FILED: NEW YORK COUNTY CLERK 08/17/2017 02:32 PM INDEX NO. 652831/2011
NYSCEF DOC. NO. 541 RECEIVED NYSCEF: 08/17/2017

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 J.S.C.
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.,

Plaintiffs,

- against -

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

Defendants.

----------x

Index no. 652831/11

Mot. seq. No. 012

DECISION AND ORDER

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:

1. Before the November 14, 2007 closing, Tringle Two and Islam signed a note by which they promised to pay Jaisrikar, LLC, $600,000, as part of assurances that it would pay for, and properly manage, the stores (note 1);

2. Tringle Two failed to pay the $600,000 owed under note 1;

3. Before the November 14, 2007 closing, Tringle Two and Islam signed a note by which they promised to pay Jaisrikar 2, Inc. $350,000, as part of assurances that it would pay for, and properly manage, the stores (note 2);

4. Islam signed note 2, personally as well as on behalf of his company;

5. Tringle Two failed to pay the $300,000 owed under note 2;

6. Before the November 14, 2007 closing, Tringle Two and Islam signed a note by which they promised to pay Jaisrikar2, Inc. $350,000, as part of assurances that it would pay for, and properly manage, the stores (note 3); and

7. Tringle Two failed to pay the $350,000 owed under note 3.

Defendants argue that they would be prejudiced by the proposed amendment as to the promissory notes, and object to what they characterize as "new, but time-barred, causes of action." They claim there is no mention of promissory notes in the second amended complaint, and that permitting a post-trial amendment triggers their right to answer and interpose defenses. (NYSCEF 520).

Plaintiffs contend that in opposing the motion to amend, defendants ignore pleading requirements, and that they properly seek to conform the pleadings to the facts adduced at trial. (NYSCEF 531).

B. Discussion

Pursuant to CPLR 3025, a party may amend a pleading "at any time by leave of court before or after judgment to conform [the pleading] to the evidence." (CPLR 3025[b], [c]; *Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411 [2014]). Leave "shall be freely given upon such terms

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.