

**Chief Fire Intermediate, Inc. v Mitarotonda**

2023 NY Slip Op 31217(U)

April 14, 2023

Supreme Court, New York County

Docket Number: Index No. 653160/2022

Judge: Barry Ostrager

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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. BARRY R. OSTRAGER PART 61**

*Justice*

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CHIEF FIRE INTERMEDIATE, INC., and CHIEF FIRE  
PREVENTION & MECHANICAL CORP.,  
  
Plaintiffs and Counterclaim Defendants,

- v -

FRANK MITAROTONDA,  
  
Defendant.

-----X

FRANK MITAROTONDA,  
  
Counterclaim-Plaintiff

-v-

CHIEF FIRE PREVENTION HOLDINGS, LLC, TRINITY  
PRIVATE EQUITY GROUP, LLC, TPEG CHIEF INVESTORS  
LLC, TRINITY CI 2018 LLC, TRAPKING LLC, DANIEL S.  
MEADER, and CAMERON SAGE HARRISON

Additional Counterclaim-Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26,  
27, 28, 29, 30, 31, 32, 52, 53, 54, 55, 58

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 35, 36, 37,  
38, 39, 40, 41, 42, 43, 56, 59

were read on this motion to/for DISMISS.

HON. BARRY R. OSTRAGER

Plaintiffs and Counterclaim Defendants Chief Fire Intermediate, Inc. and Chief Fire  
Prevention & Mechanical Corp., and Additional Counterclaim Defendant Chief Fire Prevention  
Holdings, LLC, have moved (Motion Seq. No. 002), pursuant to New York Civil Practice Law  
and Rules (“CPLR”) Section 3211, for an order dismissing the Fourth, Sixth, Eighth, and

Eleventh Counterclaims filed against them by Defendant and Counterclaim Plaintiff Frank Mitarotonda (“Mitarotonda” or “Seller”) on October 27, 2022 (NYSCEF No. 13).

Additional Counterclaim Defendants Trinity Private Equity Group, LLC, TPEG Chief Investors LLC, Trinity CI 2018 LLC, Trapking LLC, Daniel S. Meader, and Cameron Sage Harrison (collectively, the “Trinity Defendants”), have moved (Motion Seq. No. 003) pursuant to CPLR §3211, for an order dismissing the Second, Fifth, and Seventh Counterclaims for tortious interference with contract (the “Tortious Interference Counterclaims”) filed against them by Defendant and Counterclaim Plaintiff Mitarotonda.

This dispute arises from the various agreements and transactions surrounding Mitarotonda’s November 2019 sale of Chief Fire Prevention & Mechanical Corp. (“Chief Fire”)—a fire safety company serving commercial kitchens in the tri-state area—to Chief Fire Intermediate, Inc. (“Buyer”)—an entity apparently created for this transaction. Trinity Private Equity Group LLC (“Trinity”) and its corporate affiliates became majority owners of the Buyer’s corporate parent, Chief Fire Prevention Holding, LLC (“Parent).

Under the terms of the Chief Fire sale, Mitarotonda agreed to transfer all of his shares in Chief Fire to Buyer in exchange for \$35 million comprised of cash (over \$20 million) and other consideration, including a 25% interest in Buyer’s parent company Chief Fire Prevention Holdings, LLC. To effectuate these terms, the parties entered into a Stock Purchase Agreement (the “SPA”), an Employment Agreement, and an operating agreement governing the organization of Parent and the rights and responsibilities among and between Parent and its members, including Mitarotonda.

Trinity and its corporate affiliates appointed three of the five directors of the Parent company, two of whom were counterclaim defendants Daniel S. Meader and Cameron Sage

Harrison. The Board of Parent operated by majority vote so Trinity effectively controlled Parent even though Mitarotonda had the right to appoint the other two directors. Mitarotonda also became an at-will employee of Chief Fire as its CEO. The Complaint alleges, *inter alia*, that Mitarotonda breached the agreement among the parties and failed to make reasonable efforts to make certain business licenses available to Chief Fire and these business licenses were essential to Chief Fire's ongoing operations and therefore a critical part of the overall transaction. The Complaint further alleges that Mitarotonda's misconduct entitles the plaintiffs to recover the consideration Mitarotonda received from entering into the transaction.

The thrust of Mitarotonda's counterclaims is that the various Trinity-affiliated parties breached contractual obligations to Mitarotonda and marginalized Mitarotonda in a manner designed to benefit the counterclaim defendants. The counterclaims also allege with specificity various allegedly tortious acts by each of the counterclaim defendants. Ultimately in February 2021, Mitarotonda resigned as CEO and later in November 2021 terminated a March 2021 consulting relationship with Chief Fire through which he was making the business licenses available. Mitarotonda maintains his 25% interest in Parent, which Mitarotonda alleges was "run into the ground."

These pre-answer motions to dismiss counterclaims turn on disputed issues of fact that cannot be resolved at the pre-answer stage of the counterclaims. Among the disputed issues of fact are the extent, if any, to which the terms of the SPA, employment agreement, and operating agreement were breached and whether the conduct of the counterclaim defendants are actionable as tortious interference with contract claims.

The counterclaim defendants are directed to answer the counterclaims within 30 days of this Order.

The oral argument scheduled for June 14, 2023 is cancelled. A Status Conference will be held on that date via Microsoft Teams. The parties shall efile a Joint Appearance Sheet for the June 14, 2023 appearance on or before June 1, 2023. The Joint Appearance Sheet shall contain the full caption and index number of the case, the name of each attorney who will be participating in the Teams appearance, that attorney's law firm, law firm address, telephone number, email address for each individual appearing attorney, and the client represented.

Dated: April 14, 2023



BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
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