

JDF Realty, Inc. v Sartiano

2011 NY Slip Op 31693(U)

June 6, 2011

Supreme Court, New York County

Docket Number: 117897/09

Judge: Saliann Scarpulla

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

PRESENT: Salvatore Scarpulla
Justice

PART 19

Index Number : 117897/2009
JDF REALTY, INC.
vs.
SARTIANO, SCOTT
SEQUENCE NUMBER : 003
AMEND CAPTION/PARTIES

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

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 this motion

and cross-motion are decided in accordance with the accompanying memorandum decision.

FILED

JUN 24 2011

NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 6/20/11

Salvatore Scarpulla
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

----- X
JDF REALTY, INC.,

Plaintiff,
-against-

Index No.: 117897/09
Submission Date: 3/9/11

SCOTT SARTIANO, RICHARD AKIVA, and
244 WEST 14TH LLC,

DECISION AND ORDER

Defendants.

----- X
For Plaintiff:

Wender Law Group, PLLC
One Penn Plaza, Suite 2527
New York, NY 10119

For Defendants:

McCue, Sussmane & Zapfel, P.C.
521 Fifth Avenue, 28th Floor
New York, NY 10175

Papers considered in review of motion to amend and cross motion for summary judgment:

Notice of Motion.....	1
Aff in Opp to Cross Motion.....	2
Notice of Cross Motion.....	3
Reply Aff in Support.....	4
Mem of Law in Opp.....	5

FILED

JUN 24 2011

NEW YORK
COUNTY CLERK'S OFFICE

HON. SALIANN SCARPULLA, J.:

In this action for breach of contract and unjust enrichment, plaintiff JDF Realty Inc. ("JDF Realty") moves to amend its complaint to add 14 LLC as a defendant and 244 West 14th LLC ("244 West") cross moves for summary judgment dismissing the complaint against it.

JDF Realty, a real estate brokerage firm, commenced this action by summons and complaint dated December 18, 2009, seeking unpaid brokerage fees from defendants 244 West, Scott Sartiano ("Sartiano") and Richard Akiva ("Akiva") for services it allegedly

rendered in a commercial real estate transaction between non party 14 LLC and 244 West.

On June 1, 2009, 14 LLC, as landlord, entered into a commercial lease for real property located at 244-246 West 14th Street New York, New York (the "Premises") where by it agreed to lease the Premises to defendant/ tenant 244 West. In the complaint, JDF Realty asserts that it showed the Premises to Sartiano on April 16, 2009 and subsequently negotiated the terms of the lease agreement on behalf of the defendants. JDF Realty further asserts that it has only been paid one third of the commission it is owed, claiming that 14 LLC paid a \$38,000.00 commission and that Sartiano, Akiva and 244 West owed the remaining \$76,000.00, in accordance with drafts of offer sheets created before the lease agreement. JDF Realty asserts claims of breach of contract and unjust enrichment against all defendants but on a prior motion the Court dismissed the complaint against the individual defendants Sartiano and Akiva.

JDF Realty now moves to amend its complaint to add 14 LLC as a defendant. JDF Realty argues that 14 LLC should be added as a defendant because paragraph 48 of the lease between 14 LLC and 244 West states that "the landlord shall be responsible for the fees, if any, earned by Superior Management Incorporated and JDF Realty, Inc., in connection with this lease." JDF Realty asserts that this provision of the lease shows 14 LLC is liable for the remaining brokerage fees allegedly due.

244 West cross moves for summary judgment arguing that (1) JDF Realty accepted the terms of the lease as a third-party beneficiary, in that it received a benefit under the lease and assented to the lease by subsequent conduct; and (2) JDF Realty's

claim for unjust enrichment must be dismissed because the existence of a valid and enforceable written contract covering the subject matter at issue precludes recovery in a quasi contract.

244 West argues that paragraph 48 of the June 1, 2009 lease is binding upon the parties and clearly states that the landlord alone shall be responsible for any brokerage commission fees, thus relieving 244 West, Akiva, and Sartiano of any responsibility. Additionally, 244 West maintains that 14 LLC paid JDF Realty the entire amount owed for JDF Realty's services, thus satisfying the terms of the Brokerage Commission Agreement between 14 LLC and JDF Realty. In opposition to 244 West's cross-motion JDF Realty argues that it never assented to the lease and rather, the pre-lease agreements between the parties are binding.

Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980).

A lease agreement that is a clear and complete document is a final expression of the parties' agreements, and should be enforced according to its terms. *See W.W.W. Associates, Inc. v. Giancontieri*, 77 N.Y.2d 157 (1990). An exception exists if the lease or a particular clause of the lease is ambiguous. *Id.* Here, paragraph 48 of the lease

between 14 LLC and 244 West clearly states, without ambiguity, that “the landlord shall be responsible for the fees, if any, earned by Superior Management Incorporated and JDF Realty, Inc., in connection with this lease.” The lease serves as the final and binding agreement, not the preliminary offer sheets, which were products of an ongoing negotiation.¹ The lease and paragraph 48 are a final expression of the parties’ agreement and govern over any other documents or oral agreements previously entered into by the parties.²

After the execution of the lease, in which 244 West and 14 LLC agreed that 14 LLC would be responsible for legal fees, JDF Realty entered into a Brokerage Commission Agreement with 14 LLC. The Brokerage Commission Agreement specifically acknowledges the “leasing of the Premises by Owner to Prospective Tenant,” and requires only 14 LLC to pay JDF Realty a brokerage commission in the amount of

¹ Further, pursuant to the parol evidence rule, where parties have “reduced their agreement to writing,” evidence of any prior oral or written agreement offered to contradict, vary, add to or subtract from the terms of the writing should be excluded. *New York Fruit Auction Corp. v. City of New York*, 81 A.D.2d 159, 165 (1st Dept. 1981) *aff’d* 56 N.Y.2d 1015 (1982). Thus, the Court may not consider JDF Realty’s evidence of pre-lease offer sheets to contradict paragraph 48 of the lease.

² In fact, because JDF Realty benefitted from the lease between 14 LLC and 244 West, JDF Realty is a third-party beneficiary of the lease. As a third-party beneficiary, JDF Realty is bound by the terms of the lease. *See Burns Jackson Miller Summit & Spitzer v. Lindner*, 59 N.Y.2d 314 (1983); *State of California Public Employees’ Retirement System v. Sherman*, 95 N.Y.2d 427, 435 (2000); *Joseph P. Day Realty Corp. v. Chera*, 308 A.D.2d 148, 152 (1st Dept. 2003); *Kornblut v. Chevron Oil Co.*, 62 A.D.2d 831 (2nd Dept. 1978) *aff’d* 48 N.Y.2d 853 (1979). JDF Realty’s third-party beneficiary status is illustrated by e-mail correspondences between JDF Realty and 244 West and its attorney Kenneth Sussmane. The e-mails indicate that Mr. Benjamin Kahr, an agent of JDF Realty received a copy of the proposed lease prior to its execution. The e-mails further show that Mr. Kahr raised concerns regarding specific provisions of the lease to Mr. Sussmane. Tellingly, Mr. Kahr never raised any concerns regarding the provision requiring only 244 West to pay a brokerage commission.

\$38,000.00. There is nothing in the Brokerage Commission which shows that either party contemplated JDF Realty seeking an additional fee from 244 West. Nor did 244 West and JDF Realty ever enter into a written brokerage agreement.

Taken together, the lease and the subsequent Brokerage Commission Agreement to which JDF Realty was a party show an objective intent that *only* 14 LLC be responsible to pay commission fees to JDF Realty and the parameters of that responsibility are set forth in the Brokerage Commission Agreement. Accordingly, 244 West's motion to dismiss the breach of contract cause of action is granted.

Further, JDF Realty's unjust enrichment claim must also be dismissed. The existence of a valid contract, which purports to cover the particular subject matter of the claims asserted, precludes recovery in quasi contract. *Goldstein v. CIBC World Markets Corp.*, 6 A.D.3d 295, 296 (1st Dept. 2004). The lease and Brokerage Commission Agreement are binding contracts on the parties herein and therefore preclude the unjust enrichment claim. The Brokerage Commission Agreement between 14 LLC and JDF Realty requires 14 LLC to pay a commission. It is undisputed that JDF Realty has been paid this amount in full. JDF Realty's motion to amend the complaint to add 14 LLC as a defendant is therefore denied.

In accordance with the foregoing, it is

ORDERED that the plaintiff JDF Realty's motion to amend is denied and the cross motion for summary judgment dismissing the complaint of defendant 244 West LLC is granted. The Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: New York, New York

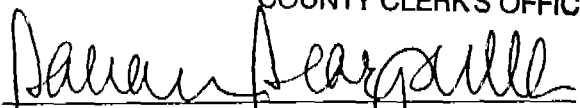
June 6, 2011

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Saliann Scarpulla, J.S.C.