

Ramirez v Issa

2024 NY Slip Op 35001(U)

September 4, 2024

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, September 4, 2024

-----x
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #19

The plaintiffs have moved seeking to compel discovery from the defendants. The defendants oppose the motion. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

As recorded in prior orders 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, Cesar Ramirez, was employed as an executive chef by the defendants since 2009 and as of 2022 received twenty-five of all profits representing a twenty-five percent ownership interest in Manhattan Fare Corp. The plaintiffs instituted this lawsuit alleging that Ramirez was fired without any justification. The defendants answered and asserted affirmative defenses and counterclaims. Specifically, the defendants assert the plaintiff Ramirez and his wife, plaintiff Adriana Rodriguez engaged in theft and fraud and sought

to harm Manhattan Fare.

The plaintiffs served discovery demands and have now moved seeking to compel the production of such discovery. As noted, the motion is opposed.

It is well settled that the trial court maintains broad discretion concerning the discovery process and any sanction for any violation (Bouri v. Jackson, 177 AD3d 947, 113 NYS3d 232 [2d Dept., 2019]). The severe sanction of striking a pleading is appropriate where it can be demonstrated that the failure to comply with discovery was the result of wilful and contumacious conduct (Rosenblatt v. Franklin Hospital Medical Center, 165 AD3d 862, 85 NYS3d 488 [2d Dept., 2018]). Such conduct may be inferred from a party's actions, specifically a long period of time passing without complying with the discovery coupled with the absence of any reasonable excuse to explain such failure to comply (Morson v. 5899 Realty LLC, 171 AD3d 916, 98 NYS3d 127 [2d Dept., 2019]). Generally, the failure of either party to provide sought after discovery and to follow the express order of the court demonstrates a pattern of wilful default and neglect concerning the outstanding discovery (Espinal v. New York City Health and Hospitals Corp., 115 AD3d 641, 981 NYS2d 569 [2d Dept., 2014]).

In this case the plaintiff's have failed to demonstrate that the severe sanction of striking the defendant's pleading is

appropriate. Indeed, there is hardly any evidence of prolonged and inexcusable neglect of discovery demands that would permit a finding of such severe and persistent violations of discovery. Thus, the motion is resolved as follows: The plaintiff shall produce all corporate records and communications not previously produced as well as minutes of Manhattan Fare Corp. Further, the plaintiff shall produce evidence demonstrating withdrawals of funds by the defendant. Lastly, the 2023 tax returns shall be furnished when their preparation is complete.

Turning to the demand for a bill of particulars, it is clear that a bill of particulars is designed to amplify the pleadings, prevent surprise at trial and sharpen the issues by limiting the required proof (Toth v. Blosinsky, 39 AD3d 848, 835 NYS2d 301 [2d Dept., 12007]). A bill of particulars is required even where the opposing party has full knowledge of the facts sought (Draper v. Zamiara, 126 AD2d 941, 511 NYS2d 986 [4th Dept., 1987]). Moreover, open-ended allegations without specificity are inconsistent with the purposes of a bill of particulars (Padro v. Boulevard Hospital, 92 AD2d 888, 459 NYS2d 875 [2d Dept., 1983]). Furthermore, any affirmative defense that seeks to establish culpable conduct on the part of another party including the plaintiff must be included within a bill of particulars (Marshall v. Leppard, 17 Misc3d 1103(A), 851 NYS2d 58 [Supreme Court Nassau County 2007]).

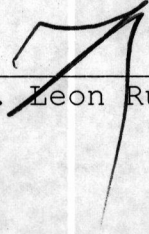
It is well settled that items requesting evidentiary material are beyond the scope of the bill of particulars (Jericho Water v. Zara & Sons, 116 AD2d 622, 497 NYS2d 707 [2d Dept., 1986], Rabat v. Gnac Corp., 155 AD2d 245, 546 NYS2d 855 [1st Dept., 1989]). A bill of particulars is not a discovery device (Carlos L. v. Sandy C., 51 Misc3d 506, 25 NYS3d 822 [Family Court Queens County 2016]). Thus, a review of the demand for a bill of particulars reveals that most of the requests are evidentiary in nature. First, demand numbers one and two are proper. Demand numbers three through thirteen seek the factual and legal basis for the defendant's affirmative defenses. The factual basis may be proper, however, the legal basis is evidentiary in nature and not proper. Concerning the remainder of the request, the plaintiffs do not really dispute the bill of particulars is largely improper. The plaintiffs argue that they "are entitled to obtain information and the basis for each of those allegations in the 50-pages of Counterclaims" (see, Affirmation in Reply, page 3 [NYSCEF Doc. No. 394]). However, as noted, the plaintiff is not entitled to the basis that supports the counterclaims. The basis for such claims are evidentiary and not factual. The demand for the bill of particulars is too inextricably intertwined with improper requests to separate the improper requests from the proper ones. A proper demand must be presented without all the evidentiary information included. Therefore, the

motion seeking to compel a bill of particulars based upon the demand presented is denied. The remainder of the plaintiff's motion seeking discovery is granted to the extent indicated.

So ordered.

ENTER:

DATED: September 4, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC

KINGS COUNTY CLERK
FILED
2024 SEP 23 A 11:16
