

**Narain v Society Pass Inc.**

2024 NY Slip Op 30870(U)

March 14, 2024

Supreme Court, New York County

Docket Number: Index No. 656956/2019

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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RAHUL NARAIN  Plaintiff,  - v -  SOCIETY PASS INCORPORATED,  Defendant.	<table border="0"> <tr> <td style="width: 150px;"><b>INDEX NO.</b></td> <td><u>656956/2019</u></td> </tr> <tr> <td><b>MOTION DATE</b></td> <td><u>11/09/2023, 01/29/2024</u></td> </tr> <tr> <td><b>MOTION SEQ. NO.</b></td> <td><u>011 012</u></td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	<b>INDEX NO.</b>	<u>656956/2019</u>	<b>MOTION DATE</b>	<u>11/09/2023, 01/29/2024</u>	<b>MOTION SEQ. NO.</b>	<u>011 012</u>
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 011) 431, 432, 433, 444, 448  
 were read on this motion to/for REARGUMENT/RECONSIDERATION.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 479, 480, 481, 482, 484, 485, 486, 487, 488, 489, 490  
 were read on this motion to/for POST JUDGMENT OTHER.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 3.14.24), the motion to reargue (Mtn. Seq. No. 011) is denied.

Pursuant to CPLR § 2221(d), a motion for leave to reargue can be granted only upon a showing that the court overlooked or misapprehended relevant facts or misapplied a controlling principle of law (*William P. Pahl Equipment Corp. v. Kassis*, 182 A.D.2d 22, 27 [1st Dept 1992], *lv dismissed in part and denied in part*, 80 N.Y.2d 1005 [1992], *rearg denied*, 81 N.Y.2d 782 [1993]; *Foley v. Roche*, 68 A.D.2d 558, 567 [1st Dept 1979]).

This Court, in a prior Decision and Order (NYSCEF Doc. No. 413), dated September 13, 2023, held:

the Plaintiff's motion (Mtn. Seq. No. 008) for summary judgment is granted solely to the extent that the Plaintiff is entitled to judgment on the Warrant (NYSCEF Doc. No. 260) and the Defendant's motion (Mtn. Seq. No. 010) for summary judgment is denied. Dennis Nguyen's email sent in connection with the Warrant is prima facie evidence that the Plaintiff is entitled to 130 shares at a valuation of \$749,190 as of September 4, 2019, and the Defendant fails to submit any evidence to rebut this prima facie showing. The Plaintiff is not entitled to judgment as to amounts due under the Employment Agreement following the December 3, 2019 letter terminating his employment because issues of fact exist as to the Plaintiff's entitlement to such amounts, including whether the Defendant properly exercised its rights to terminate his benefits as of December 3, 2019 when they terminated his employment. Issues of fact as to the Defendant's counterclaims, including the counterclaims for acting as a faithless servant and tortious interference, require the dismissal of the balance of the Plaintiff's motion for summary judgment and the entirety of the Defendant's motion for summary judgment.

(NYSCEF Doc. No. 413, at 1-2).

Among other things, the Defendant now argues that the Court erred in failing to enforce the "no waiver" provision in the employment agreement and Section 5's prohibition on non-solicitation and disparagement (the **Agreement**; NYSCEF Doc. No. 240; § 5). The Court did no such thing. The Court held that the Defendant failed to establish that Mr. Narain violated those provisions, and there were issues of fact as to those issues. The Court also held that with respect to Mr. Narain's claims, he established, pursuant to Section 3(c) of the Agreement, that the warrant attributable to 130 shares valued at \$749,190 had vested. Section 3(c) of the Agreement provides:

Equity. As consideration for the Executive's employment, the Executive shall receive a stock grant equal to 4% of the Company's shares of common stock at the close of the Series C round of financing, which the Parties expect to be on or around 30 April 2019 (the "Shares"), which shall vest and be issued quarterly in equal amounts during the term of four (4) years (i.e. 1/16<sup>th</sup> of the number of the Shares each) following the Effective Date. Executive acknowledges that Executive must be an employee of the Company

under this Agreement, or another employment agreement, in order to receive the Shares scheduled to be issued herein. In the case of an IPO or sale of the Company, the Shares shall vest immediately. The Shares shall vest as per the Executive meeting a list of mutually agreeable Key Performance Indicators (“KPIs”). The parties shall draft a list of KPIs by 31 March 2019, which govern the issuance of the Shares. The list of KPIs shall be treated as an addendum to this Agreement.

(NYSCEF Doc. No. 340, § 3[c]).

It was undisputed that Mr. Narain was an employee when Mr. Nguyen acknowledged Mr. Narain’s two quarters of vested warrant shares. The Defendant is also not correct that the Court misapprehended or misunderstood the law or the facts as it relates to the value of Mr. Narain’s position. To wit, Mr. Nguyen emailed Mr. Narain on September 4, 2019, indicating that Mr. Narain had earned two quarters of warrant shares equal to 130 shares, and that the value of those share was \$749,190:

Hi Rahul,

Please see attached warrant.

The total outstanding number of shares at Series C round is 26,026.

Four percent of this figure is 1,042 (rounded up). Since your employment agreement was signed on 01 February 2019, you have had two quarters of employment, which totals 130 shares.

With Series C share price at US\$5,763, your warrants now total US\$749,190.

Please print out, sign the signature page, and send back pdf copy to me.

With kind regards,  
Society Pass  
Dennis Nguyen  
Founder, Chairman and Chief Executive Officer

(NYSCEF Doc. No. 256). This, the Court held was prima facie evidence of Mr. Narain’s entitlement to the warrant shares and that the warrant shares were worth \$749,190 as Mr.

Nguyen had told him. The Court further held that Defendant failed to rebut this evidence under the circumstances.

However, inasmuch as the Defendant's may be entitled to offset, the Court held that the Defendant could pursue their claim for damages as a counterclaim (*Parlux Fragrances, LLC v S. Carter Enterprises, LLC*, 204 AD3d 72, 89 [1st Dept 2022]).

The Plaintiff's motion to appoint a receiver (Mtn. Seq. No. 012) is denied without prejudice as the Defendant have posted a sufficient bond so as to trigger an automatic stay pursuant to CPLR § 5519(a)(2).

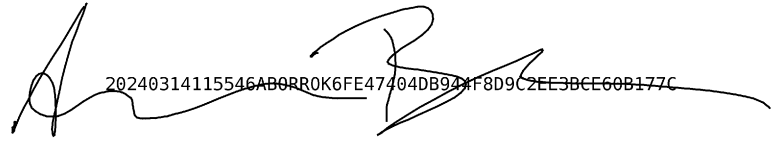
The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the motion to reargue is denied; and it is further

ORDERED that the motion (Mtn. Seq. No. 012) to appoint a receiver is denied without prejudice; and it is further

ORDERED that the parties shall appear for a pre-trial conference on October 21, 2024, at 12:30 pm.

  
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3/14/2024

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE