

<b>Daniel B. Katz &amp; Assoc. Corp. v 569 Broad LLC</b>
2022 NY Slip Op 33633(U)
October 21, 2022
Supreme Court, New York County
Docket Number: Index No. 652479/2022
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: PART 14

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DANIEL B. KATZ & ASSOCIATES CORP.	<b>INDEX NO.</b>	<u>652479/2022</u>
Plaintiff,	<b>MOTION DATE</b>	<u>10/17/2022</u>
- v -	<b>MOTION SEQ. NO.</b>	<u>001</u>
569 BROAD LLC,		
Defendant.		

**DECISION + ORDER ON  
 MOTION**

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18  
 were read on this motion to/for DISMISSAL.

Defendant’s motion to dismiss certain causes of action is granted in part and denied in part.

**Background**

This breach of contract action arises out of a sale of a property in Newark, New Jersey. On June 21, 2021, Plaintiff, a brokerage firm, and defendant entered into an exclusive sale listing agreement providing that plaintiff would be the sole agent for defendant in selling the property located at 569-577 Broad Street in Newark. Plaintiff was to receive a 4% commission of the gross sales price of the property if it was sold “to a purchaser first introduced to the property during the term of the agreement” (NYSCEF Doc. No. 2 at 1).

Plaintiff contends it supplied a purchaser for the property that culminated in a successful sale of the property for \$4,240,000.00. On May 16, 2022, plaintiff sent defendant an invoice for the commission. Plaintiff alleges it did not receive payment and defendant did not object to the invoice.

Plaintiff then commenced the instant action, claiming breach of contract, quantum meruit, unjust enrichment, account stated, and attorneys' fees. Defendant moves to dismiss the quantum meruit, unjust enrichment, account stated and attorney's fees causes of action on the ground that they are duplicative of the breach of contract claim because there is no dispute the contract exists.

In opposition, plaintiff contends the dispute should be governed by New Jersey law which recognizes each claim may be pled separately from one another. Additionally, because defendant only broadly disputes its obligation to pay plaintiff a commission, plaintiff asserts that it pled alternate theories (such as quantum meruit and unjust enrichment) to its breach of contract claim in order to properly seek recovery. It insists that those theories of recovery should survive the instant motion.

In reply, defendant argues that New Jersey law does not recognize such claims as distinct from a breach of contract cause of action. Specifically, quantum meruit is inapplicable because the existence of the contract is not disputed. Additionally, the account stated claim seeks identical damages as the breach of contract claim. Finally, defendant asserts that a claim for attorney fees is duplicative of the contract itself, which states a prevailing party in an action can recover attorney fees and costs.

## **Discussion**

Determining which state's law controls in this contract case is a matter of "grouping contacts" to establish which state has "the most significant relationship to the transaction and the parties" (*Equis Corp v Mack-Cali Realty Corp.*, 6 AD3d 264, 267, 775 NYS2d 35 [1st Dept 2004] [internal quotations and citations omitted]). Factors to consider are the places of the

contracting, negotiation and performance of the contract, the location of the subject matter of the contract, and the domicile or place of business of the parties (*id.*).

The property at issue is located in New Jersey and the contract requires that the laws of the state in which the property is located shall govern. Moreover, neither of the parties dispute the application of New Jersey law. Therefore, this Court will apply New Jersey law to the instant matter.

### **Equitable Claims of Quantum Meruit and Unjust Enrichment**

“It has long been recognized that the existence of an express contract excludes the awarding of relief regarding the same subject matter based on quantum meruit.” (*Kas Oriental Rugs, Inc. v. Ellman*, 394 NJ Super 278, 286 926 A2d 387 [App. Div. 2007]). An express contract, however, excludes an implied one (*id.*). Furthermore, “unjust enrichment is not an independent theory of liability, but is the basis for a claim of quasi-contractual liability,” (*Nat'l Amusements, Inc. v. New Jersey Tpk. Auth.*, 261 NJ Super 468, 619 A2d 262 [Law. Div. 1992], *aff'd*, 275 NJ Super 134, 645 A2d 1194 [App. Div. 1994]).

Plaintiff's second and third causes of action for quantum meruit and unjust enrichment are severed dismissed because there is no dispute that a valid contract exists between the parties. Plaintiff and defendant entered into broker's agreement and neither party seeks to invalidate the existence of this agreement. These quasi-contractual claims are simply duplicative and unnecessary where there is a valid contract.

### Account Stated

In order to prevail on a claim for account stated, “the plaintiff must prove that: (1) there was either an express or an implied agreement as to the amount due; and (2) the account was in fact stated or agreed to” (*Asco Power Tech., L.P. v Pepco Tech., L.L.C.*, CIV. 03-1942 [GEB], 2006 WL 3000334 [DNJ Oct. 20, 2006])

Defendant points to caselaw that dismisses account stated claims where breach of contract was also pled. In those cases, however, the account stated claim only failed because a claimant could not successfully show there was a breach of contract whatsoever. That is not present here. Plaintiff successfully demonstrated there was an express agreement between the parties and that plaintiff invoiced the defendant for the commission owed (NYSCEF Doc. No. 2 at 3). Defendant did not object to the amount due. There is no indication that New Jersey law treats the claim for an account stated as duplicative of a breach of contract, and because the plaintiff made a prima facie case for account stated, dismissal is denied.

### Attorney Fees

“A prevailing party can recover [attorneys] fees if they are expressly provided for by statute, court rule, or contract,” (*Packard-Bamberger & Co., Inc. v Collier*, 167 NJ 427, 440, 771 A2d 1194 [2001]).

The contract provides for recovery of attorneys’ fees. There is no indication that New Jersey law treats attorneys’ fees as a separate cause of action (it is axiomatic that New York law does not) and so the claim for attorneys’ fees is dismissed. This dismissal, however, does not foreclose the right to seek attorneys’ fees as part of a breach of contract claim.


Accordingly, it is hereby

ORDERED that defendant’s motion to dismiss only as to plaintiff’s second, third and fifth causes of action is granted and denied with respect to branch of the motion seeking dismissal of the fourth cause of action.

As defendant has already answered, the parties are directed to appear for a conference on January 31, 2023 at 11:00 a.m.

By January 24, 2023, the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement and explaining their respective positions on the items to which they could not agree, or 3) letters explaining why no agreement about discovery could be reached at all.

The failure to upload something by January 24, 2023 may result in the Court adjourning the conference or ordering that a note of issue be filed, at the Court’s discretion.

<p><u>10/21/2022</u> DATE</p>					 <hr/> ARLENE P. BLUTH, 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 type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE