

<b>Triantafillakis v Madden</b>
2019 NY Slip Op 30355(U)
February 13, 2019
Supreme Court, New York County
Docket Number: 652319/2018
Judge: Joel M. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM**

*Justice*

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JOHN TRIANTAFILLAKIS, ATHANASIOS TRIANTAFILLAKIS,

Plaintiffs,

- v -

JENNIFER MADDEN, LAKI KOKOTAS, HOWARD ROSENBLUTH

Defendants.

INDEX NO. 652319/2018

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 30, 31, 33

were read on this motion to DISMISS.

Upon the foregoing documents:

Plaintiffs John Triantafillakis (“John”) and Anthanasios Triantafillakis (“Anthanasios”) bring this action against Defendants Laki Kokotas (“Kokotas”), Jannifer Madden (“Madden”), and Howard Rosenbluth (“Rosenbluth”) for failure to distribute the proceeds from the sale of a diner. Defendants bring this motion to dismiss on the grounds of res judicata, collateral estoppel, and failure to state a claim.

***Background***

John, Anthanasios and Kokotas (“the Partners”) operated a family restaurant called the Pom Pom Diner (“Diner”). The Diner was owned by Chris 26 Enterprises, Inc. (“Chris 26”), of which each Partner held a one-third share. (NYSCEF 1 at 4). In 2011, the Partners transferred their respective one-third interests in Chris 26 to a new corporate entity, Trian West, LLC (“Trian West”). Trian West was solely owned by Jennifer Madden (“Madden”), Kokotas’ fiancé.

In December 2011 the Partners executed an Option Agreement with Madden, under which the Partners were given an irrevocable right to purchase back their respective one-third interest in the corporation. On or about October 30, 2014, Trian West entered into a purchase agreement with HR Pom Pom LLC for sale of the Diner for \$1,500,000.00. (NYSCEF 1 at 10). In an effort to stop the sale, John attempted to exercise his option to purchase his one-third share in Trian West. After Madden refused to honor the Option Agreement, John commenced a lawsuit seeking an injunction to enforce the Option Agreement (the “First Action”). (*Id.* at 4-5)

In the First Action, the Court (Kern, JSC) found that the Option Agreement was unenforceable because the agreement included an unreasonable restraint on alienation. (NYSCEF 13 at 3). After the decision in the First Action, Defendants completed the transaction in the latter half of 2016. (NYSCEF 22 at 10). Plaintiffs filed this suit to recover their alleged share of the proceeds from the sale of the Diner. Defendants move to dismiss the claims under res judicata, collateral estoppel, and for failure to state a claim.

### *Analysis*

Plaintiffs’ claims are not barred by res judicata. In *Matter of Hunter*, 4 N.Y.3d 260 (2005), the Court of Appeals explained that “[u]nder the doctrine of res judicata, a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter. The rule applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation.” *Id.* at 269 (citations omitted). However, where a claim could not have been raised in the prior litigation because it had not yet matured, res judicata does not apply. *UBS Securities LLC v. Highland Capital Management L.P.*, 159 A.D.3d 512, 513 (1st Dep’t 2018).

In the First Action, Plaintiffs sought to enjoin Defendants from selling the Diner, and to enforce the Option Agreement giving Plaintiffs their share in Trian West. Since the termination of that action, Defendants have sold the Diner, and have failed to distribute the proceeds to Plaintiffs. (NYSCEF 1 at 10). This suit was brought to enforce an Operating Agreement mandating that Plaintiffs share in the proceeds from any sale of the Diner. Plaintiffs' claims in the instant action, therefore, are based upon new conduct which could not have been raised in the original litigation (*i.e.*, failure to distribute proceeds from the sale) and a separate agreement that was not at issue in the First Action (the Operating Agreement).

In the First Action, Defendant Jennifer Madden submitted an affidavit which included a section titled "Trian West's Intention to disburse the Sale Proceeds." (NYSCEF 2 at 11). In this section of the affidavit Madden represented to the court, under oath, that "[i]n the event Trian West is permitted to close the Purchase Agreement and thereby sell all of its assets to HR Pom Pom, *Trian West will disburse the sale proceeds in accordance with the terms of the Operating Agreement.*" (*Id.*) (emphasis added). The affidavit further represented that after all payments of debts are made "*the funds will be placed in escrow pending equal distribution to the three optionees under the Option Agreement, Plaintiff John Triantifillakis, Anthanasios Triantifillakis, and Lako Kokotas.*" (*Id.*) (emphasis added). As it turned out, Defendant Madden failed to proceed as she represented she would. It was only when she allegedly reneged on her representation and refused to share the proceeds with the Plaintiffs that Plaintiffs' claims in this suit arose. As such, Plaintiffs claims in the instant action are not barred by *res judicata*.<sup>1</sup>

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<sup>1</sup> The Court finds it likely that Ms. Madden's representation influenced Justice Kern's decision not to enjoin the sale of the Diner. Justice Kern presumably believed, as Ms. Madden led her to believe, that even if the transaction was permitted to go forward the proceeds of sale would be distributed to the Plaintiffs. Of course, that would have cushioned the blow for the parties that were seeking to enjoin the sale, which presumably was why the representation was made. In that

Plaintiffs' claims also are not barred by collateral estoppel. Plaintiffs raise a breach of contract claim that was not litigated in the previous action. In *Beuchel v. Bain*, 97 N.Y.2d 295 (2001), the Court of Appeals explained that "[c]ollateral estoppel precludes a party from relitigating in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party or those in privity." *Id.* at 303 (citations omitted). Here, Plaintiffs' breach of contract claim is based upon a different contract, one that was not raised or litigated in the previous action. (NYSCEF 2 at 11). As such, Plaintiffs' claims are not barred by collateral estoppel.

Defendants' remaining argument that Plaintiffs have failed to state a viable cause of action is also not persuasive. Plaintiffs have sufficiently alleged a claim for breach of contract. Plaintiffs cite to the Madden Affidavit and an Affidavit from Howard Rosenbluth to support their breach of contract claim, and entitlement to the proceeds from sale. (NYSCEF 1 at 7-8). They have also sufficiently alleged a breach of fiduciary duty claim. Plaintiffs have alleged that a fiduciary duty existed between the parties in their former joint ownership of the Diner, and that Defendant Kokotas breached that duty by failing to distribute the proceeds of sale. (NYSCEF 1 at 11-12). These allegations are sufficient to survive a motion to dismiss.<sup>2</sup>

Therefore, it is:

**ORDERED** that Defendants' motion to dismiss is Denied; and it is further

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light, Defendants' attempt to rely on res judicata and collateral estoppel is particularly unjustified.

<sup>2</sup> "In determining whether to grant a motion to dismiss pursuant to CPLR § 3211, the court should accept as true the facts alleged in the pleading, accord the drafter the benefit of every possible inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory." *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994); *Frank v. Daimler Chrysler Corp.*, 292 A.D.2d 118, 121 (1st Dep't 2002).

**ORDERED** that the parties are to appear for a preliminary conference on March 12, 2019 at 9:30 a.m.

This constitutes the Decision and Order of the Court.

2/13/2019  
DATE

  
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JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE