

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SREENIVASA REDDY GADE,
JAISRIKAR LLC, and JAISRIKAR2, INC.

Plaintiffs

-against-

MOHAMMED M. ISLAM, TRINGLE FOOD
CORP., TRINGLE TWO FOOD CORP.,Defendants

X

Index No. 652831/2011

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the attached is a true copy of the Decision and Order that was entered in the Office of the New York County Clerk on the 17th day of August, 2017.

Dated: August 23, 2017

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SREENIVASA REDDY GADE

By: 

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213113464v1

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JAFFE
Justice

PART 12

Gade,

-v-

Islam,

INDEX NO. 652831/11

MOTION DATE _____

MOTION SEQ. NO. 012

The following papers, numbered 1 to _____, were read on this motion to/for Amend Caption / Parties

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 8/15/17

BJ
BARBARA JAFFE
J.S.C.

1. CHECK ONE: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☒ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

-----X
SREENIVASA REDDY GADE, JAISRIKAR LLC,
and JAISRIKAR2, INC.,

Index no. 652831/11

Plaintiffs,

Mot. seq. No. 012

- against -

DECISION AND ORDER

MOHAMMED M. ISLAM, TRINGLE FOOD CORP.,
TRINGLE TWO FOOD CORP,

Defendants.

-----X
BARBARA JAFFE, J.:

Plaintiffs Gade, Jaisrikar LLC (LLC), and Jaisrikar2, Inc. (Inc.) move for an order:

(1) entering judgment against defendants Islam, Tringle Food Corp. (Tringle), and Tringle Two Food Corp. (Tringle Two) consistent with the jury's verdict and judgment presented pursuant to the notice of settlement filed on August 8, 2016; and (2) permitting plaintiffs to amend the second amended complaint consistent with the proposed third amended complaint submitted to the court on July 31, 2016. (NYSCEF 456).

Defendants cross-move for orders: (1) pursuant to CPLR 4404(a), setting aside the verdict and dismiss the action; and (2) pursuant to General Business Law (GBL) § 394-a (2) and Uniform Commercial Code § 3-804, directing that plaintiffs provide defendants with a written undertaking. (NYSCEF 518).

I. BACKGROUND

A jury trial was held before me on July 26, 28, 29, 2016, and August 1, 2016. At trial, plaintiffs testified about the events underlying the action as follows: Gade, together with three partners, owned as an investment two Dunkin' Donuts stores in Manhattan, one located on 125th

Street and the other on Madison Avenue. In 2007, they sought to divest themselves of ownership of the stores; defendant Islam agreed to purchase both stores. The parties agreed on a total purchase price of \$1.1 million, \$780,000 for the 125th Street location, and \$320,000 for the Madison Avenue location. Subsequently, Islam agreed to pay a total of \$1.3 million.

During the transitional period between contract and closing, the proposed sale of the franchise must be approved by Dunkin', and the purchaser must be trained in running the franchise. Plaintiffs testified that the parties had understood that defendants were to manage the stores over the two-year period before closing, during which defendants would retain any profits, and be liable for any losses. At the closing, assets were transferred, documents were executed, \$200,000 of the purchase price was paid, and \$100,000 was put in escrow. Islam promised, but failed, to pay the balance after closing. Defendants gave plaintiffs several promissory notes, none of which was satisfied.

Defendants denied having acquired the stores, and asserted that, thus, no closing occurred, and asserted that of the four partners who may have owned the stores, only one appeared at trial because the others were "probably paid." They also alleged that the "contracts" on which plaintiffs rely contain forged signatures, were not properly completed, and are thus unenforceable and incapable of performance. Defendants also claim ownership of the \$100,000 held in escrow, assert that it should be released, and deny that they are liable on the promissory notes. They maintain that a demand for payment was never made, and that the notes should not have been admitted in evidence at the trial.

The jury rendered the following verdict:

1. Tringle Two breached a promissory note issued to LLC, dated November 14, 2007, causing damages of \$600,000, plus applicable interest, as per the note.

2. Tringle Two breached a promissory note issued to Inc., dated November 14, 2007, causing damages of \$350,000, plus applicable interest, as per the note.
3. Tringle Two breached a promissory note issued to Inc., dated November 27, 2007, causing damages of \$350,000, plus applicable interest, as per the note.
4. Inc. and Tringle entered into a management/partnership agreement, dated November 14, 2007; Tringle did not breach this agreement.
5. Inc. and Tringle entered into a management/partnership agreement, dated November 14, 2007; Tringle did not breach this agreement.
6. LLC and Tringle Two entered into a management/partnership agreement, dated November 14, 2007; Tringle Two did not breach this agreement.
7. Inc. and Tringle entered into a contract of sale, dated December 2007; Tringle breached this agreement, causing damages of \$630,000.
8. LLC and Tringle Two entered into an oral contract of sale; Tringle Two breached this agreement, causing damages of \$270,000.
9. Islam did not falsely represent any fact to plaintiffs.

(NYSCEF 512).

II. MOTION TO AMEND

A. Contentions

Plaintiffs prevailed on five of the nine questions on the verdict sheet, three as to the promissory notes, and two as to the contracts of sale. The second amended complaint contains four causes of action that are relevant to these motions: (1) breach of contract by Tringle; (2) breach of contract by Tringle Two; (3) breach of contract by Islam; and (4) consumer fraud and common law fraud by Islam. It was filed on October 15, 2013, and defendants answered on or about November 24, 2013. (NYSCEF 114).

Plaintiffs seek to amend the second amended complaint to add, *inter alia*, the following allegations:

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