

Fagnoli v David

2026 NY Slip Op 32088(U)

June 23, 2026

Supreme Court, Broome County

Docket Number: Index No. EFCA2025003208

Judge: Eugene D. Faughnan

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.

At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York on the 20th day of February, 2026.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT: COUNTY OF BROOME

MIKAILA FARGNOLI,
RMK ASSOCIATION, LLC,
CONFLUENCE PROPERTIES II, LLC,

Plaintiffs,

vs.

RICHARD DAVID,
KRISTOPHER KASMARCIK, and
K&D HOSPITALITY, LLC,

Defendants.

DECISION AND ORDER

Index No. EFCA2025003208

APPEARANCES:

Counsel for Plaintiffs:

Law Office of Ronald R. Benjamin
BY: RONALD R. BENJAMIN, ESQ.
126 Riverside Drive
Binghamton, NY 13905

Counsel for Defendants
Richard David and
Kristopher Kasmarcik and
K&D Hospitality, LLC:

Kurt Schrader PLLC
BY: KURT D. SCHRADER, ESQ.
214 Kent Ave, PMB 298
Endwell, NY 13760

Counsel for
RMK Association LLC and
Confluence Properties II, LLC:

Law Office of Alfred Paniccia, Jr.
BY: ALFRED PANICCIA, ESQ.
3660 George F. Highway, Suite 201
Endwell, NY 13760

EUGENE D. FAUGHNAN, J.S.C.

This matter involves the ownership and operation of two food and drink establishments in Binghamton, NY. The case is before the Court at this time to consider multiple motions: 1) the application/motion of Plaintiffs “for an Order granting a permanent preliminary injunction and directing that” the bar/restaurant known as Blazin’ Saddles be closed; 2) an Order to Show Cause filed by Plaintiff Mikaila Fargnoli (“Fargnoli”) to vacate the resolution to remove her from the businesses of RMK Association, LLC (“RMK”) and Confluence Properties II, LLC (“Confluence”); 3) a cross-motion of RMK and Confluence for a preliminary injunction to enjoin Fargnoli from operating or interfering with the operations of RMK and Confluence; and 4) a motion by Defendants Richard David (“David”), Kristopher Kasmarcik (“Kasmarcik”) and K&D Hospitality, LLC (“K&D”) for a preliminary injunction to enjoin Fargnoli from interfering with RMK and Confluence, and the business operated by those companies known as Stadium 138. Oral argument was held and counsel for all parties were present.¹ After due deliberation, this Decision and Order constitutes the determination of this Court.

BACKGROUND FACTS

Stadium 138 is a bar/restaurant located at 138-142 Washington Street in Binghamton. In April 2023, Fargnoli, David and Kasmarcik formed two limited liability companies for the purpose of constructing and opening Stadium 138. In both LLCs, Fargnoli and Kasmarcik each have a share of 24.5% and David has the remaining 51%. David, through an LLC, initially owned the land where the business was to be located, and then Fargnoli and Kasmarcik became minority Members of Confluence as part of this business venture, whereby Confluence held title to the land. All three individuals also formed RMK, which owned the building where the business would operate. Stadium 138 opened on December 31, 2023 (Plaintiff’s First Amended Verified Complaint, NYSCEF Doc. No. 14, ¶ 13).

Additionally, Fargnoli accepted two loans from David to finance her portion of the LLCs. She signed a promissory note in the amount of \$62,500 for her interest in Confluence (for the

¹ The Court has considered all the papers filed in support and opposition to the motions, as well as all the other documents contained in the electronic case file.

land), and signed a second promissory note in the amount of \$60,000 for her interest in RMK (for the building). All three individuals agreed to take a commercial loan in the amount of \$425,000 to construct the building that would house Stadium 138. The loan is secured by a mortgage on the real property and personal guaranties from Fargnoli, David and Kasmarcik.

Subsequent to the opening of Stadium 138, David and Kamarcik entered into an agreement to create K&D in 2025, for the purpose of operating a different bar, named Blazin' Saddles, located at 41 Court Street (Plaintiff's First Amended Verified Complaint, NYSCEF Doc. No. 14, ¶ 18). Blazin' Saddles is located less than two blocks from Stadium 138. Blazin' Saddles opened in September 2025. Fargnoli contends that Blazin' Saddles targets the same customers as Stadium 138, has some of the same activities such as line dancing, and the same bands that played at Stadium 138. Fargnoli also alleges that Blazin' Saddles hired away some of the employees from Stadium 138. She believes that all these actions by David, Kasmarcik and/or K&D constitute a violation of the non-compete provisions of the LLCs.

PROCEDURAL HISTORY

Fargnoli filed a Summons and Verified Complaint on October 14, 2025, and she was listed as the sole Plaintiff. The Defendants were David, Kasmarcik, RMK, Confluence and K&D. Fargnoli sought an Order directing that Blazin' Saddles cease and desist from operations, and also damages for breach of fiduciary duty, unjust enrichment and a minority shareholder suit to dissolve RMK and Confluence. On the same date, Fargnoli also filed a motion for a preliminary injunction to immediately close Blazin' Saddles. Four days later, Fargnoli filed a First Amended Verified Complaint.² However, the First Amended Verified Complaint changed the parties, such that Plaintiffs were now Fargnoli, RMK and Confluence, with Mr. Benjamin representing all of them. The Amended Complaint seeks: 1) closure of Blazin' Saddles; 2) dissolution of RMK and Confluence, with proceeds to be divided pursuant to future Court hearings and directions; 3) compensatory damages to RMK and Confluence; 4) compensatory damages to Fargnoli; 5) exemplary damages to Fargnoli against David and Kasmarcik.

² CPLR 3025 (a) permits a "party to amend his or her pleadings without leave of court within twenty days after its service."

Plaintiffs also filed a proposed Order to Show Cause on November 7, 2025 seeking to vacate a resolution passed by David and Kasmarcik that purported to remove Fagnoli from RMK and Confluence.³ On November 7, 2025, Mr. Paniccia filed a Verified Answer on behalf of RMK and Confluence, which was in response to the original Verified Complaint that only listed Fagnoli as the Plaintiff. An Answer would not be appropriate if RMK and Confluence were Plaintiffs, as asserted in the Amended Complaint. Mr. Paniccia also filed a cross motion for a preliminary injunction to prevent Fagnoli from operating or interfering with the operations of RMK and Confluence. On November 7, 2025, David, Kasmarcik and K&D (by Mr. Schrader) filed an Answer to the Amended Verified Complaint and also made a motion for an injunction preventing Fagnoli from interfering with the business operations and reputations of RMK and Confluence and the business operated by those companies-Stadium 138.

Following the oral arguments, the Court encouraged the parties to continue efforts to negotiate a resolution. The parties did not come to an agreement.

OPERATING AGREEMENTS AND TERMS

Plaintiffs' First Amended Verified Complaint references the non-compete clause of the RMK operating agreement, and states there is a similar clause in the Confluence Operating Agreement. Fagnoli argues that Defendants violated the non-compete provisions of the agreements.

1. RMK Operating Agreement

Fagnoli, David and Kasmarcik all signed an Operating Agreement for RMK on April 28, 2023. This LLC was for the operation of the bar and restaurant. As relevant here, the RMK Agreement stated that:

1.8. "Company" shall mean RMK Association, LLC, and any successor limited liability company.

1.9. "Competitive Activities" shall mean engaging, whether as an owner, employee, contractor, agent or otherwise participating or acquiring any financial or beneficial interest in any business or entity that owns, controls, operates or engages in the bar, restaurant or pub business within the Restricted Territory....

³ The Court signed the Order to Show Cause on November 13, 2025 and gave it a return date of January 23, 2026, which was adjourned to February.

*
*
*

1.19 “Restricted Territory” shall mean the area shown on [an attached exhibit, which includes the premises where Blazin’ Saddles is located]

*
*
*

3.12. Conflicts of Interest/Competitive Activities. The Members will not engage in any Competitive Activities within the Territory without the express written permission of all the Members, which may be withheld, conditioned or denied in the sole discretion of the other members. The Members will use their best efforts to achieve the goals of the Company and will not directly or indirectly take or usurp any business opportunity of the Company without the approval of all the Members after disclosure.

As can be seen from the RMK Agreement, the parties are not permitted to engage in competitive activities in a certain area without permission from the other Members. The territory covered by the non-compete agreement is downtown Binghamton and surrounding areas. Fagnoli generally asserts that the Confluence agreement also has a non-compete clause.

2. Confluence Operating Agreement

Fagnoli, David and Kasmarcik also signed an Operating Agreement for Confluence on April 28, 2023. Contrary to Fagnoli’s arguments, the Confluence Operating Agreement does not contain a non-competition clause. That may be because Confluence held title to property, as opposed to conducting business. The Confluence Operating Agreement does, however, have a provision concerning conflicts of interest and states the following:

3.12 Conflicts of Interest

3.12.1. A Member is entitled to enter into transactions that may be considered competitive with, or into a business opportunity that may be beneficial to, the Company, it being expressly understood that some of the Members may enter into transactions that are similar to the transactions into which the Company may enter....

3.12.2. A Member does not violate a duty or obligation to the Company merely because the Member’s conduct furthers the Member’s own interest.

As can be seen, the Confluence agreement expressly permits competitive actions by the Members. The effect of this language will be addressed below, and additional provisions in the Operating Agreement(s) will be considered as they pertain to the issues being raised.

LEGAL DISCUSSION AND ANALYSIS

Putting aside for the moment the issue of whether RMK and Confluence are Plaintiffs or Defendants, and who represents them, the Court will review the motions in order.

1) Plaintiffs' First Motion- for an injunction to close the competing business

The original motion was filed on October 14, 2025, at a time when only Fargnoli was listed as the Plaintiff, and requested a preliminary injunction to close Blazin' Saddles, based upon the non-compete agreement(s). Fargnoli's argument is basically that Blazin' Saddles is not allowed to be operated by David and Kasmarcik within the territory designated under the RMK Operating Agreement.

"The decision to grant or deny a request for a preliminary injunction is committed to the sound discretion of the trial court, and [on appeal] review is limited to whether Supreme Court has either exceeded or abused its discretion as a matter of law" *Camp Bearberry, LLC v. Khanna*, 212 AD3d 897, 898 (3d Dept 2023) (internal quotation marks and citations omitted). The purpose of a preliminary injunction "is to maintain the status quo and not to determine the ultimate rights of the parties" *R. Kelly Freedman Holding Group, LLC v. P & M Brick, LLC*, 242 AD3d 1402, 1404 (3rd Dept. 2025), quoting *Commissioner of the N.Y. State DOT v. Polite*, 236 AD3d 82, 114 (2d Dept 2024). A preliminary injunction is considered a drastic remedy [see, *Troy Sand & Gravel Co., Inc. v. Town of Nassau*, 101 AD3d 1505, 1509 (3rd Dept. 2012)] and since "preliminary injunctions prevent the litigants from taking actions that they are otherwise legally entitled to take *in advance of an adjudication on the merits*, they should be issued cautiously" *Rural Community Coalition, Inc. v. Village of Bloomingburg*, 118 AD3d 1092, 1094-1095 (3rd Dept. 2014) (emphasis in original). The injury that would "be sustained by plaintiff must be more burdensome to plaintiff than the harm which would be caused to defendants through the imposition of the injunction" *McLaughlin, Piven, Vogel, Inc. v. W. J. Nolan & Co.*,

114 AD2d 165, 174 (2nd Dept. 1986), *app. den.* 67 NY2d 606 (1986). When seeking a preliminary injunction, the proponent “must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor” *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 NY3d 839, 840 (2005), *citing* CPLR 6301; *R. Kelly Freedman Holding Group, LLC v. P & M Brick, LLC*, 242 AD3d at 1404-1405.

One of the most difficult hurdles for a plaintiff to clear for a preliminary injunction is “irreparable harm.” Economic loss that is “compensable by money damages does not constitute irreparable harm” *Matter of Rice*, 105 AD3d 962, 963 (2nd Dept. 2013). “Where the plaintiffs can be fully compensated by a monetary award, an injunction will not issue because no irreparable harm will be sustained in the absence of such relief” *Mar v. Liquid Mgt. Partners, LLC*, 62 AD3d 762, 763 (2nd Dept. 2009); *see, Harris v. Patients Med., P.C.*, 169 AD3d 433, 435 (1st Dept. 2019).

Under the circumstances of this case, Fagnoli has not shown a sufficient potential of irreparable harm. In her affidavit, she states that Stadium 138’s sales have dropped significantly since Blazin’ Saddles opened, and that if the trend continues, Stadium 138 will be forced to close. David and Kasmarcik both dispute that Blazin’ Saddles is the cause of the decline in Stadium 138’s business. Further, David denied “that the Companies are in precarious financial situations and reaffirm[ed] that is more than reasonably practicable to carry on the business[es]” (David affidavit February 14, 2026, Doc. No. 52 at ¶ 15). Thus, there is a dispute as to whether the Stadium 138 business is doomed to fail by the operation of Blazin’ Saddles, but even if that is true, Fagnoli has not shown that money damages would be an insufficient remedy. Lost profits, however difficult to prove and compute, are clearly compensable through money damages. *Sterling Fifth Assocs. v. Carpentille Corp.*, 5 AD3d 328, 329 (1st Dept. 2004).

Furthermore, the Court concludes that Fagnoli has not shown a likelihood of success, or that the balance of equities tip in her favor. The conflicting affidavits raise issues of fact that preclude the granting of a preliminary injunction. *See, Sussman Educ., Inc. v. Gorenstein*, 175 AD3d 1188 (1st Dept. 2019). In David’s affidavit, he stated that Fagnoli’s management decisions were the main cause of the decline in business for Stadium 138 (NYSCEF Doc. No. 34 at ¶ 23, 24). David also disputes that the bars cater to the same clientele, so Blazin’ Saddles cannot be said to be interfering with the business of Stadium 138. Further, David argues that since he is the majority owner of the Stadium 138 business, it would make no sense for him to

engage in business activity with Blazin' Saddles (where he has only a minority interest) that would harm Stadium 138. Additionally, both David and Kasmarcik state that they notified Fagnoli of their intention to pursue an additional business venture (even prior to Stadium 138 opening), which met their obligation under RMK Operating Agreement § 3.12.1 (see above at p.5). Thus, there is a dispute as to whether there is any violation of a no-compete clause.

Fagnoli has also failed to show that the balance of the equities tips in her favor. If an injunction is granted to close Blazin' Saddles, that would appear to be a hardship equal to, or greater, than the hardship to Fagnoli if the injunction is denied. A direction from the Court to close Blazin' Saddles before a hearing/trial is more drastic than having Stadium 138 run its business, even if it is subsequently determined that Defendants have violated the agreements, or that the competition creates a strain on the business of Stadium 138.

Another significant consideration is that Fagnoli's requested relief to close Blazin' Saddles would impact non-parties to the current action. According to the opposition papers filed by David and Kasmarcik, they both have only minority interests in Blazin' Saddles. The majority owner is Brian Kasmarcik, but he is not part of this case. Brian Kasmarcik and/or K&D should have an opportunity to participate and protect his/their interests prior to any Order affecting Blazin' Saddles.

Accordingly, Plaintiffs' motion for a preliminary injunction to close Blazin' Saddles is denied. It is an ultimate issue in the case, which will need to be resolved on a more fully developed record.

- 2) Order to Show Cause filed by Fagnoli to vacate the resolution to remove her from the businesses of RMK and Confluence

On October 27, 2025, David and Kasmarcik both signed resolutions to remove Fagnoli from RMK and Confluence. Fagnoli now seeks to vacate the resolutions.

Fagnoli has not established her right to bring an action to vacate the resolutions. The Confluence Agreement states that a Member is not authorized to commence a lawsuit without the unanimous vote or written consent of the Members (Section 4.3.2). The RMK Agreement contains the same provision at the same section. Fagnoli does not allege that the other Members authorized her to bring this suit on behalf of RMK and Confluence, but at the oral argument,

Plaintiffs' counsel argued that this is actually a derivative action, which is a mechanism by which a shareholder can assert an equitable claim to protect their interest in a corporation. That would arguably not require consent from the other Members.

Even if Fagnoli could assert a derivative action, the issues cannot be resolved by summary disposition. David and Kasmarcik have submitted affidavits providing bases for removing Fagnoli from RMK and Confluence, and allege that they complied with the procedures in the Operating Agreements of both LLCs to remove a Member. At best, this is an issue that would need to be resolved after further development of the record, or at trial.

A member of an LLC can bring a derivative action on behalf of the LLC for wrong done to the corporation. *See, Tzolis v. Wolff*, 10 NY3d 100 (2008); *Isaac v. Marcus*, 258 NY 257 (1932); *see, Maldonado v. DiBre*, 140 AD3d 1501 (3rd Dept. 2016). Any recovery inures to the benefit of the corporation. "In order to maintain a derivative cause of action, a plaintiff must be a member of the LLC" *Jacobs v. Cartalemi*, 156 AD3d 605, 607 (2nd Dept. 2017) (citations omitted). If Plaintiff is no longer a member, then she would not have standing to pursue a derivative claim. *Maldonado v. DiBre*, 140 AD3d 1501. The Court is not making any finding regarding Fagnoli's status in RMK or Confluence at this time, but rather, simply concluding that Plaintiff has not established a right, at this time, to vacate the resolution to remove her, due to the fact that she has not shown a right to commence an action on behalf of the LLC and because there is evidence that she is no longer a Member of either LLC which would preclude her from maintaining a derivative action.

- 3) Motion by RMK and Confluence for a preliminary injunction to keep Fagnoli from interfering with those businesses

On November 7, 2025, Mr. Paniccia filed a motion for RMK and Confluence seeking a preliminary injunction against Fagnoli. In support of the motion, an affidavit of Kasmarcik was filed, which incorporated a separate affidavit Kasmarcik that was submitted in the motion filed by him, David and K&D (motion 4). In that other affidavit Kasmarcik lays out that he and Fagnoli each had a 24.5% interest in RMK and Confluence. He also stated that prior to investing in RMK and Confluence, he informed David and Fagnoli that he was considering opening a country western style bar with his cousin, and that David and Fagnoli both consented to that. Therefore, he believes he complied with the Confluence Operating Agreement.

Kasmarcik's affidavit also states that Fagnoli has actually excluded David and Kasmarcik from the Stadium 138 business through threats and intimidation. He also attributes the decline in business to various decisions made by Fagnoli, including denying access to David and Kasmarcik to several business accounts and apps. He also alleges other acts of misconduct by Fagnoli, and claims that her mismanagement led to declining revenue.

David's affidavit also paints a picture of mismanagement by Fagnoli as well as self-dealing and the exclusion of the other LLC Members from the operation of Stadium 138. She refused to implement directives from David and Kasmarcik and undermined their efforts to make the bar more profitable. That ultimately led to the decision by David and Kasmarcik to remove Fagnoli from both LLCs.⁴ David also submitted sales revenue records to support his claims. Based on those arguments, RMK and Confluence, sought to enjoin Fagnoli from interfering with the business operation and reputation of those two LLCs.

Similar to Fagnoli's request for a preliminary injunction, the potential loss of profits is not sufficient to establish irreparable harm. The Court concludes that monetary damages would be available to RMK and Confluence to compensate those entities for injuries sustained. Therefore, a preliminary injunction is not warranted.

4) Motion by David, Kasmarcik and K&D for a preliminary injunction to keep Fagnoli from interfering with RMK, Confluence and Stadium 138

David, Kasmarcik and K&D also seek a preliminary injunction and their motion relies on the same affidavits as the motion by RMK and Confluence, discussed in the preceding section. The Court denies that motion on the same basis, that irreparable harm has not been shown. If David and Kasmarcik have been damaged by Fagnoli's actions in the way she has operated Stadium 138 (recalling that David and Kazmarcik have an interest in RMK and Confluence, which are the two LLCs set up to own and operate Stadium 138), then they will have the ability to prove the amount of monetary damages they have suffered. They have not shown irreparable harm which would entitle them to injunctive relief.

⁴ The Operating Agreements of both LLCs permit removal of a Member by a majority vote of the other Members. David and Kasmarcik both voted to remove Fagnoli for the reasons previously set forth.

CONCLUSION

Based on the foregoing discussion, it is hereby

ORDERED, that all the motions for a preliminary injunction are DENIED; and it is further

ORDERED, that Fargnoli's motion to vacate the resolution purporting to remove her from the LLCs of RMK and Confluence is DENIED at this time, based on this record.

THIS CONSTITUTES THE DECISION AND ORDER OF THIS COURT.

Dated: June 23, 2026
Binghamton, New York



HON. EUGENE D. FAUGHNAN
Supreme Court Justice