

Montfort v Leslie J. Garfield & Co., Inc.

2025 NY Slip Op 32429(U)

July 3, 2025

Supreme Court, New York County

Docket Number: Index No. 650998/2025

Judge: Mary V. Rosado

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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. MARY V. ROSADO

PART 33M

Justice

-----X

STANLEY MONTFORT

Plaintiff,

- v -

LESLIE J. GARFIELD & CO., INC.,

Defendant.

-----X

INDEX NO. 650998/2025

MOTION DATE 03/31/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25 were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of May 15, 2025, Defendant Leslie J. Garfield & Co., Inc.’s (“Defendant”) motion to dismiss Plaintiff Stanley Montfort’s (“Plaintiff”) Complaint pursuant to CPLR 3211(a)(1) and (a)(7) is granted in part and denied in part.

I. Background

Defendant is a New York real estate brokerage firm. Plaintiff is a licensed real estate agent who worked for Defendant. Allegedly, Plaintiff and Defendant agreed that upon the sale of a property where Plaintiff served as the exclusive agent, Plaintiff was entitled to seventy percent of the earned commission. On February 22, 2023, Plaintiff was the exclusive agent for a listing located at 336 West 118th Street, New York, New York (the “336 West 118th”). Plaintiff procured a buyer and on May 1, 2023, a contract of sale was executed (NYSCEF Doc. 3). The sale was structured as an eighteen-month lease-to-own arrangement and required a six-figure renovation. Plaintiff was tasked with ensuring the eighteen-month arrangement was completed successfully.

Plaintiff alleges he was also listed as the exclusive agent for another property located at 141 West 123rd Street, New York, New York (the “141 West 123rd”).

However, on January 12, 2024, prior to the conclusion of the eighteen-month period, Plaintiff and several other agents working for Defendant left to work for Defendant’s competitor. The terms of the separation were memorialized in a memorandum of understanding (the “Memorandum of Understanding”) (NYSCEF Doc. 15). The Memorandum of Understanding contained a list of property listings which were to go with Plaintiff and the other departing agents to Defendant’s competitor (NYSCEF Doc. 15). But the two properties mentioned in Plaintiff’s Complaint were not included in the listings to be transferred. An extension agreement was executed on February 8, 2024 (the “Extension Agreement”), which provided the parties an extended deadline to complete final settlement documents as contemplated by the Memorandum of Understanding (NYSCEF Doc. 17). The Extension Agreement stated that Defendant would make payment “forthwith on the Montfort deal that already closed and will make payments to Kantha/Montfort on any other deals promptly after any such closing and without waiting for the execution of the final documents.” When the 141 West 123rd sale closed on February 23, 2024, Defendant paid Plaintiff his 70% commission fee (NYSCEF Doc. 6).

Despite the Extension Agreement, negotiations on the final settlement documents faltered and the settlement documents were never executed. Nonetheless, Defendant allegedly never asked Plaintiff to cease serving as agent for 336 West 118th. A subsequent Amendment to the Memorandum of Understanding, dated August of 2024, recognized the validity and enforceability of the terms of the original Memorandum of Understanding yet still did not include 336 West 118th as a listing to be transferred from Defendant to Plaintiff’s new firm (NYSCEF Doc. 16).

On December 17, 2024, Plaintiff attended 336 West 118th's closing and delivered Defendant the broker payment from which he believed he would be paid his 70% commission. Plaintiff asked for his 70% commission and was informed that "there will be no money forthcoming" because 336 West 118th was not included in the parties' Memorandum of Understanding. Plaintiff now sues Defendant for breach of contract and *quantum meruit*. Defendant responds with this pre-answer motion to dismiss, which Plaintiff opposes. Defendant's motion is granted in part and denied in part

II. Discussion

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must accept the factual allegations as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). However, conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]). A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

