

UNO A Brokerage Inc v Inshur, Inc.

2024 NY Slip Op 30733(U)

March 7, 2024

Supreme Court, New York County

Docket Number: Index No. 652251/2023

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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UNO A BROKERAGE INC Plaintiff, - v - INSHUR, INC. Defendant.	INDEX NO. <u>652251/2023</u> MOTION DATE <u>09/29/2023</u> MOTION SEQ. NO. <u>002</u> DECISION + ORDER ON MOTION
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26
 were read on this motion to/for DISMISS.

Upon the foregoing documents and for the reasons set forth on the record (*tr.* 3.7.24), the motion (Mtn. Seq. No. 002) to dismiss the First Amended Complaint (the **AC**; NYSCEF Doc. No. 9) is granted. Simply put, the claims are barred by General Obligations Law § 5-701.

The Relevant Facts and Circumstances

Both the AC and the unexecuted draft Producer Agreement (NYSCEF Doc. No. 19; the **Draft Producer Agreement**), dated October [], 2018, by and between Inshur Inc. and UNO A Brokerage, make clear that Inshur retained Uno A Brokerage (**Uno**) to solicit commercial auto insurance for rideshare and TLC drivers for placement by Inshur with an insurance company through the Inshur App and agreed to pay them a structured commission based on the volume of premiums that Uno was able to place with Inshur:

2.1 Producer will be entitled to receive, as full compensation, a commission (“Producer Commission”) as set forth on SCHEDULE A hereto (the “Commission Schedule”). The Producer Commission shall be based upon the aggregate annual premiums on all policies issued pursuant to this Agreement less (i) any fees and/or assessments paid by General Agent related to such policies and (ii) any unearned commissions on returned premiums whether because of endorsement, cancellation or otherwise. The Producer Commission shall only be paid on policies for which the General Agent has already been paid commissions from the insurance company issuing the policy. The Producer Commission shall be calculated and paid on a monthly basis in arrears, payable no later than the 10th day of each month.

...

Aggregate Annual Premium Threshold	Commission %
\$5,000,000	9.00%
\$9,000,000	9.50%
\$13,000,000	10.00%
\$17,000,000	10.50%
\$21,000,000	11.00%
\$25,000,000	11.50%
\$29,000,000	12.00%

(NYSCEF Doc. No. 19, § 2.1; Schedule A).

The Draft Producer Agreement further indicates that this was not a joint venture-like arrangement where the parties shared commissions or profits and losses of third parties. They were independent contractors and not agents of one another (NYSCEF Doc. No. 19, § 1.5). The relationship was not exclusive (*id.*). Indeed, the documentary evidence (CPLR 3211 [a][1]) referred to in the AC (below) makes clear that although both were insurance brokers, the relationship was more that of principal-broker where Uno was compensated **from** Inshur than that of co-brokers where exemption from requirements of the statute of frauds would be appropriate:

7. In or around August 2018, UNO’s President, Phillip Soliman (“Soliman”) was engaged with Inshur’s CEO and Co-Founder, Daniel Bratshpis (“Bratshpis”), in discussion about an opportunity in which UNO would agree to write business through Inshur’s online insurance platform, in exchange for Inshur paying structured commissions to UNO.

8. UNO is a leader in providing insurance, as a broker, for rideshare drivers, having been a pioneer in that field for many years.
9. As a result of UNO's experience and reputation in the rideshare insurance space, UNO has tens of thousands of clients who come to UNO as their trusted source for rideshare insurance needs.
10. Inshur, aware of UNO's leadership in the rideshare insurance space, sought UNO's help in growing Inshur's overall customer base, which at that time was very small.
11. Inshur, in order to induce UNO to enter into an agreement, notified UNO that Inshur had an agreement with a major global insurance carrier, Munich Re Group ("Munich"), wherein Inshur was writing policies of insurance on Inshur's new online insurance platform and Munich was providing reinsurance for these policies.
12. Inshur, in order to induce UNO to enter into this agreement, notified UNO that Inshur had an arrangement with Munich where it received cash investment from Munich to support Inshur's business growth.
13. In conversations with Soliman, Bratshpis described Munich as Inshur's "partner."
14. In conversations with Soliman, Bratshpis detailed to Soliman how Inshur needed to impress Munich by bringing in millions of dollars of insurance business into Inshur's online platform. The idea was, as Bratshpis explained to Soliman, that if Bratshpis' team at Inshur could show Munich that it was bringing large amounts of business to the Inshur online platform, which ultimately was business being sent to Munich, that Munich would further inject millions of dollars into Inshur, helping to expand Inshur.
15. UNO and Inshur started the drafting of an agreement with the terms for the agreed upon structured commissions for UNO's services.
16. In or around September 2018, UNO began sending business to Inshur by writing business on Inshur's online insurance platform in good faith, based on the terms of the written (but unsigned) agreement the parties had exchanged, as confirmed orally in conversations between Soliman and Bratshpis to do so.
17. UNO started writing the business without an executed written contract after Bratshpis informed Soliman that Inshur was having "major delays" with its legal team on finalizing the written agreement for execution.
18. Bratshpis expressed urgency in getting Soliman to cause UNO's clients to join the Inshur online platform, advising Soliman that Inshur was behind on its targeted goals with Munich and needed UNO's immediate help to bring millions of dollars of insurance business to Inshur's online platform.

