

Daniel B. Katz & Assoc. Corp. v 569 Broad LLC

2023 NY Slip Op 31368(U)

April 25, 2023

Supreme Court, New York County

Docket Number: Index No. 652479/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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DANIEL B. KATZ & ASSOCIATES CORP.

Plaintiff,

- v -

569 BROAD LLC,

Defendant.

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INDEX NO. 652479/2022

MOTION DATE 04/21/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37

were read on this motion to/for

RENEWAL

Plaintiff's motion to renew and for sanctions 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.

The Court previously dismissed plaintiff's second and third causes of action based upon equitable theories of recovery (NYSCEF Doc. No. 19). The Court reasoned that these claims (for quantum meruit and unjust enrichment) were precluded because there was no dispute that there was a valid contract between the parties (*id.*).

Plaintiff now moves to renew and for sanctions on the ground that defendant now seeks to invalidate the existence of the agreement. It argues that in a supplemental bill of particulars, defendant now claims there is no valid contract. It seeks sanctions because defendant allegedly withheld this information in connection with the motion to dismiss.

In opposition, defendant claims that plaintiff has mischaracterized the circumstances present here. It argues that the parties' agreement provided that plaintiff would be entitled to a commission if defendant entered into a contract of sale for the property to a purchaser first introduced to the property during the specified term and that the term included a 120-day post termination tail period (this permitted the recovery of a commission if a purchaser introduced during the term of the agreement bought the property within 120 days after the expiration of the agreement). Defendant argues that in response to its first demand for documents, plaintiff produced documents showing that the eventual purchaser was introduced to the property after the expiration of the aforementioned term and during the tail period.

Defendant then served a supplemental bill of particulars that claimed that plaintiff's causes of action were barred by the New Jersey Statute of Frauds because the purchaser was introduced to the property when the operative term of the agreement had already expired. Defendant insists it does not maintain that the agreement did not exist; it simply argues that the purchaser was not introduced until the tail period (which was after the term expired).

In reply, plaintiff insists defendant has taken a contrary position than the one it did in connection with the motion to dismiss. Plaintiff argues that the contract was in effect that the time the buyer was introduced to defendant, but that it should be entitled to pursue quasi-contract theories in the alternative.

Discussion

The issue here concerns the tail period provision in the agreement, which provides that:

“If, within one hundred twenty (120) days after the termination or expiration of this Agreement, Owner enters into a sale agreement for the Property with a party (the "Brokers Prospect" or collectively the "Brokers Prospects") which was first introduced to the Property by Broker, or Owner, or any third party during the term of this Agreement and which pending transaction is evidenced by a letter of intent signed by the Owner and the Brokers Prospect no later than ninety (90) days after the termination or expiration of this Agreement, then Broker shall be entitled to the compensation set forth in and pursuant to Section 7(a) and/or 7(b) above. Broker shall, within ten (10) days after the expiration or termination of this Agreement, prepare and deliver to Owner a complete list of all Brokers Prospects for purposes of this Section” (NYSCEF Doc. No. 15, ¶ 7[c]).

Defendant claims that the entity which ended up buying the property was not introduced to the property during the term of the agreement and, instead, was introduced during this tail period. Specifically, the complaint alleges that the agreement terminated on September 19, 2021 and plaintiff apparently produced an email about the eventual buyer dated November 16, 2021. That is allegedly after the termination of the agreement, but during the 120-day tail period.

The Court grants the motion to renew to the extent that plaintiff may pursue these alternative, quasi-contract, theories of recovery. The Court finds that this new information suggests that plaintiff should be entitled to argue for these forms of relief. In other words, plaintiff should be able to argue that it is entitled to some compensation (i.e., a commission) for communicating an offer from the eventual buyer despite the fact that, technically, the term of the agreement may have already expired. To be clear, the Court recognizes that plaintiff argues that


the agreement had not expired and defendant contends the agreement was never extended. This decision also makes no findings about the Statute of Frauds, as that issue is premature.

The Court declines to issue any sanctions as the previous motion was simply a motion to dismiss based on the allegations in the complaint. The arguments included on this motion raise new issues that sustain these causes of action. There is no evidence that anyone withheld any information from the opposing party or the Court. Rather, the record shows that defendant received a document that it believes shows that the agreement had expired and it modified its bill of particulars to argue that the agreement was not in effect. But now that the defendant has raised an issue about the effect of the agreement, the Court find that plaintiff has the ability to seek damages under an alternative theory of relief.

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted only to the extent that its claims for unjust enrichment and quantum meruit are reinstated and denied to the extent that it sought sanctions or costs and defendant shall answer pursuant to the CPLR.

See NYSCEF Doc. No. 31 for information about the next conference.

<p>4/25/2023</p> <hr/> <p>DATE</p>	 <hr/> <p>ARLENE P. BLUTH, J.S.C.</p>																																	
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