

Ramirez v Issa

2023 NY Slip Op 34206(U)

November 28, 2023

Supreme Court, Kings County

Docket Number: Index No. 521206/2023

Judge: Leon Ruchelsman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

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

Plaintiff, Decision and order

- against -

Index No. 521206/2023

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

Defendants, November 28, 2023

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

Motion Seq. #10

The plaintiffs have moved seeking the appointment of a receiver. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior decisions, according to the Complaint, the defendant Manhattan Fare Corp., operated a restaurant called Chef's Table at Brooklyn Fare, which is located at 431 West 37th street, in New York County. The plaintiff was employed as an executive chef by the defendants since 2009 and as of 2022 together with his wife were equal owners of Manhattan Fare Corp. The complaint alleges that on July 1, 2023 the plaintiff was essentially fired without any justification. The complaint alleges the plaintiff has not been paid his salary since February 2022 and is owed approximately \$885,747.

The plaintiff has now moved seeking the appointment of a receiver. The basis for the receiver is the allegation the

defendant embezzled \$400,000 from the restaurant and to prevent further waste to the company. The defendants oppose the motion arguing there is no basis for the appointment of a receiver.

Conclusions of Law

It is well settled that "a temporary receiver should only be appointed where there is a clear evidentiary showing of the necessity for the conservation of the property at issue and the need to protect a party's interests in that property" (see, Quick v. Quick, 69 AD3d 828, 893 NYS2d 583 [2d Dept., 2010]). Thus, a temporary receiver is appropriate where the party has presented "clear and convincing evidence of irreparable loss or waste to the subject property and that a temporary receiver is needed to protect their interests" (Magee v. Magee, 120 AD3d 637, 990 NYS2d 894 [2d Dept., 2014]). Moreover, a receiver is charged with the responsibility to "preserve and protect the property for the benefit of all persons interested in the estate" and the receiver's allegiance is only to the court (Bank of Tokyo Trust Company v. Urban Food Malls Ltd., 229 AD2d 14, 650 NYS2d 654 [1st Dept., 1996]).

In this case the plaintiffs have failed to present sufficient and clear evidence that a receiver should be appointed to protect their interests (see, Suissa v. Baron, 107 AD3d 689, 968 NYS2d 508 [2d Dept., 2013]). While the plaintiff has accused

the defendant of embezzling money that allegation is seriously disputed. Indeed, bank records demonstrate the funds allegedly taken were restored. Moreover, there are no allegations of any continuing waste or loss that requires a receiver. Other than one accusation of theft, in the past, there is no further allegation of any other impropriety. In fact, the plaintiffs themselves readily admit the restaurant has re-opened. The plaintiffs argue that upon the re-opening of the restaurant "the Plaintiffs now desperately and urgently seek the assistance of this Court to designate and appoint a Temporary Receiver for the restaurant and the Defendant Issa, in order to protect the assets of Manhattan Fare Corp. from any further improper diversion of Company funds in violation of the fiduciary and contractual obligations of the Defendant Issa to the Plaintiffs and the Manhattan Fare Corp." (see, Memorandum of Law in Support, page 4 [NYSCEF Doc. No. 146]). However, the re-opening of the restaurant militates against the waste and loss the plaintiff fears. Other than one instance of disputed improper activity, there is no basis to fear the defendants will cause any loss or waste to the business that necessitates the appointment of a receiver. The re-opening only serves to secure the assets, machinery and items necessary for its successful operation. To the extent the plaintiffs argue the defendants may take profits that are not their full share, mere damages claims will further

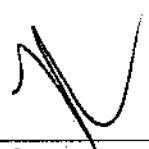
accrue. That is not a basis for the appointment of a receiver. In truth, the receiver is sought merely to secure the plaintiffs' share of the restaurant's business and not to prevent any waste or loss which, as noted, is entirely speculative. Therefore, there is insufficient grounds upon which to seek a receiver.

Thus, there is no clear and convincing evidence a receiver should be appointed. There are significant factual disputes which foreclose the relief sought here (Eighanayan v. Iannucci, 145 AD2d 345, 535 NYS2d 611 [1st Dept., 1988]) and the basis for the appointment is really grounded in speculation. Therefore, the motion seeking the appointment of a receiver is denied.

So ordered.

ENTER:

DATED: November 28, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC