

Ittmann v Schlumberger
2021 NY Slip Op 32424(U)
November 22, 2021
Supreme Court, New York County
Docket Number: 655976/2018
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK

PART 53

Justice

-----X

DANIEL ITTMANN,

Plaintiff,

- v -

MARCEAU SCHLUMBERGER, CORAL REEF CAPITAL LP,
CORAL REEF CAPITAL GROUP LP, CORAL REEF
CAPITAL GROUP LLC

Defendant.

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INDEX NO. 655976/2018

MOTION DATE _____

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Coral Reef Capital Group LLC's (**CRCG**) motion for summary judgment dismissing all of Daniel Mcleod Ittmann's claims must be granted. CRCG has come forward with sufficient evidence to indicate that there was no agreement to compensate Mr. Ittmann a finder's fee merely based on introductions to individuals that at some unspecified time in the future invested with CRCG in investments not identified at the time of the introduction and for which Mr. Ittmann was not a direct and procuring cause of the investment (*Green v Hellman*, 51 NY2d 197, 206 [1980]; *Gregory v Universal Certificate Group LLC*, 32 AD3d 777 [1st Dept 2006]; *Multi Capital Group LLC v Karasick*, 149 AD3d 437 [1st Dept 2017]) and Mr. Ittmann fails to raise a material issue of fact to the contrary (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Simply put, Mr. Ittmann's tortured attempt to sew together various emails and other documents fails to establish the agreement that he alleges. His deposition testimony also unequivocally indicates that, to the extent that an arrangement existed for finder's fee compensation, the

arrangement was, as one would expect, limited to where Mr. Ittmann found capital for specific transactions or had been the direct and procuring cause of the investment. For completeness, and under the circumstances, Mr. Ittmann's mere introduction of Marceau Schlumberger to Christophe Jungels-Winkler and Stu Lamb years before any investment took place in investments not yet contemplated at the time of the introductions and where Mr. Ittmann was not the direct and procuring cause of such investments also fails to establish the right to compensation.

The Relevant Facts and Circumstances

Reference is made herein to the Seacrest, Suntrust, and Shawnee transactions (collectively, the **Subject Transactions**), which were investment raises by CRCG, a private equity investment firm (Complaint, NYSCEF Doc. No. 1, ¶¶ 5, 18-19, 34). Mr. Ittmann alleges that he was owed 10% of the gross fees received for making the introductions that led to the investments in the Subject Transactions (*id.*, ¶¶ 10, 12).

More specifically, Mr. Ittmann alleges that in 2010 through Andrew Mackay he introduced Mr. Schlumberger to Mr. Jungels-Winkler (*id.*, ¶ 16) and that two years later, Mr. Jungels-Winkler and his business partner Robert Bassett Cross formed Eisvogel Group, which raised money for the Seacrest transaction (*id.*, ¶¶ 17-18).

In 2012, Mr. Ittmann alleges that Mr. Jungels-Winkler introduced Mr. Schlumberger to Suntrust Investments Co. SA, which gave rise to the Suntrust transaction (*id.*, ¶ 19).

Mr. Ittman also alleges that he introduced Mr. Schulmberger to Mr. Lamb and that as such he should be compensated for the investment in the Shawnee Transaction. To wit, in 2011, Mr. Ittmann alleges that he introduced Mr. Schlumberger to Mr. Lamb and worked with CRCG and Mr. Lamb in the acquisition of a company called Greenworks. For this transaction, Mr. Ittmann concedes he was compensated (*id.*, ¶ 33). Subsequently, in 2012-2013, Mr. Lamb and others worked with CRCG to invest in the Shawnee transaction (*id.*, ¶ 34).

When he was not paid, Mr. Ittmann sued. In the complaint, he asserts six causes of action (NYSCEF Doc. No. 1, ¶¶ 37-71): breach of contract (first cause of action) as to the Seacrest transaction, quantum meruit (second cause of action) for the Seacrest transaction, breach of contract for the Suntrust transaction (third cause of action), quantum meruit for the Suntrust transaction (fourth cause of action), breach of contract for the Shawnee transaction (fifth cause of action), and quantum meruit for the Shawnee transaction (sixth cause of action). In support of this alleged agreement, Mr. Ittmann introduces several emails from Marceau Schlumberger on behalf of CRCG (the **Ittmann Emails**; NYSCEF Doc. No. 112). The emails indicate that there was an arrangement regarding compensation as to capital raises (e.g., Polaris and Viesel) with respect to certain deals for which Mr. Ittmann does not make a claim in this case. Previously, by decision and order dated July 22, 2019, this Court dismissed the complaint as against all of the defendants other than CRCG (Decision and Order, NYSCEF Doc. No. 36).

Discussion

On a motion for summary judgment pursuant to CPLR § 3212, the movant “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to

demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The opposing party must then “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact” that its claim rests upon (*Zuckerman v New York*, 49 NY2d 557, 562 [1980]). The elements of a claim for breach of contract are (1) the existence of a contract, (2) the plaintiff's performance, (3) the defendant's breach, and (4) resulting damages (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]).

To be entitled to a finder's fee, a party must show a “continuing connection between plaintiff's initial efforts and the merger that came about” (*Edward Gottlieb, Inc. v City & Commercial Communications*, 200 AD2d 395, 399 [1st Dept 1994], quoting *Simon v Electrospace Corp.*, 28 NY2d 136, 142 [1971]). There must be “a direct and proximate link, as distinguished from one that is indirect and remote, between the bare introduction and the consummation” (*Green v Hellman*, 51 NY2d 197, 206 [1980], see *Gregory v Universal Certificate Group LLC*, 32 AD3d 777 [1st Dept 2006]).

In the Ittmann Emails, which Mr. Ittmann claims reduced the parties' oral agreement to writing, Mr. Schlumberger wrote “[f]or finding a deal/client 10 percent is very fair” (NYSCEF Doc. No. 112, at 2). He also wrote that, on a particular deal, Mr. Ittmann would receive \$2,500 per month for as long as client paid a retainer of \$25,000 per month, and that he would “get 10% of all success fees” (*id.*, at 1). Mr. Ittmann claims that these emails memorialize the parties' agreement that he would receive 10% of gross fees on the Subject Transactions and generally if any introduction at any time resulted in a transaction and regardless of whether he was the direct and

procuring cause. However, the emails do not confirm this arrangement. Indeed, Mr. Ittmann testified at his deposition that the email chain concerned a particular transaction and success fees from Viesel (Tr. of Daniel Ittmann Deposition; NYSCEF Doc. No. 88, at 75)¹ and Mr. Ittmann fails to come forward with any other evidence to support this novel finder's fee arrangement. Thus, CRCG is entitled to summary judgment as to Mr. Ittmann's claims sounding in breach of contract.

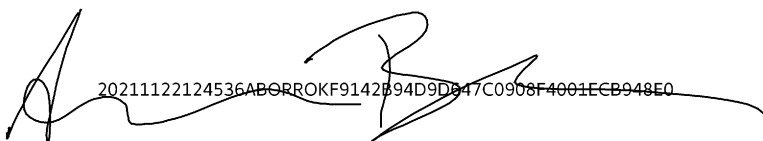
CRCG is also entitled to summary judgment on Mr. Ittmann's claims in quantum meruit. A claimant making a claim in quantum meruit must establish "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services" (*Martin H. Bauman Assoc. v H&M Intl. Transp.*, 171 AD2d 479, 484 [1st Dept 1991]). The introduction of Mr. Schlumberger to Mr. Jungels-Winker through Mr. Mackay is simply insufficient to demonstrate that Mr. Ittmann was a direct and proximate cause in bringing about the Subject Transactions. As discussed above, the Seacrest transaction was done in connection with a company that did not exist at the time Mr. Ittmann introduced Mr. Schlumberger to Mr. Jungels-Winker and, on the record before the court, Mr. Ittmann did not do anything further to bring about the transaction. Mr. Ittmann's connection to the Suntrust transaction was equally remote. This transaction was accomplished through Mr. Jungels-Winker's efforts, not Mr. Ittmann. The claim with respect to the Shawnee transaction fares no better. Mr. Ittmann's only connection to this transaction is that he had been involved with arranging Mr. Lamb's investment in a prior

¹ Mr. Ittmann's contention that his deposition transcript should not be considered because he did not sign it is wholly without merit (*see Bennett v Berger*, 283 AD2d 374, 375 [1st Dept 2001] [although a "deposition transcript was not signed, it was certified by the reporter, and may be considered since the excerpts thereof included in the record are not challenged by plaintiff as inaccurate"]).

transaction for which he was compensated. Additionally, as Mr. Ittmann conceded at oral argument (11.6.21), Mr. Ittmann's brother who also had a finder's fee arrangement with CRCG and who was personally and directly involved in arranging the investment in Shawnee paid a finder's fee. Stated differently, as to Shawnee, Mr. Ittmann attempts to claim a finder's fee for a transaction that he had nothing to do with and for which his brother was paid a finder's fee also fails. At oral argument (11.22.21), counsel for Mr. Ittmann withdrew the request for a fee for Shawnee.

The court has considered Mr. Ittmann's remaining arguments and finds them unavailing.

Thus, it is hereby ORDERED that CRCG's motion for summary judgment is granted, and the complaint is dismissed with prejudice.

<u>11/22/2021</u>			
DATE		ANDREW BORROK, JSC	
CHECK ONE:	☒ CASE DISPOSED	☐ DENIED	☐ NON-FINAL DISPOSITION
	☒ GRANTED		☐ GRANTED IN PART
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ OTHER
			☐ REFERENCE