

Sysco Metro N.Y., LLC v Beresheet, LLC

2024 NY Slip Op 31394(U)

April 9, 2024

Supreme Court, New York County

Docket Number: Index No. 650346/2022

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

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INDEX NO. 650346/2022

SYSCO METRO NEW YORK, LLC,

MOTION DATE 11/08/2023

Plaintiff,

MOTION SEQ. NO. 003

- v -

BERESHEET, LLC D/B/A MATTO ESPRESSO, AFIA
KHATUN

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, it is

Plaintiff moves for summary judgment on the complaint. The defendants have not opposed the motion. As set forth more fully hereinbelow, the motion is granted in part and otherwise denied.

Plaintiff previously moved for a default judgment. Pursuant to a stipulation dated March 28, 2023 (NYSCEF Doc. No. 20), the default judgment motion was withdrawn, the defendants given time to answer, and the defendants waived personal jurisdiction defenses. The defendants subsequently answered and interposed a counterclaim for attorney fees.

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (Winegrad v New

York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of any material issues of fact or where the issue is arguable (*Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]). “If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion” (CPLR § 3212[b]). “In considering a summary judgment motion, evidence should be analyzed in the light most favorable to the party opposing the motion (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]).

The motion for summary judgment against the individual defendant, Afia Khatun, must be denied as the complaint (NYSCEF Doc. Nos. 1, 27) fails to state a claim against Afia Khatun. The only times that Afia Khatun is mentioned in the complaint are in the heading and the third paragraph, which merely states that Afia Khatun is a resident of the County of New York, State of New York. The portion of the complaint which refers to a guarantor alleges that Chandrakant Patel is the personal guarantor of Park Road Hospitality, Inc. Neither Chandrakant Patel nor Park Road Hospitality, Inc. are parties to this action. Accordingly, as the complaint fails to make any factual allegations of liability as to defendant Afia Khatun, the motion for summary judgment is denied as to defendant Afia Khatun, and the complaint is dismissed against them.

Plaintiff is not entitled to summary judgment on its third, fourth, or fifth causes of action in that each of those are also alleged against non-party Park Road Hospitality, Inc. Therefore, summary judgment in plaintiff's favor on these causes of action is not warranted, and these causes of action are dismissed.

Furthermore, the plaintiff is not entitled to summary judgment on the second cause of action in that it seeks damages in the amount of \$6,211.10 based on a purported October 11, 2011 Credit Application, which is not annexed to the Complaint or addressed in the Affidavit of Aimee Chiore in support of the instant motion. Accordingly, summary judgment on the second cause of action is not warranted, and this cause of action is dismissed

Plaintiff is entitled to summary judgment on its first cause of action. As set forth in the affidavit of Aimee Chiore, plaintiff sold and delivered goods to the defendant Beresheet, LLC d/b/a Matto Espresso at an agreed upon price of \$12,062.87, and the defendant never paid for such goods despite demand for payment having been made. Accordingly, the plaintiff is entitled to summary judgment on its first cause of action.

As set forth more fully herein above, it is hereby


ORDERED that the plaintiff's motion for summary judgment is granted to the extent of granting partial summary judgment in favor of plaintiff and against defendant Beresheet, LLC d/b/a Matto Espresso only on the first cause of action as follows; and it is further

ORDERED that the Clerk shall enter judgment in favor of plaintiff Sysco Metro New York, LLC, with an address at 20 Theodore Conrad Drive , Jersey City, NJ 07305, and against defendant Beresheet, LLC d/b/a Matto Espresso, with an address at 359 East 68th Street, New York, NY 10065 in the amount of \$12,062.87, together with interest at the rate of 9% per annum from the date of July 31, 2020, until the date of the decision on this motion, and thereafter at the statutory rate, as calculated by the Clerk in the amount of \$ _____; and it is further

ORDERED that the defendants are granted summary judgment dismissing the SECOND, THIRD, FOURTH, and FIFTH causes of action; and it is further

ORDERED that the defendant Afia Khatun is granted summary judgment dismissing the cause of action against him.

This constitutes the decision and order of the court.

4/9/2024			
DATE	NICHOLAS W. MOYNE, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE