

**Premiere Real Estate Group, Inc. v Lalezarian
Devs., Inc.**

2007 NY Slip Op 30955(U)

April 17, 2007

Supreme Court, New York County

Docket Number: 0603679/2006

Judge: Helen E. Freedman

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

PRESENT: Hon Helen Z. Freedman
Justice

PART 39

Index Number : 603679/2006

PREMIERE REAL ESTATE GROUP

vs

LALEZARIAN DEVELOPERS

Sequence Number : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

C

The following papers, numbered _____ this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that ~~the~~ motion sequences 001 and 002 are hereby consolidated for joint disposition and decided in accordance with accompanying Memorandum decision.

FILED
APR 27 2007
COUNTY CLERK'S OFFICE
NEW YORK

Dated: April 17, 2007

[Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

-----X
PREMIERE REAL ESTATE GROUP, INC. and
SHAHRAM SADAGHATI,

Plaintiffs ,

-against-

Index No.

LALEZARIAN DEVELOPERS, INC., MAIDEN LANE
PROPERTIES, LLC, DAVID ADELIPOUR, JONES LANG
LASALLE AMERICA INC., ELIAS KALIMIAN and FRANK
LALEZARIAN,

Defendants.

FILED
APR 27 2007
COUNTY CLERK'S OFFICE
NEW YORK

HELEN E. FREEDMAN, J.:

Motions sequence 001 and 002 are consolidated for disposition.

In this action, plaintiffs Premiere Real Estate Group, Inc. and Shahram Sadaghati ("Premiere" or "Sadaghati"), real estate brokers, claim that pursuant to an oral agreement they are entitled to a brokerage commission in the sum of \$3,420,000.00 representing six percent of the \$57,000,000 purchase price of the building at issue.

In the Complaint, plaintiff Sadaghati claims that he contacted defendant David Adelpour, an agent of defendant Maiden Lane Properties, LLC, Lalezarian Developers Inc. and of the other individual defendants ("Lalezarian defendants"), informing Adelpour of the availability of the premises located at 100 Maiden Lane in or about June 2003. Plaintiff claims he then advised defendant Jones Lang LaSalle America, Inc. ("Jones Lang"), exclusive agents for sellers, that he had a ready willing and able buyer. Jones Lang then provided plaintiffs with a confidentiality agreement to be signed by the interested purchaser, which plaintiffs in turn provided to Adelpour. On or about June 25, 2003, Adelpour signed the Confidentiality Agreement that plaintiffs had

provided to defendant Jones Lang. Jones Lang then sent the information package regarding the subject property directly to Adelpour. Plaintiff further alleges that defendant Jones Lang arranged to have the Lalezarian defendants, Maiden Lane Propertis LLC, and Adelpour visit the properties, that Adelpour advised the Lalezarian defendants that plaintiffs were brokers for the deal, that the property was purchased on March 15, 2004 for \$57,000,000.00, but that defendants have refused to pay a brokerage fee.

Plaintiffs base the claim on the six percent of the sale price standard fee, claiming to have produced a ready willing and able buyer and charge defendants with colluding to avoid payment of a brokerage fee. The claims include breach of contract, quantum meruit earnings, and tortious interference with a real estate brokers' contract and plaintiffs seek \$3,420,000.00 in compensatory and \$3,000,000 in punitive damages.

In motion sequence 001, defendants Lalezarian Developers Inc, Maiden Lane Properties, LLC, Elias Kalimian and Frank Lalezarian move pursuant to CPLR § 3211(a)(1) and CPLR § 3211(a)(7) to dismiss the Complaint against them. In motion sequence 002, defendants David Adelpour and Jones lang LaSalle America Inc., move to dismiss the Complaint against them pursuant to CPLR § 3211(a)(7).

Defendants Elias Kalimian and Frank Lalezarian contend that they had no contract, written or oral with anyone and that they cannot be held liable for any of the acts of their LLC. They assert that plaintiffs have failed to set forth any basis for holding them liable for the actions of either defendants Lalezarian Developers or Maiden Lane. Although plaintiff avers that the individuals so dominated the LLC and misused the LLC form or used it to commit fraud, plaintiffs have not alleged any basis for this conclusion. The First Department has applied

standards for piercing a corporate veil that are similar to those applied to corporations.

Retropolis, Inc. V. 14th Street Development LLC, 17 A.D.3d 209, 797 N.Y.S.2d 1 (1st Dept. 2005).

Moreover, documentary evidence shows that the members of Maiden Lane are five LLC's and no individuals. Thus, the contract and quantum meruit. claims against Kalimian and Lalezarian as individuals are dismissed. As for the tortious interference claims, plaintiffs have not set forth facts sufficient to implicate these individuals. At best, plaintiffs contend that they had a contract with Adelpour that the individual defendants caused Adelpour to breach. However, plaintiffs also claim that Adelpour was acting as an agent for disclosed principals, in which case the contract would be with the parties against whom the claim for tortious interference was lodged. Since Adelpour allegedly had some interest in Maiden Lane, the alleged contract was also with a party against whom the claim for breach of contract is lodged. Thus, plaintiffs cannot claim any deliberate acts that would constitute tortious interference either by the individuals or these corporate defendants. With respect to the breach of contract claims against Lalezarian

Developers and Maiden Lane, they will not be dismissed at this time. Plaintiff Sadaghati alleges that Adelpour entered into an oral contract with him or his company, and that Adelpour was acting as a disclosed agent for the two corporate defendants. Adelpour signed a confidentiality agreement that did not name the corporate defendants, but for the present, it will be assumed that he was acting as their agent. While it is not at all clear what Adelpour's relationship to Maiden Lane, the corporation formed to purchase the premises, was, it shall remain as a defendant for the time being.

In motion sequence 002, defendants Adelpour and Jones Lang LaSalle America Inc. Move to dismiss the complaint against them on the ground that no specific terms of a contract are

put forth as evidence that such a contract existed, that a quantum meruit claim is insufficiently stated, and that a party may not tortiously interfere with a contract that it is allegedly a party to. See *Lama Holding Co. v. Smith Barney Inc.* 88 N.Y.2d 413, 646 N.Y.S. 2d 76 (1996).

With respect to the tortious interference claim, the allegations are that Adelipour entered into a contract with plaintiff as evidenced by the confidentiality agreement that he and plaintiff both signed. Thus, if he was the contracting party, then he cannot be charged with tortious interference with that contract. In order to establish a tortious interference claim, it must be shown that there existed a valid contract between two parties that a third party knew about and intentionally procured a breach causing damages. *Lama Holding Co. v. Smith Barney*, 88 N.Y.2d 413, 646 N.Y.S.2d 76 (1996). Clearly, plaintiff does not claim that Adelipour deliberately caused a breach by another party. Thus that claim against Adelipour cannot remain. However, if Jones Lang, as agent for the seller, was the party that procured the confidentiality agreement and then dealt directly with the purchasing defendants, by-passing plaintiffs who claim to have represented the purchasers, a claim for tortious interference with a contract may lie.

As for the quantum meruit claim asserted against the defendants, ordinarily a party may not claim breach of contract and then sue in quantum meruit for the same claim. Also, a cause of action for unjust enrichment (the analogue of quantum meruit) must "state that a benefit was bestowed by plaintiffs and that defendants will obtain such benefit without adequately compensating plaintiffs therefor," *Wiener v. Lazard Freres & Co.* 241 A.D.2d 114 (1st Dept. 1998). At this stage of the proceedings, it is unclear whether plaintiffs can establish the breach of contract claim since the alleged contract was oral and the terms are unclear. Thus, the alternative pleading of unjust enrichment or a quantum meruit claim remains. The fact that Jones Lang and

Adelipour procured or entered into a confidentiality agreement is some evidence of either claim.

For that reason, both causes of action remain.

With respect to plaintiffs claim for punitive damages made in conjunction with its tortious interference claim, that claim is dismissed. Punitive damages are inappropriate for what is essentially a breach of contract claim involving discreet parties. There is no evidence that the conduct here was part of a pattern of conduct directed at the public generally, as required by *Rocanova v. Equitable Life Assurance Co.*, 83 N.Y.2d 603, 612 N.Y.S.2d 339 (1994).

Based upon the foregoing, it is hereby

ORDERED that all claims are dismissed against individual defendants Lazclarian and Kalimian; and it is further


ORDERED that the claim for tortious interference with contract are dismissed as to defendants Lalezarian Developers Inc., Maiden Lane Properties, LLC and Adelipour; and it is further

ORDERED that the claim for punitive damages is dismissed in its entirety; and it is further

ORDERED that the remaining claims continue at this time..

Parties are directed to appear in Room 208 for a preliminary conference on May 22, 2007 at 9:30 a.m.

Dated: April 17, 2007.

Enter: 
Helen E. Freedman, J.S.C.

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