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CHRISTINA STRANAGHAN and LENNY WEAVER, h/w,

Plaintiffs,

v.

HAKAN, INC., (A New Jersey Corporation) d/b/a Golden Palace Diner and Restaurant;

and

SYSCO PHILADELPHIA, LLC, a foreign limited liability company;

and

D'ARRIGO BROS. CO., OF CALIFORNIA, a foreign corporation;

and

WAYMON FARMS, INC., an Arizona Corporation;

and

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CUMBERLAND COUNTY
DOCKET NO.: CUM-L-00489-19

CIVIL ACTION

ORDER

JOHN DOE 1-100 (fictitious name(s) of the individual(s) or entity(ies) responsible for growing, processing, distributing, or supplying the subject romaine lettuce or any other component of the subject salad consumed by Christina Stranaghan), j/s/a,

Defendants.

D'ARRIGO BROS. CO., OF CALIFORNIA, a foreign corporation;

Defendant/Third Party Plaintiff,

vs.

WAYMON FARMS, INC.

Third Party Defendant

This matter having come before the court upon the Motion filed by the Ferrara Law Firm, LLC, on behalf of plaintiffs, and the courts having considered the moving papers;

IT IS on this 7 day of ~~October~~ December, 2021 ORDERED that:

1. There being no genuine issue of material fact, this Court finds that Defendant Hakan, Inc. is a manufacturer within the meaning of N.J.S.A. 2A:58C..

FURTHER ORDERED that a copy of this order be sent to all counsel within 5 days of its executions.

Benjamin D. Morgan

Hon. Benjamin D. Morgan, J.S.C.

xx Opposed

_____ Unopposed

Reasons attached.

Case Caption: **Christina Stranaghan and Lenny Weaver v. Hakan, Inc. d/b/a Golden Palace Diner and Restaurant**

Docket No.: **CUM-L-489-19**

Date: **December 7, 2021**

Re: **Plaintiffs' Motion for Partial Summary Judgment**

MOTION DECISION

This is Plaintiffs, Christina Stranaghan and Lenny Weaver's, ("Plaintiffs") motion for partial summary judgment seeking a finding by this Court that Defendant, Hakan, Inc. d/b/a Golden Palace Diner and Restaurant should be considered a "manufacturer" as defined under N.J.S.A. 2A:58C-8. Defendant has opposed this motion for summary judgment. After consideration of the moving party's papers and the opposition filed thereto, as well as all supplemental correspondence provided by both counsel following oral argument held on October 22, 2021, the Court hereby finds that Plaintiff's motion for partial summary judgment is granted for the following reasons.

BRIEF FACTUAL BACKGROUND

Plaintiff alleges that on December 11, 2017 Plaintiff Christina Stranaghan's mother purchased her a Chicken Caesar Salad from the Defendant. It is undisputed that Defendant prepared the Chicken Caesar Salad, which included, but was not limited to, romaine lettuce. Defendant purchased the romaine lettuce used to make the salad from Defendant Sysco. Neither party disputes that the romaine lettuce was contaminated with E. coli 0157:H7 at the time it was prepared for the Plaintiffs.

Plaintiff subsequently became ill and was forced to seek treatment at the hospital. On August 6, 2019, Plaintiff filed their complaint against Defendant and other parties. On October 10, 2019, Defendant answered Plaintiff's complaint and admitted that Defendant is a restaurant

that manufactures, prepares, and sells food products to the public. In discovery, Defendant stated that Defendant uses the romaine lettuce in its salads by removing it from its packaging, storing it unwashed until used in its salads, at which time the lettuce is washed and placed in a to-go container as an ingredient in the full salad.

Plaintiff contends this process makes Defendant a "manufacturer" under N.J.S.A. 2A:58C-8. Defendant opposes that position, stating that Defendant is merely a "product seller" and cannot be considered a "manufacturer" under the statute. Moreover, Defendant contends that the E. coli became embedded in the lettuce leaves and could not be removed.

STANDARD OF REVIEW

A party who moves for summary judgment is entitled to judgment as a matter of law if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); see also Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 528–29 (1995). When determining whether summary judgment is appropriate, "[t]he Court must consider whether the competent evidential materials presented, viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Davis v. Devereux Foundation, 209 N.J. 269, 286 (2012) (citing Brill, 142 N.J. at 540).

DISCUSSION

Plaintiff's claim that Defendant should be considered a "manufacturer" under New Jersey's Product Liability Act, N.J.S.A. 2A:58C ("the PLA"). Specifically, the PLA defines a product "Manufacturer" as,

> (1) any person who designs, formulates, produces, creates, makes, packages, labels or constructs any product or component of a product; (2) a product seller with respect to a given product to the extent the product seller designs, formulates, produces, creates, makes, packages, labels or constructs the product before its sale; (3) any product seller not described in paragraph (2) which holds itself out as a manufacturer to the user of the product; or (4) a United States domestic sales subsidiary of a foreign manufacturer if the foreign manufacturer has a controlling interest in the domestic sales subsidiary.

N.J.S.A. 2A:58C-8. Contrarily, the PLA defines a "Product seller" as

> any person who, in the course of a business conducted for that purpose: sells; distributes; leases; installs; prepares or assembles a manufacturer's product according to the manufacturer's plan, intention, design, specifications or formulations; blends; packages; labels; markets; repairs; maintains or otherwise is involved in placing a product in the line of commerce.

Id.

Our courts have previously examined who can be considered a "manufacturer" under the PLA. In Smith v. Alza Corp., 400 N.J. Super. 529 (App. Div. 2008), the Appellate Division held that the packager of a pharmaceutical product could be considered a "manufacturer" under the PLA when that packager went beyond merely containing the product according to manufacturer specifications. In that case, the defendant packaged, labeled and shipped a dietary drug called Acutrim. The panel found that the packaging and labeling of the product "falls within the scope of the manufacturing function defined in Section 8". The court found that section 9, which provides an immunity to "product sellers," exempts only those entities where packaging and labeling products are incidental or ancillary to their primary business of selling the products itself. The court goes on to state that "Section 9 carves out a very limited exception to the PLA's overarching principle of imposing strict liability upon all entities in the chain of distribution,

exempting only those whose exclusive role is to make the finished, packaged and labeled product available to consumers."

Neither party has been able to provide the Court with any New Jersey precedent describing the analysis a Court should take when determining whether a restaurant should be considered a "manufacturer" of the food it serves the public. The Court's own research has also uncovered no New Jersey case directly on point. Thus, this issue is likely a matter of first impression.

While certainly not binding on this Court, we are aided by how other courts across the country have viewed this issue. For example, the Court of Appeals in Washington held in Almquist v. Finley Sch. Dist. No. 53, 114 Wn. App. 395 (2002), that a school putting together tacos from ground beef and other ingredients constituted a "manufacturer" for purposes of their Products Liability Act. In that case, a "manufacturer" was defined as any seller of a product who "designs, produces, makes, fabricates, constructs, or remanufacturers the relevant product or component part of a product before its sale to a user or consumer." Id. at 401. The court first rejected the defendant's argument that the sale of the tacos was only incidental to its business as a school. The school sold the tacos as a stand-alone product and thawed, cooked, rinsed, drained, seasoned, and assembled taco filling from frozen ground beef. While not its main focus, it certainly was a stand-alone sale of a product and thus could not evade the Washington Products Liability Act. Next, the court found the school was not merely a retailer. "The District's cooking process falls neatly into each of the definitions for 'produce,' 'make,' 'fabricate,' and 'construct'" contained in the statute. Id. at 405. The court found that "[t]he District did not simply resell frozen ground beef, seasonings, and tortillas as a grocery store would. It took raw ingredients and made a taco lunch out of them. It then sold them. The District is a manufacturer – a manufacturer of tacos." Id. at 405-06.

The District Court of Colorado, Denver County in Kagarise v. Savory Sandwiches Enters. 3, LLC, 2016 Colo. Dist. Lexis 489 (January 6, 2016) has similarly found that a sandwich provider could be considered a "manufacturer" under its Products Liability Act. In that case, the court considered whether a Jimmy Johns restaurant could be considered a "manufacturer" where Plaintiff alleged she contracted E. coli 0157:H7 from a sandwich purchased at the restaurant that contained cucumbers imported from Mexico. The court first found that the product sold was not solely the cucumbers in the sandwich, but the entire sandwich that was marketed to the public. The defendant manufactured the sandwich "by baking the bread, selecting the ingredients, slicing the meat and the cucumbers, arranging the parts of the sandwich and packaging the sandwich in Jimmy Johns' logo paper." Relying upon the Washington court's decision in Almquist, the Colorado court also concluded that the restaurant should be considered a "manufacturer" under the products liability statute.

In the present case, this Court similarly concludes that Defendant constitutes a "manufacturer" under the PLA. There is no question or dispute that Defendant "creates," "makes," "packages," "labels," and "constructs" the Chicken Caesar Salads at its restaurant. The creation and sale of food is not incidental to its business – that is the entirety of its business. Similar to the tacos in Almquist or the sandwiches in Kagarise, Defendant selects, washes, arranges and packages separate components in its Chicken Caesar salads for consumption and sale by the public. It is not merely passing on an already finished product for sale, but is combining different materials to create a new product entirely. This value-added component places Defendant squarely into the position of a "manufacturer" under the statute – a manufacturer of Chicken Caesar Salads.

The Court appreciates Defendant's argument that the E. coli may have already been embedded in the lettuce and nothing it could have done could have removed it. But this fact alone

does not take away Defendant's responsibility for its finished product or lessen its actions in creating a new sellable product. When presented with the two out-of-state cases examined above, Defendant could not provide any contrary authority except to reiterate its past arguments. Because the Court finds the reasoning in the Almquist and Kagarise cases persuasive, the Court similarly finds that Defendant in this case also constitutes a "manufacturer" under New Jersey PLA.

Plaintiff's motion for partial summary judgment is therefore granted. This opinion in no way reflects upon any determination of causation or any other element of Plaintiff's claim.