

<b>Halstead Prop. LLC v Thor Urban Invs. LLC</b>
2014 NY Slip Op 32545(U)
September 18, 2014
Supreme Court, New York County
Docket Number: 151656/14
Judge: Melvin L. Schweitzer
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COM. DIV. PART 45

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HALSTEAD PROPERTY LLC,	:	
	:	
Plaintiff,	:	DECISION and ORDER
	:	
-against-	:	Index No. 151656/14
	:	
	:	Mot. Seq. No. 001
THOR URBAN INVESTMENTS LLC,	:	
	:	
Defendant.	:	
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**MELVIN L. SCHWEITZER, J.:**

According to the complaint, plaintiff Halstead Property LLC (plaintiff or Halstead) sues to recover a “brokerage commission/finder’s fee in connection with defendant’s purchase of real property located in the Design District of Miami, Florida in a transaction in which plaintiff was the procuring cause” (Cmplt., ¶ 3). Defendant Thor Urban Investments LLC (defendant) moves, pursuant to CPLR 3211 (a) (1) and (7), to dismiss the complaint based on the fact that plaintiff is not registered or licensed as a real estate broker in Florida. For the following reasons, the motion is granted.

The complaint alleges that plaintiff is engaged in “real estate brokerage” with its principal place of business in New York City (Cmplt., ¶ 1). Defendant is identified as a New York-based limited liability company (*id.*, ¶ 2). In February of 2013, John Goldman, a broker affiliated with plaintiff learned about a property for sale in Miami, Florida (*id.*, ¶ 4). After Mr. Goldman personally visited the property on “at least two occasions in February to familiarize himself with the property,” he “advised [defendant’s managing director] regarding the Premises” (*id.*, ¶ 6). After receiving additional information from plaintiff, defendant made an offer to purchase the

property for \$23.5 million (*id.*, ¶ 8). The offer was sent to Mr. Goldman, together with a note from defendant asking Mr. Goldman to “present this and lets [sic] discuss after you hear back” (*id.*, ¶ 9). Defendant then forwarded the offer to the seller’s representative (*id.*, ¶ 8). In April, defendant increased its offer to \$27 million pursuant to a written proposal dated April 22, 2013, which states, in part, that:

“The parties agree that they have dealt with no brokers, agents or finders other than John D. Goldman of Halstead Property. Purchaser shall be responsible for any commission due to Broker pursuant to a separate agreement.”

(*id.*, ¶ 10 and Exh. 1 thereto). On April 23, 2013, the seller made a counteroffer which was forwarded to plaintiff, who, in turn, passed it on to defendant (*id.*, ¶ 11). Although defendant announced that it was passing on the transaction, plaintiff alleges that defendant eventually signed an agreement in November 2013 to purchase the property for \$50 million (*id.*, ¶¶ 12-14). Plaintiff alleges that it was “the procuring cause of such purchase transaction,” and is entitled to a 2.5% commission in the amount of \$1,250,000 plus interest from November 2013 (*id.*, ¶ 15).

Defendant moves to dismiss the complaint on the ground that a search of the Florida Real Estate Commission’s website reveals that neither Halstead nor Mr. Goldman are registered or licensed as a real estate broker in Florida (*see Matalon Affirm.*, ¶ 3 and Exh. B thereto). Defendant submits further documentary proof that the seller of the property was three Florida limited liability companies with their principal place of business, mailing address and registered agent located in Miami, Florida (*id.*, Exhs. C and D thereto).

In opposition to the motion, plaintiff offers an affidavit from Mr. Goldman in which he avers that plaintiff was, at all relevant times, performing its services exclusively in New York as a finder not a broker, and that plaintiff’s only function was to locate a purchaser for the property

and to put that purchaser in touch with the seller's broker, Whitehall Realty Advisors, a licenced Florida real estate broker (Goldman Aff., ¶¶ 2, 3). Plaintiff argues that the Florida licensing laws only govern acts performed by unlicensed real estate brokers in Florida, and here, plaintiff acted solely as a finder to introduce defendant to the seller's Florida broker and performed all of its own acts in New York. Notably, Mr. Goldman does not deny that neither he nor Halstead was licensed in Florida, does not refute any of the defendant's documentary proof, admits that he traveled to Florida to view the property and admits that he forwarded defendant's offers to the seller's Florida broker. Mr. Goldman also specifically denies that he had any type of co-brokerage agreement with Whitehall Realty Advisors (*id.*, ¶ 3 n 2).

Florida law applies to this dispute since the subject transaction involved Florida real estate owned by Florida entities and the broker seeking a commission performed acts in that jurisdiction (*Excel Realty Advisors, L.P. v SCP Capital, Inc.*, 101 AD3d 669, 670 [2d Dept 2012]; *TDH-Berkshire Inc. v Korff*, 33 AD3d 437, 438 [1st Dept 2006]; *Equis Corp. v Mack-Cali Realty Corp.*, 6 AD3d 264, 267 [1st Dept 2004]; *Madison Realty v Neiss*, 253 AD2d 482, 483-484 [2d Dept 1998]).

The Florida Real Estate Licensing Act (the Act) prohibits a person from operating as a broker or sales associate without being the holder of a real estate broker's license (Fla Stat Ann § 475.42 [1] [a]). Operating as a broker includes selling, buying, and negotiating the sale of real property for another party (Fla Stat Ann § 475.01 [1] [a]). A single act is sufficient to trigger the statute (Fla Stat Ann § 475.01 [3]). No contract or commission is valid unless the broker has complied with the Act regarding issuance and renewal of the license when the service was performed (Fla Stat Ann § 475.41). Such contracts are "entirely void as a matter of public

policy, and [Florida] courts have ruled that recovery may not be had either under the contract or under the theory of quantum meruit” (*Paris v Hilton*, 352 So 2d 534, 535 [Fla App, 1st Dist 1977], *cert denied* 365 So 2d 713 [Fla 1978], *cert denied* 441 US 931 [1979]).

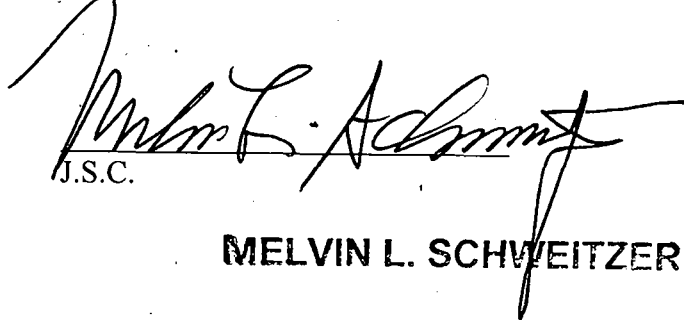
Even if plaintiff is deemed a finder, not a broker (which is directly contrary to the complaint’s own allegations (*see* Cmplt., ¶¶ 1, 3-6, 8-11, 15), finders must also be licensed under Florida law. Section 475.01 (1) (a) of the Act defines “broker” as one “who takes any part in the procuring of sellers, purchasers, lessors, or lessees of business enterprises or business opportunities or the real property of another . . . or who directs or assists in the procuring of prospects . . .” Florida courts have construed this statutory language as encompassing finders (*see Schy v Margulies*, 407 So 2d 267, 268 [Fla App, 3d Dist 1981]; *Fuller v Alberts*, 382 So 2d 113, 114 [Fla App 1980]; *First Equity Corp. of Florida v Riverside Real Estate Inv. Trust*, 307 So 2d 866, 867-868 [Fla App, 3d Dist], *cert denied* 316 So 2d 287 [Fla 1975]).

For the foregoing reasons, it is hereby

ORDERED that defendant’s motion to dismiss the complaint is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter a judgment of dismissal.

Dated: September 18, 2014

ENTER:

  
J.S.C.  
MELVIN L. SCHWEITZER