

Reddy v Gade

2015 NY Slip Op 31109(U)

June 23, 2015

Supreme Court, New York County

Docket Number: 103129/2010

Judge: Kathryn E. Freed

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 2**

JAIDEEP REDDY Individually and on Behalf of
JAISRIKAR LLC, and JAISRIKAR2, INC.,

Plaintiffs,

-against-

SRENEVASA REDDY GADE, JAISRIKAR
LLC, and JAISRIKAR2, INC.,

Defendants.

DECISION AND ORDER
Index Number 103129/2010
(Action 1)
Motion Sequence 012

SREENIVASA REDDY GADE, JAISRIKAR
LLC, and JAISRIKAR2, INC.,

Plaintiffs,

-against-

MOHAMMED M. ISLAM, TRINGLE FOOD
CORP., TRINGLE TWO FOOD CORP.,
ESTATE OF YVETTE M. VILLABA (deceased),
JAIDEEP REDDY, AND SYED W. QUADRI,

Defendants.

Index Number 652831/2011
(Action 2)
Motion Sequence 011

HON. KATHRYN E. FREED, J.S.C.:

Recitation, as per CPLR 2219, of papers considered upon this motion:

PAPERS	NUMBERED
Gade Not. of Mot. And Aff. In Supp.	1, 2 (Exs. A-J)
Gade Memo. of Law In Supp.	3
Jaideep's Cross-Mot. and Aff. In Supp.	4, 5 (Exs. A-O)
Jaideep's Memo. of Law In Supp. of Cross-Mot.	6
Islam and Tringle Aff. In Partial Opp. to Gade Mot.	7 (Exs. A-B)
Gade Aff. In Opp. To Cross-Mot.	8 (Ex. A)
Gade Memo. of Law In Opp. to Cross Mot.	9
Jaideep's Reply Memo. of Law	10
Gade Aff. in Further Opp. To Cross Mot.	11

Upon the foregoing cited papers, the decision on this motion is as follows:

In these two related actions based on the financing and sale of two Dunkin' Donuts restaurants, Action 2 plaintiffs Sreenivasa Reddy Gade, sued herein as Sreenevasa Reddy Gade¹ ("Gade"), Jaisrikar LLC ("LLC") and Jaisrikar2, Inc. ("INC") (hereinafter collectively "Gade Plaintiffs") moved, in motion sequence 009, pursuant to CPLR 3212, for summary judgment in their favor on their complaint ("Gade Motion"). Action 1 plaintiffs Jaideep Reddy individually ("Jaideep") and on behalf of Jaisrikar LLC, and Jaisrikar2, Inc. (hereinafter collectively "Jaideep Plaintiffs") cross-moved, pursuant to CPLR 3212, for partial summary judgment in their favor on their complaint, and for dismissal of Gade's counterclaims ("Jaideep Motion"). By order dated February 25, 2015, this Court denied the motion and the cross motion.

The Gade Plaintiffs now move, pursuant to CPLR 2221, to renew and reargue their motion for summary judgment. Upon reargument, the Gade Plaintiffs seek, inter alia, partial summary judgment against Jaideep dismissing his case against them, the denial of Jaideep's cross motion for summary judgment seeking dismissal of the counterclaims by the Gade Plaintiffs, and vacatur of that portion of this Court's order which dismissed the counterclaims of the Gade Plaintiffs as untimely.

Jaideep opposes the motion and cross moves for renewal and reargument of that branch of his prior cross motion which had sought summary judgment on his two causes of action for breach of fiduciary duty.

After oral argument, and based on the parties' motion papers, the relevant case law and statutes, the motion by the Gade Plaintiffs is **granted** only to the extent that this Court reconsiders that branch of the motion for summary judgment by the Gade Plaintiffs seeking to dismiss the punitive damages claim asserted against them by Jaideep and, upon reargument, summary judgment

¹ Mr. Gade's first name is given as both Sreenivasa and Sreenevasa.

dismissing that claim is **granted**. The motion and cross motion for renewal and reargument by the Gade Plaintiffs are otherwise **denied**. The motion for reargument by Jaideep is **granted** and, upon reargument, Jaideep's motion for summary judgment on his causes of action for breach of fiduciary duty is **denied**.

FACTUAL AND PROCEDURAL BACKGROUND:

Jaideep commenced Action 1 on or about March 10, 2010, asserting causes of action for accountings as against LLC and INC, and breach of fiduciary duty as against the Gade Plaintiffs. On or about October 15, 2013, Jaideep filed a second amended complaint² individually and on behalf of LLC and INC. ("the Jaideep Complaint"). The Jaideep Complaint asserted causes of action for rescission of Jaideep's investments in LLC and INC, accountings as against both entities, breach of fiduciary duty, breach of contract, and fraud as against Gade Plaintiffs, and indemnification of Jaideep's liabilities for the two entities. Jaideep also alleged punitive damages. LLC and INC were later removed as plaintiffs from the caption of the Jaideep Complaint.

Action 2 was commenced on October 15, 2011, with the Gade Plaintiffs asserting causes of action for breach of contract, fraud, legal malpractice, and a declaratory judgment on Jaideep's status as to LLC and INC variously, against Mohammed M. Islam ("Islam"), Tringle Food Corp., Tringle Two Food Corp. (together, "Tringle"³), Estate of Yvette M. Villaba (deceased) ("Villaba"), and Jaideep Reddy (hereinafter collectively "the Gade Defendants"). On November 12, 2011, an amended complaint was filed in Action 2 ("the Gade Complaint"), adding Syed W. Quadri ("Quadri"), a certified public accountant who prepared tax returns and other documents for the

² No first amended complaint was produced.

³ In some papers, Tringle was referred to as Triangle.

entities, as a defendant. The Gade Complaint added a cause of action for professional malpractice against Quadri.

On June 15, 2012, this Court (Ramos, J.) granted the Gade Plaintiffs' motion to consolidate Actions 1 and 2, and ordered the consolidated action to bear the following caption, under New York County Index No. 103129/2010:

JAIDEEP REDDY,

Plaintiff,

-against-

SREENIVASA REDDY GADE, JAISRIKAR LLC,
and JAISRIKAR2, INC.,

Defendants/Index 652831/2011 Plaintiffs,

-against-

MOHAMMED M. ISLAM, TRINGLE FOOD
CORP., TRINGLE TWO FOOD CORP., ESTATE
OF YVETTE M. VILLALBA (deceased),
JAIDEEP REDDY, and SYED W. QUADRI,

Index 652831/2011 Defendants.

The consolidated action, with the caption exactly as set forth in the above referenced order, was assigned to the Honorable Louis B. York, J.S.C. and, upon his death, was transferred to the undersigned. However, the parties appear to have ignored the consolidation order, and filed papers, including new pleadings, under both index numbers and their accompanying captions, continuing to designate them as Actions 1 and 2. Therefore, by order dated February 25, 2015, this Court, *inter alia*, modified, *sua sponte*, the June 15, 2012 order to reflect the procedural course the parties charted herein, restoring the individual actions, their captions and their separate index numbers, and

consolidated them for purposes of joint trial only. In accordance with this determination, Jaideep's cross motion in Action 2 was deemed a motion under Action 1, identified as motion sequence 010, and counsel for Jaideep was directed to efile a complete set of the moving papers under Index No. 103129/2010. Additionally, counsel for plaintiffs in Action 1 and Action 2 were directed to file a copy of the February 25, 2015 order with the Office of Trial Support and the County Clerk so that each office could mark its records appropriately. The parties were directed to file all further submissions in each action in duplicate, meaning that a copy of any paper served in either action was to be served in both actions.

Underlying Motions for Summary Judgment

LLC owned and operated a Dunkin' Donuts franchise at 1630 Madison Avenue, New York County. Gade was the managing member of LLC. Jaideep, who paid \$100,000 to purchase a 20% membership in LLC, was named on LLC's franchise agreement, dated May 29, 2003, as a passive investor, jointly and severally guaranteeing LLC's money obligations. Raghav Ponnaluri (Ponnaluri), another LLC member, was identified on LLC's franchise agreement as the "designated representative." INC owned and operated another Dunkin' Donuts franchise at 105 West 125th Street, New York County. Gade was INC's managing director and president. Jaideep paid \$100,000 to purchase 20% of INC's outstanding stock. Jaideep appeared on INC's franchise agreement, dated May 10, 2004, as a passive investor, jointly and severally guaranteeing INC's money obligations. Gade was identified on INC's franchise agreement as the "designated representative." Both franchise agreements defined the designated representative as:

the person from time to time designated by FRANCHISEE as being responsible for the day-to-day operation of the Unit . . . , and must be authorized to act for and bind FRANCHISEE in all dealings with FRANCHISOR with respect to the day-to-day operations of the Unit.

In addition to his direct investments, Jaideep alleged that he loaned LLC \$191,942.20, between 2004 and 2005, and that he loaned INC \$107,397.81 between 2003 and 2006.

Jaideep claimed that his investments in the two entities entitled him to 20% of all profits and income from both, yet he asserts that he was “never paid any profits or income” from either. Jaideep alleged that Gade retained all of the profits from LLC and INC. Jaideep also alleged that Gade caused the two entities to default on the payment of sales taxes and withholding taxes to government authorities, “exposing the other investors to personal liability for such taxes, together with penalties and interest.” Jaideep thus claimed that he was personally liable for taxes in the amount of \$163,355.08, and that he had received notices of delinquency from the New York State Department of Taxation and Finance and the Internal Revenue Service.

Jaideep further claimed that he personally guaranteed loans from GE Capital (“GE”) to INC and LLC which have gone unpaid, resulting in a lawsuit against him. The Gade Plaintiffs submitted a copy of a June 30, 2009 judgment awarded to GE by an Arizona state court against LLC, Gade, Ponnaluri and Jaideep in the principal amount of \$205,755.74, plus interest, fees and costs. A judgment was entered in the same amount by this Court on July 27, 2010. Gade alone entered into a settlement agreement with GE, in the amount of \$285,000, on February 15, 2011. GE then assigned the underlying loan to Gade.

According to the franchise agreements (paragraph 5.2.5), the franchisees were required to maintain a complete set of accounting and tax records, including, but not limited to, daily cash register tapes, cash disbursement journals, weekly inventories, and business tax returns. Jaideep contended that “Gade did not meet his obligations as Designated Representative and active partner.” Jaideep conceded that he visited the two stores regularly and did their bookkeeping from October 2004 to July 2005. His increased participation followed the execution of a letter agreement, dated

September 27, 2004, between Gade and Jaideep, in partnership with nonparty Eppanapally to give Jaideep and Eppanapally the right of first refusal on, and an option to purchase, the assets of LLC and INC. No sales transaction ever resulted from this agreement.

In August of 2005, Gade purchased Ponnaluri's interests, according to two checks to Ponnaluri totaling \$150,000, annotated as "payment for Dunkin Donuts partnership." Shortly before that, Karthik B. Dhama ("Dhama"), the fourth owner of the two restaurants, transferred his interest in them to Gade, in exchange for a waiver of debts to Gade. Thus, by the end of August, 2005, Gade and Jaideep owned 80% and 20% of the two entities, respectively. However, Jaideep alleged that, by that time, Gade "cut [him] out of the franchises and [he] did not receive any K-1s or tax returns." Yet, when they had occasional subsequent encounters, Gade allegedly advised Jaideep "that he was trying to sell the franchises and that business was ok."

Jaideep alleged that, in late 2007, Gade told him that he had a buyer for the two stores at \$1.1 million. The actual sale took place more than one year later, although the papers submitted did not establish exactly when. An agreement to transfer by sales of assets, executed by INC and LLC as sellers, represented by Gade, Jaideep, Ponnaluri, and Dhama, and Tringle, represented by Islam, as buyer, was dated November 12, 2009. However, Jaideep submitted an undated page of different signatures, including his own, Gade's, Dhama's and Ponnaluri's, countersigned by Islam, Tringle's president, which he claimed was presented as the sales contract with Tringle, and its managing partner, Biswajit Sarwah ("Sarwah"), a nonparty in both actions. The Gade plaintiffs also submitted sales contracts between Tringle and LLC and INC, dated June 19, 2008, bearing the signatures of Gade, Jaideep, Ponnaluri, Dhama, Islam and Sarwah.

Jaideep claimed that Gade used a forged power of attorney, dated March 23, 2009, notarized by Villalba, in Jaideep's stead at the closing. Jaideep submitted a copy of his passport, allegedly

showing that he was in India from March 12 through 29, 2009. However, this Court was unable to discern these dates due to the poor quality of the photocopy of the exhibit.

Despite Jaideep's claim that Gade was using a forged power of attorney on or after March 23, 2009 to close the sale of the two businesses, Gade wrote a letter to an attorney, dated February 27, 2009, asserting that he sold the two business to Tringle, and asking for a release of \$100,000 from escrow to Villalba, as Tringle's attorney. Another letter by Gade, dated September 11, 2009, explained in greater detail the request for the \$100,000, but also omitted mention of the date of sale. Gade's motion and deposition testimony also failed to set forth a date of sale.

Gade testified that he had no lawyer with him at the closing, and that he "signed Jaideep's name on the closing date." Gade testified that he was unaware of the purported power of attorney, and that he had never seen it when copies were shown to him. Further, he contended that Jaideep "refused to come" to the closing, which, he was told, allowed him to sign for Jaideep.

Responding to Jaideep's claim to the sales proceeds, Gade testified at his deposition that Islam had never paid him (Gade) "any money from which [he] sold the stores." Gade promised that "I will give [Jaideep] his 20 percent share if I get any money from [Islam]."

By notice of motion dated May 9, 2014, the Gade Plaintiffs moved for summary judgment seeking inter alia, summary judgment against Islam and Tringle or the dismissal of the complaint against them. In support of the motion, the Gade Plaintiffs asserted, inter alia, that Jaideep failed to establish that they breached any duty to Jaideep and that he has thus failed to establish his causes of action for fraud, breach of contract, and breach of fiduciary duty. The Gade Plaintiffs further asserted that Jaideep's claim for punitive damages had no merit.

By notice of cross motion dated August 4, 2014, Jaideep sought summary judgment on his

complaint's first cause of action for rescission and return of his investments and loans, in the amount of \$499,340.01, on the seventh cause of action for indemnification, in the amount of \$9,655.00, and for summary judgment on liability on the remaining causes of action. The motion also sought dismissal of Gade's counterclaims asserted in his answer to Jaideep's complaint, dated October 21, 2013.

In support of his cross motion, Jaideep asserted that Gade did not keep standard accounting records, failed to file timely tax returns, understated sales for sales tax purposes, did not repay Jaideep's loans, and that over \$2.5 million was missing from the franchises. Jaideep submitted an affidavit from Emilio Martinez ("Martinez"), a certified public accountant, as an expert witness on the accounting issues raised by Jaideep's complaint. Much of Martinez's analysis dealt with Gade's alleged lack of "due care and loyalty in operating and meeting his obligations." Martinez faulted Gade for late payments of the entities' sales tax liabilities, and late payments of income taxes. Martinez questioned why Islam drew such a high salary in 2008, a time by which Islam had presumably replaced Gade in operating the franchises. Martinez raised substantial concerns about the disposition of the proceeds from the sales of the entities, the repayment of the loan to GE Capital, and funds from the sales of the stores which were undeposited or unaccounted for. He estimated that the missing funds totaled more than \$2.5 million. Specifically, he stated that there were approximately \$1,324,587 in alleged undeposited funds from sales, and \$800,000 in "sales proceeds which either have not been collected or have not been accounted for." While a chart prepared by Martinez comparing sales figures from a sales tax audit for 2006-2009 with bank deposits for the period indicated a discrepancy of \$1,066,171, it did not address the missing \$800,000.

Jaideep argued that he was entitled to equitable rescission of his interest in LLC and INC in

order “to undo the wrong and put the parties in status quo [ante].” That is, he sought the return of the money that he invested in the franchises, and the loans that he allegedly made to LLC and INC.

This Court’s Order of February 25, 2015

In an order dated February 25, 2015, this Court denied the motion by the Gade Plaintiffs in its entirety holding, inter alia, that they failed to establish their prima facie entitlement to summary judgment dismissing the complaint against them or to relief on their causes of action for breach of contract and fraud against Islam and Tringle. This Court did not specifically address whether Jaideep was entitled to punitive damages.

This Court further held that Jaideep failed to establish his prima facie entitlement to summary judgment on his cause of action for rescission and return of his investments. It reasoned that the fraud that Jaideep complained of concerned the ultimate sale of the franchises to Islam, and not his initial investment in, or subsequent financial support of, the franchises. Jaideep did not allege fraud in his contracting to become a passive investor in the franchises, memorialized by LLC’s franchise agreement, dated May 29, 2003, and INC’s franchise agreement, dated May 10, 2004, which would have been the agreements subject to rescission. Jaideep conceded that the sale to Islam was made without his permission or participation and, thus, while he may have been damaged by the transaction, he was not falsely induced to be a party to it.

This Court also denied that branch of Jaideep’s cross motion seeking summary judgment against Gade on his two causes of action for breach of fiduciary duty (one against INC and one against LLC) on the ground that Jaideep failed to establish that he was damaged by Gade’s alleged misconduct.

Further, this Court held that Jaideep failed to establish his prima facie entitlement to summary judgment on his breach of contract claim. The Jaideep Complaint alleged only that “Gade breached his promise to repay Jaideep for his loans to LLC and [INC] from the proceeds of the sale of the Duncan [sic] Donuts franchises.” In so holding, this Court reasoned that the incomplete transcript of Gade’s deposition annexed to Jaideep’s motion only mentions Gade’s obligation to pay Jaideep his 20% share of the proceeds of the sale of assets, not repayment of any loans.

Additionally, this Court denied that branch of Jaideep’s cross motion seeking summary judgment on his claim for fraud, finding that the claim was insufficiently pleaded.

Jaideep also moved for dismissal of the Gade counterclaims, which charged him with breach of fiduciary duty, breach of contract, breach of duty of good faith and fair dealing, negligent misrepresentation, unjust enrichment, conversion, and breach of duty of loyalty, and request contribution and indemnification, and enforcement of the Arizona judgment owned by Gade.

The Gade counterclaims were based on the allegation that “Jaideep acquired the Dunkin Donuts stores . . . managing them for his own benefit in September 2004 and to the exclusion of Gade and Gade’s interests.” This role allegedly resulted from Jaideep “orally contract[ing] to buy the Dunkin Donuts stores pursuant to an option agreement.” The claims of breach of fiduciary duty, breach of contract, breach of duty of good faith and fair dealing, negligent misrepresentation, unjust enrichment, conversion, and breach of duty of loyalty all emanated from the alleged contractual relationship between Jaideep and Gade.

The September 27, 2004 agreement, in fact, gave Jaideep and Eppanapally “a right of first refusal . . . [and] the option to purchase all of the assets and the Dunkin’ Donuts franchises owned, licensed and/or leased by” LLC and INC. The Gade counterclaims failed to acknowledge that no

sale to Jaideep, alone or in combination with others, ever took place. They conceded that “Jaideep continued to manage the Dunkin Donuts stores until the end of February, 2006” and alleged that “[a]t some time after the end of February, 2006, the shareholder/membership interests in INC and LLC were transferred back to Gade with the consent of Jaideep.” Jaideep asserted that, in or about June of 2005, he became a “passive member without any active role in the management or business affairs of LLC,” and “a passive shareholder without any active role in the management or business affairs of INC.” This closely comported with the letter that the attorney for both businesses wrote to Dunkin’ Donuts, dated July 11, 2005, stating that Jaideep “functioned – and [would] continue to function – solely as a passive investor.”

This Court held that, since Gade conceded that Jaideep’s active participation in the two franchises ended in late February of 2006, and because Gade’s answer was filed no earlier than October 21, 2013, seven-and-a-half years after Gade resumed control of the franchises, most of the causes of action in the Gade counterclaims were time-barred by the six-year statute of limitations set forth in CPLR 213(2). Once he became no more than a passive investor, explained this Court, Jaideep had no legally enforceable duties to Gade or the businesses, as alleged in the Gade counterclaims. Thus, except for the causes of action for contribution and indemnification and enforcement of an Arizona judgment against inter alia, Jaideep and Gade, discussed below, that branch of Jaideep’s motion for summary judgment dismissing the Gade counterclaims as untimely was granted.

The remaining Gade Counterclaims were based on an equipment promissory note, dated January 26, 2004, in the amount of \$445,000, between GE and LLC, signed by Jaideep and Ponnaluri, as directors of LLC, and an associated loan and security agreement, dated January 26,

2004, between GE and LLC, signed by Jaideep, Gade, Ponnaluri and Dhama, as guarantors of the \$445,000 equipment loan. On June 30, 2009, an Arizona court defaulted LLC, Gade, Ponnaluri and Jaideep on the loan, and entered judgment against them for \$205,755.74, plus interest, costs and fees. According to a copy of a settlement agreement and a check submitted by Gade, Gade paid \$285,000 to resolve that matter, on or about February 16, 2011. Consequently, GE assigned the “Loan Documents” and its “remaining rights and interest in the Lawsuits and Judgments” to Gade. Gade’s counterclaim alleged that “Jaideep and Gade share the responsibility for satisfying the GE Capital judgments in proportion to their interests in LLC and INC,” thereby obliging Jaideep to pay Gade 20% of the \$285,000 settlement.

Jaideep argued that the “[GE] loan was intimately tied to the franchise agreements and the franchises.” He maintained that Gade’s request for compensation was “simply ludicrous since at the very least his actions in mismanaging the Franchises has resulted in our failure to make the necessary payments and a loss many times greater.” Jaideep contended that “Gade’s actions reek[ed] of bad faith, fraud, and unconscionable conduct,” and required him to bring his lawsuit. According to Jaideep, Gade’s unclean hands warranted the denial of his request for payment of a part of the GE loan. This Court determined that the claims concerning the financing, operation and disposition of the two franchises left many issues of material fact unresolved, thereby requiring the denial of that branch of Jaideep’s motion to dismiss Gade’s counterclaims involving the GE loan.

CONTENTIONS OF THE PARTIES:

The Gade Plaintiffs argue that they are entitled to reargument of their motion and Jaideep’s cross motion for summary judgment and that, upon reargument, this Court should grant that branch

of their motion seeking to dismiss Jaideep's claim for punitive damages. They further assert, inter alia, that, upon reargument, this Court should deny the branch of Jaideep's cross motion seeking dismissal of the counterclaims of the Gade Plaintiffs as time barred. Finally, they assert that, in its discretion, this Court should treat their motion as one to renew.

Jaideep opposes the motion and cross moves for reargument only as to that portion of the February 25, 2015 order which denied him summary judgment as to liability on his causes of action against Gade for breach of fiduciary duty. In support of his cross motion, Jaideep asserts that this Court erred in finding that Gade did not breach his fiduciary duty because it did not analyze all of the elements of the said cause of action, but merely concluded that Gade did not cause Jaideep damages.

In opposition to the cross motion, the Gade Plaintiffs assert that there is no evidence of any breach of a fiduciary duty by Gade.

LEGAL CONCLUSIONS:

A motion for leave to reargue, pursuant to CPLR 2221(d), "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." Such motion "is addressed to the sound discretion of the court." *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22 (1st Dept 1992), *lv dismissed*, 80 NY2d 1005 (1992), *rearg denied*, 81 NY2d 782 (1993). Reargument is not designed or intended to afford the unsuccessful party successive opportunities to reargue issues previously decided (*see Pro Brokerage v Home Ins. Co.*, 99 AD2d 971 [1st Dept 1984]), or to present arguments different from those originally asserted. *See William P. Pahl Equip. Corp.*, 182 AD2d at 27; *Foley v Roche*, 68 AD2d 558 (1st Dept 1979); *Amato v Lord*

& Taylor, Inc., 10 AD3d 374 (2d Dept 2004). On reargument, the court's attention must be drawn to any controlling fact or applicable principle of law which was misconstrued or overlooked. See *Macklowe v Browning School*, 80 AD2d 790 (1st Dept 1981). Professor David Siegel succinctly instructed that a motion to reargue "is based on no new proof; it seeks to convince the court that it was wrong and ought to change its mind." Siegel, NY Prac § 254, at 449 (5th ed 2011).

The Gade Plaintiffs' Motion For Reargument

The Gade Plaintiffs are granted reargument only to the extent that they seek reargument of that branch of their underlying motion which requested dismissal of Jaideep's claim for punitive damages. Since this Court's order of February 25, 2015 did not address this branch of the motion, it was implicitly denied. See *Klansky v Weiden Lake Prop. Owners Assn., Inc.*, 127 AD3d 1439 (2015). However, summary judgment dismissing the claim should have been granted, since Jaideep is not entitled such extraordinary damages. "It is well-established that punitive damages are not available for a private wrong, breach of contract, and ordinary fraud (citations omitted)." *Mom's Bagels of New York, Inc. v Sig Greenbaum, Inc.*, 164 AD2d 820, 822 (1st Dept 1990). Thus, upon reargument of this branch of the motion by the Gade Plaintiffs, Jaideep's claim for punitive damages is dismissed.

However, the motion is otherwise denied. The Gade Plaintiffs are not entitled to reargument on their contention regarding the timeliness of their counterclaims against Jaideep. As noted above, this Court concluded that, since Gade conceded that Jaideep's active participation in the two franchises ended in late February of 2006, and because the Gade Plaintiffs' answer was filed no earlier than October 21, 2013, seven-and-a-half years after Gade resumed control of the franchises,

most of the causes of action in the Gade Plaintiffs' answer were time-barred by the six-year statute of limitations set forth in CPLR 213(2). Once he became no more than a passive investor, explained this Court, Jaideep had no legally enforceable duties to Gade or the businesses, as alleged in the Gade Plaintiffs' counterclaims. Thus, except for the causes of action for contribution and indemnification, and that relating to the enforcement of the Arizona judgment, that branch of Jaideep's motion for summary judgment dismissing the Gade Plaintiffs' counterclaims as untimely was properly granted.

The Gade Plaintiffs also argue that this Court, in its discretion, should consider this motion as one to renew because new evidence introduced as a result of "procedural issues" arising from "multiple index numbers" warrants such relief. However, since they fail to specify any such evidence or why it warrants such relief, this branch of their motion must be denied.

Jaideep's Cross Motion For Reargument

As noted above, Jaideep asserts in support of his cross motion for summary judgment that this Court erred in finding that Gade did not breach his fiduciary duty because it did not analyze all of the elements of the claims based on the said causes of action. Specifically, he takes umbrage with the fact that this Court found that Gade did not cause Jaideep damages, which is one of the elements of a cause of action for breach of fiduciary duty. Jaideep is correct. In denying Jaideep's cross motion, this Court mentioned that his expert, Emilio Martinez, a certified public accountant, submitted an affidavit in which he addressed Gade's alleged lack of "due care and loyalty in operating [the stores] and meeting his obligations." Martinez Aff., at par. 32. Martinez also opined that Gade made late payments for the entities' sales tax liabilities and late income tax payments.

Thus, Martinez established a prima facie claim of breach of fiduciary duty against Gade, since he showed that Jaideep and Gade had a fiduciary relationship, that Gade committed misconduct, and that Gade's misconduct damaged Jaideep. *See Pokoik v Pokoik*, 115 AD3d 428, 429 (1st Dept 2014). However, since material issues of fact exist regarding whether Jaideep's damages arose from Gade's actions and, if so, what those damages are, Jaideep is not entitled to summary judgment on his causes of action for breach of fiduciary duty.

This Court finds the remainder of the parties' contentions to be without merit.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the motion for reargument by Sreenivassa Reddy Gade, Jaisrikar, LLC and Jaisrikar 2, Inc. is granted to the extent that this Court reconsiders that branch of the motion for summary judgment by the said defendants seeking to dismiss the punitive damages claim asserted against them by plaintiff Jaideep Reddy; and it is further,

ORDERED, that upon reargument, that branch of the motion by defendants Sreenivassa Reddy Gade, Jaisrikar, LLC and Jaisrikar 2, Inc. seeking summary judgment pursuant to CPLR 3212 dismissing the punitive damages claim asserted against them by plaintiff Jaideep Reddy is granted; and it is further,

ORDERED that the motion for reargument by defendants Sreenivassa Reddy Gade, Jaisrikar, LLC and Jaisrikar 2 is otherwise denied; and it is further,

ORDERED that the motion for renewal by defendants Sreenivassa Reddy Gade, Jaisrikar, LLC and Jaisrikar 2 is denied; and it is further,

ORDERED that the cross motion for reargument by plaintiff Jaideep Reddy is granted and that, upon reargument, the motion for summary judgment by plaintiff Jaideep Reddy on his causes of action for breach of fiduciary duty is denied in all respects; and it is further,

ORDERED that this constitutes the decision and order of the court.

DATED: June 23, 2015

ENTER:

A handwritten signature in black ink, appearing to read 'Kathryn E. Freed', is written over a horizontal line.

HON. KATHRYN E. FREED, J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**