

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

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CESAR RAMIREZ and ADRIANA RODRIGUEZ, individually and as stockholders of MANHATTAN FARE CORP.	:
	:
Petitioners,	:
	:
v.	:
	:
MONEER ISSA, MANHATTAN FARE CORP., and 431 FOOD MARKET CORP.,	:
	:
Respondents.	:
	:
-----	X

Index No. 652676/2024

Motion Sequence No. 1

Oral Argument Requested

**RESPONDENTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO STAY**

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Respondents Moneer Issa, Manhattan Fare Corp. (the “Company”) and 431 Food Market Corp. submit this memorandum of law in support of their motion pursuant to CPLR 2201 to stay this action in favor of the first-filed pending action in Kings County Supreme Court, Commercial Division, involving the identical parties, identical facts, and overlapping claims for relief.¹

PRELIMINARY STATEMENT

This is a duplicative action.

Petitioners and respondents in this action are also the plaintiffs and defendants, respectively, in an action pending in New York Supreme Court, Kings County, which plaintiffs filed a year ago in July 2023: *Cesar Ramirez et al. v. Moneer Issa et al.*, Index No. 521206/2023 (N.Y. Sup. Ct., Kings County) (the “Kings County Action”). The operative facts at issue in this action for dissolution of the Company are exactly the same operative facts at issue in the Kings County Action, in which the petitioners seek damages for breach of the parties’ Stockholders Agreement, related torts, and equitable relief concerning control of the Company. Some of the equitable relief petitioners seek here – including appointment of a receiver and a mandatory preliminary injunction requiring Issa to allow Ramirez to manage the Company – also was sought, and denied, in the Kings County Action.

The Kings County Action, moreover, has been aggressively litigated over the past year. Discovery was completed this summer, including party and third-party discovery and depositions. Over the course of the last year in the Kings County Action, petitioners made multiple repetitive motions seeking interim relief with respect to the Company based on the same allegations of mismanagement and mistreatment as petitioners make here. Each of those motions

¹ Accompanying this memorandum is the Affirmation of Jewel Tewiah, dated July 8, 2024, with exhibits. The Petition in this action (cited as “Pet. ¶ ___”) is attached thereto as Exhibit 1, and the operative complaint in the Kings County Action is Exhibit 2 (cited as “Kings Compl. ¶ ___”). Citations to “Ex. ___” are to the exhibits to this Affirmation.

was denied. The Kings County Supreme Court is thus exercising jurisdiction over the Company and petitioners' claims concerning the Company. Moreover, as demonstrated below, the Kings County Court's resolution of the parties' respective claims and counterclaims in that action will be dispositive of the claims petitioners bring in this action.

While petitioners make a solitary passing reference in their petition to Justice Ruchelsman, who is the presiding justice in the Kings County Action, they fail to alert this Court to the fact that this is a duplicative action and that they previously made the same fact allegations they are making here in the Kings County Action, some of which have been preliminarily ruled on by Justice Ruchelsman and rejected as unsupported by evidence. Similarly, in this action they fail to disclose to this Court that the Company records they seek in their petition have already been produced in discovery in the Kings County Action and that discovery disputes concerning the scope of disclosure are pending decision before Justice Ruchelsman.

In order to avoid wasting judicial and party resources on duplication of effort and to avoid the risk of inconsistent adjudication, this action must be stayed. Only a stay is consistent with the fundamental principles of judicial economy, orderly procedure and avoiding the possibility of competing judicial rulings from separate courts.

RELEVANT FACTS

Petitioners' fact allegations in this action are the same core operative fact allegations they made in the Kings County Action and that are being litigated there.

Petitioner Cesar Ramirez worked as the Head Chef at the Company's well-known and highly regarded restaurant, Chef's Table at Brooklyn Fare. In 2022, Ramirez and Moneer Issa, the owner of the Company, entered into a Stockholders Agreement whereby Issa transferred a 50% ownership interest to Ramirez and his spouse, petitioner Adriana Rodriguez. In July 2023,

Issa terminated Ramirez as Head Chef and closed the restaurant so it could be reorganized under the replacement chefs. The reasons for Ramirez's termination are squarely and fundamentally at issue in this action and the Kings County Action: Issa asserts he caught Ramirez red-handed stealing Company property (including hundreds of thousands of dollars' worth of expensive oven accoutrements, pots, pans, cutlery and wine); Ramirez claims Issa fired him without cause simply because he found out Ramirez intended to leave Chef's Table at the end of the year.

Each of Ramirez's accusations that Issa has "oppressed" and mistreated him and his spouse as Company shareholders and excluded them from managing the Company in breach of the parties' Stockholder Agreement – on which petitioners base this dissolution action – depend on the adjudication of whether Issa is telling the truth or Ramirez is. That core determination was the central topic of the now-completed discovery in the Kings County Action and now awaits determination at trial.

That the parties and the core fact allegations are identical in the two actions cannot be gainsaid. A comparison of the Petition in this action and the operative complaint in the Kings County Action, both summarized below, definitively shows as much:

A. Dissolution Petition

In this action, petitioners seek dissolution of the Company pursuant to BCL 1104-a. They venued the action here pursuant to the New York Business Corporation Law, which requires filing dissolution proceedings in the County in which the office for the Company is located.

In this action, they claim Issa acted illegally and oppressively toward them because he allegedly breached the parties' Stockholder Agreement. Pet. ¶¶ 15-32. They also purport to

invoke the subsection of BCL 1104-a that allows dissolution where Company assets are “looted, wasted, or diverted” for non-Company purposes. *Id.* ¶ 36.

Here, petitioners allege that “on July 1, 2023, despite the contractual requirement in the Stockholders Agreement of the compulsory requirement of a joint decision for all company business, Issa unilaterally fired and discharged Ramirez from his position as Head Chef at Manhattan Fare restaurant and claimed to have singularly cancelled the stock ownership of the Petitioners and cancelled unilaterally the Stockholders Agreement with the Petitioners without Petitioners’ consent and without notice.” Pet. ¶ 28. They further allege that after Issa’s termination of Ramirez, Issa filed a purportedly baseless criminal complaint with the New York City Police Department concerning Ramirez’s theft of Company property, and that, as a result, he was arrested in front of his family at his home. *Id.* ¶ 31.

According to the Petition, Issa unilaterally shut down Chef’s Table on July 1, 2023, and then reopened the restaurant on October 4, 2023, with two new chefs replacing Ramirez. Pet. ¶ 23. Petitioners further allege that after Ramirez’s termination “no information regarding the business or finances of Manhattan Fare, whether financial or otherwise, has been provided to Petitioners, except through Court Orders from the Honorable Leon Ruchelsman, Justice of the Supreme Court of the State of New York.” Pet. ¶ 22. They add that Issa has failed to provide them with distributions from the Company after June 30, 2023 and that the Company has supposedly wrongfully paid Issa and/or his companies excessive rent for Chef’s Table – although no detail and no supporting facts for this (baseless) sweeping allegation is presented in the Petition. Pet. ¶¶ 24, 26(a).

As noted above, in addition to dissolution petitioners seek the following equitable relief:

(i) the appointment of “an independent examiner and/or receiver to examine Manhattan Fare

Corp.'s books and records and oversee its day-to-day operations"; (ii) an order directing the Company "to make available for inspection and copying its financial books and records"; and (iii) an order enjoining Issa from "transferring any assets outside of the ordinary course of its business" and from "authorizing or permitting the cancellation of Petitioners' stock without their consent and from exercising any corporate powers." Pet. at p. 8, Wherefore Cl. ¶¶ 1-3.

B. Kings County Complaint

While the Kings County Action was commenced in July 2023, the operative complaint in that action is an amended complaint filed on October 27, 2023. Ex. 2. The defendants filed an answer and counterclaims to the amended complaint on January 23, 2024. Ex. 3 (Answer/Counterclaim).

That action principally seeks damages for alleged breach of the Stockholders Agreement, related alleged statutory violations, and related torts. The causes of action include Breach of Contract; violation of the Labor Law; Conversion; Diversion of Corporate Assets; Defamation; Breach of Fiduciary Obligation; Breach of Covenant of Good Faith; Loss of Equity; False Arrest; and Intentional and Malicious Infliction of Emotional Distress. Kings Compl. ¶¶ 1-68. Three of these causes of action ("Diversion," "False Arrest" and "Emotional Distress") were dismissed by Justice Ruchelsman on defendants' motion to dismiss. Ex. 11 (Jan. 2, 2024 Order, at 3, 5-6). The Labor Law claim is the subject of a pending appeal to the First Department. Ex. 9 (NOA). And petitioners also raised their (false) allegation about inflated "rent" during discovery in the Kings County Action. Tewiah Affirm. ¶ 14; Ex. 6 (Issa Deposition Transcript).

In the prior pending action, petitioners sought various preliminary equitable relief, including a TRO/mandatory preliminary injunction to enjoin Issa to reopen the restaurant with Ramirez and the appointment of a receiver. These motions were denied. Exs. 7, 8, 10, and 12

(Orders). Because he was, of course, doing so anyway, Issa voluntarily agreed to a preliminary order, signed on consent of the parties by Justice Ruchelsman, enjoining him not to make any payments from the Company that are not ordinary course business payments pending the outcome of the Kings County Action. *Tewiah Affirm.* ¶¶ 16-17. *Compare* Ex. 8 (Sept. 7, 2023 Order) *with* Pet. ¶ 34.

With regard to petitioners' previous application for a receiver, this was initially denied by the Kings County Court on November 28, 2023: "Other than one instance of disputed improper activity, there is no basis to fear the defendants will cause any loss or waste to the business . . . The re-opening [of the restaurant] only serves to secure the assets, machinery, and items necessary for its successful operation." Ex. 10 (Nov. 28, 2023 Order at 3).

The Court also held that plaintiffs have no likelihood of success because the record evidence markedly *disproves* plaintiffs' baseless claim about the supposed embezzlement of \$400,000 from the Company; the Company bank records show that the money was moved for safekeeping and then redeposited in the Company's operating account and used for ordinary business expenses:

In this case the plaintiffs have failed to present sufficient and clear evidence that receiver should be appointed to protect their interests . . . While the plaintiff has accused the defendant of embezzling money that allegation is seriously disputed. Indeed, bank records demonstrate the funds allegedly taken were restored.

Ex. 10 (Nov. 28, 2023 Order, at 2-3).

On January 16, 2024, the Kings County Court denied plaintiffs' motion to reargue their motion for appointment of a receiver and rejected their allegations of theft by Issa because "the entire argument of waste is contradicted by the plaintiffs' assertion that the restaurant has re-opened and is profitable," and because "the receiver is not an expedient to be employed as

retaliation for the allegedly abrupt and improper termination of plaintiff's employment at the restaurant." Ex. 12 (Jan. 16, 2024 Order at 2-3).

The following chart catalogues the key operative fact allegations made by petitioners in the Kings County Action against Issa in comparison with the same fact allegations made in the Petition in this Action:

Kings County Complaint	New York County Petition
<p>"[Ramirez] was willfully and arbitrarily terminated by the Defendant Issa on July 1, 2023, which termination was intentional, without cause, notice, or justification, and without the required unanimous consent of the Plaintiffs, Cesar Ramirez and Adriana Rodrigues, as required by the Stockholder Agreement . . ." Kings Compl. ¶ 12.</p>	<p>"On July 1, 2023, despite the contractual requirement in the Stockholders Agreement of the compulsory requirement of a joint decision for all company business, Issa unilaterally fired and discharged Ramirez from his position as Head Chef at Manhattan Fare restaurant . . . without Petitioners' consent and without notice." Pet. ¶ 28.</p>
<p>"Defendant Issa has materially breached his covenant of good faith and fair dealing with the Plaintiffs in:</p> <ul style="list-style-type: none"> • "having closed the Company Restaurant without a <i>bona fide</i> reason" (Kings Compl. ¶ 45(c)); • "re-opening the Manhattan Fare Restaurant without the required unanimous consent of the individual Plaintiffs." Kings Compl. ¶ 45(m). 	<p>"On October 4, 2023, after the Chef's Table restaurant had been unilaterally closed by Issa since July 1, 2023, Issa, who previously hired two chefs to replace Ramirez, re-opened Chef's Table." Pet. ¶ 23.</p>
<p>"Defendant Issa has materially breached his covenant of good faith and fair dealing with the Plaintiffs in: having refused to allow Plaintiff, Cesar Ramirez . . . access to examine the financial records of the company . . ." Kings Compl. ¶ 45(j).</p>	<p>"Petitioners have sought financial information about Manhattan Fare Corp., from Issa, which had not been previously provided by Issa to them . . ." Pet. ¶ 25.</p>

Kings County Complaint	New York County Petition
<p>“Defendant Issa has materially breached his covenant of good faith and fair dealing with the Plaintiffs in: having filed a false complaint with the NYC Police Department falsely accusing the Plaintiffs of stealing property of Manhattan Fare Corp., and having the Plaintiff, Cesar Ramirez, arrested, and fingerprinted . . .” Kings Compl. ¶ 45(f).</p>	<p>“In or about August 2023, Issa filed a criminal complaint with the New York City Police Department and/or with the office of the local District Attorney charging Ramirez with stealing Manhattan Fare’s property and had the police arrest him at his house in front Ramirez’s wife and children . . . the Criminal Complaint filed by Issa were made without any legal basis whatsoever and were made to cause the oppression of and damages to the Petitioners.” Pet. ¶¶ 31-32.</p>
<p>“Defendant Issa has materially breached his covenant of good faith and fair dealing with the Plaintiffs in: having failed to otherwise live up to the terms of the agreements with the Plaintiffs by excluding and locking them out from the employment, the Company business activities and its premises and its records . . .” Kings Compl. ¶ 45(k).</p>	<p>“The decisions by Issa . . . failed to comply with the provisions of the Stockholders Agreement for joint decisions, and is in direct contravention of corporate law and a violation of the Stockholders Agreement.” Pet. ¶ 29.</p>

C. Status of Kings County Action

Discovery is complete in the Kings County Action. All party and nonparty depositions have been taken and the Note of Issue/ Certificate of Readiness is due at the end of the month, on July 30. Tewiah Affirm. ¶ 7; Ex. 4 (Order).

Over the last year, party and third-party discovery has been comprehensive. Petitioners here (plaintiffs in that action) made sweeping discovery requests, including requests served as recently as May 17, 2024. In discovery, they also sought Company business records and tax records from both the Company and the Company’s outside accountants, which records were produced by defendants. Tewiah Affirm. ¶¶ 10-11.

Moreover, Justice Ruchelsman has been deeply involved in overseeing that lawsuit.

With over 350 entries on the case docket, there have been some 20 motions since the case began – all of which petitioners lost – including multiple motions to dismiss, cross-motions to compel, motions for protective orders concerning third-party discovery demands, motions to quash subpoenas, including from third parties, and motions for a preliminary injunction against petitioners, which was granted in part. *Tewiah Affirm.* ¶¶ 23-24. Justice Ruchelsman has issued 20 written decisions and orders deciding these motions against petitioners. *Id.* ¶ 25; Ex. 13 (Ruchelsman Orders). Each side has pending appeals with respect to some of Justice Ruchelsman’s rulings. *Tewiah Affirm.* ¶ 25. While petitioners have produced only hundreds of documents, respondents have produced over 6,000 documents in the Kings County action. *Id.* ¶ 12. There have also been numerous case management and motion related appearances before the Commercial Part’s court attorney. *Id.* ¶ 23. Moreover, a discovery dispute is still pending decision before Justice Ruchelsman, including petitioners’ claim in that action that they are entitled to additional Company records. *Id.* ¶ 13.

ARGUMENT

A CPLR 2201 STAY IS WARRANTED

When faced with duplicative actions like this one, courts routinely stay the duplicative action pursuant to CPLR 2201, which stay may be granted before issue is joined. *Uptown Healthcare Mgmt., Inc. v. Rivkin Radler LLP*, 116 A.D.3d 631 (1st Dep’t 2014) (citing *Britt v International Bus Servs.*, 255 AD2d 143 (1st Dept 1998)) (“A stay can be granted, even though defendants have not yet interposed answers.”). That statute provides: “Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just.” CPLR 2201.

A CPLR 2201 stay “may be justified on the basis of the well-settled rule that a subsequent action may be stayed pending the trial of a prior action.” *Buzzell v. Mills*, 32 A.D.2d 897, 897 (1st Dep’t 1969). That principle applies to a duplicative dissolution proceeding under BCL 1104-a that was brought in a County different than the prior pending action. *E.g. Srybnik v. Srybnik*, 2016 WL 1258498, at *3 (Sup. Ct. N.Y. Cnty., Mar. 30, 2016) (staying BCL 1104-a action in favor of prior pending Surrogate’s Court action).

A stay should be granted when it is necessary to promote the goals of judicial economy, and orderly procedure, including avoiding the possibility of contradictory judicial outcomes in adjudicating the same fact claims. *See Belopolsky v. Renew Data Corp.*, 41 A.D.3d 322, 322 (1st Dep’t 2007); *see also Goodridge v. Fernandez*, 121 A.D.2d 942, 945 (1st Dep’t 1986) (granting stay because it “avoids the unnecessary risk of inconsistent adjudications . . . the duplication of proof, and the consequent waste of judicial resources which would result from prosecution of the instant action”); *Uptown Healthcare Mgmt., Inc. v. Rivkin Radler LLP*, 116 A.D.3d 631 (1st Dep’t 2014) (same).

When determining whether a stay is warranted based on a prior filed action, courts consider: (i) whether the parties are similar or the same in the two actions; (ii) whether there are overlapping issues and common questions of law and fact; and (iii) whether the resolution of issues in the prior action may dispose of or limit issues which are involved in the subsequent action. *See Belopolsky*, 41 A.D.3d at 322. Here, all of these factors weigh in favor of a stay pending the outcome of the Kings County Action.

A. Identical Parties

It is plain and indisputable that the parties in the Kings County Action are the same as the parties here.

B. Overlapping Issues and Common Questions of Fact and Law

The fact issues, as demonstrated above, are at minimum overlapping if not also exactly identical. As demonstrated above, both this action and the prior pending Kings County Action depend on whether Ramirez was stealing Company property in breach of his fiduciary duties and contractual obligations of good faith and fair dealing, warranting suspension of Issa's contract performance and Ramirez' termination and exclusion from the business.

Thus, in both this action and the Kings County Action, the fact finder will have to construe the Stockholders Agreement and adjudicate which party materially breached that agreement and which breach occurred first, warranting suspension of performance by the other party. Similarly, in both actions the fact finder will need to adjudicate whether Issa mismanaged the Company in any respect or whether it was Ramirez who was harming the Company's business by stealing from it and lying to the other owner, Issa.

Common legal issues in both actions include the meaning and import of various contract clauses in the Stockholders Agreement; whether Issa or Ramirez violated their fiduciary duties to the Company and to each other; whether Issa acted "oppressively or unlawfully" or whether Ramirez's conduct in taking Company property amounted to unlawful theft of property; and whether as a remedy Issa was entitled both to fire Ramirez as head chef and to remove him from any management role in the Company. While Ramirez claims in this action that Issa intends to strip him and his wife of their ownership interest, which he did not allege in the Kings County Action, that issue is also implicated in the prior pending action because it will necessarily be decided in that action whether any conduct by Issa damaged any of petitioners' property rights.

C. Dependency of Outcome

This dissolution action obviously depends on the outcome of the prior pending action.

If in the prior action it is determined that Ramirez stole Company property, then that will moot one of the bases for dissolution alleged in this action – that Issa supposedly acted oppressively or unlawfully in terminating Ramirez and excluding him from management of the Company – or at the very least narrow the range of Issa’s conduct that may be properly considered in this case as a premise for dissolution.

In addition, while not spelled out in the Petition, petitioners also invoke BCL 1104-a(a)(2) as a basis for dissolution. That statutory provision requires a showing that Company assets were being allegedly “looted, wasted or diverted.” Petitioners made that same claim in the Kings County Action, in which Ramirez accused Issa of embezzling \$400,000 of Company funds – even though the company bank records show the money was removed temporarily only for two days to safeguard it (from Ramirez) and then was redeposited in the Company operating account and expended within weeks for ordinary course business expenses. As noted, the Kings County Court already preliminarily ruled that petitioners failed to provide any evidence to disprove what the Company records show. The final ruling on that issue will, again, moot this dissolution case or at least narrow the issues here by removing another set of facts as supporting the second basis for petitioners’ dissolution cause of action. Petitioners’ claim in this action about “excessive” rent is also before the Kings County Court and a rejection of that “claim” (such as it is) by that Court will again moot that “claim” as a basis for dissolution here.

Finally, some of the issues raised in this action were already ruled on in the Kings County Action. That includes petitioners’ claim for an injunction limiting Company payments to ordinary course business expenses (that order has already been entered with the consent of Issa in the Kings County Action); petitioners’ demand for additional Company business records (that

motion is pending decision before Justice Ruchelsman); and petitioners' claim for a receiver (that request has been *twice* denied by Justice Ruchelsman).

It thus behooves this Court to stay this action until the Kings County Action is concluded, both as a matter of judicial economy, including avoiding wasteful duplicative proof and work, and also to avoid the possibility of inconsistent or competing judgments from two different courts on the same matters.

CONCLUSION

For the foregoing reasons, respondents' motion for a stay should be granted in its entirety and this action should be stayed pending resolution of the prior pending Kings County Action.

Dated: New York, New York
July 8, 2024

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RULE 202.8-b CERTIFICATION

The undersigned counsel for Respondents hereby certifies pursuant to 22 NYCRR 202.8-b that the foregoing document, exclusive of caption, table of contents, table of authorities, and signature block, has a word count of **3836**, complying with the word limit of this rule.

By: s/ Michael Paul Bowen