

Goodman v MHP Real Estate
2015 NY Slip Op 31965(U)
October 21, 2015
Supreme Court, New York County
Docket Number: 154007/2015
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 39

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BRUCE GOODMAN,

Plaintiff,

DECISION/ORDER
Index No. 154007/2015

-against-

MHP REAL ESTATE, F/K/A MURRAY HILL
PROPERTIES LLC

Defendant.

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HON. SALIANN SCARPULLA, J.:

In this action to recover damages for, *inter alia*, breach of contract, defendant MHP Real Estate f/k/a Murray Hill Properties LLC (“MHP”) moves to dismiss the complaint.

MHP owned, leased and managed office space in New York. Pursuant to an agreement dated April 25, 2013, brokerage and investment banking firm Stifel, Nicolaus & Co. (“Stifel”) was engaged by MHP to act as the exclusive financial advisor and equity financing agent for the anticipated purpose of MHP acquiring or recapitalizing office buildings in New York City (“MHP/Stifel agreement”). Thereafter, plaintiff Bruce Goodman (“Goodman”) and MHP entered into a letter agreement dated May 21, 2013, which set forth the terms of Goodman’s participation in the MHP/Stifel deal (“letter agreement”). Specifically, the letter agreement provided, in relevant part,

1. In the event Stifel, Nicolaus & Company obtains one or more commitments for the financing from one or more financial institutions or other sources for either the recapitalization of the existing capital of Murray Hill Properties LLC (and its

affiliates) or provides new capital to the company, or obtains GP capital, LP capital or other equity financing for Murray Hill Properties LLC (and its affiliates) or through a joint venture, partnership, or other entity formed, controlled or managed by Murray Hill Properties LLC, then Bruce Goodman shall be entitled to receive a fee equivalent to fifty (50%) percent of any and all fees earned and paid to Stifel, Nicolaus & Company. Such fees shall be due and payable immediately upon the closing or funding of the capital and /or equity provided.

3. In the event Bruce Goodman finds third party capital or equity (separate and apart from Stifel, Nicolaus & Company, and it is determined that Stifel is not entitled to compensation as per their Agreement with Murray Hill Properties) for the purpose of investing with Murray Hill Properties or its affiliated entities, then you shall be due a fee of one and a half (1.5%) percent upon the closing or funding of such capital/equity provided.

On February 21, 2014, the MHP/Stifel agreement terminated. According to Goodman, certain of the provisions of the agreement survived termination. Specifically, one of the provisions that survived termination provided that,

Stifel is hereby granted the sole and exclusive right and authority to locate Financing sources and to obtain Commitments during the term of this Agreement. If [MHP] accepts or otherwise enters into any Commitment during the term of this Agreement or within the 12 month period commencing upon the expiration or termination of this Agreement, and the Company closes the Financing under such Commitment, whether or not such Financing or Commitment was arranged through Stifel (although such closing may occur subsequent to the expiration of this Agreement), the Company expressly agrees that Stifel's services have been fully performed as outlined herein, and the Company shall pay Stifel compensation as outlined herein.

Goodman commenced this action in or about April 2015. According to the allegations of the complaint, Goodman worked on identifying and obtaining capital sources for MHP, and in October/November 2013, MHP directed that Goodman share his capital source contact list with an MHP employee so that they could work on obtaining capital for MHP together. In February/March 2013, Goodman allegedly introduced Clarion Partners ("Clarion") to MHP. From that time through mid-January 2014, with

MHP's full knowledge, Goodman solicited Clarion and other potential investors for MHP from his contact list. Goodman left MHP's employ on May 8, 2014. On or about January 8, 2015, Clarion and MHP acquired the office building at 180 Maiden Lane, New York for \$470 million.

Goodman alleged that because MHP ultimately got financing from Clarion in or about January 2015, pursuant to the provision of the MHP/Stifel agreement that extended the term for 12 months after the agreement terminated in February 2014, Stifel earned its fee. Therefore, Goodman claimed, he was entitled to compensation under paragraph 1 of the letter agreement. He alleged that he was entitled to compensation under paragraph 3 of the letter agreement because he initiated MHP's relationship with Clarion. Goodman claimed that MHP breached the letter agreement by refusing to pay Goodman the fee due to him. He also asserted causes of action for unjust enrichment and quantum meruit.

MHP now moves to dismiss the complaint, arguing that the complaint fails to sufficiently allege that any obligation to pay fees was triggered under paragraph 1 or paragraph 3 of the letter agreement. Specifically, with regard to Goodman's claim relating to paragraph 1 of the letter agreement, the complaint does not allege that Stifel obtained any financing, rather it only alleges that Stifel earned its fee. Further, it does not allege that Stifel was actually paid any fee in connection with the subject transaction.

With regard to Goodman's claim relating to paragraph 3 of the letter agreement, MHP alleges that Goodman would only be entitled to a fee if it was determined that Stifel was not entitled to compensation. The complaint fails to allege that Stifel was not entitled to compensation.

MHP next contends that the causes of action for unjust enrichment and quantum meruit must be dismissed because they are precluded by the existence of a valid and enforceable written contract.

In opposition, Goodman argues that the documentary evidence fails to resolve all issues of fact regarding MHP's defense as a matter of law, and the complaint should not be dismissed at this stage of the litigation. Rather, Goodman sufficiently alleged a breach of contract cause of action, and only further discovery will reveal whether the parties intended Goodman to be entitled to his finder's fee, if Stifel had earned and been paid its fee under the MHP/Stifel agreement, but had not actually "obtained" the financing. Goodman further seeks leave to replead to add the allegation that Stifel is not entitled to compensation under paragraph 3.

He further contends that the quantum meruit and unjust enrichment causes of action should not be dismissed at this stage of the litigation, because they were pled in the alternative to the breach of contract cause of action.

Discussion

Contrary to Goodman's contention, the intention of the parties was fully determinable from the language of the letter agreement, and the agreement was unambiguous. *Cushman & Wakefield, Inc. v. Am. Mgmt. Ass'n Int'l, Inc.*, 8 A.D.3d 67 (1st Dept. 2004). According to paragraph 1 of the letter agreement, Goodman was only entitled to his fee if Stifel earned and was paid a fee upon obtaining a commitment. There is no allegation here that Stifel obtained a commitment, or earned or was paid any fee upon obtaining such commitment. In fact, according to the allegations of the

complaint, the MHP/Stifel agreement terminated well before MHP ultimately got financing from Clarion. Furthermore, the obligation as set forth in the MHP/Stifel agreement to provide compensation to Stifel in the event MHP accepts or otherwise enters into any commitment during the term of the agreement or within the 12 month period after the termination of the agreement, does not trigger Goodman's entitlement to a fee. His entitlement to a fee, under paragraph 1 of the letter agreement, would have only been triggered had Stifel actually obtained a commitment.

Further, according to paragraph 3 of the letter agreement, Goodman was entitled to a fee if he found third party capital or equity, separate and apart from Stifel, and if Stifel was not entitled to compensation as per the MHP/Stifel agreement. Goodman clearly alleges that he initiated the relationship between MHP and Clarion, however, MHP argues that Goodman failed to plead that Stifel was not entitled to compensation and therefore, the claim must fail.

While Goodman alleges that the complaint was just inartfully drafted, and seeks leave to replead to include a statement that Stifel was not entitled to compensation, such a statement directly contradicts statements he already made in his complaint. Specifically in paragraph 24 of the complaint, Goodman alleged that "Stifel Nicolaus has earned its fee." The court can not allow Goodman to replead, just to include a statement of fact contradictory to one already pled.

In light of the foregoing, the breach of contract claim is dismissed.

Goodman's claims for unjust enrichment and quantum meruit are also dismissed because the existence of the valid and enforceable letter agreement governing the parties'

dispute, precludes recovery in quasi contract for events arising out of the same subject matter. *See MG W. 100 LLC v St. Michael's Prot. Episcopal Church*, 127 A.D.3d 624 (1st Dept. 2015).

In accordance with the foregoing, it is hereby

ORDERED that defendant MHP Real Estate f/k/a Murray Hill Properties LLC's motion to dismiss the complaint is granted, and the complaint is dismissed. The Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

Dated: October 21, 2015
 New York, NY


J.S.C.
HON. SALIANN SCARPULLA