

# *State of New York Court of Appeals*

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To be argued Tuesday, March 21, 2017

## **No. 46 Connaughton v Chipotle Mexican Grill, Inc.**

Kyle Connaughton, a well-known chef, conceived an idea for a fast food restaurant chain that would serve ramen cuisine in 2010, and he presented the concept to Chipotle Mexican Grill, Inc. and its founder and chief executive officer, Steven Eells. In January 2011, Chipotle hired Connaughton as its culinary director to develop and implement the concept under an at-will employment agreement that gave both parties the option of ending his employment "at any time, with or without notice or cause." The contract provided him with a base salary and a promise that he would receive a substantial amount of company stock after three years. At the end of his first year, he received an annual bonus and additional stock grants, and in September 2012 a lease was signed for a flagship ramen restaurant in Manhattan. Connaughton alleges that one month later he learned from Chipotle executives that Eells had entered into an agreement in 2008 with David Chang, the owner of Momofuku Noodle Bar in Manhattan, to develop a similar ramen restaurant concept and that a nondisclosure agreement required Eells to keep Chang's business plans confidential. Connaughton says the executives told him that, after the agreement with Chang fell apart, Chipotle took his design work without payment for its own use and that Chang would sue when Eells opened Connaughton's restaurant. Connaughton confronted Eells, who ordered him to proceed with his planning. He was terminated in November 2012.

Connaughton sued Chipotle and Eells for fraudulent inducement, claiming that by failing to disclose their prior agreement with Chang, the defendants omitted a material fact that would undermine his ability to implement his own ramen concept. He alleged that Chipotle staff must have communicated to him plans and ideas developed by Chang, thus involving him in their violation of the nondisclosure agreement and threatening to ruin his professional reputation by creating the appearance that he had stolen Chang's ramen concept. He sought compensatory damages for his promised Chipotle stock and for lost business opportunities, as well as punitive damages. Supreme Court granted the defendants' motion to dismiss the suit under CPLR 3211.

The Appellate Division, First Department affirmed in a 3-2 decision, saying Connaughton did not adequately allege that he suffered actual damages due to fraud. "When a claim sounds in fraud, the measure of damages is governed by the 'out-of-pocket' rule, which states that the measure of damages is 'indemnity for the actual pecuniary loss sustained as the direct result of the wrong'....," it said. "Here..., the allegations at best suggest that, depending on the future actions of Chang and Momofuku, plaintiff might suffer injury. Not only is there no suggestion or indication that actual pecuniary damages were sustained..., but the complaint does not allege facts from which actual damages can be inferred...."

The dissenters argued, "[D]amages need not be demonstrated at the pleading stage as long as the possibility of damages may reasonably be inferred.... Here, it is implicit from the allegations contained in the ... complaint ... that the position in which plaintiff was placed due to defendants' conduct may cause him, or may have already caused him, compensable damages, particularly the possibility of damage to his reputation, and perhaps even future legal expenses."

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