Plaintiff's first cause of action alleging breach of contract and breach of the implied covenant of good faith and fair dealing is dismissed. Plaintiff concedes that the property for which he is seeking commission was not included in the Memorandum of Understanding, and he fails to

allege any written contract regarding the payment of commission for the sale of 336 West 118th. The failure to allege the existence of a contract entitling Plaintiff to the commission alleged is fatal to his breach of contract claim (*see, e.g. Dworkin Construction Corp (USA) v Consolidated Edison Company of New York, Inc.*, 191 AD3d 596 [1st Dept 2021]; *see also Marino v Vunk*, 39 AD3d 339, 340 [1st Dept 2007]). Moreover, since the terms of sale stated that closing would take eighteen months, and Plaintiff was not entitled to commission until closing, any contract related to Plaintiff's commission regarding the sale of 336 West 118th needed to be in writing pursuant to the Statute of Frauds (*see Farash v Sykes Datatronics, Inc.*, 59 NY2d 500, 503 [1983]; *see also* General Obligations Law § 5-701[a][1]). Therefore, Plaintiff's first cause of action alleging breach of contract is dismissed. Because Plaintiff failed to allege the existence of a valid contract to pay him commission for the sale of 336 West 118th, the allegations regarding the breach of the implied covenant of good faith and fair dealing also must be dismissed.

However, Plaintiff has alleged a cause of action for *quantum meruit*. Plaintiff alleges that he secured a buyer for 336 West 118th, remained the exclusive agent for the property for well over a year, ensured the conditions for closing were met, represented Defendant at 336 West 118th's closing, and delivered to 336 West 118th its brokerage fee. Based on the foregoing, and accepting the allegations as true, Plaintiff provided Defendant with valuable services in good faith, provided those services with an expectation of compensation, and the services were accepted by Defendant without objection (*see Eastern Consolidated Properties, Inc. v Waterbridge Capital LLC*, 149 AD3d 444, 444 [1st Dept 2017]). Defendant has failed to provide any conclusive documentary evidence to the contrary. Although Defendant argues that Plaintiff's claim fails because he did not allege the "value" of his work, this is inaccurate. Plaintiff alleges that the parties previously agreed the "value" of Plaintiff's work was 70% of the commission fee.

Defendant's argument that Plaintiff's *quantum meruit* claim is duplicative of the breach of contract claim is without merit because the breach of contract claim was dismissed, and *quantum meruit* is an alternative, equitable, quasi-contractual remedy available in the absence of an enforceable contract (*Heller v Kurz*, 228 AD2d 263, 264 [1st Dept 1996]). Absent Plaintiff's ability to recover under a theory of *quantum meruit*, Defendant would be inequitably enriched by reaping 100% of the commission despite Plaintiff serving as the exclusive agent for Defendant's benefit (*see, e.g. Curtis Properties Corp. v Greif Companies*, 212 AD2d 259, 266-67 [1st Dept 1995]). Therefore, Defendant's motion to dismiss Plaintiff's second cause of action alleging *quantum meruit* is denied (*see also Kramer v Greene*, 142 AD3d 438, 442 [1st Dept 2016]; *Caribbean Direct, Inc. v Dubset, LLC*, 100 AD3d 510, 511 [1st Dept 2012]).

Accordingly, it is hereby,

ORDERED that Defendant's motion to dismiss Plaintiff's Complaint is granted solely to the extent that Plaintiff's first cause of action alleging breach of contract and breach of the implied covenant of good faith and fair dealing is dismissed; and it is further

ORDERED that Defendant's motion to dismiss Plaintiff's second cause of action alleging *quantum meruit* is denied; and it is further

ORDERED that within twenty days of entry of this Decision and Order, counsel for Defendant shall serve an Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties are directed to meet and confer immediately and submit a proposed preliminary conference order to the Court via e-mail at SFC-Part33-

Clerk@nycourts.gov, but in no event shall the proposed order be submitted any later than September 3, 2025;¹ and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

7/3/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

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

¹ This date is for the submission of a proposed preliminary conference order only. It is not to appear for a conference. If the parties have a serious discovery dispute requiring Court intervention, they shall contact the Court via e-mail to SFC-Part33-Clerk@nycourts.gov to be provided a date for an in-person conference.