Ahmed v Hampton's Fresh Deli, Inc.
2025 NY Slip Op 33138(U)
August 19, 2025
Supreme Court, New York County
Docket Number: Index No. 656440/2023
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH — *Justice* — PART 12M

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HAYTHAM AHMED,

Plaintiff,

- v -

HAMPTON'S FRESH DELI, INC.,SHOGY S. AHMED

Defendant.

---X

INDEX NO. 656440/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for SUMMARY JUDGMENT.

FACTUAL BACKGROUND

This action arises from a dispute over an alleged partnership agreement concerning Hampton's Fresh Deli, Inc. ("Deli"), a delicatessen business in New York. Defendant, Shogy Ahmed ("Shogy"), purchased the Deli in 2021 with his uncle, Ahmed Albasha ("Albasha") , as equal partners. (NYSCEF Doc No. 13, ¶ 4). In May 2021, Defendant Shogy hired Plaintiff, Haytham Ahmed, Shogy's stepbrother, as Deli's store manager, compensating him with a $5,000 monthly salary and a ten percent share of the business's profits. (Id. ¶¶ 6-7). It is undisputed that shortly thereafter Defendant offered Plaintiff a one-third ownership interest in the business in exchange for a $150,000 capital contribution. (Id. ¶ 8).

Defendants assert that Plaintiff never made the aforementioned $150,000 capital contribution and, accordingly, never acquired any ownership interest. (Id. ¶¶ 9-11). Defendants maintain that Shogy and Albasha remained the only owners until Albasha's withdrawal as co-owner of the business in 2022, after which Shogy became the sole owner of the Deli. (Id. ¶¶ 12-13). Plaintiff

disputes this characterization and contends that he satisfied the $150,000 capital contribution through a combination of funding sources: a $50,000 loan from Albasha paid directly to Shogy, a $25,000 direct payment from Deli profits, and repayment of the remaining $75,000 to Albasha. (NYSCEF Doc Nos. 27, 29 at 2). However, Plaintiff fails to provide any evidence that such was ever paid to Defendant. According to Plaintiff, these payments reflected the parties' understanding of the original ownership arrangement, notwithstanding the lack of formal transfer documentation.

In June 2022, following Albasha's withdrawal from the partnership with Defendant Shogy, Shogy offered Plaintiff a second opportunity to become an equal partner in the Deli in exchange for a $34,000 capital contribution. (Id. ¶¶ 14-17). The parties signed a handwritten Partnership Agreement on June 25, 2022, stating "[Plaintiff] owes [Defendant] $34,000 and [it] will be paid in no longer than two months from commencement." (NYSCEF Doc No. 28 at 3). Defendant Shogy asserts this was in addition to the prior $150,000 buy-in and that Plaintiff verbally agreed to pay that amount the next day. (NYSCEF Doc No. 13, ¶ 17). The contract commenced on July 1, 2022 and Plaintiff did not pay the $34,000 as per the Partnership Agreement. (Id. ¶¶ 18-20). Defendant Shogy maintains that, as a result, no partnership was formed, and he remains the sole owner of the business. (Id. ¶ 21).

Plaintiff concedes that he did not pay the $34,000 contribution referenced in the June 2022 Partnership Agreement. (NYSCEF Doc No. 25 at 5). However, he disputes Shogy's characterization of the agreement's terms and asserts that the $34,000 was the only contribution required under the June agreement, which superseded any prior terms. (NYSCEF Doc No. 29, ¶ 12). Plaintiff contends that following execution, he took steps consistent with partnership formation, including proposing a joint commercial lease, forming a corporation, and opening a joint bank account. (Id. ¶¶ 14-15). He maintains that the Agreement described the parties as equal partners requiring unanimous decision-making, and included a fixed deadline of August 31, 2022 only for his contribution, with no corresponding deadlines for Defendants' obligations. (NYSCEF Doc Nos. 28 at 2, 29 ¶¶ 16-17, 22).

Plaintiff argues that Defendant's failure to engage in these partnership activities and Defendants' unilateral treatment of him as a non-partner constitute a repudiation of the Agreement, which by its terms could not be modified without mutual consent. (NYSCEF Doc No. 25 at 6).

Defendants now move for summary judgment on all claims, asserting that because Plaintiff never made the required capital contribution, he was never a partner and has no entitlement to ownership, control, or additional compensation from the business. (Id. ¶¶ 36-38).

DISCUSSION

Defendants move for summary judgement on all sixteen causes of action. To prevail on a motion for summary judgement, Defendants must establish entitlement to judgement as a matter of law by demonstrating the absence of any material issue of fact. (*Brill v City of New York*, 2 NY3d 648, 651 [2004]).

The Court considers whether a valid partnership was ever formed between the parties. Absent such a relationship, Plaintiff's claims for breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, and all other claims that presuppose a partnership must fail as a matter of law. (NYSCEF Doc No. 29).

To determine whether a written partnership agreement creates such a relationship, courts apply traditional principles of contract interpretation. A partnership agreement, like all contracts, must be enforced according to the plain meaning of its terms when it is "complete, clear and unambiguous" (*Cole v Macklowe*, 99 AD3d 595, 595 [1st Dept 2012]). In evaluating whether a partnership exists, the First Department considers "various factors, including sharing in profits and losses, exercising joint control over the business, and making capital investment and possessing an ownership interest in the partnership." (*M.I.F. Sec. Co. v R.C. Stamm & Co.*, 94 AD2d 211, 214 [1st Dept 1983], affd, 60 NY2d 936 [1983])." Courts "accord the words of the contract their 'fair and reasonable meaning'" (*Duane Reade, Inc. v Cardtronics, LP*, 54 AD3d 137, 140 [1st Dept 2008])

and interpret "the expressions of the parties" practically "to the end that there be a 'realization of [their] reasonable expectations.'" (*Id.* [internal citation omitted]).

In the partnership context, terms requiring capital contributions are particularly significant. Courts have emphasized that, "the failure of a party to contribute capital" to the partnership business "is strongly indicative that no partnership exists" (*Brodsky v Stadlen*, 138 AD2d 662, 663 [2d Dept 1988]). A "capital investment" is widely recognized as a hallmark of "partnership status" (*M.I.F. Sec. Co.*, 94 AD2d 211 at 214). A partnership arises only when parties have "joined their property, interests, skills and risks" such that "their respective contributions have become as one" (*Steinbeck v Gerosa*, 4 NY2d 302, 317 [1958], [internal citation omitted]).

Here, the June 2022 Partnership Agreement expressly conditioned Plaintiff's acquisition of an interest in the Deli on a $34,000 capital contribution, to be paid "in no longer than 2 months from commencement." (NYSCEF Doc No. 28 at 3). The agreement commenced on July 1, 2022, setting a clear payment deadline of September 1, 2022. (Id.). Plaintiff concedes that he never made the required payment, and the record is devoid of any evidence suggesting otherwise. (NYSCEF Doc No. 17 at 85, ¶¶ 11-14). Accordingly, Plaintiff failed to satisfy a material condition precedent to partnership formation.

Plaintiff argues that Defendants repudiated the agreement by excluding him from joint decision-making before the deadline, citing *Donerail v 450 Park LLC*, 30 Misc 3d 1221(A) [Sup Ct, NY County 2011]. He argues that this case stands for the proposition that when one party's obligation is subject to a fixed deadline and the other's is not, both are expected to perform concurrently. (NYSCEF Doc No. 25 at 4, 5). However, Plaintiff's reliance on *Donerail* is inapposite. As the *Donerail* court clarified, "an offer to perform a concurrent condition can be conditional on performance by the other party" (*id.*, citing *Geary v Dade Dev. Corp.*, 29 NY2d 457, 461 [1972]). Here, Defendants' obligation to treat Plaintiff as a partner was expressly conditioned on Plaintiff's

timely payment of $34,000 (NYSCEF Doc No. 28 at 3). Therefore, even if Defendants owed Plaintiff a concurrent obligation, the record does not support that Defendants breached it.

Moreover, the record contains no evidence that Defendants waived the capital requirement or that Plaintiff's unilateral actions, such as proposing a joint lease or forming a corporation, constituted performance under the agreement. Absent payment of the capital contribution, Plaintiff did not acquire any rights under the Partnership Agreement, including the right to participate in management or share in profits. Accordingly, the Court finds that no partnership was ever formed as a matter of law. Without a valid partnership, Plaintiff's fiduciary duty and contract claims necessarily fail. Defendants' motion for summary judgment is granted in its entirety.

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

Accordingly; it is hereby

ORDERED that Defendants' motion for summary judgment is granted in its entirety, and that Plaintiff's Complaint is dismissed.

The foregoing constitutes the decision and order of the Court.

8/19/2025
DATE

HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
	X	GRANTED	☐	DENIED	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE

The Court would like to thank law student Marina J. Newell for her assistance in drafting this decision.