

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD BRADDOCK,

Plaintiff,

v.

ZAYCON FOODS LLC, et al.,

Defendants.

C16-1756 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Individual Defendants’ Motion for Partial Summary Judgment, docket no. 119, is DENIED in part and DEFERRED in part as follows.

(a) The Motion is DENIED as to Plaintiff’s First and Second Claims. Plaintiff’s First and Second Claims remain a part of the Amended Complaint, docket no. 76, and no party has moved for dismissal or summary judgment regarding those claims. Defendants suggest these claims are no longer operative because they were dismissed earlier in the case. See Defs.’ Mot. for Partial Summary Judgment, docket no. 119, at 7. Plaintiff’s subsequent request for leave to amend, docket no. 55, was granted by the Court, docket no. 74, and Plaintiff realleged federal and state securities fraud claims. See Am. Compl., docket no. 76;

(b) Except as to Defendant Kremin, the Motion is DENIED as to the Third Claim for fraud, the Fourth Claim for negligent misrepresentation, and the Fifth Claim for breach of fiduciary duty. There are material issues of fact that preclude summary judgment on those claims; and

(c) The Motion is DEFERRED as to the Sixth Claim for breach of contract, all claims relating to Defendant Kremin, and Plaintiff’s Eighth Claim for declaratory judgment.

(2) Plaintiff’s Motion for Partial Summary Judgment, docket no. 124, for (a) finding Defendants liable for breach of the Second Amended and Restated Operating Agreement, as amended (“Operating Agreement”) and Employment Agreement, and

1 (b) dismissing Defendants' First Counterclaim for declaratory judgment is also
2 DEFERRED.

3 (3) The Court RENOTES the motions, docket nos. 119 and 124, to May 29,
4 2019. The Court SETS oral argument on the deferred issues described above in
5 Paragraphs 1(c) and 2 (the "Deferred Motions") for May 29, 2019, at 1:30 p.m. At oral
6 argument, the parties should address the Deferred Motions with emphasis on the
7 following issues:

8 (a) Whether the Michael John Trust and/or the Saratoga Trust held
9 voting rights and consented to Plaintiff's removal as co-Manager or whether Defendants
10 Giunta and Saratoga retained the voting rights, had the right to consent (*see*
11 RCW 25.15.251(3)), and consented to Plaintiff's removal as co-Manager. Was any
12 transfer of units in violation of Article 8 of the Operating Agreement and, if so, would the
13 transferors retain the voting rights associated with the transferred units under the
14 Operating Agreement and/or state law;

15 (b) Whether there are any other issues of fact relating to whether 80%
16 consent was obtained for Plaintiff's removal as co-Manager;

17 (c) The proper interpretation of the Operating Agreement as to whether
18 80% consent was necessary and/or obtained for Plaintiff's removal as co-Manager;

19 (d) What claims can be dismissed if the Court concludes Defendants
20 obtained the required 80% consent to remove Plaintiff as co-Manager; and

21 (e) Whether Defendant Kremin can be dismissed as to all claims.

22 (4) Plaintiff shall file a supplemental brief not to exceed 20 pages by May 10,
23 2019, and Defendants shall file a combined responsive brief not to exceed 20 pages by
24 May 17, 2019, addressing the issues outlined in paragraph 3 of this Minute Order. No
25 replies shall be filed.

26 (5) At the hearing on May 29, 2019, the parties should also be prepared to
27 address a trial date and any pretrial deadlines.

28 (6) The Clerk is directed to send a copy of this Minute Order to all counsel of
29 record.

30 Dated this 19th day of April, 2019.

31 William M. McCool
32 Clerk

33 s/Karen Dews
34 Deputy Clerk