

**National Union Fire Ins. Co. of Pittsburgh, PA v
Razzouk**

2022 NY Slip Op 31276(U)

April 14, 2022

Supreme Court, New York County

Docket Number: Index No. 653191/2012

Judge: Margaret Chan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 49

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NATIONAL UNION FIRE INSURANCE COMPANY OF
PITTSBURGH, PA, AS SUBROGEE OF CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC., and
CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC.,

INDEX NO. 653191/2012

MOTION DATE 06/08/2021,
06/08/2021

MOTION SEQ. NO. 019 020

Plaintiffs,

- v -

SASSINE RAZZOUK, GRACE RAZZOUK, DANIELLE
RAZZOUK, MONIQUE RAZZOUK, RUDELL &
ASSOCIATES, INC., MDM CAPITAL, INC., RUDICON
POWER CORPORATION, and RODOLFO QUIAMBAO,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 019) 402, 403, 404, 405, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 513, 515, 516, 517, 518, 519, 520, 521, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634

were read on this motion to/for JUDGMENT - SUMMARY & PARTIAL SUMMARY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 020) 407, 408, 409, 410, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 514, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604

were read on this motion to/for JUDGMENT - SUMMARY

In this action, plaintiff Consolidated Edison Company of New York, Inc. (Con Ed) and its insurer, plaintiff National Union Fire Insurance Company of Pittsburgh, PA (National Union), seek to recover amounts connected to an alleged kickback and bribery scheme. Two motions and two cross motions are before this court, which are consolidated for disposition.

In Motion Sequence 019, plaintiffs move for partial summary judgment on their causes of action for breach of fiduciary duty (Count 2 of the Second Amended Verified Complaint) against defendant Sassine Razzouk (Razzouk) and unjust

enrichment (Count 5) against Razzouk and his wife, co-defendant Grace Razzouk, both of whom oppose the motion.

In Motion Sequence 020, Con Ed moves for (i) partial summary judgment on its cause of action for aiding and abetting breach of fiduciary duty (Count 15) against defendant Rodolfo Quiambao, and (ii) dismissal of the affirmative defense of extortion of defendants Rudell & Associates (Rudell), Rudicon Power Corporation (Rudicon), and Quiambao (all three together, the Rudell defendants). The Rudell defendants oppose the motion. Rudell cross moves for summary judgment dismissing the causes of action for breach of contract (Count 9), money had and received (Count 10), contract rescission (Count 11), and unjust enrichment (Count 13). Quiambao and Rudicon cross move for summary judgment dismissing all claims alleged against them.

Background

Con Ed is a regulated utility that provides electric, gas, and steam to residents in the five boroughs of New York City and Westchester County (NYSCEF # 404 – Rule 202.8-g Statement, ¶ 1). National Union insured Con Ed under a commercial crime policy that covered Con Ed for losses resulting from employee dishonesty. Pursuant to the policy, National Union reimbursed Con Ed for certain losses sustained as a result of the defendants' actions, in exchange for which Con Ed assigned to National Union any claims it had against the defendants, such that National Union is legally and equitably subrogated to Con Ed's rights against the defendants (*id.*, ¶'s 73-75).

Razzouk was Con Ed's employee from 1984 until 2011 (*id.*, ¶ 2). He was a section manager in Con Ed's Electrical/Control Systems Design Section from 2003 to 2011 (*id.*, ¶ 3). In this position, he oversaw the design of electrical control systems, which included the review of bids and technical proposals, the awarding of contracts to design/engineering contractors, and the approval of payments to these contractors (*id.*, ¶ 4). Quiambao is an engineer who began his career in the areas of civil, piping, hydraulics, and nuclear engineering (NYSCEF # 463 - Rudell defendants' Rule 202.8-g Statement for MS 020, ¶ 1). Quiambao formed Rudell in 1988, which contracted for work from Con Ed (*id.*, ¶'s 6-8). Quiambao owned Rudicon as well (NYSCEF # 553 - Quiambao Tr Dec 4, 2020 at 524:25–525:2).

On January 14, 2009, several Con Ed employees (excluding Razzouk) were arrested for soliciting and accepting kickbacks from contractors (NYSCEF # 411, ¶ 14). Con Ed thereafter held a meeting to discuss legal and ethical rules, and consequences, including Con Ed's response to the arrests. Quiambao attended that meeting (NYSCEF # 463, ¶'s 16-18).

Until January 2009, Quiambao had made payments through Rudell to Razzouk's company, MDM Capital, Inc. (MDM) (NYSCEF # 411, ¶ 25; NYSCEF # 426 at 27:19-21). After January 2009, Quiambao began routing payments to MDM through Rudicon (*id.*, ¶ 26; NYSCEF # 575 at 111:3-112:8). Certain checks referenced projects Rudell had performed for Con Ed under Razzouk's supervision (NYSCEF # 411, ¶ 27).

Razzouk was arrested in January 2011 after a government investigation unveiled Quiambao's payments (NYSCEF # 618 - Sentencing Tr, Apr 3, 2011, at 33:5-6). On June 10, 2011, Razzouk pled guilty to acceptance of bribes in violation of 18 USC § 666 (a) (1) (b) and three counts of tax evasion in violation of 26 USC § 7201 for calendar years 2007, 2008, and 2009 (NYSCEF # 608 at 30 - Tr of Razzouk Plea, June 10, 2011). Razzouk's part in "the criminal scheme involved awarding contracts to the Rudell defendants in exchange for Razzouk's approval for post-contract changes to inflated project costs, overcharges, and bills for nonexistent work" (NYSCEF # 206 - Decision and Order of this court dated Jan. 30, 2018, at 2). This criminal scheme occurred from January 2006 to January 2011 (NYSCEF # 47, ¶ 1). For his plea, the District Court for the Eastern District of New York sentenced Razzouk on April 3, 2018, to seventy-eight months for the bribery count and sixty months for the tax evasion counts, all to run concurrently (*id.* at 34:24; NYSCEF # 425 - Tr of Criminal Cause for Sentencing at 69:1-5). Razzouk's appeal of his sentence was unsuccessful (*U.S. v Razzouk*, 828 Fed Appx 773 [2020]).

On March 16, 2016, Quiambao admitted and pled guilty to bribing two other Con Ed employees, to attempted tax evasion charges for both 2009 and 2010 related to concealing payments to Razzouk and the other two Con Ed employees in Rudell's and Rudicon's books and records and to filing with the IRS false and fraudulent income tax returns (NYSCEF # 463, ¶'s 32, 36; NYSCEF # 584 - Quiambao Tr of Pleading 9:17-25). The federal government had brought charges against Quiambao for bribing Razzouk but ultimately dropped those charges after Quiambao set up a meeting with Razzouk who, at this meeting, tried to obtain Quiambao's cooperation by characterizing the bribe payments as consulting fees (*id.*, ¶ 39). Quiambao was sentenced to forty-eight months of incarceration on the bribery counts for the other two Con Ed Employees and forty-eight months on the attempted tax evasion counts for 2009 and 2010, all to be served concurrently (NYSCEF # 585 - Quiambao Transcript of Criminal Cause for Sentencing, at 26:15-19).

The Rudell defendants produced cancelled checks during discovery showing that Quiambao paid Razzouk \$8,178,184.86 between 2006 and 2011 (NYSCEF # 463, ¶ 59). Razzouk has paid certain amounts in restitution related to his criminal case (NYSCEF # 411, ¶'s 34, 43). Quiambao has also paid certain amounts in restitution related to his criminal case to the Internal Revenue Service for his tax evasion charges (NYSCEF # 297 at 28:3-10 - Quiambao Tr of Criminal Cause for Sentencing, Apr 3, 2018).

National Union filed this action on September 12, 2012, and Con Ed joined as of December 14, 2012. Originally, plaintiffs sought to establish liability against defendants respecting bribes alleged to have been made between 2008 and 2010 (NYSCEF # 2 - Complaint, ¶ 18-23), but, through discovery, plaintiffs learned in October 2016, about additional payments dating back to 2002 (NYSCEF # 161 - Pltf's MOL to Amend Complaint, at 2), so plaintiffs moved to amend their complaint to add claims for those additional years, which this court granted (NYSCEF # 207). Quiambao later testified that his payments to Razzouk actually began in October of 1992 (NYSCEF # 553 at 569:3-5).

In connection with MS 019, plaintiffs move for summary judgment on their claim against Razzouk for breach of fiduciary duty and seek the return of all the compensation Con Ed paid Razzouk from January 2006 to January 2011 (\$968,340.06); the disgorgement of all bribes Razzouk accepted from Quiambao during that time (\$8,178,184.86); the payment of \$6,059,801 in alleged losses that Con Ed suffered because of the bribery scheme during that time; \$15,206,325.90 in punitive damages; and statutory pre-judgment interest on the compensatory damages (NYSCEF # 517 at 24).

Plaintiffs also seek summary judgment on their unjust enrichment claim against Grace Razzouk and the divestment of her interest in the Razzouks' New Jersey home, which plaintiffs claim was funded through Razzouk's bribery scheme (*id.* at 25; NYSCEF # 500 - forensic accounting report of Howard A. Zandman of Aprio, LLP, March 19, 2018 at 9-10). Plaintiffs assert that Grace Razzouk did not pay fair market value for the house, that she benefited from the bribery scheme, and that she will be unjustly enriched if she is able to keep her ownership interest in the house (NYSCEF # 517 at 24). Plaintiffs claim that "[w]ith the money from the bribery scheme, Mrs. Razzouk enjoyed a lavish lifestyle that included luxury cars and a second house, which is the subject of this litigation" (NYSCEF # 520 at 1).

In connection with MS 020, plaintiffs move for summary judgment on the claim against Quiambao for aiding and abetting a breach of a fiduciary duty and seek dismissal of the Rudell defendants' affirmative defense of extortion. They also seek an order directing the Rudell defendants to pay plaintiffs, jointly and severally with Razzouk, the following amounts: \$8,178,184.86, \$968,340.06, and \$6,059,801 constituting, respectively, alleged bribe payments, compensation, and alleged losses; disgorgement of alleged \$6,564,421 in profits to Quiambao's companies; punitive damages of \$21.8 million; and statutory, pre-judgment interest on the compensatory damages (NYSCEF # 410 at 26).

Discussion

A party moving for summary judgment must make a *prima facie* showing that it is entitled to judgment as a matter of law (*see Alvarez v Prospect Hosp.*, 68

NY2d 320, 324 [1986]). Once a showing has been made, the burden shifts to the party or parties opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). On a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*see Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Grossman v Amalgamated Haus. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]). “A motion for summary judgment, irrespective of by whom it was made, empowers a court to search the record and award judgment where appropriate” (*GHR Energy Corp. v Stinnes Interoil Inc.*, 165 AD2d 707, 708 [1st Dept 1990]). “It is not the court’s function on a motion for summary judgment to assess credibility” (*Ferrante v Am. Lung Assn.*, 90 NY2d 623, 631 [1997]).

MS 019 – Breach of Fiduciary Duty against Defendant Razzouk (Count 2)

Plaintiffs assert that they are entitled to summary judgment on their cause of action for breach of fiduciary duty against Razzouk as he breached his duty owed to Con Ed as its employee by engaging in a criminal bribery scheme as conclusively established by his guilty plea and that the doctrine of collateral estoppel precludes him from denying his unlawful acts. Moreover, plaintiffs argue that based on the faithless servant doctrine Con Ed may recover all of the compensation it paid to Razzouk during the period of his disloyalty plus the amount of the bribe payments he received (NYSCEF # 521 at 7). At this stage, Con Ed is only seeking recovery for amounts accruing between 2006 and 2010 because this motion “is based on Razzouk’s guilty plea” (NYSCEF # 517 at 4).

Razzouk counters that he has already paid \$7,015,809 in restitution to plaintiffs in the federal court criminal case, and that the total amount of losses plus his salary adds up to \$6,878,164.72, so that Con Ed has already been made whole (NYSCEF # 416 at 5-6). Razzouk further argues that plaintiffs should be estopped from seeking more than they were awarded in the criminal case because plaintiffs “had a full and fair opportunity to litigate these issues in the federal court and they did” and because plaintiffs were allegedly in privity with the government (*id.* at 11, 14). Finally, Razzouk asserts that the punitive damages plaintiffs seek are “vindictive and designed to hurt” Razzouk’s family, “not to deter any future employees” (*id.* at 15).

“One who owes a duty of fidelity to a principal and who is faithless in the performance of his services is generally disentitled to recover his compensation, whether commissions or salary.... Nor does it make any difference that the services were beneficial to the principal, or that the principal suffered no provable damage as a result of the breach of fidelity by the agent” (*Feiger v Iral Jewelry, Ltd.*, 41 NY2d 928, 928-29 [1977] [internal citation omitted]). An employee “is prohibited

from acting in any manner inconsistent with his agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his duties” (*Bon Temps Agency Ltd. v Greenfield*, 184 AD2d 280, 281 [1st Dept 1992] [internal quotation marks omitted]). “[A]ny compensation secretly or improperly received from others beyond the compensation to which the employee is entitled is deemed to be held by him on a constructive trust for his employer” (*W. Elec. Co. v Brenner*, 41 NY2d 291, 295 [1977]; see also *Consol. Edison Co. v Zebler*, 40 Misc 3d 1230(A) [Sup Ct, NY County 2013] [granting award of both (i) one hundred percent of the compensation previously paid to a Con Ed employee (unrelated to this action) and (ii) full disgorgement of bribes paid by a Con Ed contractor to such employee]). “A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim” (18 USC § 3664 [l]). There are “two necessary requirements for the invocation of the doctrine of collateral estoppel. There must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and, second, there must have been a full and fair opportunity to contest the decision now said to be controlling” (*S. T. Grand, Inc. v City of New York*, 32 NY2d 300, 304 [1973] [citation omitted] [establishing that a criminal bribery conviction estops denial of bribery of a city employee for purposes of voiding a contract and rendering complete forfeiture]).

Here, Razzouk pled guilty to acceptance of bribes in violation of 18 USC § 666 (a) (1) (b), which conclusively establishes his breach of fiduciary duty. He is now collaterally estopped from contesting such breach (see e.g. *Nat’l Bank of Pakistan v Basham*, 148 AD2d 399, 539 [1st Dept 1989] [applying collateral estoppel and granting summary judgment on breach of fiduciary duty claim based on “defendant employee’s guilty plea to falsifying business records in support of a check-kiting scheme”]; see also *Zebler*, 40 Misc 3d 1230(A) [finding a criminal bribery guilty plea collaterally estops defendant from disputing that defendant was involved in bribery-kickback scheme, which mandates summary judgment as to breach of loyalty civil claim]). Notably, Con Ed is seeking summary judgment only with respect to years from 2006 to 2011, which is the period covered by Razzouk’s guilty plea.

It is unavailing that Razzouk (i) later sought Quiambao’s cooperation in characterizing the bribe payments as consulting fees, (ii) persisted in this explanation in depositions for this case, and (iii) attested to his alleged misunderstanding as to the meaning of his guilty plea for bribery (NYSCEF # 426 – Tr Dec 8, 2020, at 71:2-5, 71:6-24). Before taking Razzouk’s plea, the judge informed Razzouk that “once you plead guilty... and if I accept your guilty plea, you will not be allowed to withdraw your plea” to which Razzouk affirmed his understanding (NYSCEF # 608 - Guilty Plea Tr, June 10, 2011, at 28:21-23; 29:2). Razzouk’s attempts “for nine years to take that plea back” have been rejected by the Second Circuit, which concluded that his plea allocution “provided an adequate basis for the

requisite finding of corrupt intent” under 18 USC § 666 (a) (1) (b) (828 Fed Appx at 777; NYSCEF # 426 at 71:10-14)

Relying on *Doe v Hesketh* (828 F3d 159, 172 [3d Cir 2016]), Razzouk asserts that plaintiffs should be estopped from seeking more than they were awarded in the criminal case. Razzouk’s reliance for this assertion is misplaced. *Hesketh* sets out six independent categories by which to establish estoppel of a civil litigant that is a nonparty in a criminal action by virtue of the nonparty’s privity with the government. Razzouk asserts that privity should be established because of the third category because Con Ed was “adequately represented by someone with the same interests who [wa]s a party” (*id.*). Yet the court in *Hesketh* determined: “The interests of a victim and the government in a restitution determination are not sufficiently similar for a finding of privity” (*id.*), which rebuts Razzouk’s assertion that privity exists here.

The government bears “responsibility to represent the interest of society as a whole” (*id.* [quotation marks omitted]) rather than just to Con Ed, so it was not necessarily concerned with recovering the maximum it could for Con Ed in restitution. Furthermore, the government could not have attained for Con Ed all remedies available in this civil action. For instance, in this action, under the faithless servant doctrine available to Con Ed under civil law, Con Ed can assert claims for all compensation it paid to Razzouk during the period of his dishonesty, irrespective of how beneficial such services may otherwise have been or the demonstration of provable damages flowing from his dishonesty, as well as full recovery of Razzouk’s kickback payments (*Feiger*, 41 NY2d at 928-29; *W. Elec. Co.*, 41 NY2d at 295). Conversely, in the criminal action, the government could only seek restitution based on Con Ed’s actual provable loss (NYSCEF # 621 – Restitution Order of Hon. Allyne R. Ross [District Court, Eastern District, Apr. 3, 2018] at 3).

This principle limits recovery of compensation for Con Ed’s loss, measured as the “difference in the value of the services that [Razzouk] rendered and the value of the services that an honest employee would have rendered,” which Judge Ross calculated to be a twenty percent markdown (*id.* at 16-17). Such limit does not apply to this civil action, so Con Ed is free to seek the remaining eighty percent of compensation that has not been made subject to repayment (*see e.g. Stanley v Skowron*, 989 F Supp 2d 356, 364 [SD NY 2013] [offsetting compensation by amount received in restitution in criminal court proceeding]). Con Ed may also seek the amount Razzouk obtained in profits by accepting the bribes (*Samba Enterprises, LLC v iMesh, Inc.*, 2009 WL 705537, * 8, 9 [SD NY 2009], *affd* 390 Fed Appx 55 [2d Cir 2010] [holding that under New York law an agent who breaches a fiduciary duty to a principal must “disgorge any profits made as a result of the breach”]).

Razzouk also cites *State v Stokols* (234 AD2d 222 [1st Dept 1996]) for the idea that Con Ed is estopped from arguing that its losses exceed the amount that

the government established in the criminal action. But *Stokols* found estoppel as to a defendant, not a plaintiff, and, for the reasons stated above, plaintiffs are entitled to losses greater than they could have recovered via the criminal process.

While summary judgment is warranted on the breach of fiduciary duty claim for the period between January 2006 and January 2011, there remain open issues on the amount to which plaintiffs are entitled. Plaintiffs assert that Con Ed may recover for the period from January 2006 to January 2011, which are: (i) its losses pursuant to their cause of action for breach of fiduciary duty (\$6,059,801); (ii) all of the compensation it paid to Razzouk during this period (\$968,340.06); (iii) the amount of the bribe payments he received under the faithless servant doctrine (\$8,178,184.86); and (iv) punitive damages.

