

Summit Camp Realty, Inc. v Northern Murray Equity, Inc.

2020 NY Slip Op 34007(U)

October 23, 2020

Supreme Court, Queens County

Docket Number: 718073/19

Judge: Leonard Livote

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable Leonard Livote
Acting Supreme Court Justice

IAS TERM, PART 33

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SUMMIT CAMP REALTY, INC.,
Plaintiff,

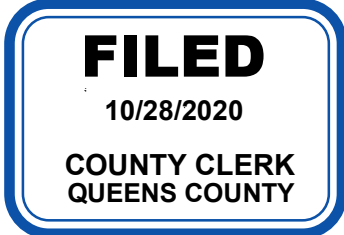
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-- against --

Motion Date: 9/8/20

NORTHERN MURRAY EQUITY, INC.,
150 JR GROUP, LLC, DR. JEAN RHEE,
MY HS REALTY, INC., and HENRY HAN,
Defendants.

Seq. No: 2



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The following papers numbered EF66 to 85 read on this motion by defendants My HS Realty Inc. and Henry Han for:

- A. An Order or Judgment of this Honorable Court pursuant to CPLR §3211(a)(7) and other applicable law and rules, dismissing Plaintiff's Third Cause of Action for Tortious Interference, set forth in Plaintiff's Amended Verified Complaint filed on January 13, 2020, with prejudice, as against My HS Realty Inc. and Henry Han, for failure to state a claim upon which relief can be granted, and based upon any and all other applicable grounds;
- B. An Order or Judgment of this Honorable Court pursuant to CPLR §3211(a)(7) and other applicable law and rules, dismissing Plaintiff's Fourth Cause of Action for Quantum Meruit, set forth in Plaintiff's Amended Verified Complaint filed on January 13, 2020, with prejudice, as against My HS Realty Inc. and Henry Han, for failure to state a claim upon which relief can be granted, and based upon any and all other applicable grounds; and
- C. An Order or Judgment of this Honorable Court pursuant to CPLR §3211(a)(7) and other applicable law and rules, dismissing Plaintiff's Fifth Cause of Action for Fraud, set forth in Plaintiff's Amended Verified Complaint filed on January 13, 2020, with prejudice, as against My HS Realty Inc. and Henry Han, for failure to state a claim upon which relief can be granted, and based upon any and all other applicable grounds.

PAPERS
NUMBERED

Notice of Motion, Affirmation, Affidavits and Exhibits.....	EF66 - EF72
Cross Motion, Affirmation, Affidavits and Exhibits.....	
Answering Affirmations, Affidavits and Exhibits.....	EF73 - EF84
Reply Affirmations, Affidavits and Exhibits.....	EF85
Other.....	

Upon the foregoing papers, the motion is granted as more fully set forth below.

This action arises out of a commercial real estate transaction between defendant/seller Northern Murray Equity, Inc. (Northern) and defendant/buyer 150 JR Group, LLC (JR). On September 13, 2018, Plaintiff, Summit Camp Realty, Inc., entered into a written real estate brokerage agreement entitled "Exclusive Right-To -Sell Agreement," with Northern.

Defendant Dr. Jean Rhee, retained the Defendant MY HS REALTY, INC. to act as his real estate broker in connection with his attempt to purchase of the subject real property. Defendant HENRY HAN is a salesman employed by MY HS REALTY, INC. and acted as a buyer's broker for Rhee.

In March of 2019, Rhee agreed to purchase the property from Northern for \$5,000,000.00. On August 23, 2019, Northern sold the subject real property to JR, a company formed by Rhee to hold title to the property. Plaintiff alleges that it was the competent producing cause of the agreement to sell but, it was not paid its contractual broker's fee.

The Plaintiff Corporation has alleged five (5) causes of action in its Amended Verified Complaint: Breach of Contract; Unjust Enrichment; Tortious Interference with a Contractual Relationship; Quantum Meruit; and Fraud.

"On a motion to dismiss the complaint pursuant to CPLR 3211(a) (7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Rabos v. R & R Bagels & Bakery, Inc.*, 100 AD3d 849, 2012 N.Y. Slip Op 07974, 2012 WL 5870676 [2nd Dept 2012]).

The complaint fails to state a cause of action for breach of contract against Rhee and JR because neither is a party to the brokerage agreement between plaintiff and Northern (*see RWSP Realty, LLC v Agusta*, 42 AD3d 490, 491 [2d Dept 2007]).

The second cause of action alleges a claim of unjust enrichment against Northern only and is, therefore, dismissed as against movants.

The third cause of action alleges tortious interference with contract. "The elements of a cause of action alleging tortious interference with contract are: (1) the existence of a valid contract between the plaintiff and a third party, (2) the defendant's knowledge of that contract, (3) the defendant's intentional procurement of a third-party's breach of that contract without justification, and (4) damages" (*Nagan Constr., Inc. v. Monsignor McClancy Mem. High Sch.*, 117 A.D.3d 1005, 1006). In the instant case, plaintiff's allegations that movants intentionally procured a breach is wholly conclusory. Accordingly, the third cause of action is dismissed as against movants.


The fourth cause of action alleges quantum meruit. "The elements of a cause of action sounding in quantum meruit are: (1) the performance of services in good faith, (2) the acceptance of services by the person to whom they are rendered, (3) the expectation of compensation therefor, and (4) the reasonable value of the services rendered" (*Johnson v. Robertson*, 131 A.D.3d 670, 672). In the instant case, the services were rendered to co-defendant Northern, not to the movants. Accordingly, the fourth cause of action is dismissed as against movants.

The fifth cause of action alleges fraud. "The elements of a cause of action [alleging] fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages" (*Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 559). Plaintiff alleges that the defendants, including movants, falsely represented that plaintiff would be paid its real estate brokerage commission at the closing of title upon the sale of the subject property. However, plaintiff had no justification for relying on any representations by movants regarding plaintiff's commission because movants have no contractual or other duty to plaintiff. Accordingly, the fifth cause of action is dismissed as against movants and it is,

ORDERED, that the complaint is dismissed as against defendants Henry Han and MY HS REALTY, INC.

This constitutes the Order of the Court.

Dated: October 23, 2020


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Leonard Livote, A.J.S.C.

