

Warburg Realty Partnership, Ltd. v Aschheim

2022 NY Slip Op 33602(U)

October 19, 2022

Supreme Court, New York County

Docket Number: Index No. 651948/2022

Judge: Lyle Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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WARBURG REALTY PARTNERSHIP, LTD., D/B/A
COLDWELL BANKER WARBURG,

Plaintiff,

- v -

DEBORAH ASCHHEIM, ROBERT WEISS, THERESA
RACHT

Defendant.

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INDEX NO. 651948/2022

MOTION DATE 06/22/2022,
06/22/2022

MOTION SEQ. NO. 001 002

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 25, 26, 27, 28, 29, 30, 31, 39, 40, 41, 42, 43

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motions to dismiss are granted in their entirety.

Plaintiff commenced this action to recover damages for breach of contract and quantum meruit from all defendants and for tortious interference against defendant THERESA RACHT.

The allegations stem from an "Exclusive Right to Sell Agreement" made as of May 1, 2019 between the parties (the "agreement") entered into between plaintiff and defendants DEBORAH ASCHHEIM and ROBERT WEISS regarding the sale of their home.

Defendants move to dismiss the complaint in its entirety pursuant to CPLR §3211(a)(1), alleging that plaintiff's action is not founded upon documentary evidence, and pursuant to CPLR §3211(a)(7), alleging failure to state of cause of action.

Facts

Plaintiff is a real estate broker, who contracted with defendants an "Exclusive Right to Sell Agreement". Plaintiff later terminated this agreement with the Defendants. Then, in July 2020, plaintiff notified defendants that a purchaser that the parties has previously had contact with, was still interested in buying their property. Defendants then negotiated a sale of the property to the purchaser. Plaintiff contends that it was entitled to compensation for its services, and defendants contend that they are not bound by any contract or agreement.

Discussion

When considering a motion to dismiss based upon CPLR § 3211(a)(7), the court must accept the alleged facts as true, accord the plaintiff the benefit of every possible favorable inference, and determine whether the facts alleged fit into any cognizable legal theory. *See Leon v. Martinez*, 84 N.Y.2d 83 (1994). With respect to CPLR§3211(a)(1), a motion to dismiss on the ground that the action is barred by documentary evidence may be appropriately granted only where the documentary evidence utterly refutes a plaintiff's factual allegations, and conclusively establishes a defense as a matter of law. *See Goshen v. Mutual Life Ins. Co. of New York*, 98 N.Y.2d 314, 327 (2002). Furthermore, judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are "essentially undeniable," would qualify as "documentary evidence" in the proper case. *Fontanetta v. Doe*, 73 A.D.3d 78 (2d Dep't 2010).

Breach of Contract

Plaintiff contends that it earned its commission when it produced a buyer ready, willing and able to purchase at the terms set by the seller. Defendant counters that the termination notice and confirmation emails (*See* NYSCEF Doc. 10) ended the contractual agreement it had with plaintiff, a year before the buyer contracted with defendants, and that they have presented clear

documentary proof that plaintiff terminated the agreement, thereby negating the existence of a valid contract between the parties and negating the basis of plaintiff's complaint as against them. Moreover, as discussed further below, the parties contemplated what would occur after the agreement had been terminated, and the agreement was explicit about those terms. The "[m]ere assertion by one that contract language means something to him, where it is otherwise clear, unequivocal and understandable when read in connection with the whole contract, is not in and of itself enough to raise a triable issue of fact" (*Goldman v. Metropolitan Life*, 5 N.Y. 3d 561, 571 (N.Y. 2005), citing *Bethlehem Steel Co. v. Turner Constr. Co.*, 2 N.Y. 2d 456, 460 (1957)).

It is the Court's opinion that the original agreement must be read along with the termination notice and confirmation emails, and that there can be no breach of contract nor tortious interference with a contract if there is no contract to be breached or interfered with.

Quantum meruit

Defendants moves to dismiss plaintiffs' *quantum meruit* claim, arguing failure to state a cause of action. Plaintiff contends, alternatively to breach of contract, that defendants benefited from services that it rendered, and that it is accordingly entitled to compensation. "To state a claim for quantum meruit under New York law, the plaintiff 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.'" *Mid-Hudson Catskill Rural Migrant Ministry*, 418 F.3d at 175 (quoting *Revson v. Cinque & Cinque, P.C.*, 221 F.3d 59, 69 (2d Cir. 2000)). Here, the plaintiff had, per the email sent on October 30, 2019 (*See* NYSCEF Doc. 11), explicitly indicated waiving its right to a commission for the "protected names" after 90 days of the end of the agreement. There appears to be no question that the interaction with the proposed buyer occurred more than 90 days after the plaintiff terminated

the agreement. The only element present from the test above is the expectation of compensation for the alleged services. The cause of action under *quantum meruit* therefore fails and is dismissed.

Interference with Prospective Economic Advantage

Defendants here move to dismiss plaintiff’s Interference with Prospective Economic Advantage claim, arguing failure to state a claim. Plaintiff contends that defendant THERESA RACHT interfered with its economic advantage.

To state a claim for tortious interference with prospective economic advantage under New York law, four conditions must be met: (1) the plaintiff had business relations with a third party; (2) the defendant interfered with those business relations; (3) the defendant acted for a wrongful purpose or used dishonest, unfair, or improper means; and (4) the defendant's acts injured the relationship. *Innovative Biodefense, Inc. v. VSP Techs., Inc.*, 176 F. Supp. 3d 305 (S.D.N.Y. 2016).


As explained above, there was no business relationship to interfere with. Further, Ms. Racht’s only involvement was the informal email exchange she had with the plaintiff’s principal, which, to this Court by itself, cannot as a matter of law constitute interference with prospective economic advantage.

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted in its entirety; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment of dismissal in favor of all defendants.

10/19/2022
DATE

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LYLE FRANK, J.S.C.