

**Schlesinger & Co., LLC v George Comfort & Sons,  
Inc.**

2016 NY Slip Op 30316(U)

February 23, 2016

Supreme Court, New York County

Docket Number: 151643/14

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
SCHLESINGER & COMPANY , LLC

Plaintiff,

Index No. 151643/14

-against-

**DECISION/ORDER**

GEORGE COMFORT & SONS, INC., NEW YORK  
COMMUNICATIONS CENTER ASSOCIATES, LP.  
AND WWP OFFICE, LLC,

Defendants.  
-----X

**HON. CYNTHIA KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3,4</u>
Exhibits.....	<u>5</u>

Plaintiff has brought the present motion for summary judgment against defendant WWP Office, LLC ("WWP"). WWP has brought a cross-motion for summary judgment. As will be explained more fully below, the motion for summary judgment is granted and the cross-motion for summary judgment is denied.

The relevant facts are as follows. Plaintiff Schlesinger & Company, LLC ("Schlesinger") is a real estate broker. On or about May 6, 1994, Schlesinger entered into a brokerage agreement (the "Agreement") with defendant New York Communications Center Associates, LP ("Communications Center"). At that time, Communications Center was the owner of the premises known as Worldwide Plaza. The premises are now owned by WWP.

The Agreement provided that Communications Center would pay plaintiff a brokerage fee in connection with the lease between Roberts & Holland LLP as tenant and Communications Center as landlord for the 37<sup>th</sup> floor of the premises. The Agreement contained a provision which provided that plaintiff would be entitled to additional commissions if the tenant exercised options to extend or renew its lease. The renewal commissions were to be paid at the time of the commencement of the renewal or extension period. In August 2007, Roberts & Holland LLP exercised its first five year renewal option. In September 2010, plaintiff sent WWP an invoice for the commission due plaintiff for the first renewal and this invoice was then paid by defendants WWP and George. Roberts & Holland LLP then exercised its option to extend the lease for an additional five year term in 2011. Plaintiff subsequently learned of the second renewal and demanded that it be paid a commission for the second renewal pursuant to the terms of the Agreement. After defendants refused to pay any commission to plaintiff for the second renewal, plaintiff commenced the present action to recover the brokerage commission which it claimed was due under the Agreement based on the second renewal.

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Once the movant establishes a *prima facie* right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See id.*

Under New York law, '[w]here property is conveyed 'subject to' a lease providing that the owner will pay brokerage commissions in the event the lease is extended or renewed, the purchaser of the property does not, without an affirmative assumption, undertake the contractual obligation of its predecessor in interest for the commissions." *Longley-Jones Assoc. v. Ircon Realty Co.*, 67 N.Y.2d 346, 347 (1986). This is because "[a]bsent an affirmative assumption, a grantee is only liable for those covenants that run with land....A covenant in a lease to pay a broker's fee upon renewal of the lease does not run with the land...." *Id.*

In the instant case, plaintiff's motion for summary judgment is granted and WWP's cross motion for summary judgment is denied as plaintiff has established as a matter of law that WWP affirmatively assumed the obligation to pay plaintiff's broker commission pursuant to the lease entered into between Roberts & Holland LLP and Communications Center. On July 22, 2009, in connection with its purchase of the building, WWP signed an Assignment and Assumption of Leases. That document expressly provides that WWP assumed "all written agreements for the payment of leasing brokerage commissions set forth on Schedule 1 attached hereto (the 'Brokerage Agreements')." Schedule 1, in turn, lists the lease for Roberts & Holland LLP - the tenant plaintiff procured for the Building in 1994 - as one such agreement. Moreover, the document also expressly provides that WWP assumes "all of the Assignor's obligations under the Brokerage Agreements arising with respect to the period on or after the date hereof." Pursuant to the foregoing provisions in the assignment and assumption of leases, WWP assumed the obligation to satisfy all of plaintiff's rights under the 1994 Brokerage Agreement governing plaintiff's compensation for procuring Roberts & Holland LLP as a tenant.

Moreover, even though the assignment and assumption of leases is between WWP and its

immediate predecessor, not Communications Center, the agreement under which WWP purchased the Building from its immediate predecessor-in-interest expressly provides that WWP "shall be responsible for the payment of all leasing Commissions relating to Existing Leases that are set forth on Schedule 4.2.7(i)" and Schedule 4.2.7(i) includes the Roberts & Holland LLP lease. Thus, WWP expressly agreed that it would be responsible for all commissions relating to the Roberts & Holland LLP lease, which includes the commission plaintiff is seeking in this action pursuant to its 1994 Agreement with Communications Center, the former owner of the premises.

Based on the foregoing, plaintiff's motion for summary judgment is granted and WWP's cross-motion for summary judgment is denied. Settle order.

Dated: 2/23/16

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**CYNTHIA S. KERN**  
 J.S.C.J.S.C.