

The Legal Intelligencer

1843-1999

THE OLDEST LAW JOURNAL IN THE UNITED STATES

Vol. 220 No. 73 • \$3.00

Cowboy v. Venus v. Cowboy Goes to Next Round

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The court battle between celebrity chefs Mark Kiffin and Allison Barshak — the former lovers and would-be business partners in the nouvelle hotspot Venus and the Cowboy — promises to be a true “he said, she said” now that a federal judge has refused to dismiss Barshak’s counterclaims.

It was Kiffin who filed the suit, claiming he was promised a post as executive chef, but was unceremoniously dumped just before the Center City eatery was set to open. Represented by David T. Shulick and Alan L. Frank of Frank & Rosen, the suit named as defendants Barshak, her lawyers, her investors and her new boyfriend.

Barshak countersued for fraud and deceit, claiming Kiffin is “not financially credible” and that he failed to contribute the capital necessary to become a partner in the new venture.

Now Barshak has won a significant round in the battle with a ruling from U.S. District Judge Herbert J. Hutton that says she has adequately pleaded her four key counterclaims — fraudulent misrepresentation; negligent misrepresentation; fraud; and defamation.

Barshak, who earned her stripes at Striped Bass, met Kiffin, of the legendary Coyote Cafes in the Southwest, when he came to Philadelphia to participate in the “Book and Cook” event. The two began a relationship in 1995, and Barshak resigned her post at Striped Bass to move to Santa Fe in June 1996.

According to the suit, Kiffin financially supported Barshak during the period that she spent conceiving of and planning Venus and the Cowboy. In 1997, he says, Barshak promised that she would hire him as an assistant chef and that he would have other operational duties.

Kiffin claims that at first, the two approached the venture as equal partners.

When their romantic relationship ended in October 1997, Kiffin says, Barshak continued to offer him a post in the restaurant as an “at will” employee, and he was promised an undefined, minority equity interest in the business in exchange for his obtaining the financing for that interest.

But Barshak, whose resume includes jobs at Roller’s, Apropos and Central Bar and Grille, claims that it was she who lined up all of the investors, according to court papers.

Kiffin claims that after he resigned his post at the Coyote Cafe, Barshak and her investors broke the promise that he would be kept on in the Venus venture and instead “began to take me out of the deal piece by piece until I was out altogether.”

In May 1998, Royal Bank refused to give them a \$300,000 small-business loan because the investors owned more than 20 percent of the business. It was then, Kiffin says, that Barshak’s new boyfriend, Michael Untermeyer, put up the rest of the money on the

condition that Kiffin be forced out.

Untermeyer, a senior deputy in the Office of the Attorney General, has declined to comment on the suit or his involvement in the restaurant.

Kiffin says he first learned that he had been fired from his \$70,000 job in an Aug. 7 letter from Barshak’s lawyer, Michael C. Forman of Klehr Harrison Harvey Branzburg & Ellers. It said he had not performed his duties, which he contends is not true.

On the contrary, Kiffin says, he created the restaurant, the food, the menu, the logos and the design and oversaw the staffing.

Barshak’s lawyer, Michael S. Silberman of Silberman & DiFilippo, contends in her counterclaim that Kiffin failed to obtain investors and “otherwise refused to use his best efforts to help open and operate Venus and the Cowboy.”

Now Judge Hutton has ruled that those allegations are sufficient to put Kiffin on notice of the claims against him and cannot be dismissed at this stage of the litigation.

Hutton also greenlighted Barshak’s counterclaim for defamation based on her allegations that Kiffin told others: “Barshak cheated me,” “Barshak is a thief,” “Barshak is a liar,” and “Untermeyer is Barshak’s new gigolo.”

(Copies of the 22-page opinion in Kiffin v. Barshak, PICS NO. 99-0724, are available from The Legal Intelligencer. Please refer to the Pennsylvania Instant Case Service order form on Page 9.)



HUTTON