

RMX Foods, Inc. v Adelson
2025 NY Slip Op 35429(U)
February 26, 2025
Supreme Court, Nassau County
Docket Number: Index No. 603964-24
Judge: Jerome C. Murphy
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**SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. JEROME C. MURPHY,
Justice.**

**RMX FOODS, INC., VISTA FOOD EXCHANGE,
INC., VINCENT PACIFICO, ROBERT
GREENZEIG, ROBERT WALKER, SHAWN REID,
and THE ESTATE OF THOMAS RYAN by Jennifer
Hartmann, Kevin Hartmann, and Matthew Ryan,
as co-executors,**

Plaintiffs,

TRIAL/IAS PART 5

**Index No. 603964-24
Motion Date: 11-4-24
Sequence Nos.: 002**

- against -

DECISION AND ORDER

**SEYMOUR ADELSON and ALAN ADELSON,
Defendants.**

XXX

The following papers have been read on this motion:

<u>Motion Sequence 002</u>	NYSCEF DOC. NO.
Notice of Motion, Affirmation and Exhibits.....	46-55
Memorandum of Law in Support.....	56
Memorandum of Law in Opposition.....	59
Reply Memorandum of Law, Reply Affirmation and Exhibits.....	63-67

PRELIMINARY STATEMENT

In Motion Sequence 002, defendants, move for an Order: 1. Pursuant to CPLR 3211(a)(1) and relevant precedent, entering judgment in favor of defendants Seymour Adelson ("Seymour") and Alan Adelson ("Alan"; together with Seymour, "Defendants") declaring that Defendants are not required to redeem their Class A shares in RMX Foods, Inc. and that Seymour is not required to redeem his Class A shares in Vista Food Exchange, Inc.; 2. Pursuant to CPLR 3211(a)(2), (a)(3),

and/or (a)(7), dismissing the First, Second, and Third Causes of Action in the First Amended Complaint (NYSCEF Doc. No. 42) asserted by plaintiffs Vincent Pacifico, Robert Greenzeig, Robert Walker, Shawn Reid, and the Estate of Thomas Ryan for lack of standing; 3. Pursuant to CPLR 3211(a)(5), dismissing the First and Third Causes of Action in the First Amended Complaint asserted against Seymour because those claims are time barred; and 4. Granting such other and further relief as this Court may deem just and proper. Opposition and reply have been submitted.

BACKGROUND & DECISION

In this action, the defendants have moved to dismiss the plaintiffs complaint which seeks a declaratory judgment against both defendants. As it relates to the two first name plaintiffs, RMX Foods, Inc. ("RMX") and Vista Food Exchange Inc., ("Vista"), the Court finds that these plaintiffs have standing to bring this lawsuit. The remaining plaintiffs who are shareholders of these corporations, have no right to bring the lawsuit since their claims are derivative claims that only belong to the two corporate entities. These individual claims are dismissed.

The plaintiffs have argued that since the two defendants are no longer full-time employees of either RMX or Vista, that these defendants are now required to allow each respective corporation to redeem their shareholder interests. The argument that the plaintiffs have advanced, is that these defendants must be full-time employees to retain their stockholder interests. However, pursuant to their respective shareholder or stockholder agreements, these two defendants have the right to resist the redemption and retain their shares.

The requirements for the redemption of both RMX stock and Vista stock are similar as is acknowledged by the parties. Defendants, Seymour Adelson and Alan Adelson own stock in RMX, and only Seymour Adelson owns stock in Vista..

As a matter of background, Plaintiffs RMX and Vista are affiliated, closely-held companies in the wholesale food distribution business that operate primarily out of the Hunts Point Meat Market in the Bronx. (First Amended Complaint, "FAC" ¶¶ 27-28). Stock ownership in RMX is governed

by the RMX Stockholders Agreement (Friedman Aff. Ex. 2 (NYSCEF Doc. No. 2) (“RMX-Agreement”)), and stock ownership in Vista is governed by the Vista Shareholders Agreement (Friedman Aff. Ex. 5 (NYSCEF Doc. No. 5) (“Vista-Agreement”; together with the RMX-Agreement, the “Stockholder Agreements”). (FAC ¶ 49).

In view of the respective definitions in each of the stockholders or shareholders agreements, each of the defendants remains qualified to retain their shareholder interest in these respective corporations because they meet the definition of being a “Qualified Class A Stockholder”.

It is important to note that as it relates to Section 1.21 of RMX’s stockholders agreement, that section recognized that a shareholder can still remain qualified even if not employed by the Corporation or by an affiliated business entity, and thus the shares involved would not be subject to a required redemption.

The Vista stockholder agreement is similarly written, for this affiliated corporation of RMX, and the same analysis applies to those shares.

In construing a contractual agreement “[a] court should . . . give full meaning and effect to its material provisions” (*CNR Healthcare Network, Inc. v 86 Lefferts Corp.*, 59 AD3d 486, 489 [2d Dept 2009]). Moreover, a reading of an agreement “should not render any portion meaningless, and the contract should be read as a whole, with every part interpreted with reference to the whole . . . [so] as to give effect to its general purpose” (*id.*). In the instant matter, to adopt the interpretation of the shareholders’ agreement urged by the plaintiffs would function so as to effectively “render” superfluous the ending subsections of 1.21, which in this case exempts the defendants from a required redemption of their stock, and as such, the Court cannot adopt plaintiffs’ position (*id.*).

In view of the shareholders and stockholders agreements, and in view of the fact that David Edelson is the son and a brother of the respective defendants, the Court finds that the two defendants do not have to redeem their stock.

Accordingly, it is

ORDERED, that the complaint against the defendants is dismissed; and it is further

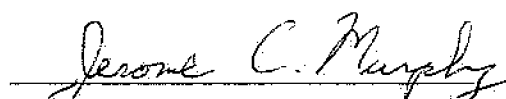
ORDERED, that all requests for relief not addressed herein are DENIED as moot.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York

February 26, 2025

ENTER:


JEROME C. MURPHY, J.S.C.

ENTERED

Feb 28 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE