

Zere Real Estate Servs., Inc. v Parr

2011 NY Slip Op 31442(U)

April 19, 2011

Sup Ct, Suffolk County

Docket Number: 39680-2007

Judge: Emily Pines

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SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY



Present: HON. EMILY PINES
J. S. C.

_____ X
ZERE REAL ESTATE SERVICES, INC., (f/k/a ZERE ASSOCIATES, INC.),

Plaintiff,

-against-

RONALD PARR, individually, PARR GENERAL CONTRACTING COMPANY, INC, PARR DEVELOPMENT CORP. And THE PARR ORGANIZATION,

Defendants.

_____ X

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DECISION AFTER TRIAL

This case considers the issue of when and under what circumstances a broker becomes entitled to a commission, when the asserted introduction allegedly lead to the choice of the Defendant as a general contractor to construct a law school facility.

In this action, Plaintiff, Zere Real Estate Services, Inc ("Zere") a real estate brokerage firm owned by Marie Zere, seeks payment from Parr General Contracting Company, Inc, The Parr Development Corp, and The Parr Organization ("Parr

Organizations”), all corporations owned by Ronald Parr, for alleged services in bringing about the construction contract, under which The Parr Organization was retained as the General Contractor to supervise construction of the Touro Law Center, in Central Islip New York, in January, 2005. Marie Zere asserts that she brought about the introduction and ultimate retainage of one of the Parr Organizations by Touro through her efforts, with the understanding that she would be paid a commission. On the other hand, Parr takes the position that Zere only acted as a broker with regard to the land involved, and Touro provided her with a termed exclusive listing on the sale of the campus in Huntington. With regard to the Central Islip deal, she was aware that she could not be compensated by Touro College, as the land was purchased from the State, and she performed no services with regard to the selection of the Parr Organizations as the general contractor for the facility.

In a pre-trial decision, this Court dismissed Zere’s contract claim, as the parties never entered into a written agreement, setting forth all of the necessary terms (Decision dated April 22, 2009). However, as explained in this Court’s Decision and Order of January 14, 2011, Plaintiff’s claims for quantum meruit and unjust enrichment (which this Court finds to be essentially one and the same), were permitted to proceed, upon Plaintiff’s showing at trial that: 1) the Defendant(s) requested that Plaintiff perform services; 2) Plaintiff performed such services for the Parr Organization(s); 3) the Defendant(s) accepted Plaintiff’s services; 4) the Defendant(s) benefitted from Plaintiff’s services; and 5) the Plaintiff expected to be compensated for rendering services to the Defendant(s). The Court notes that it did grant the individual Defendant, Ronald Parr, Summary Judgment, dismissing the action against him as a individual. In its Answer and Post Trial Memorandum, defendants raised defenses based on the statute of limitations and on the ground that Ms. Zere provided no services entitling her to compensation. Over five days of trial, the Court heard the testimony of nine witnesses, including experts in the real estate brokerage field, as well as general

contractors and admitted thirty one exhibits into evidence. The Court had a good opportunity to adjudge the credibility of each of the witnesses who testified.

PARTIES

Marie Zere testified that she has been the owner of a commercial real estate firm, specializing in the sale and leasing of commercial property since 1980; that she is the President and Chief Executive officer of the corporate Plaintiff; and that she is a licensed real estate broker. Following a meeting in late 1992, where she acted as moderator for Long Island Metro Business Action ("LIMBA"), she claims that she learned that Touro Law School was looking to relocate its campus from Huntington to Central Islip. She testified that she contacted Ronald Parr, the owner of various construction companies with whom she had acted as a broker in the past and suggested that he might be interested in becoming involved. She claims that he was very excited and asked her to arrange a meeting with the Touro law school Dean and himself. According to Ms. Zere, she visited Touro on January 15, 1993 (Plaintiff's 2) and learned information from Dean Glickstein and an Ed Taylor (Director of Development and Public Affairs) concerning the size of the proposed facility, the proposed location near the upcoming new federal court, and the number of classrooms. She claims to have relayed all this information to Parr. Ms. Zere alleges she arranged with the Dean and the Director of Development to meet with her and Parr on January 19, 1993, which she followed up with a letter to Parr (Plaintiff's 4). Ms. Zere then attended several more meetings with the Dean, Parr and others, including the New York State Department of Economic Development (Plaintiff's 7, 8), and provided the Dean with various incentive programs available for purchasers of land in New York. In each of these, she copied Parr (Plaintiff's 9). According to Zere, Dean Glickstein informed her that and she understood from the beginning of these discussions that she would receive no fee from the law school or Touro College, to which

the law school was connected, and that any fee for the actual construction of the law school would emanate from Parr.

According to Zere, she had several outstanding “build to suit” commission agreements outstanding with Parr during the 1990's all of which identify her as the broker which rendered services in connection with a construction contract on real property and state that if the contract goes forward, Zere will be paid a commission amounting to six 6% percent of the total construction cost (Plaintiff's 12, 19, 20). There is also documentary evidence that Zere was being copied on facsimiles sent by Parr to the law school in June 1994, regarding the availability of land in the Central Islip Planned Development District (Plaintiff's 14). Zere testified that her involvement continued on a daily basis through 1995 . While Zere testified that the Touro decision slowed down for a period due to the unavailability of State funding and the need for the school to engage in private fund-raising efforts for its new facility, Zere claims she kept in contact with Parr over the deal, sending him periodic memoranda requesting information on its status. Finally, she claims at his suggestion, she sent Parr a proposed commission agreement in September 1997 (Plaintiff's 17) calling for Parr Development Co, Inc to pay Zere Associates, Inc six (6 %) percent of the total construction cost of the new law school facility, if a Parr Organization were selected to construct the same. Parr never signed the Agreement. On January 8, 1998, Zere met with Parr concerning a number of deals the two had pending, and discussed the Touro project. According to Zere, Parr for the first time stated he did not want to pay Zere the “traditional” six percent offered the procuring broker in a build to suit deal. Although she asserts that she reached out to Parr during the next five months, he declined to give her a final answer on what she would be paid if the Touro contract came to fruition. During that period, she was aware that the law school continued to raise funds.

Finally, Zere met with Parr again on May 28, 1998 and she obtained a document from Parr regarding the Touro construction. Plaintiff's 23, dated May 29, 1998 states as follows:

"Reference is made to a proposed agreement with Touro Law School for the construction of a new facility to be located in Central Islip, New York.

I write to advise that should Parr General Contracting Company, Inc., or any of its affiliates enter into a formal agreement with Touro Law School, either as a General Contractor or Construction manager, Zere Associates, Inc. will be recognized as the broker who brought about this agreement. The brokerage fee will be the subject of further discussion and negotiation between Marie Zere and I"

The letter is signed by Ronald Parr on behalf of Parr General Contracting Company, Inc. Marie Zere claims she continued to attempt to contact Parr to get him to finalize their agreement, sending him memos setting forth their various transactions, always including the Touro project (Plaintiff's 25, dated August 16, 2001). In January 2004, Zere testified that she had a conversation with Parr in which he told her that he was going to attempt to bill Touro for part of Zere's "build-to-suit" commission at four (4%) percent of the contract price and pass through the cost. This clearly never came to fruition.

Zere asserts that from the time of her introduction of Parr to the Touro personnel until the 2004 telephone conversation, she has records on her daily memo sheets of approximately 45 conversations with Dean Glickstein concerning the project, meetings with the Dean at least a "couple of times" per year to discuss the project; and conversations several times per week with Parr. They discussed the land, funding from the State, and Touro fund-raising for the project. Throughout 2004 and 2005, Zere continued to write Parr to ask him concerning the status of the Touro project and she stated that at that point he just ignored her (Plaintiff's 28, 29). She finally wrote him in February 2005, after a conversation with the project manager for the law school,

where she learned that one of the Parr organizations had been awarded the contract for the new school and that no provision had been made for Zere as the broker in any manner.

During cross examination, Zere admitted that a broker's fee could be affected by the cost involved in a project. She was also shown a prior \$8,000,000 multi family housing project deal where she was the broker and received 1.5 percent of the value of the land only (Defendant's A).

Ronald Parr, who holds a BA in Economics and Finance as well as a law degree, testified that he is the president and sole shareholder of all of the named Defendant corporations. He stated that he has been involved in the real estate development and construction business on Long Island for forty five years. According to Mr. Parr he became involved with development in Central Islip in the late 1980's, when he developed a Master Plan for the area. In addition, he was, before that time, involved in the building two residential developments, which along with the Master Plan, in his opinion paved the way for the eventual ability of Touro Law School to move to the area and construct a new facility.

Mr. Parr states he has been involved in over 125 "build-to-suit" transactions, which he describes as construction of a building on the owner's property. In some instances, although it is not the usual case, the builder is not the owner of the property. He states that at times the seller pays the real estate broker's commission in such transactions and at times, the buyer pays, and the result is merely a matter of negotiation. However, it is his position that the general contractor will always attempt to recoup those costs from the other party by somehow incorporating the broker's fee as an add-on to the deal. In addition, according to Mr. Parr, the size of the broker's commission is clearly connected to the size of the transaction.

Mr. Parr asserted that he was involved in one “build-to-suit” transaction as well as several land deals with Marie Zere over the years . In the “build-to suit” transaction, as the general contractor, he paid Ms. Zere six percent of the construction cost for a 10,000 square foot office building. However, when the two parties were involved in a land deal where he purchased properties in Lake Grove involving approximately \$8,000,000, he paid Ms. Zere amounts that translated into 1.5 percent of the cost.

Mr. Parr did recall that sometime in 1992 or early 1993, he met Dean Glickstein before Ms. Zere ever became involved. Shortly thereafter, according to Parr, he met with Dean Glickstein and Ms. Zere at Ms. Zere’s request based on her statements that he could help Touro find appropriate land in Central Islip. He states that at no time was the issue of general contracting ever raised nor did Ms. Zere state that she expected any compensation. Parr denied ever having received the letters dated in January 1993 (Plaintiff’s 2 and Plaintiff’s 4) in which Ms. Zere discusses her visit to the law school or her follow up after inviting him to Touro to speak with the Dean.

Thereafter, between 1993 and 1998, Parr claims he met often with Touro personnel, and advised them of available land, grant programs, and financing. During this period, which culminated in the law school purchasing the land in question, Parr claims Zere may have kept in touch with him but she provided no services for any of his organizations. After 1998, he claims to have become involved in the plan for developing the building. He first provided Touro pricing information in the Summer of 2000. In the period between 2000 and 2005, when his contract to construct the law school was executed, Parr asserts that he was heavily involved in the pricing and with the various architects and that Zere had no involvement whatsoever in the lengthy complex process. He states that noone at Touro ever indicated that their choice of his organization to build the new facility had any connection whatsoever with Ms. Zere.

When Parr received the commission agreement that Zere wanted him to sign (Plaintiff's 17) in 1997, he told her he would not sign this because the law school, if any party, would pay her a commission since he was building the facility at his cost. Yet, he signed Plaintiff's 23 in May, 1998, in which he stated that one of the Parr organizations would recognize Marie Zere as the broker who brought about the deal, if a Parr organization should be selected as general contractor or construction manager of a new Touro facility. His stated excuse for signing this letter is that he was helping her apply for a bank loan and this was the only prospect that "(s)till had some life in it . . ."

Parr stated that he did ask Dean Glickstein several times if the law school would pay Zere a commission in connection with the land issue but they simply were not in a position to do so. He did not believe, in any case, that Ms. Zere's involvement in the Touro project was, in any manner, a "build-to-suit" deal, as she had no involvement with the construction phase, which occurred years after the search for land. However, he stated that whether a deal was a build-to-suit or merely a general construction deal, if a broker brought it to him, he felt he would have some obligation to pay a fee. He did not enter into commission agreements with brokers at the beginning of these transactions but only if it appeared that the deal had a good chance of going through.

TOURO WITNESSES

Edward Taylor testified that in late 1992/early 1993, he was the Director of Development for Touro law School. He recollected meeting Marie Zere during that time period at the aforesaid LIMBA meeting. He stated that he approached her; told her that Touro was contemplating a move to the Central Islip area near the court system, and seeking her aid in locating an appropriate plot of land. He recollected that at some point thereafter she visited the law school, took a tour of the facility and met with him and Dean Glickstein. She stated that they both asked how she would be able to

facilitate the process of a move, which was at its preliminary stages of discussion. He recalls that she mentioned Ronald Parr's name as a good resource for the school and that he would be able to help the school in connection with "construction end" of the process. She stated she would contact Ronald Parr and attempt to set up a meeting between him and the Dean. Although he was unable to remember the exact point of the discussion, he did recall that at one point he asked Marie Zere how she would be compensated if she acted in aid of the school and was told by her the Ronald Parr would take care of the issue.

Dean Howard Glickstein, former Dean of Touro Law School from 1986 through June 2004 testified that he was intimately involved with the decision of the law school to move from Huntington to Central Islip through the on process of locating a parcel of land near the Federal Court facility, purchasing the land and ultimately building the new law school. According to him, the process began in the early 1990's. He recalled that Touro's Director of Development, Edward Taylor, first mentioned Marie Zere to him in the early 1990's and that he met with her at the law school in Huntington in the early 1990's. He recalls discussing the potential move with her and that the school was looking for vacant land in Central Islip. She, according to the Dean, recommended Ronald Parr as a helpful aid in locating appropriate land, since he had been the author of the Master Plan for Central Islip. He met with Ronald Parr as a result of Marie Zere's recommendation and asserted that although the issue of a building was far down the road in the process, he told Parr that Touro was hoping to construct a state of the art law school on land once it was acquired.

Over the seventeen year period that it took from first concept until completion Dean Glickstein testified that he spoke with Marie Zere several times per year. He also was read a portion of his pre trial deposition, in which he had stated that Ms. Zere told him that she would be looking for compensation for her role in the process from Mr

Parr. Dean Glickstein stated that he was extremely impressed with Mr. Parr and ultimately never considered anyone else for the role as a general contractor for the law school project. While Dean Glickstein stated under cross-examination that Ms. Zere's introduction to him of Ronald Parr played no role in his decision to recommend Ronald Parr as the general contractor, on redirect examination he stated that the introduction did play a role in his ultimate selection, albeit approximately nine years later.

EXPERT WITNESSES

Jack Kulka, a licensed professional Engineer and owner/operator of companies engaged in the field of general contracting and construction management, testified as an expert witness on behalf of Plaintiff, on the issue of payment of brokers by general contractors in build-to-suit projects. Mr Kulka stated that his various companies had been involved over the past thirty five years in over 17 million square feet of construction. Over 100 transactions involved participation by brokers in some fashion. Mr. Kulka opined that if a broker brings a potential customer to a contractor and the customer and contractor arrange a building project, the broker is entitled to a fee for the introduction. In most instances, he believes the fee should be six percent of the initial construction cost, without inclusion of design fees or later changes in the work. He also testified that he has been involved in build-to-suit projects, where he has paid the broker the six percent figure and where as contractor, he has not been the owner of the property. Based on Mr Kulka's reading of the contract between Touro Law School and Parr, he believes Marie Zere is entitled to a commission of six percent of the original construction cost, minus architectural fees (\$21,500,000 in this case). Mr Kulka asserted that he had been involved in several "build-to-suit" projects with Marie Zere, where she had effectuated the introduction of one of his construction firms to the property owner and in each instance his firm paid her a broker's fee of approximately six percent of the original construction cost. He also states that when he has a

longstanding relationship with a brokerage firm, the fee agreement is not always in writing.

Under cross-examination, Mr. Kulka stated that where over one year passes between the introduction of the builder to the potential customer and no activity occurs relating to the project, the broker will lose the right to the fee. However, he did not consider the Touro project to fall within that category, as the intervening years were spent, as far as he knew, in attempts to raise funds for the law school project.

Alan Yaffe, a licensed real estate broker for over twenty five years and Executive Vice-President of a business focusing on commercial and industrial real estate on Long Island, testified as an expert witness, on behalf of the Plaintiff. According to the witness, a “build-to-suit” is a ground up construction project, where an entity purchases land and brings in a contractor for its particular needs. Where the broker effectuates the introduction between the general contractor and the customer, he asserts that the real estate broker is entitled to a fee. Like Mr. Kulka, Mr. Yaffe opined that the fee should generally be in the range of six percent of the original construction cost. As the broker, his role is to introduce the potential user of the property to a general contractor. He stated that his company has been involved in more than twenty build-to-suit projects in Nassau and Suffolk counties and that he has been individually involved in approximately six. It is customary, in his experience, where he makes the introduction of the contractor to the ultimate user of the land, to be paid a fee by the general contractor.

In his experience, his role would be to make the introduction and to attend future meetings to “get the ball rolling”. The main role of the broker in a “build-to-suit” situation, according to Mr Yaffe, is to make sure that the customer has a level of comfort

with the general contractor; however, once such is achieved, he does not get involved with the actual design or construction.

Like Mr. Kulka, Mr. Yaffe stated that he likes to have a commission agreement in place before the meeting between the contractor and customer occurs; however, he does not do so when he has dealt with the contractor on many other occasions. Ultimately, however, he looks to formalize the deal, as Ms. Zere attempted to do in this case (Plaintiff's 31). He did state that the size of the project might have an effect on the fee; however, he said that the adjustment would be slight. In the build-to-suit projects where he acted as the broker, he was generally paid approximately six percent of the construction costs by the contractor; however, he stated under cross examination that these projects ranged in size from \$700,000 to \$3,000,000. In addition, in one of the projects, where problems arose between the contractor and the customer, he received a flat fee which he believed to be approximately two percent of the cost of construction.

Mr. Yaffe opined, like Mr. Kulka, that often the fee is not disclosed to the customer. He defines the term "procuring cause" as the broker who initiates the deal and sees that it gets accomplished.

George Donohue, who holds a M.S. in Real Estate Development and Finance as well as a BA in Architecture, and has spent over twenty years in the real estate field, testified as an expert in the area of a broker's fees, on behalf of the Defendants. During his career, he has acted as the head of real estate for the Port Authority of New York and New Jersey, the president of the commercial real estate business of the William B. May Real Estate Co, and the broker of record for GMAC Real Estate International Properties Group. In the latter two roles, he negotiated many brokerage commission agreements and oversaw the negotiations of many others He has been involved with hundreds of

transactions in both firms. At the Port Authority, his role was representing the interests of the property owner.

According to Mr. Donohue, a broker must create a meeting of the minds between the two other parties to a transaction and then prove that he/she was the procuring cause for that transaction in order to earn the right to a commission. Before a broker begins working, however, Mr. Donohue believes that there must be authorization and a signed brokerage agreement. He states that is the manner in which he handled all of his commission deals in the past. According to Mr Donohue, commissions are paid by both buyers and sellers and they vary in size, dependant on the size of the project involved, Thus, he opines, the larger the transaction, the smaller the commission as a percentage of the total cost. In his experience, the brokerage commission for a real estate transaction in the realm of \$20,000,000 would be from one to two percent.

According to Mr. Donohue, the broker should always have a commission agreement so that it is clear both which party to the transaction is paying as well as the amount of the fee. In this particular case, Mr Donohue does not believe Ms Zere was entitled to any commission as a broker on the Touro deal with Parr to build the law school based on absence of any significant performance on the Plaintiff's part. Brokers' fees, based on "build-to-suit" schemes, according to the witness, are handled the same way as other brokerage fees. They should be in writing, disclosed to all sides of the transaction and their percentage of the total cost is dependent on the size of the transaction. He disclosed one of his experiences with a large lease deal worth \$75,000,000; his firm was paid .44 of the deal.

If Ms. Zere had an agreement to be paid a brokerage fee in the Touro construction transaction, in his opinion, the fee would have been in the range of one to two percent. However, a finder's fee, which is more akin to what he believes occurred in this case,

would entitle her to a mere one fifth of one to two percent of the construction amount. Under cross-examination, Mr. Donohue stated that he never represented a construction company as a broker in a “build-to suit” project nor has he been involved in a construction project on Long Island.

QUANTUM MERUIT

A party, suing under the theory of “quantum meruit” must demonstrate, in order to prevail that : 1) she performed services for the other party in good faith; 2) the other entity accepted such services; 3) she has an expectancy of compensation for such services; and 4) the reasonable value of the services rendered. **Miranco Contracting Inc v Perel**, 57 AD 3d 956, 871 NYS 2d 310 (2d Dep’t 2008); **Capital Heat, Inc v Buchheit**, 46 AD 3d 1419, 848 NYS 2d 481 (4th Dep’t 2007); **Galbreath Riverbank, L P v Sheft & Sheft**, 273 AD 2d 35, 708 NYS 2d 117 (1st Dep’t 2000). A memorandum demonstrating the first three prongs of the above test may be sufficient in an action in quantum meruit to recoup the reasonable value of brokerage services, so long as it evidences the fact of the broker’s employment by the defendant to render the services the Plaintiff is alleging it provided. **Morris, Cohen & Co v Russell**, 23 NY 2d 569, 297 NYS 2d 947, 245 NE 2d 712 (1969); **see, Seidman v Dean Witter & Co, Inc**, 70 Ad 2d 845, 418 NYS 2d 6 (1st Dep’t 1979).

PROCURING CAUSE

In order to prove that she did in fact perform services for the defendant, which the defendant accepted and which provided the Plaintiff with the expectancy of compensation in a scenario involving the services of a broker, the broker must demonstrate a proximate link between her introduction of the parties and the agreement upon which she bases her commission demand. **Parker Realty Group v**

Petigny, 14 NY 3d 864, 903 NYS 2d 325, 929 NE 2d 387 (2010). This does not mean that a broker is required to participate in all stages of negotiations or even be present when an agreement is made between the two other parties; however, a mere introduction of the parties, without more, is insufficient to meet the requirements set forth in law. **Eugene J Busher Co, Inc v Galbreath-Ruffin Realty Co, Inc**, 22 AD 2d 879, 254 NYS 2d 673, aff'd, 15 NY 2d 992, 260 NYS 2d 12, 207 NE 2d 68 (1965).

In this case, Marie Zere demonstrated, by a fair preponderance of the credible evidence, at trial, that she provided the introduction of the Parr Organizations to Touro College, for the ultimate construction of its state of the art law school facility, when she brought about the meeting of Ronald Parr and Dean Glickstein in early 1993. The Court found credible both the testimony of Ms. Zere and Edward Taylor, then Director of Development, that Mr. Parr's introduction was far from limited to discussion of the purchase of land. He was, by that time, a well known and experienced industrial and commercial developer on Long Island, as set forth in his own testimony. Ms Zere's involvement in the Touro Law School project did not terminate with the introduction. She stayed involved for years through her research on available grant programs, her meetings with the former Dean, and her extensive correspondence with Ronald Parr. The Court found credible Ms. Zere's testimony supported by her well kept records that she remained involved in the project as an advocate on behalf of the construction companies owned by Ronald Parr well into 2004. Since the quantum meruit claim accrues upon the last date services are performed, the commencement of this action in 2007 was well within the Statute of Limitations. **See, Eisen v Feder**, 47 AD3d 595, 850 NYS2d 412 (1st Dep't 2008) The Court found credible Ms. Zere's testimony, supported by that of Dean Glickstein, that she met with the Dean, discussing the project on each occasion, 45 times between 1993 and 2004. While the defendants urge that her work was completed in 1994, after which she was stonewalled, she testified at trial that defendant's stonewalling really occurred after a January, 2004 telephone conversation

and several unanswered letters in October and November 2004. In fact, it appears Ms. Zere remained involved, albeit on the periphery of the project, at least until the signing of Defendant's contract in January, 2005 (Plaintiff's 27, 28 and 29).

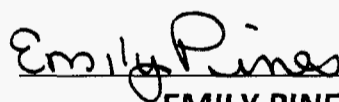
Of course, the most convincing evidence of Marie Zere's entitlement to a fee for her services is Plaintiff's Exhibit 23. It clearly fulfills the requirements set forth under the law to allow Ms. Zere to recoup the value of her services, under a quantum meruit claim. Although Mr. Parr stated that Ms. Zere's involvement was limited to the initial search for land for the facility, that is not what this extremely experienced businessman placed in writing. Rather, he stated that if one of his organizations is selected as either the general contractor or the construction manager for the Touro Law School project, Marie Zere would be recognized as the broker who brought about the deal. It also specifically states that the recognition would come from one of the Parr organizations. It does not limit the right to recoupment to a particular Parr owned construction organization. That admission coupled with the testimony of Ms. Zere, the extensive correspondence and the credible testimony of Edward Taylor, are more than sufficient to entitle Marie Zere's firm to compensation.

To the extent that Mr Parr testified that he wrote this letter in order to be presented by Ms. Zere to various lending organizations, that presents the Court with the following conundrum. If, as the letter states, the Parr organizations, not Touro, are the entities that will recognize Ms. Zere as the broker to be recognized for a commission should they be selected to construct the new facility, and if Parr had no intention of ever providing compensation to Ms. Zere for her services or lack thereof, his letter was written to defraud a lending institution. The Court does not accept such excuse. Rather, the Court believes the letter is one of true intent and satisfies the requirements to prove the first three elements of a claim in quantum meruit.

The issue of what constitutes a reasonable fee for Zere's services must be based upon extrinsic evidence as there is no agreement setting such forth. The three expert witnesses, as well as Ms. Zere and Mr. Parr all testified regarding this issue. Based on the Court's review of all such testimony, it is convinced that there is indeed a relationship between the size of the construction contract on which the brokerage commission is based and the percentage of entitlement. In this vein, the Court found convincing, the testimony of Mr. Donohue that on extremely large projects, the commission is generally between one and two percent. Mr. Yaffe also admitted that the size of the transaction can have an effect on the commission percentage. In addition, each of the witnesses testified that they had the experience of a brokerage commission being on that level in certain transactions, including a prior one between one of the Zere and Parr organizations in the past. The other issue that influences the Court in this direction, is the fact that although Ms. Zere made the initial introduction and stayed involved in the project for many years, the bulk of the actual work, i.e., the design and construction itself, as set forth in the testimony of Dean Glickstein, was done by the Parr Organizations. Based on the above considerations, the Court finds that Zere Real Estate Services, Inc is entitled to Judgment from the Defendants in the sum of one and one half percent (1½%) of the initial construction cost of the law school facility (\$21,500,000). This equates to a judgment of \$307,500. Ms. Zere's claim accrued when her work was completed, which occurred on or about the date one of the Parr organizations entered into its construction contract with Touro (January 25, 2005).

This constitutes the **DECISION** and **JUDGMENT** of the Court. Submit Judgment, on Notice, in accordance with the Court's **DECISION**.

Dated: April 19, 2011
Riverhead, New York



EMILY PINES
J. S. C.

FINAL DISP **NON - FINAL DISP**