

Fairview Prop. Group, LLC v RYCO Capital, LLC

2025 NY Slip Op 32615(U)

July 11, 2025

Supreme Court, New York County

Docket Number: Index No. 659433/2024

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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FAIRVIEW PROPERTY GROUP, LLC,

Plaintiff,

- v -

RYCO CAPITAL, LLC, WEST LAKE 141-143 SECOND AVENUE, LLC, WEST LAKE 145 SECOND AVENUE, LLC, WEST LAKE 147-149 SECOND AVENUE, LLC, WEST LAKE 151-153 SECOND AVENUE, LLC, WEST LAKE 156-158 SECOND AVENUE, LLC, WEST LAKE 157 SECOND AVENUE, LLC, JAMES RYAN, STEVEN C. LUSBY

Defendant.

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INDEX NO. 659433/2024
MOTION DATE 03/07/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 4

were read on this motion to/for DISMISS.

This action arises out of allegations that defendants failed to pay for real estate broker services¹. Defendants, RYCO Capital LLC (“RYCO”), West Lake 141-143 Second Avenue, West Lake 145 Second Avenue, West Lake 147-149 Second Avenue, West Lake 151-153 Second Avenue, West Lake 156-158 Second Avenue, West Lake 157 Second Avenue (collectively the “West Lake Entities”) and James Ryan, now move to dismiss to the complaint pursuant to CPLR § 3211(a)(1) and (a)(7). For the reasons set forth below, the motion is granted.

Background

Plaintiff alleges that it and defendant Lusby, as principal of Two Rivers Property Group, entered into a non-disclosure and commission agreement in relation to the purchase and sale of

¹ The Court would like to thank Benjamin Shoyhet for his assistance in this matter.

real property, referred to as the Second Avenue properties. Plaintiff alleges that pursuant to that agreement it helped defendants Lusby and RYCO acquire the subject real property. Specifically, plaintiff relies on the portion of the commission agreement that states:

Principal hereby agrees to pay Fairview Property Group a commission percentage of two and a half (2.5%) of the sales price in the event that a purchase occurs by Lusby or by their nominee or an entity in which they are partners, principals, joint venturers or brokers. Such Commission shall be due and payable at Closing.

NYSCEF Doc. 3.

Plaintiff alleges that RYCO through its subsidiaries acquired the subject real property, however none of the defendants have honored the commission agreement.

Standard of Review

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. "The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory." *Id.*

"In a motion to dismiss pursuant to CPLR § 3211(a)(1), the defendant has the burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Fortis Fin. Servs., LLC v Fimat Futures USA, Inc.*, 290 AD2d 383, 383 [1st Dept 2002] internal quotations and citations omitted). Further,

dismissal pursuant to CPLR § 3211(a)(1) is warranted where documentary evidence “conclusively establishes a defense to the asserted claims as a matter of law.” *Gottesman Co. v A.E.W, Inc.*, 190 AD3d 522, 24 [1st Dept 2021]. “When documentary evidence is submitted by a defendant the standard morphs from whether the stated a cause of action to whether it has one” (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 135 [1st Dept 2014] internal citations and quotations omitted).

Discussion

Plaintiff asserts six causes of action against the moving defendants: breach of contract; quantum meruit; unjust enrichment; promissory estoppel; conversion and tortious interference with contract. In its opposition to the instant motion, plaintiff withdrew all claims, with the exception of tortious interference with contract, as against defendant James Ryan and during oral argument plaintiff withdrew its seventh cause of action, tortious interference with contract against defendant Ryan. The Court will address each of the remaining causes of action in turn.

Second Cause of Action-Breach of Contract

To state a claim for breach of contract, a party must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages. *VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013].

In support of its motion to dismiss this cause of action, defendants rely on the agreement as documentary evidence that defeat plaintiff’s claims. Specifically, defendants argue that they are not parties to the Two Rivers Agreement, and the contract itself establishes that only Lusby signed it, in his capacity as co-founder of Two Rivers, thus defeating plaintiff’s breach of contract allegations as against the movants.

Plaintiff argues that the Two Rivers Agreement binds RYCO by virtue of Lusby signing the Two Rivers Agreement and subsequently being employed by RYCO. The Court does not agree. Here, the contract between plaintiff and Two Rivers, explicitly defeats a cause of action alleging breach of contract asserted against the moving defendants. While plaintiff contends that Lusby became a director at RYCO, whether or not this is accurate, the specific compensation provision relied on by plaintiff states that the principal, requires Lusby to pay the commission not any other entity. The Court does not agree with plaintiff that the agreement binds Lusby and any subsequent entity that he is a partner, principal, or broker, a plain reading of the contract does not support that contention. Accordingly, defendants' motion is granted, and this cause of action is dismissed as asserted against them.

Third, Fourth and Fifth Causes of Action-Quasi Contract

Similarly, as to plaintiff's asserted quasi contract causes of action, the contract establishes that plaintiff does not have a cause of action against the movants. The law is well established that the existence of a written contract governing a particular subject matter precludes recovery in quasi contract for events arising out of the same subject matter. *Clark-Fitzpatrick, Inc. v Long Island R. Co.*, 70 NY2d 383 [1987].

Plaintiff claims it was the broker, committed time and resources to brokering the deal, and that defendants gained benefit from plaintiff's work; however, the contract governed the exact work plaintiff is alleging benefited the non-parties to the contract. The prohibition against quasi-contractual claims applies not only to the parties that are in privity of contract, by also to non-contracting parties as well. *Bellino Schwartz Padob Advertising, Inc. v Solaris*, 222 AD2d 313[1st Dept 1995]; *Melcher v. Appollo Medical Fund Management LLC*, 105 AD3d 15 [1st Dept 2013].

Plaintiff avers that if the Court finds that there was no express contract between plaintiff and defendants, the Court must allow estoppel because defendant made representations upon which plaintiff relied. Defendant contends, and the Court agrees, that plaintiff fails to allege any duties or promises being made outside of the written contract and the promissory estoppel claim is duplicative of the breach of contract claim. New York Courts have held that a promissory estoppel claim cannot be asserted where the subject matter of the claim is governed by a contract and, instead, must be premised on violations of duties arising out of circumstances extraneous to and not constituting elements of the contract. *Brown v Brown*, 12 AD3d 176 [1st Dept 2004] *see also, Kim v Francis*, 184 AD3d 413 [1st Dept 2020](although adequately pled, the promissory estoppel claim should be dismissed as the allegations were duplicative of the breach of contract claim). Accordingly, plaintiff's third, fourth and fifth causes of action are dismissed.

Sixth Cause of Action- Conversion

Plaintiff's complaint alleges that defendant retained broker commission and failed to pay plaintiff.

A claim for conversion cannot be maintained if it is duplicative of one for breach of contract. See *Peters Griffin Woodward, Inc., v WCSC, Inc and MMT Sales, Inc.*, 88 AD2d 883 [1st Dept 1982]; see also *Retty Financing, Inc. v Morgan Stanley Dean Witter & Co.*, 293 AD2d 341 [1st Dept 2002].

Here, the alleged payment withheld was pursuant to a contractual obligation, specifically the retainer agreement. The Court finds that plaintiffs have not sufficiently alleged any breached duty distinct from the breach of contract, thus making this claim duplicative of the breach of contract claim. Accordingly, the portion of defendants' motion seeking dismissal of the conversion claim is granted.

The Court has reviewed plaintiff's remaining contentions and finds them unavailing.

Accordingly, it is hereby

ORDERED that the motion to dismiss is granted in its entirety; and it is further

ORDERED that the complaint is dismissed as against defendants RYCO Capital LLC, West Lake 141-143 Second Avenue, West Lake 145 Second Avenue, West Lake 147-149 Second Avenue, West Lake 151-153 Second Avenue, West Lake 156-158 Second Avenue, West Lake 157 Second Avenue and James Ryan; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the action is severed and continued against the remaining defendant; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

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7/11/2025

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE