Hopkinson Assoc. LLC v Robinson & Miller Offset Corp.
2025 NY Slip Op 30883(U)
March 17, 2025
Supreme Court, New York County
Docket Number: Index No. 653212/2022
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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HOPKINSON ASSOCIATES LLC,

Plaintiff,

- v -

ROBINSON & MILLER OFFSET CORP.,

Defendant.

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INDEX NO. 653212/2022

MOTION DATE 03/10/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

ROBINSON & MILLER OFFSET CORP.

Plaintiff,

-against-

GIGANTIC STUDIOS, LLC, JONATHAN GRAY, BRIAN DEVINE, PEACEABLE ASSEMBLY, LLC, GRAY KRAUSS STRATFORD SANDLER DES ROCHERS LLP

Defendant.

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Third-Party
Index No. 595917/2022

The following e-filed documents, listed by NYSCEF document number (Motion 002) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128

were read on this motion to/for SUMMARY JUDGMENT.

Plaintiff's motion for summary judgment as to liability on its first, second, and third causes of action is denied and defendant's cross-motion for summary judgment dismissing this case is granted.

Background

This action is a dispute about a brokerage commission. Plaintiff, a real estate broker, contends that it handled a lease renewal/amendment from which defendant, the owner and landlord of a property in Manhattan, benefitted. Plaintiff's principal is Steven Jacobson, an attorney.

This is not a run-of-the-mill case where a broker finds a tenant and claims the landlord is cheating him out of the commission. As will be explained in more detail below, there already was a tenant in the space, the third party defendant law firm, Gray Krauss Stratford Sandler Des Rochers LLP ("law firm"). That law firm wanted to go out of business and hired plaintiff to help guide it; with plaintiff's assistance, the law firm decided to use the space for other purposes, and bring in other companies; they of course needed the landlord's consent for these transactions. Then plaintiff, the law firm's representative, contacted the landlord to negotiate this transition. Now the plaintiff seeks a fee from the landlord as a broker.

The Parties' contentions

Plaintiff alleges that defendant refused to pay it any commission despite benefitting from the services it provided. It insists that in early 2021, third-party defendant Jonathan Gray and non-party Bruce Meyerson were attorneys with Gray Krauss Stratford Sandler Des Rochers LLP, the law firm which rented the subject premises.

Plaintiff contends that Mr. Gray (the managing partner of the firm) wanted to disband the firm and admits that Mr. Gray hired plaintiff as a consultant to discuss the firm's options for moving, subletting or surrendering the space. Plaintiff attaches an engagement letter signed by Mr. Gray in which plaintiff was to act as its "consultant" and receive a $12,500 fee with the possibility for additional fees (NYSCEF Doc. No. 60). It maintains that Mr. Gray decided to stay

at the premises with a new company—third-party defendant Peaceable Assembly, LLC (an entity allegedly in the documentary film business). Plaintiff argues that the space was too large and too expensive for Peaceable Assembly. It claims that in early February 2021, plaintiff attempted to negotiate a deal with defendant on behalf of Peaceable Assembly whereby third-party defendant Gigantic Studios, LLC would get out of its current lease at a different location and move into the subject premises.

Plaintiff insists it got Gigantic Studios out of its old lease and negotiated another lease renewal/amendment where Peaceable Assembly would assume the tenant's rights and where the defendant took on three tenants for the lease (the law firm, Peaceable Assembly and Gigantic Pictures). Plaintiff admits that it noticed that this fourth lease renewal/amendment contained a "No Broker" clause but insists it thought that the tenants or the defendant would remove it given that it was clear plaintiff was acting as the tenants' broker. It acknowledges that this clause remained in this new lease document. Plaintiff says it sent an invoice to defendant for the brokerage commission but never received any payments.

Plaintiff emphasizes that it routinely emailed defendant identifying itself as the broker for the tenants and so it is entitled to a broker's commission under principles of the common law even though no commission agreement was actually signed. It stresses that it negotiated this complex transaction over many months and found a deal that benefitted all parties, including defendant who stood to gain substantial rental income.

Defendant sees things differently and cross-moves for summary judgment. It claims that plaintiff was already paid by the tenants and that it is trying to get paid a second time for the same work. Defendant argues that plaintiff was hired by the tenants to discuss a fourth amendment to the lease on their behalf with defendant and that plaintiff only provided services to

those tenants. It also points out that each of the many drafts of the eventual agreement contained an express provision that no broker was involved in negotiating the amendment. Defendant argues that plaintiff waited until after the deal was signed to send an invoice and that there was never any contract between plaintiff and defendant.

In reply, plaintiff complains that defendant failed to submit an affidavit from anyone with personal knowledge of the facts of the case and that the attorney affirmation is not sufficient. It claims that defendant's submission of an affirmation from third-party defendant Jonathan Gray is contradictory and should not be credited. Plaintiff insists that Mr. Gray's assertion that plaintiff was retained as a lawyer instead of as a broker is belied by the presence of an agreement between plaintiff (in its capacity as a real estate firm) with the tenants.

Plaintiff emphasizes that it worked on this deal for nearly a year and was heavily involved in the negotiations. It emphasizes that it is not seeking a commission from defendant on the theory that defendant ever explicitly hired plaintiff. Rather, plaintiff is seeking the commission under a common law theory of an implied contract. It reiterates that many, many brokers have earned commissions even where no brokerage agreement was signed.

Discussion

"It has long been recognized that a broker, save when he enjoys the benefit of a special agreement to the contrary, does not automatically and without more make out a case for commissions simply because he initially called the property to the attention of the ultimate purchaser" (*Greene v Hellman*, 51 NY2d 197, 205, 433 NYS2d 75 [1980]). "That is not to say that, in order to qualify for a commission, the broker in all instances must have been the dominant force in the conduct of the ensuing negotiations or in the completion of the sale. But,

however variable the judicial terminology employed to express the requirement that the broker must be the procuring cause, it has long been recognized that there must be a direct and proximate link, as distinguished from one that is indirect and remote, between the bare introduction and the consummation" (*id*. at 206).

Here, there is no question that plaintiff actively participated on behalf of the tenants in figuring out the best way to handle their new office space needs and then during the negotiations leading up to the fourth amendment of the lease. However, the Court's inquiry does not end there. The Court must assess the nature of plaintiff's involvement in those negotiations. The Court must first look at the terms of that fourth amendment, which expressly provides that:

> "No Broker. Tenant and Landlord represent and warrant that neither has dealt with a broker in connection with this Fourth Amendment. The parties agree to indemnify and hold each other harmless (including, without limitation, reasonable attorneys' fees) from and against any and all claims for brokerage commissions resulting from a breach of the foregoing representation" (NYSCEF Doc. No. 68, ¶ 15).

This provision compels the Court to grant the cross-motion by defendant for summary judgment dismissing this case. The fact is that "A contract cannot be implied in fact where there is an express contract covering the subject matter involved" (*Julien J. Studley, Inc. v New York News, Inc.*, 70 NY2d 628, 629, 518 NYS2d 779 [1987] [holding that a real estate broker could not recover a commission where an express contract covered the transaction]). Moreover, plaintiff's deposition testimony makes clear that its principal was well aware of this provision and what it meant. He testified that although he read this provision, he was not worried about it because "I reviewed the initial lease and the other three amendments; and all of them had the same 'No Broker' clause in it. And I was under—under the assumption that they just cut and pasted it for this fourth draft amendment, and—and that it was going to be edited to include myself as the tenants' broker" (NYSCEF Doc. No. 61 at 180). He admitted that he did not share

that expectation with anyone nor did he ever review a subsequent draft where he was the broker (*id*. at 181).

In other words, this record shows that plaintiff, a vastly experienced and sophisticated real estate broker with an attorney as principal who is admitted to practice in New York, knew full well that it had no contract with anyone to receive a commission and, in fact, the relevant agreement specifically stated that there was no broker involved. And, here, it was not the defendant landlord who wanted anything, but it was the previous tenant, the law firm, that wanted something affirmative. The law firm wanted to set up an arrangement whereby multiple entities signed onto the lease renewal/amendment. This is not a situation in which the landlord was actively seeking tenants, and one might reasonably infer that plaintiff was acting as a broker for the landlord. Rather, the initial tenant wanted something affirmative and complicated from the landlord and so the tenant hired plaintiff as a "consultant."

Plaintiff's argument that the No Broker provision is "irrelevant" is misplaced. The work for which plaintiff seeks a commission is for the signing of that agreement and so the Court must consider the language of that agreement. And there is no suggestion that this provision was "slipped in" or inserted over plaintiff's robust objection. Instead, plaintiff admitted at the deposition that it was well aware of this clause and just assumed it would be taken out. A misguided assumption is not a basis for this Court to avoid a clear contractual provision.

Moreover, the record suggests that plaintiff only acted as a consultant (and possibly as an attorney) and not as a real estate broker. Jonathan Gray contends in his affirmation that plaintiff was hired for a flat fee and then at a particular billing rate without any other additional compensation (NYSCEF Doc. No. 91 at 2). Mr. Gray stresses that that the agreement characterized by plaintiff as a consulting agreement was actually a legal retainer agreement (*id*.).

Plaintiff strenuously objects to this characterization of the agreement and insists that plaintiff is a real estate firm, not a law firm. However, the Court observes that although the agreement suggests that plaintiff was a "consultant" it also provides that "In the event that a dispute arises between us relating to our fees, you may have the right to arbitration of the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the New York State Courts" (NYSCEF Doc. No. 60 at 1). The Part 137 cited in the aforementioned document concerns fee disputes between *attorneys and clients*.

In any event, this suggests that plaintiff was hired, at the very least, as a consultant for the work at issue (not as a real estate broker) and that he was paid for that work. The consultancy agreement does not mention anything about work as a real estate broker or a potential commission.

The Court recognizes that defendant sent in an untimely letter withdrawing the portions of its motion with respect to the third-party action and seeking an extension of time for motions to be brought in the third-party complaint. That request is denied and, in any event, it is seemingly moot in light of the Court's decision.

Summary

This case presents a situation in which plaintiff and defendant offer wildly divergent theories of what occurred. Plaintiff contends it acted as a real estate broker and is entitled to a commission from defendant because it procured tenants for defendant. And defendant argues that it never hired plaintiff, that plaintiff merely worked on behalf of an existing tenant and emphasizes that plaintiff was already paid for its work in accordance with the consultancy agreement it had with the tenant. Whether it was a legal retainer agreement (due to the Part 137

right to arbitration language) or a consultant, it is clear no one on the tenant's side thought plaintiff was acting as a broker.

The record on this motion supports defendant's cross-motion for summary judgment. There is no question that the relevant document at issue signed by the landlord, the fourth lease amendment, contained a specific no broker's clause; this indicates that the signatories to that agreement affirmatively represented that there was no broker. And plaintiff readily admits it both knew about the presence of this "no broker" clause and never did anything to change that.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is denied and defendant's cross-motion for summary judgment is granted, the complaint is dismissed and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

3/17/2025
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE