

Bay Sun Realty Inc. v Chang Jiang Li

2020 NY Slip Op 30521(U)

February 20, 2020

Supreme Court, Kings County

Docket Number: 508685/19

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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BAY SUN REALTY INC.,

Plaintiff,

Decision and order

- against -

Index No. 508685/19

CHANG JIANG LI, JIN HUA XU, NAN NAN LI,
XIANGAN GONG, CHENG YUN HSU & TAI WEI HSU,
Defendants,

ms # 4

February 20, 2020

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §3025 seeking to amend the caption and assert additional causes of action against defendants Mr. And Mrs. Hsu. The Hsus have opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders the plaintiff is a real estate broker. They commenced this action against all the defendants seeking brokerage fees concerning the purchase of a property located at 1444 West 9th Street in Kings County. The defendants Cheng Yun Hsu and Tai Wei Hsu were the owners of the property and sold the property to defendants Chang Jiang Li and Jing Hua Xu and their daughter Nan Nan Li. Defendant Xian An Gong was the attorney for the purchasers. On April 17, 2014 the defendants purchasers and the plaintiff entered into a Offer to Purchase Agreement whereby it was agreed the plaintiff was to be paid a brokerage fee. Specifically, the agreement provided that "unless

stated otherwise, the brokerage commission is to be paid by the Sellers" (see, Offer to Purchase Agreement). The plaintiff commenced this action seeking recovery of his brokerage commission. The court already dismissed the lawsuit as to the Hsus on the grounds there was no binding brokerage agreement between them and the plaintiff.

The plaintiff now seeks to amend the caption and the complaint to assert causes of action against the defendants Hsu based upon an exclusivity listing agreement entered between the plaintiff and the Hsus. Further, based upon that amendment the plaintiff seeks to reinstate claims already dismissed.

Conclusions of Law

A party may be allowed to amend or supplement a pleading "at any time by leave of court," and such "leave shall be freely given" (Holchendler v WE Transport, Inc., 292 AD2d 568, 739 NYS2d 621 [2nd Dept. 2002]; CPLR 3025 [b]). The decision whether to grant such leave is within the court's sound discretion, to be determined on a case-by-case basis (Caruso v Anpro, Ltd., 215 AD2d 713, 627 NYS2d 72 [2nd Dept. 1995]). "[O]n the eve of trial, judicial discretion in allowing such an amendment should be discreet, circumspect, prudent and cautious" (Kopel v Chiulli, 175 AD2d 102, 571 NYS2d 806 [2nd Dept. 1991], quoting Alexander v Seligman, 131 AD2d 528, 516 NYS2d 260 [2nd

Dept. 1987])). Generally, leave to amend should be granted where there is no significant prejudice or surprise to the defendants, and where the documentary evidence submitted in support of the motion indicates that the proposed amendment to the pleading may have merit (Holchendler, 292 AD2d at 569).

An examination of the exclusivity listing agreement indicates that it was entered into on October 28, 2013 and expired on January 28, 2014. Thus, the agreement only had a life of three months. There is no dispute the plaintiff, as broker, showed the property between April 17, 2014 through September 18, 2014 after the exclusivity listing agreement already expired. It is true the exclusivity listing agreement provides that the plaintiff would be entitled to a brokerage fee "if the property is sold, whomever, within the above period, and after expiration of this period if it is sold to the purchaser originally obtained" by the plaintiff (see, Exclusivity Listing Agreement). However, that language does not permit the plaintiff to seek fees from the Hsus for purchasers that were not in existence prior to the expiration. Thus, that clause contemplates a situation where the broker found the purchaser during the operative period but for whatever reason the closing did not place until afterward, then broker is obviously entitled to a commission. Allowing the broker to earn fees based upon this clause months after its expiration would effectively nullify the expiration clause, an

impossible option.

Therefore, based on the foregoing the motion seeking to amend the caption and to amend the complaint is denied. The claims that remain following the order dated November 7, 2019 are the only viable claims.

So ordered.

ENTER



DATED: February 20, 2020
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

KINGS COUNTY CLERK
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