

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

2025 NY Slip Op 34282(U)

November 7, 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 07/28/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of September 4, 2025, Defendant Leslie J. Garfield & Co., Inc.'s ("Defendant") motion to dismiss Plaintiff Stanley Montfort's ("Plaintiff") first cause of action alleging a violation of New York City Administrative Code § 20-929 and for the imposition of sanctions is granted in part and denied in part.

This action stems from Plaintiff's former employment as a real estate agent with Defendant, a real estate brokerage firm, in which he seeks commission allegedly owed to him after Plaintiff left Defendant's firm. In motion sequence 001, by Decision and Order dated July 3, 2025 (NYSCEF Doc. 26), this Court granted Defendant's motion to dismiss Plaintiff's first cause of action alleging breach of contract but denied Defendant's motion to dismiss Plaintiff's second cause of action alleging quantum meruit. On July 8, 2025, Plaintiff filed an Amended Complaint alleging a new cause of action claiming a violation of New York City Administrative Code § 20-929. Defendant now moves to dismiss the newly alleged cause of action and seeks the imposition of sanctions. Plaintiff opposes.

Defendant's motion to dismiss Plaintiff's cause of action alleging a violation of New York City Administrative Code § 20-929, also known as the "Freelance Isn't Free Act" ("FIFA") is granted. The specific section which Plaintiff alleges was violated reads:

"a. Except as otherwise provided by law, the contracted compensation shall be paid to the freelance worker either:

1. On or before the date such compensation is due under the terms of the contract; or
2. If the contract does not specify when the hiring party must pay the contracted compensation or the mechanism by which such date will be determined, no later than 30 days after the completion of the freelance worker's services under the contract.

b. Once a freelance worker has commenced performance of the services under the contract, the hiring party shall not require as a condition of timely payment that the freelance worker accept less compensation than the amount of the contracted compensation."

The issue here is this Court previously found in motion sequence 001 that Plaintiff failed to allege the existence of an enforceable contract with respect to the property listing for 336 West 118th Street, New York, New York ("336 West 118th").

This is not a typical FIFA case in that Plaintiff, along with several other real estate agents, separated from Defendant's brokerage firm, moved to a competing firm, and during the process of that move, engaged in extensive negotiations, while represented by counsel¹ regarding commissions for certain property listings. As a result of the negotiations, the parties entered a contract (NYSCEF Doc. 41) which expressly stated, "[t]his is a final, binding and enforceable agreement resolving all issues that were raised or could have been raised between the parties signing below that ar[o]se from or relate to the Matters being Settled, unless specifically noted herein."

¹ Plaintiff was represented in the negotiations by Quinn Emmanuel Urquhart Oliver & Hedges LLP.

That agreement further stated:

“[a]ll parties agree that prior to signing they have thoroughly reviewed this binding MOU and understand and agree with the terms and provisions contained herein. They further agree that this binding MOU shall be considered as having been jointly drafted for purposes of rules of contract interpretation. The parties further represent that they have had a full and complete opportunity to consult with their respective legal counsel prior to signing this binding MOU, and acknowledge that the terms of this binding MOU supersede all prior agreements and negotiations, oral and/or written.” (NYSCEF Doc. 41 at ¶ 20).

The agreement expressly listed properties under contract and stated how commission would be paid with respect to those properties, but it did not include the property listing for 366 West 118th Street, New York, New York. The parties entered into an amendment to the agreement to clarify further the original contract, and the amendment still did not include the property listing for 366 West 118th Street, New York, New York (NYSCEF Doc. 44). Thus, this is not a case of a hiring employer refusing to provide an independent contractor with a contract but is a case of a broker who was represented by a sophisticated law firm who negotiated a separation agreement which did not include the property listing which is at the heart of this lawsuit.

The failure to allege an enforceable contract, written or oral, was why this Court previously dismissed Plaintiff’s breach of contract cause of action but allowed him to assert a quasi-contract claim for *quantum meruit*. While Plaintiff claims in an affidavit that there was an oral agreement that he would be compensated for 366 West 118th Street, this is barred by the terms of the contract to which he agreed, which expressly stated “the terms of this binding MOU supersede all prior agreements and negotiations, oral and/or written.” Because there is no enforceable contract with respect to the listing at issue, either oral or written, the alleged violation of New York City Administrative Code § 20-929, which according to the statutory text must be predicated on “contracted compensation” must be dismissed (*see, e.g., Gordon v Equitas Capital Group, LLC,*

2025 WL 2771708 at *7 [SDNY Sept. 29, 2025] citing *Provenzano v Orwel*, 223 NYS3d 520 [Civ Ct, NY County 2024]).

While Plaintiff relies on *Tan v. Breathing.AI LLC*, 79 Misc.3d 1211(A) (Sup. Ct., N.Y. County 2023) this reliance is misplaced because in *Tan* the alleged § 20-929 violation was able to proceed because the plaintiff alleged adequately the existence of an enforceable contract. That is not the case here, where the Court already determined there is no enforceable contract with respect to the 366 West 118th Street listing due to the memorandum of understanding and amended memorandum of understanding signed, negotiated and drafted by Plaintiff while represented by counsel. Therefore, this case is analogous to *Gordon v. Equitas Capital Group, LLC*, 2025 WL 277108 (S.D.N.Y. Sept. 29, 2025) and *Provenzano v Orwel*, 223 N.Y.S.3d. 520 (Civ. Ct. N.Y. County 2024) where both courts dismissed the alleged § 20-929 violation based on the plaintiff's failure to allege the existence of an enforceable contract. Thus, the branch of the motion which seeks dismissal of Plaintiff's first cause of action alleging a violation of § 20-929 is granted.

However, the motion for sanctions is denied. The decision whether to impose sanctions for frivolous conduct is generally left to the sound discretion of the Court (*Flowers v 73rd Townhouse, LLC*, 227 AD3d 568 [1st Dept 2024]). The Court does not find Plaintiff's actions justify sanctions. Precedent applying § 20-929 is still relatively sparse and the Court finds Plaintiff asserted the claim in good faith. Therefore, the motion is denied to the extent it seeks sanctions.

Accordingly, it is hereby,

ORDERED that Defendant's motion is granted to the extent that the first cause of action in Plaintiff's Amended Complaint is hereby dismissed, but the motion is denied to the extent it sought the imposition of sanctions against Plaintiff or his counsel; and it is further

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

ORDERED that the parties shall 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 November 10, 2025; 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.

11/7/2025
DATE

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

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: