

**EXR Group Cos. LLC v Olmsted Real Estate LLC**

2021 NY Slip Op 31471(U)

April 29, 2021

Supreme Court, Kings County

Docket Number: 514657/18

Judge: Leon Ruchelsman

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

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EXR GROUP COMPANIES LLC,  
Plaintiff, Decision and order

- against - Index No. 514657/18

OLMSTED REAL ESTATE LLC, HARRISON BALISKY,  
KEAT CHEW, & AARON LEE a/k/a KUN HO LEE,  
Defendants, April 29, 2021

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking to enforce a settlement entered into between the parties. The defendants oppose the motion and argue certain obligations were not included within the settlement agreement. Papers were submitted by all parties and arguments held and after reviewing all arguments this court now makes the following determination.

The defendants Balisky, Chew and Lee all once worked for the plaintiff as real estate brokers. On April 6, 2018 Balisky formed defendant Olmsted Real Estate LLC and within a few months Chew and Lee were working there. The complaint filed alleged the defendants essentially took clients away from the plaintiff causing them business losses. The complaint further alleged the defendants stole plaintiff's confidential and proprietary information including trade secrets, client lists and contact information, discount structures and commission pricing. The defendants counterclaimed and asserted they were not paid commissions owed other claims. Further, the parties were also involved in a lawsuit in Nassau County. During the litigation the parties signed a

Letter of Understanding whereby commissions paid by a client called Cayuga Capital would essentially be shared between the plaintiff and the defendants. On November 20, 2019 the parties entered into a 'Confidential Settlement Agreement' settling both the Kings County action and the Nassau County action. The plaintiff has now moved seeking to enforce the settlement agreement. Specifically, pursuant to the settlement agreement all commissions not paid as of that date were waived. Thus, the plaintiff asserts it no longer must share those commissions with the defendants. The defendants counter the terms of the Letter of Understanding survive the settlement agreement and are thus outside the settlement agreement's purview.

#### Conclusions of Law

It is well settled that a stipulation or settlement agreed between the parties should not thereafter be disturbed by the court (Itoko Suzuki v. Peters, 12 AD3d 612, 784 NYS2d 393 [2d Dept., 2004]). Indeed, a court should not disturb a settlement unless some fraud or mistake or some other significant reason presents itself mandating changing the settlement terms (Maury v. Maury, 7 AD3d 585, 776 NYS2d 489 [2d Dept., 2004]). The settlement agreement states that "the Kings County Defendants hereby reciprocally fully release, acquit, and forever discharge Kings County Plaintiff and Nassau County Defendants from any and all

past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, commissions, expenses and compensation of any nature whatsoever, whether known or unknown, whether based on a tort, contract or any other theory of recovery, against Kings County Plaintiff and Nassau County Defendants based upon the Kings County Lawsuit and the Nassau County Lawsuit, as well as for, upon or by reason of the facts giving rise to the Kings County Lawsuit and the Nassau County Lawsuit" (see, Confidential Settlement Agreement, ¶2.19(c))

The defendants assert that when the settlement agreement was executed "the parties did not contemplate the incorporation of commission fees covered by their Letter of Understanding because those fees were not disputed between them at the time that the Agreement was made. The parties had already reached an amicable arrangement memorialized and executed in writing during the instant litigation. If anything, the parties did not have a "meeting of the minds" regarding those fees when executing the Agreement. But even so, the Agreement does not explicitly state that it supersedes all prior writings" (see, Affirmation in Opposition, ¶9).

However, as noted the settlement agreement clearly indicates that "any and all past, present and future claims" including "commission" are released. The settlement agreement does not carve out the Letter of Understanding as remaining viable notwithstanding the settlement agreement. Moreover, the settlement agreement

specifically states that "the Agreement sets forth the complete terms of the agreement between the Parties hereto with regard to the subject matter hereof" (Confidential Settlement Agreement, ¶4.7). Thus, there is no basis upon which to assert the Letter of Understanding survived the settlement agreement.

The defendants insist the settlement agreement only supplemented "the LOU for all other outstanding issues not covered by the LOU" (see, Affirmation in Opposition, ¶79). However, there is nothing contained in the settlement agreement which supports that contention. The defendants argue it is logical the Letter of Understanding remain outside the settlement agreement because the matters contained in it were already resolved and there would be no reason to revisit them. Further, the defendants maintain it is "inconceivable" the plaintiff intended otherwise and in fact admitted it still owed the commissions under the Letter of Understanding to the defendants (see, Affirmation in Opposition, ¶82). The admission consists of an e-mail wherein Mr. Le Vine, a representative of the plaintiff noted that "EXR is due the entirety of the fourth Vital payment and payment to our former agents is governed under that agreement" seemingly acknowledging the defendants are entitled to commissions. However, a review of the complete e-mail sent by John Le Vine in support of the defendant's position actually undermines their very argument. On January 6, 2020, after the settlement agreement had been signed by all

parties, Mr. Le Vine sent an e-mail to Jacob Sacks a member of Cayuga Capital. Mr. Le Vine wrote that concerning the lawsuit with the defendants "we can now confirm we have settled the outstanding dispute and as per our confidential settlement agreement, which we are able to share with you so long as you sign a confidentiality agreement. EXR is due the entirety of the fourth Vital payment and payment to our former agents is governed under that agreement. This confidential settlement agreement supersedes the letter of understanding between EXR and Olmsted. We are looking for confirmation that the fourth and final Vital payment will be made out to EXR Group Companies LLC and that you have not paid Olmsted, nor any current or former EXR agent, nor do you intend to, on this fourth payment, directly" (see, E-mail from John Le Vine to Jacob Sacks dated January 6, 2020 at 11:18 AM).

Thus, clearly, no such admission exists. On the contrary, Mr. Le Vine confirmed the plain understanding of the agreement that the settlement agreement indeed superceded and rendered void all prior agreements including the Letter of Understanding. Since the Letter of Understanding contained a negotiated payment schedule it is very logical for the parties to alter that arrangement upon a global settlement of two lawsuits spanning two counties.

Therefore, since the settlement agreement superceded all other agreements and any claims the defendants may have were released by the settlement agreement, the plaintiff's motion seeking to enforce

the settlement agreement is granted.

So ordered.

ENTER

DATED: April 29, 2021  
Brooklyn N.Y.



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Hon. Leon Ruchelsman  
JSC