss of rights," Lauriat said. "Chang alleges that he has received nothing in return for the substantial benefits he provided to ConnectU, including the value of his work, as well as i2hub's users and goodwill."

Lauriat also noted that, although Chang's claims to the settlement are "too speculative to confer standing, his claims with respect to an ownership in Connect U are not."

"They constitute an injury separate and distinct from his possible share of the settlement proceeds," Lauriat wrote. "The court concludes that Chang has pled sufficient facts to confer standing with respect to his claims against the Winklevoss defendants."

The surviving claims against the Winklevoss defendants include breach of contract, breach of the covenant of good faith and fair dealing, breach of partnership and breach of fiduciary duty. Lauriat also ruled that dismissal of accounting and constructive trust claims "would be premature" because there's been no determination yet about whether the defendants breached their fiduciary duties.

Lauriat dismissed unjust enrichment and quantum meruit claims because "Chang has asserted both tort and breach of contract claims, which if the Winklevoss defendants are held liable, will adequately compensate him for any losses. He dismissed Chang's conversion claim because it's based on Chang's contention that the Winklevoss defendants converted his share of the settlement money.

"It fails for the reason, if no other, that he has set forth no facts from which the court can infer that he has a right to immediate possession of the money," Lauriat wrote.

The claims dismissed against Finnegan Henderson and Mosko were professional negligence, civil conspiracy, aiding and abetting and interference with advantageous business relationships. According to court papers, Chang alleged that the firm and Mosko did not enable him to participate in the settlement proceedings, which deprived him of the proceeds and breached their duties to him.

Lauriat wrote that although lost settlement opportunities may be enough to support a claim of legal malpractice, "on the facts of this case, any injury as a result of missed settlement opportunities is far too speculative, and any causal connection to the defendants' conduct far too attenuated, to confer standing."

Lauriat concluded that "as to Chang's claim that he could have asserted claims against the Winklevoss defendants at the time of the settlement, nothing in the complaint supports an interference that the delay caused him an injury."

Alan Rose Jr., a partner at Boston-based Rose, Chinitz & Rose who represented Chang, said the lawyers at his firm "view the ruling as a significant victory for our clients."

"The case will now move forward with the value of the claims completely intact," Rose said. "That's what we care most about and what we're prepared to go forward on."

Sean O'Shea, a partner at New York-based O'Shea Partners who represents all three Winklevosses and Narendra, said that the only thing the order does is say that Chang deserves discovery on his claims.

Although it's not surprising that a judge would rule that a party like Chang who only has an oral contract is entitled to some discovery, O'Shea said his clients are "confident his claims remain baseless."

"In no way does the decision vindicate Chang's claims, which are self-contradictory," O'Shea said. "We expect that we'll prevail in this case."

Looney & Grossman of Boston served as local counsel for the Winklevosses and Narendra on the case.

Tom Mason of Washington-based Zuckerman Spaeder, who represented Finnegan Henderson and Mosko, said that Lauriat looked at this matter very carefully and issued a thoughtful decision. "The result is entirely consistent with the applicable law, and we're very pleased on behalf of our clients."

Boston's Conn Kavanaugh Rosenthal Peisch & Ford also represented Finnegan Henderson and Mosko.

Chang's complaint claims his memorandum of understanding with ConnectU entitles him to a 15% share of ConnectU for integrating i2hub's peer-to-peer file-sharing software and ConnectU's Web site. Chang also claims he and the Winklevosses formed the Winklevoss Chang Group partnership to jointly and operate ConnectU, i2hub and other Internet projects. He claims to have a 50% interest in the partnership, which entitles him to half of the proceeds of ConnectU's sale. As for the settlement, Chang claims the partnership agreement means he should get half, or, alternatively, a 15% cut based on the memorandum of understanding.

ConnectU and its founders originally sued Facebook founder Mark Zuckerberg in the District of Massachusetts in 2004 claiming that Zuckerberg stole the idea for Facebook when they were all students at Harvard University. Facebook struck back in 2005 with a California state court lawsuit against ConnectU, the Winklevosses, Chang and others, which was later removed to the Northern District of California. In 2008, the parties agreed to a settlement whereby Winklevosses agreed to give up ConnectU in exchange for cash and shares of Facebook.

The Winklevosses' subsequent bid to undo the settlement culminated in a ruling by the U.S. Court of Appeals for the 9th Circuit in April [rejecting that effort](#).

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