

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF ONONDAGA
COMMERCIAL DIVISION

PRESIDING JUSTICE: HON. ANTHONY J. PARIS

OSI RESTAURANT PARTNERS, LLC, et al., *et al.*

Plaintiffs

v.

IPT, LLC d/b/a/ FACILITY MAINTENANCE

Defendant

**PRELIMINARY
CONFERENCE
STIPULATION AND
ORDER**

Commercial Division
Index No.: 2016-EF-2494
R.JI No.: 33-17-0510

(1) **Appearances:**

Counsel for Plaintiff(s):

Client's Name: OSI Restaurant Partners, LLC ("OSI"), and its affiliates Outback Steakhouse of Florida, LLC ("Outback"), Carrabba's Italian Grill, LLC, ("Carrabas") Bonefish Grill, LLC ("Bonefish"), Bonefish Grill of Florida, LLC ("Bonefish FL"), and Outback/Fleming's, LLC

Lead Counsel's Name: John G. Powers

Firm Name and Address: Hancock Estabrook LLP, 1500 AXA Tower I, 100 Madison Street, Syracuse, NY 13202

Telephone Number: (315) 565-4547

Facsimile Number: (315) 565-4647

Email Address: jpowers@hancocklaw.com

Counsel for Defendant(s):

Client's Name: IPT, LLC d/b/a Facility Maintenance ("FM")

Lead Counsel's Name: Donald E. Frechette

Firm Name and Address: Locke Lord LLP, 20 Church Street, 20th Floor, Hartford, CT 06107

Telephone Number: 860-525-5065

Facsimile Number: 860-527-4198

Email Address: donald.frechette@lockelord.com

(2) **Pertinent Dates:**

a. Date of Commencement: June 22, 2016

b. Date of Joinder: N/A

c. RJI Date: February 13, 2017

(3) **Nature of Case:**

Pursuant to 22 NYCRR 202.12(c)(1), provide a brief description of the factual and legal issues raised in the pleadings.

a. The legal theories and salient facts supporting plaintiffs' claims are:

Plaintiffs plead claims for breach of contract and breach of the implied covenant of good faith and fair dealing. Plaintiffs contend that among Defendant's contractual obligations was the responsibility to accurately assess sales tax on work performed by Defendant's vendors on Plaintiff's behalf and to only invoice Plaintiffs for sales tax amounts actually due and owing. Plaintiffs contend that Defendants breached this obligation causing monetary injury to Plaintiffs in an amount exceeding \$2 Million plus statutory interest. Plaintiffs also seek recovery of their attorneys' fees under applicable contractual fee shifting provisions.

Relief Demanded: Compensatory damages in an amount to be determined at trial but not less than \$2.1 million dollars; interest, costs and attorney's fees

b. Defendant FM's claims. If issue has been joined, the legal theories and salient facts supporting defendant FM's defenses, counterclaims and third-party claims are: _____

Relief demanded: _____

c. Defendant _____'s claims. If issue has been joined, the legal theories and salient facts supporting defendant _____'s defenses, counterclaims and third-party claims are _____

Relief demanded: _____

(4) **Attorneys' Consultation:**

The parties consulted in a good faith effort to reach agreement on the issues identified in Uniform Commercial Division Rule 8.* Agreement was reached as follows:

ISSUE DISCUSSED	DATE OF CONSULTATION	AGREEMENT REACHED (Y or N)
Resolution of the case	6/15/16 to present	N
Fact discovery including methods, timing and scope	6/12/17	Y
Expert disclosure including designation, timing and scope	6/12/17	Y
The use of ADR	10/24/16	(already conducted)
Voluntary and informal exchange of information	ongoing	Y
Confidentiality and privilege	6/12/17	Y

The scope, extent, order and form of production	ongoing	Y
The anticipated cost and burden of data recovery and proposed initial allocation of such costs	6/12/17	Each side to bear their own costs

* Concerning electronic discovery, see Item (8)d below.

COMMENTS: _____

(5) **Impleader:** Do you anticipate the need to add parties? If so, who and when? NO

Note: *Impleader must be completed no later than 15 days after the end of the last party deposition.*

(6) **Early Disposition:**

a. This case is appropriate for early disposition by:

- i. N/A the accelerated adjudication procedures of the Commercial Division of the Supreme Court as set forth in Uniform Commercial Division Rule 9
- ii. N/A ADR (identify type and timing) Mediation was conducted on November 28, 2016.
- iii. N/A limited issue discovery in aid of an early dispositive motion or settlement (identify type and timing) _____
- iii. N/A dispositive motion that will be filed on or before _____
- iv. N/A other (identify type and timing) _____

b. This case is not appropriate for early disposition because: The parties already have participated in AAA mediation.

(7) **Confidentiality Order:**

The court recognizes that most cases in the Commercial Division involve highly sensitive information. In such cases, the parties may be directed to enter into a Confidentiality Agreement that the court will "So Order." The parties are encouraged to use the model confidentiality agreement found at: <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>

The parties HAVE or X HAVE NOT entered into a Confidentiality Agreement.

The parties X WILL or WILL NOT enter into a Confidentiality Agreement.

If so, then state when: ASAP. If not, then state why not:

(8) Disclosure [See generally 22 NYCRR 202.70(g)]:

It is hereby **STIPULATED** and **ORDERED** that disclosure shall proceed as follows pursuant to the CPLR and the Uniform Commercial Division Rules:

a. **Insurance Coverage** shall be furnished on or before: N/A

b. **Bill of Particulars:**

i. Demand(s) for a bill of particulars shall be served on or before, if appropriate, **September 1, 2017**

ii. Response(s) to the demand(s) for a bill of particulars shall be served on or before: **Response according to CPLR.**

c. **Document Production:**

i. Initial demands for discovery and inspection shall be served on or before **14 days from the date of service of Defendant's Answer.**

ii. Responses to the demands for discovery and inspection shall be served on or before: **according to CPLR, or by agreement of the parties.**

iii. The parties will provide a statement regarding the completeness of document production on or before: **March 1, 2018**

iv. If documents are withheld are grounds of privilege, the parties agree to employ:

a categorical privilege log

a document by document privilege log (**X**) *Note: Pursuant to Uniform Commercial Division Rule 11-e, unless agreed to by the parties or otherwise authorized by the court: document production must be complete before the date set for commencement of depositions; and no later than one month prior to the close of fact discovery, each party must provide opposing counsel with a statement regarding the completeness of its document production.*

COMMENTS: _____

d. **Electronic Discovery**

Will there be electronic discovery in the case?

_____ YES

_____ NO*

_____ **X** NOT SURE **

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.