

**Ramirez v Issa**

2024 NY Slip Op 31378(U)

April 16, 2024

Supreme Court, Kings County

Docket Number: Index No. 521206/2023

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

-----X  
CESAR RAMIREZ and ADRIANA RODRIGUEZ,  
individually and as stockholders  
of MANHATTAN FARE CORP., and in the  
right of MANHATTAN FARE CORP.,

Plaintiff, Decision and order

- against -

Index No. 521206/2023

MONEER ISSA, MANHATTAN FARE  
CORP., and 431 FOOD MARKET CORP.,

Defendants, April 16, 2024

-----X  
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #20

The plaintiffs have moved seeking to reargue a determination dated March 12, 2024 which denied the motion to dismiss the affirmative defenses and four counterclaims, namely counterclaims alleging a breach of fiduciary duty, breach of contract, misappropriation of trade secrets and trespass to chattel. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders the defendant Manhattan Fare Corp., operated a restaurant called Chef's Table at Brooklyn Fare, which is located at 431 West 37<sup>th</sup> street, in New York County. The plaintiff, Cesar Ramirez, was employed as an executive chef by the defendants since 2009 and as of 2022 received twenty-five of all profits representing a twenty-five percent ownership interest in Manhattan Fare Corp. The plaintiffs instituted this lawsuit alleging that Ramirez was

fired without any justification. The defendants answered and asserted affirmative defenses and counterclaims. Specifically, the defendants assert the plaintiff Ramirez and his wife, plaintiff Adriana Rodriguez engaged in theft and fraud and sought to harm Manhattan Fare. The defendants asserted numerous counterclaims and they were dismissed except for the ones noted. The plaintiff has now moved seeking to reargue the denial of the dismissal of those four counterclaims. As noted, the motion is opposed.

#### Conclusions of Law

A motion to reargue must be based upon the fact the court overlooked or misapprehended fact or law or for some other reason mistakenly arrived at in its earlier decision (Deutsche Bank National Trust Co., v. Russo, 170 AD3d 952, 96 NYS3d 617 [2d Dept., 2019]).

Preliminarily, the prior motion never mentioned the ad damnum clause and never sought to challenge the defendant's request to rescind the operating agreement. Thus, the plaintiff is barred from raising this issue in a motion to reargue.

The plaintiff has moved seeking to reargue the denial of the counterclaim alleging a breach of fiduciary duty. The plaintiff argues that "none of these allegations" supporting the counterclaim "are true or viable" (see, Memorandum of Law, page 3

[NYSCEF Doc. No. 319]). However, on a motion to dismiss pursuant to CPLR §3211, the court must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord the party the benefit of every possible favorable inference and determine only whether the facts, as alleged, fit within any cognizable legal theory (Sokoloff v. Harriman Estates Development Corp., 96 NY2d 409, 729 NYS2d 405 [2001]).

Therefore, the assertion that the allegations of the counterclaim are "not true" is not a basis upon which to dismiss the counterclaim. Likewise, other arguments the allegations are untruths are not grounds to dismiss the counterclaim. Therefore, the motion seeking to dismiss the breach of fiduciary claim is denied.

Next, concerning the faithless servant doctrine, the plaintiff argues a shareholder cannot assert such a claim against another shareholder. However, the allegations concern activities when the plaintiff was also an employee. Moreover, at this stage of the case, without any discovery, the allegations are surely viable. Therefore, the motion seeking to dismiss this counterclaim is denied.

Concerning the counterclaim alleging a breach of trade secrets, the prior decision contained a detailed analysis of the issue. The reargument motion does not assert any factual or legal mistake committed by the court. Rather, the plaintiff

reasserts the same arguments that were rejected in the prior motion. That is not a basis upon which to reargue a prior decision. Thus, the motion seeking to reargue the trade secrets counterclaim is denied.


Lastly, the motion seeking to reargue the trespass counterclaim is denied. The reargument motion, once again, impermissibly denies the factual allegations contained in the counterclaim. That is an improper basis upon which to seek reargument.

Thus, the motion seeking reargument is denied in all respects.

So ordered.

ENTER:

DATED: April 16, 2024  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC