

Village Realty of Staten Is., LTD. v Iberia Real Estate Corp.

2014 NY Slip Op 32365(U)

August 14, 2014

Supreme Court, Richmond County

Docket Number: 150149/2014

Judge: Charles M. Troia

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E-FILE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

_____ X
Village Realty of Staten Island, LTD.

Plaintiff,

-against-

**Iberia Real Estate Corp. Jose Friere,
and Isabella Friere**

Defendants.

_____ X

DCM. Part 1

Present:

HON. CHARLES M. TROIA

DECISION AND ORDER

Index No. 150149/2014

Motion No. 1444-001

The following papers numbered 1 to 4 were fully submitted on the 13th day of June,
2014.

**Papers
Numbered**

Notice of Motion by Defendant to Dismiss the Complaint, with Supporting Papers and Exhibits (dated April 11, 2014).....	1
Affidavit in Opposition to Defendants Motion to Dismiss, with Supporting Papers and Exhibits (dated May 13, 2014).....	2
Memorandum of Law by Plaintiff in Opposition to Motion to Dismiss (dated June 4, 2014).....	3
Reply Affirmation in Further Support of Motion to Dismiss (dated June 9, 2014).....	4

Upon the foregoing papers, defendants' motion to dismiss the complaint is granted.

This is an action for alleged breach of contract and quantum meruit.

In April, 2011 defendants contacted plaintiff's real estate firm to assist with the sale of a certain property in Staten Island, New York. In September 2011 plaintiff negotiated an offer by a prospective purchaser in the amount of \$3,100,000. On or about October 10, 2011, defendants executed a separate commission agreement whereby defendant agreed to pay plaintiff the sum of \$192,000.00 for negotiating the purchase and sale of the subject property (see Defendants' Exhibit "A"). On the same day defendants entered into a lease agreement, rather than a contract of sale with the purchaser/tenant which included an option to purchase the property. This option had to be exercised before January 13, 2013.

Thereafter in October 2012 as a result of the damage to the property from Superstorm Sandy, the parties agreed to a lower purchase price as well as a reduction in the commission to \$150,000. Despite the reduction in the amount, it is undisputed that the terms of the commission agreement remained unchanged. The commission agreement signed by all parties on October 11, 2011 stated that \$12,000.00 would be paid as of the date of the signing of the contract, a sum certain would be due upon payment of the promissory note and a further amount due approximately three years after closing. The Court notes that the copies of this agreement annexed to the moving as well as the opposition papers are identical. It is undisputed that defendant paid plaintiff \$12,000.00 upon the signing of the contract as well as an additional \$20,000 thereafter.

In support of the motion to dismiss, defendant Jose Friere, an Officer of Iberia Real Estate Corp. contends that despite the reduced purchase price the purchasers never fulfilled the contract obligation of applying for and seeking financing or paying the real estate taxes or rent obligations pursuant to the lease agreement. Defendant asserts that purchaser merely advised them in an email that financing through the Small Business

Authority “does not look like a possibility” (see, Defendants Exhibit “D”). Thus, defendant concludes that the purchasers failed to satisfy the contract requirement of applying for and seeking financing from an institutional lender. Consequently, a closing never took place and the agreed upon precondition of title passing did not occur. In opposition Plaintiff’s allegation that the failure to close was based upon defendant’s belief that they could obtain a higher sale price from another potential purchaser is wholly unsupported and speculative and fails to raise any triable issue of fact sufficient to defeat the motion.

The fundamental precept of contract interpretation is that written agreements are construed in accordance with the parties’ intent. A written agreement that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms. A contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion (see Norma Reynolds Realty, Inc. v Edelman, 29 AD3d 969). Here, the language of the agreement was unambiguous. The agreement clearly provided that the remaining broker’s commission was to be paid when title closes and thereafter (see Battery Park Realty, Inc. v RKO Del., Inc., 18 AD3d 680).

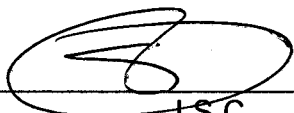
Inasmuch as purchasers never took title to the property and the agreement explicitly stated that the brokerage commission was due upon closing of title, defendant is not liable for any damages.

Accordingly, it is hereby

ORDERED that the motion is granted and the complaint dismissed; and it is further

ORDERED that the Clerk enter judgment accordingly.

ENTER,


J.S.C.

GRANTED
AUG 25 2014
 **CLERK**

Dated: August 15, 2014
gl

Hon. Charles M. Troia
Justice of the Supreme Court