The first issue is whether the amounts awarding in this action should be reduced in light of the restitution that Razzouk was directed to pay in connection with the criminal matter. Here, the record shows that Razzouk was ordered to pay restitution consisting of \$5,902,661, based on losses Con Ed sustained by as a result of the bribery scheme; and \$193,668.01 for losses attributable to Razzouk's faithless work¹ (NYSCEF # 621 - Restitution Order of Judge Ross at 15, 21). Moreover, as plaintiffs assert, collateral estoppel applies to preclude Razzouk from relitigating the amount of losses found by the criminal court (NYSCEF # 405 at 19-20).

Under these circumstances, plaintiffs are not entitled to compensation for their alleged \$6,059,801 in losses² as such recovery would be duplicative of the restitution awarded in the criminal proceeding (*see Ott v Barash*, 109 AD2d 254, 263 [2d Dept 1985] [the double recovery rule limits an injured party's recovery to the actual loss suffered]; *see also* 18 USCA § 3664 [j] [2] ["[a]ny amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in-- (A) any Federal civil proceeding; and (B) any State civil proceeding, to the extent provided by the law of the State"]).

In so concluding, the court notes that while an employer may receive damages caused by an employee's dishonesty as well as compensation paid to such employee (*see e.g. Schulhof v Jacobs*, 54 Misc 3d 1221(A) [Sup Ct, NY County 2017], *affd* 157 AD3d 647 [1st Dept 2018]), such recoveries are predicated on the remedies

¹ Judge Ross initially found that Con Ed was entitled to \$771,021.50 for Con Ed's investigative work and prejudgment interest (NYSCEF # 621 at 19) but later eliminated these costs (NYSCEF # 411, ¶ 43).

² Plaintiffs seek the same amount for Con Ed's losses in this action, that is \$6,059,801, that it sought in restitution from the criminal court, which is the amount provided in the report of Con Ed's first auditing company, KPMG. Judge Ross, however, based the restitution calculation on losses of \$5,902,661 as determined by Grassi & Co., which National Union had engaged to review KPMG's findings (NYSCEF # 621 at 7-8).

sought being different (*see e.g. Robinson v De Niro*, 2021 WL 2887702 at *4 [SD NY 2021] [upholding separate relief sought under breach of fiduciary duty and faithless servant doctrine where employer sought “additional, and different, relief” consisting of, respectively, (i) return of frequent flyer miles and amounts wrongly charged on a corporate credit card, and (ii) the return of all wages, bonuses, and other compensation paid to the disloyal employee]).

Here, as Con Ed previously obtained restitution for its losses in the criminal proceeding, it cannot recover these losses a second time. In addition, to the extent plaintiffs argue that Con Ed “is entitled to a civil judgment in the full amount of its damages, and it will apply any amounts that Razzouk pays in satisfaction of the criminal restitution order toward any civil judgment awarded by this Court” (NYSCEF # 521 at 12), the court declines to award an inflated judgment (*see e.g. United States v Aumais*, 656 F3d 147, 156 [2d Cir 2011] [noting the “significant practical difficulties” if there were a need to monitor collection to avoid a victim’s recovery of more than is due]).

At the same time, Con Ed is entitled to recover Razzouk’s ill-gotten gains, including compensation and bribes he received, under the faithless servant doctrine (*see Art Capital Group LLC v Rose*, 149 AD3d 447, 449 [1st Dept 2017]) [“New York’s strict application of the faithless servant doctrine mandates the forfeiture of all compensation ... where ... one who owes a duty of fidelity to a principal is faithless in the performance of his services” [internal citation and quotation omitted]; *see also Diamond v Oreamuno*, 24 NY2d 494, 498 [1969] [“[T]he function of [a claim for breach of fiduciary duty], unlike an ordinary tort or contract case, is not merely to *compensate* the plaintiff for wrongs committed by the defendant but ... to *prevent* them, by removing from agents and trustees all inducement to attempt dealing for their own benefit” [internal citation and quotation omitted] [emphasis in the original]]. In this connection, the court notes that the criminal court judge specifically stated that the restitution may not be awarded based on substituting ill-gotten gains for actual losses (NYSCEF # 621 at 2-3). However, while Razzouk should not be permitted to keep his ill-gotten gains, considering that a portion of his gains were already awarded as restitution, Con Ed is entitled to recover \$8,178,184.86 based on the bribes Razzouk received less the amount Razzouk has paid in restitution based on the criminal court order. This is so because as “an alternative to an accounting of the disloyal employee’s gain, a calculation of what the employer would have made” – or in this case lost – “is an available measure of damages” from a breach of fiduciary duty (*Gomez v Bicknell*, 302 AD2d 107, 114 [2d Dept 2002]).

Razzouk’s analysis of *Gomez* is incorrect in suggesting that Con Ed is barred from disgorging Razzouk’s gains because Con Ed has already been awarded restitution for certain identified losses in the criminal case (NYSCEF # 416 at 12). Again, the restitution Con Ed has already received in the criminal court process

does not estop plaintiffs from seeking additional greater amounts, including disgorgement to receive “an accounting of the disloyal employee’s gain” subject to offsetting for amounts already received (*Gomez*, 302 AD2d at 114; see *New York Life Ins. Co. v Mazzarielo*, 2008 WL 4104031, at *7 [SD NY 2008] [relating to damages from bribery kickback scheme, pursuant to 18 USC § 3664 (j)(2), “any amount of the judgment that Defendants pay shall be off-set from the amount of restitution that they were ordered to pay” in criminal court]).

As for plaintiffs’ request for punitive damages, that is denied at this stage, with leave to renew at trial, as the determination “whether to award punitive damages in a particular case and the amount of such damages are questions for the trier of fact” (*Maskantz v Hayes*, 39 AD3d 211, 215 [1st Dept 2007]).

Accordingly, for the period January 2006 to January 2011, Con Ed is entitled to an award on the partial summary judgment in the amount of \$8,178,184.86, to disgorge the amount of the bribes, less the restitution Razzouk paid, the amount of which is to be determined by settling an order. In addition, Con Ed is entitled to recover \$774,672.05, which is the \$968,340.06 total compensation less the \$193,668.01 that had been awarded by the criminal court respecting Razzouk’s compensation during such period of dishonesty.

Pursuant to CPLR 5012, the court severs plaintiffs’ claim for breach of fiduciary duty, solely for the period January 2006 to January 2011, on which severed portion plaintiffs are granted judgment.

MS 019 – Unjust Enrichment against Defendant Grace Razzouk (Count 5)

Plaintiffs move for summary judgment on their unjust enrichment cause of action against Grace Razzouk, which seeks divestment of her ownership interest in a house at Buckley Road, Marlboro, New Jersey. The Razzouks assert that they closed, under their names, on their purchase of the New Jersey house on December 13, 2007. They further assert that the \$1,076,631.33 to buy the house came from Razzouk’s individual Fidelity account and that they had sufficient funds to make the purchase as far back as 1999. The Razzouks maintain that the funds for the purchase of the house were not from MDM or the bribe money (NYSCEF # 411, ¶’s 45-46). MDM took title of the house by assignment of contract from Grace and Sassine Razzouk after the closing.

Grace Razzouk testified at her deposition that, just before the closing of the New Jersey house, Quiambao suggested to her and Razzouk that they should put their house under a business name so that they can take business deductions and get tax benefits. But because it was too late to close with a company name on their title, she and Razzouk transferred the title to MDM after the closing (NYSCEF # 449 - Grace Razzouk Tr at 26:24–27:24; NYSCEF # 426 – Razzouk tr at 28:15-18).

In August of 2011, MDM transferred the New Jersey house back to the Razzouks, as tenants by the entirety, for \$1 (*id.*, ¶ 47). Grace Razzouk testified that a prosecutor advised Razzouk to “take the house out of the business name and put it back in our names” (NYSCEF # 449 at 31:9-12). This, plaintiffs allege was a “sham transaction” (NYSCEF # 517 at 24).

Plaintiffs counter that the Fidelity account included funds that were traced back to payments received from the bribery scheme (NYSCEF # 520 at 6). Per the forensic accounting report of Howard A. Zandman of Aprio, LLP of March 19, 2018, there was a \$7,419,212.21 transfer from Razzouk’s Seelaus account to the Fidelity account on November 2, 2007, just weeks prior to the closing of the New Jersey house. The Zandman report also indicated that Razzouk’s individual Seelaus account received \$2,920,000 in transfers from the Seelaus account of MDM, which in turn was funded by the Rudell defendants (NYSCEF # 500 at 9-10). Plaintiffs allege that MDM was a “sham company” used “to launder the money from the bribery scheme to pay personal expenses... [including] the property taxes on the New Jersey house” (NYSCEF # 520 at 4). Still, a question of fact remains as to whether the house was funded by MDM money.

The Razzouks respond that there can be no unjust enrichment involving the 2011 transfer because “MDM did not pay for the property in the first place” (NYSCEF # 415 at 18). The Razzouks fail to rebut the Zandman report indicating the Fidelity account was funded at least in part by money stemming from MDM and the Rudell defendants (NYSCEF # 500 at 9).

“The essential inquiry in any action for unjust enrichment ... is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. A plaintiff must show that (1) the other party was enriched, (2) at that party’s expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered” (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [citations and quotation marks omitted]).

The Razzouks’ assertion that “Con Ed fails to plead unjust enrichment” is belied by the Second Amended Complaint. A glance at the header on the claims against Grace Razzouk clearly shows “Unjust Enrichment.” The ensuing allegations are that Grace Razzouk “retained that which was generated solely as a result of the fraud perpetrated upon Con Edison” and that her “retention of these benefits violates the fundamental principles of equity, justice and good conscience” such that “Con Edison has sustained damages to Grace Razzouk’s benefit and unjust enrichment” (NYSCEF # 160, ¶’s 113-15).

The Razzouks cite *Georgia Malone & Co., Inc. v Rieder* for the idea that while “a plaintiff need not be in privity with the defendant to state a claim for unjust enrichment, there must exist a relationship or connection between the parties that

is not too attenuated” (19 NY3d 511, 516 [2012] [internal quotation marks omitted]). The Razzouks’ reliance is misplaced. As the First Department has observed: “While the Court of Appeals cautioned in *Georgia Malone* that an unjust enrichment claim will not lie if the alleged connection between the parties is ‘too attenuated’ ... the Court of Appeals has never held that such a claim will not lie against one who knowingly receives, as a gratuitous donee, the proceeds of criminal wrongdoing” (*Metro. Bank & Tr. Co. v Lopez*, 189 AD3d 443, 445 [1st Dept 2020]; see also *Avilon Auto. Grp. v Leontiev*, 194 AD3d 537, 538 [1st Dept 2021] [in case involving allegations of looting and wrongful retention of funds, rejecting dismissal of unjust enrichment claim and finding that although defendants “lacked a direct relationship with plaintiffs ... allegations support an inference that defendants knowingly received proceeds of wrongdoing and benefitted from them”]).

The Razzouks assert that the “evidence is undisputed that Grace was an innocent third party who was not involved in the business dealings between her husband and Defendant Quiambao” (NYSCEF # 415 at 9). But an unjust enrichment claim does not “require the performance of any wrongful act by the one enriched” (*Simonds v Simonds*, 45 NY2d 233, 242 [1978]). Nonetheless, the innocent third party’s knowledge of the criminal wrongdoing at the time of the transfer needs to be addressed. Grace Razzouk’s deposition raises factual questions as to whether she knew or should have known of the wrongdoing involved in Razzouk’s receipt of money from Quiambao (*Avilon Auto. Grp.*, 194 AD3d at 538; *Metro. Bank & Tr. Co.*, 189 AD3d at 321-322). As such, plaintiffs’ motion for summary judgment on their unjust enrichment claim against Grace Razzouk is denied.

MS 020 – Aiding and Abetting Breach of Fiduciary Duty against Quiambao (Count 15) and the Extortion Defense

Plaintiffs assert that the Rudell defendants knowingly participated in aiding and abetting Razzouk’s breach of his fiduciary duty to Con Ed by making and concealing bribe payments to Razzouk (NYSCEF # 410 at 17). Plaintiffs seek partial summary judgment and a judgment against the Rudell defendants, jointly and severally with Razzouk, for (i) the amounts that the Rudell defendants admit they paid to Razzouk; (ii) the compensation Razzouk received; (iii) and the losses suffered due to the scheme, all respecting years 2006 to 2011. They also seek the profits earned by the Rudell defendants as a result of Rudell’s work with Con Ed, prejudgment interest, and punitive damages.

Plaintiffs also seek summary judgment dismissing the Rudell defendants’ defense of extortion, asserting that “the Rudell Defendants cannot prove that Razzouk made any wrongful threats towards them” (NYSCEF # 410 at 25). Plaintiffs argue that “the mere allegation that Quiambao feared he might lose his business does not prove economic coercion. Economic coercion requires proof that Razzouk threatened Quiambao and that the threat deprived Quiambao of his free

will” (NYSCEF # 556 at 2). Plaintiffs suggest that Quiambao “voluntarily chose to pay Razzouk. Quiambao chose to work for Con Edison and chose to focus his practice on utilities. While he allegedly valued Con Edison business, he chose not to report the alleged request for payments to Con Edison – despite knowing that the payments were illegal” (*id.*).

The Rudell defendants claim that Razzouk extorted Quiambao by, *inter alia*, telling him “that Rudell was disfavored, that Con Edison did not want to work with minority vendors, that Rudell was hated within Con Edison, that other vendors enjoyed close relationships with Con Edison higher-ups and were rewarded with non-competitive work, and that Rudell would be forced out of business” (NYSCEF # 462 at 6). Quiambao “gave in to Razzouk’s demands for kickbacks to avoid being excluded from Con Edison’s competitive bidding process” (NYSCEF # 462 at 1). The Rudell defendants state that “Con Edison accounted for 95% of Rudell’s revenues – and given the time it would take to become qualified as a bidder for another large utility – exclusion from the Con Edison competitive bidding process would have bankrupted Mr. Quiambao’s company and resulted in the firing of more than 100 employees. Mr. Quiambao, therefore, reasonably feared that he and his company would suffer future economic harm if he did not give in to Razzouk’s demand for kickbacks” (NYSCEF # 462 at 2).

“A claim for aiding and abetting a breach of fiduciary duty requires: (1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damage as a result of the breach” (*Kaufman v Cohen*, 307 AD2d 113, 125 [1st Dept 2003]). Anyone who “knowingly participates with a fiduciary in a breach of trust is liable for the full amount of the damage caused thereby to the cestuis que trust” (*Wechsler v Bowman*, 285 NY 284, 291 [1941]). One who is liable for aiding and abetting a breach of fiduciary duty is jointly and severally liable for the damages resulting from such breach (*Visual Arts Found., Inc. v Egnasko*, 91 AD3d 578, 579 [1st Dept 2012]).

Conversely, one “who is victimized by an extortion will not be held civilly liable for the amount of such payments” (*City of New York v Liberman*, 232 AD2d 42, 44, [1st Dept 1997], *as clarified*, 248 AD2d 134 [1st Dept 1998]). The availability of an extortion defense in a civil case is analyzed by reference to the New York State Penal Law (*see e.g. City of New York v Corwen*, 164 AD2d 212, 218 [1st Dept 1990] [citing Penal Law § 155.05 [2] [e] with respect to the affirmative defense of extortion against civil liability for bribe payments], *abrogated for other reasons by City of New York v Keene Corp.*, 304 AD2d 119 [1st Dept 2003]).

NY Penal Law § 155.05 (2) (e) provides:

A person obtains property by extortion when he compels or induces another person to deliver such property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will ... (ix) Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

To establish a defense to bribery under New York law as a victim of coercion or extortion, one must prove that one has been “constrained to do what ... free will would refuse” (*City of New York v Balkan, Inc.*, 656 F Supp 536, 547 [ED NY 1987]). “[T]he distinction between bribe and extortion is a fine one,” and “in a bribery case there is never an aspect of coercion on the part of the bribee” (*People v Kacer*, 113 Misc 2d 338, 342 [Sup Ct, NY County 1982] [quoting *United States v Hall*, 536 F2d 313, 321 [10th Cir 1976]). These cases require an analysis into the circumstances of each payment (*Liberman*, 232 AD2d at 44; see e.g. *United States v Capo*, 817 F2d 947, 952 [2d Cir 1987] [dismissing extortion defense at the summary judgment stage where willing participants who sought to secure the defendants’ assistance in order to improve their chances of obtaining a job had paid the defendants without threat of harm if they did not pay]).

Plaintiffs have made out a prima facie case that Quiambao aided and abetted Razzouk’s breach of fiduciary duty in that (1) Razzouk breached his fiduciary obligations to Con Ed, (2) Quiambao knowingly induced and participated in the breach by his awareness that paying an employee of Con Ed without telling Con Ed was illegal at all times (NYSCEF # 575 at 64:16-19), and (3) Con Ed suffered damages as a result of the breach because of the admitted wrongful payments (*Kaufman*, 307 AD2d at 125; see e.g. *Cont’l Mgmt., Inc. v United States*, 527 F2d 613, 618 [Ct Cl 1975] [for a bribery claim, “it is enough to show the fact and amount of the bribes—nothing further need be alleged or proved by way of specific or direct injury”]; see also *Donemar, Inc. v Molloy*, 252 NY 360, 365 [1930]).

The Rudell defendants have not controverted this showing nor have they raised a triable issue of fact based on the extortion defense. The evidence, including Quiambao’s testimony, clearly establishes that Quiambao has not been “constrained to do what free will would refuse” (*Balkan, Inc.*, 656 F Supp at 547 [declining to dismiss based on the defense of extortion or coercion where the complaint alleged that defendants were “free to report the corrupt sewer inspectors [receiving kickbacks], but preferred to enter into a quid pro quo arrangement to further their own interests”]), including because it would be patently unreasonable to conclude that Quiambao’s free will was deprived over a nearly twenty-year period during which Quiambao acknowledges that Razzouk made no threats and Quiambao was richly rewarded for his work with Razzouk.

Quiambao denied that Razzouk “constantly threatened” Quiambao or his business (NYSCEF # 553 at 652:13-18). Quiambao agreed that in 1992 when Razzouk first demanded money, Razzouk “did not then threaten me” but rather he relayed a “threat from outside” from upper management (NYSCEF # 575 at 29:11-14, 90:3-91:13). While Quiambao testified about what Razzouk could do to “destroy” Quiambao and his company if he did not pay Razzouk, -- “He can bad mouth me. He can give me problems with the projects I’m doing. He can discredit me. He can take me out from the bidders’ list” (NYSCEF # 620 at 316:25–317:6; *see also* 308:9-15; 313:22–314:3) -- Quiambao has not stated that Razzouk even made implied threats to exercise this power in any way. And evidence of Razzouk’s “general reputation... is insufficient to establish extortion ... in the absence of any evidence of implicit threats ... to harm the business or person of the [payor]” (*People v Capparelli*, 158 Misc 2d 996, 1005 [Sup Ct, NY County 1993]). For this reason, Quiambao’s alleged fear of future economic harm if he were to report Razzouk to Con Ed (NYSCEF # 620 at 262:22–63:3) is without merit.