19. Bratshpis knew that UNO, as a leader in providing insurance policies for rideshare drivers, could bring millions of dollars of rideshare insurance business to Inshur fairly quickly.
20. Thereafter, UNO sent thousands of its clients to sign up on Inshur's online platform, based on the parties' oral agreement.
21. Not only was UNO able to send thousands of its clients to Inshur, UNO was so successful to the point that Inshur met a premium milestone with Munich by signing up over \$5,000,000 of business from UNO's clients.
22. Pursuant to the oral agreement, UNO performed multifarious services for Inshur.

(NYSCEF Doc. No. 9 ¶¶ 7 - 22).

After Uno alleges that Inshur earned \$5,000,000 in premiums and failed to agree to pay Uno in full for those premiums (*id.* ¶¶ 21-31), Uno sued.

Discussion

General Obligations Law § 5-701(a)(10) requires a signed writing for any contract “to pay compensation for services rendered” in negotiating a business opportunity, including “procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction.”

In *Dura v Walker, Hart & Co.* (27 NY2d 346, 349 [1971]), the Court recognized that the General Obligations Law is not intended to apply to agreements between fellow finders or finders and third parties (“Despite the broad wording of the statute -- mandating that a ‘contract to pay compensation for services rendered in negotiating ... the purchase [or] sale ... of a ... business’ be in writing [General Obligations Law, §5-701, subd. 10] -- it is clear that it was aimed at averting the evils arising from oral contracts ‘between the finder and the principal or employer with whom he has

assertedly contracted and from whom he seeks compensation’ and not between fellow finders or finders and other parties.”). This however is not the arrangement discussed in the AC or which the parties sought to memorialize in the Draft Producer Agreement. Thus, under *Dura*, it is irrelevant that both Uno and Inshur happen to be brokers because the nature of their arrangement (as discussed above) was really that of principal and broker.

As the Court later explained in *Freedman v. Chemical Constr. Corp.* (43 N.Y.2d 260, 266-67 [1977]), oral agreements for commissions based on making business introductions are precluded by the statute of frauds (*see Freedman v. Chemical Constr. Corp.*, 43 N.Y.2d 260, 266-67 [1977] [finding that services rendered under an agreement will fall under the statute as a “business opportunity” “where . . . the intermediary’s activity is . . . evidently that of providing ‘know-how’ or ‘know-to’”]). At its core, this is what is at issue here – *i.e.*, Uno was to receive structured commissions in exchange for using its resources and contacts to make business referrals to Inshur (AC ¶¶ 8-10, 20-23).

As it is undisputed that (i) no executed agreement exists between the parties and (ii) that any purported oral agreement between the parties is a commission agreement, Uno’s claim for breach of contract falls squarely within the statute of frauds under General Obligation Law § 5-701(a)(10). Uno’s attempts in their opposition papers to frame the parties’ relationship as like a joint venture are simply inconsistent with the AC and the Draft Producer Agreement.

It is also clear that the oral agreement is also void under General Obligation Law § 5-701(a)(1) because it was not capable of being performed within one year because the performance of the

agreement was dependent upon the will of third parties (*see Apostolos v. R.D.T. Brokerage Corp.*, 159 A.D.2d 62, 64–65, 559 N.Y.S.2d 295 [1st Dept. 1990]). The arguments to the contrary based on termination rights fail.

To the extent Uno alleges its claims are exempt from the statute of frauds due to part performance (*see* AC ¶¶ 16), this argument too fails. The Appellate Division has held that “the exception to the statute of frauds for part performance has not been extended to General Obligation Law § 5-701” (*SCE Assoc., Inc. v Coglianesi*, 179 AD3d 730, 730 [2d Dept 2020]).

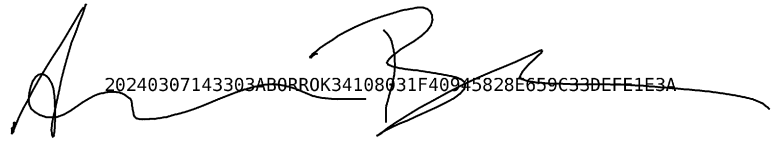
Uno’s claim for unjust enrichment is dismissed because “it is well settled in New York . . . that a plaintiff may not assert an unjust enrichment claim to circumvent the statute of frauds” (*Intertex Trading Corp. v Ixtaccihuatl S.A. de CV*, 754 F Supp 2d 610, 616 [SDNY 2010]; *see also Snyder v Bronfman*, 13 NY3d 504, 507 [2009] [affirming the Appellate Division’s finding that “plaintiff’s unjust enrichment and quantum meruit claims fall squarely within the statute’s broad and unambiguous prohibition”] [internal quotations omitted]).

Uno’s accounting claim is derivative of its first two claims and therefore is also dismissed.

The Court has considered Uno’s remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted.



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3/7/2024
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE