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Docket: CIVIL ACTION NO. 2012-4609-BLS2

Date: October 20, 2016

Parties: MAR-LEES SEAFOOD LLC, MAR-LEES HOLDING LLC, and SEAFOOD DEVELOPMENT PARTNERS, LLC, Plaintiffs vs. JOHN A. LEES, JR., JAL CONSULTING, INC., ML HOLDINGS, INC., LEES SEAFOOD HOLDINGS, LLC, MICHAEL F. SWEENEY, DUFFY & SWEENEY, LTD., NORATLANTIC 21, LLC, N.A. 21 HOLDINGS, LLC, and JAMES DWYER, Defendants

Judge: /s/Janet L. Sanders

MEMORANDUM OF DECISION AND ORDER ON LEES AND SWEENEY DEFENDANTS' MOTIONS FOR RECONSIDERATION

The Lees and Sweeney Defendants have moved for reconsideration or clarification of the Court's ruling that Plaintiffs' Count Six for breach of fiduciary duty survives summary judgment to the extent it is based on allegations that "Lees sold tilapia from TAF without providing plaintiffs an opportunity to participate in these transactions." See Memorandum of Decision and Order dated July 22, 2016, at p. 15. After carefully considering the arguments put forward by both parties and on further review of the summary judgment record, this Court concludes that the Motion should be ALLOWED.

The summary judgment record contains no evidence cognizable under Mass. R. Civ. P. 56(e) that Lees sold tilapia from TAF. In support of this allegation, Plaintiffs point to a statement in their Second Answers to Interrogatories in which they asserted that Lees "purchas[ed] and [sold] tilapia from TAF, at a profit, without providing Plaintiffs an opportunity to make the same business deal." The statement, however, is not based on personal knowledge and therefore

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does not constitute admissible evidence under Rule 56(e). Plaintiffs also suggest that the Arbitration Award provides support for their claim. Quite the contrary is true. The Panel explicitly found that the transactions at issue were loans to TAF and not purchases or sales. Moreover, as to those loans, the Panel expressly found that the plaintiffs did not suffer any harm as a result of Lees making such loans. In so finding, it pointed out that New Mar-Lees had previously refused to extend credit to TAF and would not have loaned TAF money if it had been asked to do so. It also concluded that the loans were "designed to assist a business that [Lees] hoped would do more business with Mar-Lees," gave TAF "the funds to purchase a substantial amount of product from Mar-Lees," and "benefited rather than harmed Mar-Lees." Award at p. 20. Given these findings and their collateral estoppel effect on these proceedings, plaintiffs may not assert a breach of fiduciary duty claim based on this set of allegations.

SO ORDERED.

/s/Janet L. Sanders
Justice of the Superior Court