Even accepting *arguendo* Quiambao’s statement that “the time it would take to become qualified as a bidder for another large utility” (NYSCEF # 462 at 2), Quiambao’s argument fails because Quiambao had nearly two decades from the first alleged payment to Razzouk in October 1992 to 2011 when he was caught. Quiambao’s failure to break off his dealings with Razzouk reveals his complicity in the bribery scheme (*see e.g. Edison Stone Corp. v 42nd St. Dev. Corp.*, 145 AD2d 249, 253 [1st Dept 1989] [duress as a contractual defense waived where nineteen payments made over three-year period]; *see also People v Dioguardi*, 8 NY2d 260, 273 [1960] [internal quotation marks omitted] [“the essence of extortion is duress”]). For similar reasons, Quiambao’s testimony that Razzouk “convinced me that the upper management is trying to get rid of [Rudell] and they are trying to discredit us... [and] that he’s the only guy who can protect me” (NYSCEF # 620 at 327:19-23) is insufficient on this record to establish extortion, particularly where, even after several Con Ed employees unrelated to this action were arrested for soliciting and accepting bribes from contractors (NYSCEF # 463, ¶ 16). And after Quiambao was reminded that Con Ed “employees were not allowed to take any gifts or benefits” (NYSCEF # 576 at 155:13-16), Quiambao chose to continue the scheme (*compare Capparelli*, 158 Misc 2d at 999 [extortion established where, *inter alia*, defendant warned victims that if they revealed his organized crime ties “the consequences could be fatal”]).

The Rudell defendants’ reliance on *Kraft Gen. Foods, Inc. v Cattell* (18 F Supp 2d 280 [SD NY 1998]) is also unavailing. In *Kraft*, the court denied summary judgment after finding factual questions as to defendant’s extortion defense, including based on evidence that the recipient of the bribes (i) directly controlled the defendant’s access to working with plaintiff, (ii) threatened that she would cut defendant off unless he paid her kickbacks, and (iii) caused him to lose his other clients thereby weakening his ability to refuse her demands (18 F Supp 2d at 285-

86). Conversely, here, the evidence shows that Razzouk did not exclusively control Quiambao's access as Con Ed awarded bids through sealed bid competitive bidding process operated by Con Edison executives who were independent of Razzouk (NYSCEF # 461 at 4); the lack of direct or indirect threats by Razzouk further underscores the unavailability of an extortion defense (*see e.g. United States v Covino*, 837 F2d 65, 68 [2d Cir 1988] [noting that the essential element of extortion is "pay me or be excluded"]); and the absence of any allegations that Razzouk caused him to lose other clients. That Quiambao may not have generated as much profit or success from clients other than Con Ed (NYSCEF # 576 at 210:3-10; 211:12-16) does not establish that Razzouk's alleged demands for money were extortionate; being "subjected to difficult economic circumstances" is not enough alone to establish extortion by wrongful use of fear of economic loss (*Capo*, 817 F2d 947, 953).

The court has considered Quiambao's additional arguments in this regard and has found them to be without merit.

MS 020 – Rudell's Cross Motion for Summary Judgment Respecting Claims 9, 10, 11, and 13 and Rudell's Claims Respecting \$2,583,302

Rudell's cross motion for summary judgment seeking dismissal of plaintiffs' claims for breach of contract, rescission, money had and received, and unjust enrichment is denied. Rudell argues, *inter alia*, that the payments to Razzouk did not result in any overcharges or losses because Rudell won projects "by submitting the lowest bids. Change orders were initiated by project engineers (who did not report to Razzouk) based on unexpected or additional needs" (NYSCEF # 462 at 3).

Plaintiffs argue that Rudell's motion for summary judgment should be denied because there are questions of material fact concerning whether (a) certain change order work was necessary; (b) Rudell performed all work required by certain change orders; and (c) Con Edison paid Rudell twice for the same work" (NYSCEF # 551 at 12). Considering the nature of "the criminal scheme involved awarding contracts to the Rudell defendants in exchange for Razzouk's approval for post-contract changes to inflated project costs, overcharges, and bills for nonexistent work" (NYSCEF # 206 - Decision and Order of this court dated Jan. 30, 2018, at 2), it cannot be said that Rudell's evidence sufficiently answers the issues Con Ed raised. As the record contains conflicting evidence concerning what work was and was not performed, there are issues of material fact which mandate denial of summary judgment (*see Grossman*, 298 AD2d at 226).

Summary judgment is likewise denied as to Rudell's request for \$2,583,302, which it alleges is due and owing for work Rudell performed for Con Ed. Further, as plaintiffs point out, Rudell waived its claim to the \$2,583,302 since it did not assert it in its answer (NYSCEF # 551 at 20).

A review of Rudell's Answer shows no reference that can be read, even broadly, to show that Rudell intended to assert a setoff defense or counterclaim *Ellenville Nat. Bank v Freund* (200 AD2d 827, 828 [3d Dept 1994] citing *Kivort Steel v Liberty Leather Corp.*, 110 AD2d 950, 952 [3d Dept 1985]). Hence, Rudell's failure to raise a setoff as a defense or a counterclaim constitutes a waiver (*Schaffer Stores Co. v Grand Union Co.*, 84 AD2d 614 [3d Dept 1981], appeal dismissed 56 NY2d 570).

As to the amount of damages owed on the claim for aiding and abetting Razzouk's breach of fiduciary duty, plaintiffs seek an order directing the Rudell defendants to pay plaintiffs (respecting the first three items, jointly and severally with Razzouk) for the period from 2006 to 2011: (i) the \$8,178,184.86 they admit that Con Ed paid to Razzouk; (ii) \$968,340.06 in compensation Razzouk received; (iii) the \$6,059,801 in asserted losses that Con Ed suffered because of the bribery scheme; (iv) the profits the Rudell defendants earned via their work with Con Ed, estimated to be in excess of \$6,000,000; (v) prejudgment interest on the compensatory damages; and (vi) punitive damages (NYSCEF # 463, ¶ 59; # 411, ¶ 53; # 601, ¶ 11; # 463, ¶ 34; and # 410 at 2).

In determining the damage amount owed by the Rudell defendants, the court notes that the measure of damages for aiding and abetting a breach of fiduciary duty is the amount of "damages as will reasonably compensate [plaintiff] for such injury and damage as ... [plaintiff] has sustained as a proximate result of [defendants'] wrongful conduct" (*S&K Sales Co. v Nike, Inc.* (816 F2d 843, 852-53 [2d Cir 1987]). In this case, however, for reasons stated in connection with MS 019, the amount of Con Ed's losses resulting from the Rudell defendants' participation in the scheme from 2006-2011 has been awarded by the criminal court in the form of restitution, and plaintiffs may not seek additional amounts for these losses.

Additionally, plaintiffs cannot recover from the Rudell defendants the compensation paid to Razzouk since "[a]lthough the faithless servant doctrine mandates the forfeiture of all compensation where an employee is faithless in the performance of his services to a principal, disgorgement of a faithless servant's compensation does not constitute damages for a claim against an alleged aider and abettor" (*Apollo Global Management, Inc v Cernich*, 2021 WL 2003171 at *5 [Sup Ct, NY County 2021] [internal citation omitted], *mod on other grounds* 202 AD3d 527 [1st Dept 2022]). Likewise, on a claim for aiding and abetting a breach of fiduciary duty, plaintiffs are not entitled to recover profits that the Rudell defendants made during the scheme since the forfeiture of compensation and profits is a remedy under the faithless servant doctrine that cannot be applied on the present motion limited to Quiambao's liability for aiding and abetting a breach of fiduciary duty (*id.*). The court reaches the same conclusion regarding the \$8,178,184.86 that the Rudell defendants admittedly paid to Razzouk since, as noted above, a defendant who aids a breach of fiduciary duty is liable only for the

losses to the injured party (*see Wechsler*, 285 NY at 291 [“[a]ny one who knowingly participates with a fiduciary in a breach of trust is liable for the full amount of the *damage* caused thereby to the cestuis que trust”] [internal citations omitted] [emphasis added]).

Furthermore, although there is a presumption of injury due to a bribe, and courts have measured an employer’s losses against an employee and briber based on the amount of the bribe, it does not mean that plaintiffs can obtain a double recovery for the same loss (*Donemar, Inc. v Molloy*, 252 NY 360, 364 [1930]). The First Department has indicated that whether the presumption of injury is rebuttable remains an open question (*City of New York v Liberman*, 232 AD2d 42, 49 [1st Dept 1997]).

Finally, the issue of whether to award punitive damages and the amount of such damages is an issue for the fact finder (*Maskantz*, 39 AD3d at 215).

Accordingly, while plaintiffs are entitled to partial summary judgment as to Rudell defendants’ liability for aiding and abetting a breach of fiduciary duty for the period between January 2006 and January 2011, as Razzouk has already been ordered to pay restitution for these losses, plaintiffs cannot recover any compensatory damages against the Rudell defendants for this period on the present motion, and the issue of punitive damages, and any other prospective awards, may not be resolved at this point.

Conclusion

In view of the above, it is

ORDERED that plaintiffs’ motion for partial summary judgment against defendant Sassine Razzouk on Count Two (MS 019) is granted in the amount of (i) \$774,672.05 for the compensation paid to Razzouk; and (ii) \$8,178,184.86, (the bribe money paid by the Rudell defendants) less the amount of restitution that Razzouk had paid in accordance with the criminal court order; and it is further

ORDERED that with respect to MS 019, the Clerk is directed to enter judgment in favor of plaintiff Consolidated Edison Company of New York, Inc. in the amount of \$774,672.05, with interest to run from June 15, 2008, until entry of judgment, and severing this aspect of the claim; and it is further

ORDERED that on MS 019, Con Ed shall settle a judgment in accordance with § 202.48 of the Uniform Rules of Trial Courts, on notice to defendants, with regard to the amount to be disgorged by Razzouk to be calculated in accordance with this Decision and Order, that is the \$8,178,184.86 in bribe money paid to

Razzouk by the Rudell defendants less the amount of restitution that Razzouk has paid in accordance with the criminal court order; and it is further

ORDERED that plaintiffs' motion for summary judgment (MS 019) against Grace Razzouk on Count Five is denied; and it is further

ORDERED that plaintiffs' motion (MS 020) for summary judgment against defendants Rudell & Associates, Rudicon Power Corporation, and Rodolfo Quiambao for Count Fifteen is granted without damages awarded on this claim, and the Rudell defendants' extortion defense is dismissed; and it is further

ORDERED that summary judgment in MS 020) is denied with respect to plaintiffs' request for punitive damages against the Rudell defendants; and it is further

ORDERED that Rudell's cross motion for summary judgment (MS 020) seeking dismissal of plaintiffs' Ninth, Tenth, Eleventh, and Thirteenth Counts is denied; and it is further

ORDERED that Quiambao and Rudicon's cross motion for summary judgment (MS 020) seeking dismissal of all of plaintiffs' claims against them is denied; and it is further

ORDERED that based on the parties' stipulation of discontinuance against defendants Danielle Razzouk and Monique Razzouk (MS 019; NYSCEF # 406), the caption is amended to reflect the dismissal of the Second Amended Complaint against defendants Danielle Razzouk and Monique Razzouk and shall read as follows:

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NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, AS
SUBROGEE OF CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC., and
CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.,

Plaintiffs,

- v -

SASSINE RAZZOUK, GRACE RAZZOUK,
RUDELL & ASSOCIATES, INC., MDM CAPITAL,
INC., RUDICON POWER CORPORATION, and
RODOLFO QUIAMBAO,

Defendants.

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and it is further

ORDERED that plaintiff Con Ed shall serve a copy of this order with notice of entry on the Clerk of General Clerk's Office and the County Clerk, who are directed to mark their records to reflect the change in the caption; and it is further

ORDERED that such service upon the General Clerk's Office and the County Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page and on the court's website at the address (www.nycourts.gov/supctmanh); and it is further

ORDERED that counsel for Con Ed shall serve of a copy of this decision, along with notice of entry, on all parties within ten days of entry.

04/14/2022
DATE


MARGARET CHAN, J.S.C.

| | | |
|-----------------------|--|--|
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| APPLICATION: | <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER |
| | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE |