

**Salem Advisory LLC v Kingdom of Saudi Arabia**

2020 NY Slip Op 33411(U)

October 16, 2020

Supreme Court, New York County

Docket Number: 656715/2019

Judge: Barry Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

Table with case details: SALEM ADVISORY LLC, Plaintiff, THE KINGDOM OF SAUDI ARABIA a/k/a PERMANENT MISSION OF THE KINGDOM OF SAUDI ARABIA TO THE UNITED NATIONS, Defendant. Includes INDEX NO. 656715/2019, MOTION DATE, MOTION SEQ. NO. 001, and DECISION + ORDER ON MOTION.

HON. BARRY R. OSTRAGER

Plaintiff Salem Advisory LLC (“Salem”) commenced this action against The Kingdom of Saudi Arabia a/k/a Permanent Mission of The Kingdom of Saudi Arabia to the United Nations (“The Kingdom”) to recover a real estate commission of about \$592,000 for services allegedly rendered by Salem in connection with The Kingdom’s purchase of certain commercial condominium units at 866 United Nations Plaza, New York, NY for use as its Permanent Mission to the United Nations.1 The Kingdom has now moved for summary judgment dismissing this action in its entirety based on Salem’s alleged failure to timely complete service pursuant to CPLR § 306-b, for lack of personal jurisdiction, and pursuant to CPLR § 3212 on the ground that Salem’s claims lack merit. The Kingdom also cites CPLR § 3211(a)(1) and (7) and seeks dismissal based on documentary evidence and failure to state a cause of action. However, as The Kingdom has filed its Answer and issue has been joined, the Court’s analysis is governed by CPLR § 3212. Salem opposes the motion and cross-moves pursuant to CPLR § 306-b to extend

1 To the extent The Kingdom has indicated in its moving memorandum that plaintiff’s use of an “a/k/a” for The Kingdom was improper, counsel shall stipulate to amend the caption to correctly name the defendant.

its time to complete proper service. The standing issue raised has been resolved by Stipulation (see NYSCEF Doc. No. 72). For the reasons that follow, The Kingdom's motion is denied, and Salem's cross-motion is granted.

Salem commenced this action by the e-filing of a Summons and Complaint on November 12, 2019 (NYSCEF Doc. No. 1). The Kingdom filed an Answer with various affirmative defenses, including one claiming a lack of personal jurisdiction, on January 16, 2020 (NYSCEF Doc. No. 2). Salem filed an Affidavit of Service of the pleadings on January 21, 2020 (NYSCEF Doc. No. 7), and The Kingdom then filed an Amended Answer on February 5, 2020 that again asserted a jurisdictional defense (NYSCEF Doc. No. 8). It appears The Kingdom also served discovery demands, to which Salem responded with some objections (NYSCEF Doc. No. 9). Following a temporary suspension of proceedings due to the pandemic, The Kingdom filed this motion on May 7, 2020, before any depositions were scheduled or a preliminary conference order completed, despite a directive by the Court on April 24 that counsel meet and confer and submit a proposed preliminary conference order (NYSCEF Doc. No. 11).

The Court must first address the threshold issues of personal jurisdiction and the timeliness of service of process. It appears that Salem's first attempt to serve The Kingdom with process was by delivering a copy of the Summons and Complaint to an employee or staff member at the Permanent Mission of Saudi Arabia to the United Nations located at 809 United Nations Plaza, New York, New York. This attempted service triggered The Kingdom's filing of an Answer with a jurisdictional defense asserting that delivery to the Mission in New York was insufficient to acquire jurisdiction over The Kingdom (NYSCEF Doc. No. 2, ¶ 15).

The Kingdom alleges, and Salem appears to agree, that service must be made on The Kingdom in Saudi Arabia pursuant to the Foreign Sovereign Immunities Act of 1976 (FISA) (28

U.S.C. § 1608[a], [b]), which provides the provisions for service of process on foreign states, including a political subdivision, an agency or instrumentality thereof. As both parties detail in their papers, Salem attempted to complete service pursuant to FISA in various ways at various times, including by delivery of the Summons and Complaint to the Clerk of the Court in New York County, who mailed the papers to Saudi Arabia via Federal Express on January 21, 2020 and completed an affidavit of service to that effect (NYSCEF Doc. No. 7). Although The Kingdom asserts, and Salem does not dispute, that Salem never received an acknowledgement of delivery from Federal Express, The Kingdom somehow became aware of the mailing as it filed an Amended Answer on February 5, 2020 in which it explicitly challenged that attempted service as improper because it had allegedly been mailed to the wrong address in Saudi Arabia (NYSCEF Doc. No. 8, ¶¶ 19-24). Salem's counsel recounts yet another attempt at service via the Secretary of State in Washington, DC, but delivery was not confirmed and the pandemic then took hold of the world (NYSCEF Doc. No. 29).

On the present record, Salem is unable to establish that it acquired personal jurisdiction over The Kingdom and timely completed service within 120 days of the commencement of the action, which was March 11, 2020, as required by CPLR § 306-b. Presumably aware of this fact, Salem has cross-moved pursuant to CPLR § 306-b for an extension of time to complete service.

That statute provides in relevant part (with emphasis added) that:

Service of the summons and complaint ... shall be made within one hundred twenty days after the commencement of the action or proceeding ... If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, *or upon good cause shown or in the interest of justice, extend the time for service.*

Salem's cross-motion is granted over The Kingdom's objection, and the Court extends through December 22, 2020 Salem's time to complete proper service on The

Kingdom and file proof of service sufficient to establish personal jurisdiction. The Court finds good cause has been shown for this moderate extension of time based on the repeated attempts by Salem to complete service, the acknowledged receipt by The Kingdom of the pleadings, and The Kingdom's full participation in this action through service of an Answer and an Amended Answer, discovery demands and a motion. The Court further finds the extension serves the interests of justice as it recognizes the need for reasonable extensions of time in the face of the pandemic and is consistent with public policy favoring dispositions on the merits. The Court declines to compel The Kingdom's counsel to accept service of process at this time, despite the importance of professional courtesies, but will entertain a further motion on that ground with more extensive briefing on this point should Salem be unable to complete service via FISA.

Were the Court in a position to determine the merits following a showing of jurisdiction, the Court would deny The Kingdom's motion for summary judgment dismissing the entire action before any meaningful discovery based on a clear demonstration of triable issues of fact. Salem asserts it reached an oral agreement with The Kingdom in or about 2017 to provide services related to the acquisition of commercial condominium units in exchange for a commission not exceeding 1% of the purchase price, that Salem was the procuring cause of the acquisition, and that the purchase closed in 2019 for a price of \$59,200,000, thereby entitling Salem to a commission in the amount of \$592,000. These allegations are set forth in the Complaint, in Salem's Statement of Material Facts in Dispute (NYSCEF Doc. No. 43), and the Affidavit on personal knowledge of Omer Salem, the managing director and founder of plaintiff Salem (NYSCEF Doc. No. 30).

Quoting *Stanzoni Realty Corp. v Landmark Props. of Suffolk, Ltd.*, 19 AD3d 582, 583 (2d Dept 2005), Salem asserts that a “real estate broker is entitled to recover commission upon establishing that he or she (1) is duly licensed, (2) had a contract, express or implied, with the party to be charged with paying the commission, and (3) was the procuring cause of the sale.” Based on the above allegations and this principle of law, Salem in its Complaint asserted claims of (1) breach of contract; (2) breach of an implied contract; (3) *quantum meruit*; and (4) unjust enrichment.

The Kingdom in its motion contends that it never entered into any contract with Salem, express or implied, to pay a commission for brokerage services, that Salem was not the procuring cause of The Kingdom’s acquisition and does not merit any payment for any services rendered, and that The Kingdom received no benefit and was in no way enriched by any work allegedly performed by Salem. To support its claim, The Kingdom offers an affidavit on personal knowledge from Hekmat Al Saeed, the Chef de Cabinet at the Permanent Mission of The Kingdom of Saudi Arabia to the United Nations and the person responsible for finding suitable office space for relocating the Saudi Permanent Mission in New York City. ThereThe Kingdom asserts that “The Kingdom was represented in this transaction at all times “exclusively by Gil Robinov of MHP Real Estate Services” and not by Salem (NYSCEF Doc. No. 15). The Kingdom also submits an affidavit from Andrew Chase Arvay, Director at MHP Real Estate Services, confirming the statements in the Affidavit of Hekmat Al Saeed (NYSCEF Doc. No. 16).

In sum, because of the sharply disputed allegations of fact in the competing affidavits, the Court would deny summary judgment at this early stage in the litigation were the Court able to reach the merits of the claims.

Accordingly, it is hereby

ORDERED that the motion by defendant The Kingdom of Saudi Arabia is denied and the cross-motion by plaintiff Salem Advisory LLC is granted, and Salem Advisory LLC is granted an extension of time through December 22, 2020 to complete proper service on defendant in accordance with the terms of this decision; and it is further

ORDERED that counsel shall promptly meet and confer and prepare a Proposed Preliminary conference Order using the form available on the Part 61 website for discussion with the Court during the conference previously scheduled for October 20, 2020 at 10:15 a.m. Counsel shall appear at that time with full settlement authority.

Dated: October 16, 2020

  
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE