

Eyzenberg & Co., LLC v Trilar Holdings LLC

2025 NY Slip Op 34283(U)

November 6, 2025

Supreme Court, New York County

Docket Number: Index No. 651157/2025

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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EYZENBERG & COMPANY, LLC

Plaintiff,

- v -

TRILAR HOLDINGS LLC,

Defendant.

INDEX NO. 651157/2025

MOTION DATE 05/07/2025,
05/07/2025

MOTION SEQ. NO. 001 001

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 13, 14, 15, 16

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 13, 14, 15, 16

were read on this motion to/for DISMISSAL.

Trilar Holdings, LLC (**Trilar**)’s motion to dismiss is DENIED.

Reference is made to a certain Global Engagement Letter (NYSCEF Doc. No. 6; the **Brokerage Agreement**), dated February 20, 2022, by and between Eyzenberg & Company, LLC (**Eyzenberg**) and Trilar pursuant to which Eyzenberg agreed to provide services to Trilar on an exclusive basis to assist in its efforts to acquire funding to purchase and develop certain specified properties. Pursuant to the terms of the Brokerage Agreement, the parties agreed (i) that Eyzenberg was entitled to (x) a “Success Fee” in the event that Trilar or any of its affiliates, successors and/or assigns obtained funding or consummated a joint venture relating to the properties during the term of the Brokerage Agreement (*id.* § 2), and (y) “Profits Interest” in the amount of a specified percentage of the distributions received by Trilar’s owners, principals

and/or their affiliates or Trilar's affiliates, successors and/or assigns from the operations, refinancing and/or sale of the properties (*id.* § 3), (ii) Trilar would not sell or otherwise transfer the contractual rights to the Property or facilitate another party's acquisition of the Property (hereinafter defined) without having such party assume Trilar's obligations under the Brokerage Agreement (*id.* § 17), and (iii) attorney's fees and costs would be paid to the prevailing party in the event of litigation on the Brokerage Agreement (*id.* § 15).

As alleged, during the term of the Brokerage Agreement, one of Trilar's affiliates, Forte Clear LLC (**Forte Clear**), through a separate entity, *i.e.*, Forte Sands, LLC (**Forte Sands**), obtained \$30.8 million in funding to purchase a certain property located at 551 Gulf Boulevard, Clearwater Beach, FL (NYSCEF Doc. No. 1 ¶¶ 5, 8; the **Property**) pursuant to a purchase agreement dated September 15, 2021 (NYSCEF Doc. No. 1 ¶¶ 27-36), entitling Eyzenberg to a Success Fee (*id.* ¶¶ 54-56) of not less than \$816,000. As further alleged, Forte Clear received net distributions of \$1 million from its ownership interest in the Property (NYSCEF Doc. No. 1 ¶ 38), entitling Eyzenberg to the Profits Interest (*id.* ¶¶ 62-64) of \$20,000. As relevant, the complaint also alleges that during the term of the Brokerage Agreement, Forte Clear assigned its rights to the Property to Forte Sands without causing Forte Sands to expressly assume the Brokerage Agreement in breach of Section 17 (*id.* ¶¶ 68-70). The complaint also alleges Eyzenberg had performed brokerage services for Trilar under the Brokerage Agreement with respect to the Property including "aiding in negotiations with the seller of the Property, analyze the Property's funding requirements, assisting in identifying potential capital sources, providing potential capital sources with offering and other materials concerning and relating to the Property, advising on financing and structuring alternatives, creating and distributing to

numerous prospective lenders and investors executive summaries, offering memoranda, and excel analyses, and participating in meetings and calls with various prospective lenders and investors” (*id.* ¶ 8).

When they were not paid, Eyzenberg sued for (i) breach of contract for nonpayment of a Success Fee, (ii) breach of contract for nonpayment of Profits Interest, (iii) breach of contract for failure to assign its obligations under the Brokerage Agreement, and (iv) for attorney’s fees and costs.

In a cause of action for breach of contract, a plaintiff must allege that: (i) a contract exists (ii) plaintiff performed in accordance with the contract, (iii) defendant breached its contractual obligations, and (iv) defendant's breach resulted in damages (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).

Taking allegations as true, (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]), dismissal simply is not warranted at this stage of the proceeding because the complaint properly alleges (i) the existence of a valid contract, (ii) plaintiff performed in accordance with the contract, (iii) defendant breached its contractual obligations, and (iv) defendant's breach resulted in damages (*34-06 73, LLC*, 39 NY3d at 52). Thus, the motion is DENIED.

The Court notes further that Trilar is not entitled to a factual determination as to the meaning of the email exchange identified in paragraph 41 of the complaint at this stage of the litigation:

Hi Marius,

As per our discussions, this email is written to memorialize that we agree, if Eyzenberg & Company, LLC (“Eyzenco”) is not paid a commission in a minimum amount of \$550,000 for arranging capital for the Clearwater transaction for any reason, you agree to pay Eyzenberg & Co, in addition to the 2% profits participation in distributions received by Forte Clear, LLC and/or its affiliates and/or assigns, (“Forte Clear”), up to \$550,000 at most, to cover any shortfall between what Eyzenco receives and the minimum \$550,000 mentioned above.

The above is only due if & when Forte Clear receives distributions from the Clearwater transaction in excess of return of its capital invested in the transaction.

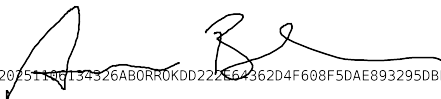
Please reply “Agreed” to this email to confirm your agreement to the above.
Thank you,

Robert

(NYSCEF Doc. No. 1 ¶ 41).¹

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

Accordingly, it is hereby ordered that Trilar’s motion to dismiss is DENIED.


20251106134326AB0RR0KDD22564362D4F608F5DAE893295DBE3

<u>11/6/2025</u> DATE					<u>ANDREW BORROK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>

¹ The Court notes that facially it appears that the parties agreed that if Eyzenberg was not receiving a commission of \$550,000 that Eyzenberg would receive in addition to its 2% profits interests, the minimum of \$550,000. Put another way, it does not appear that the parties agreed that under all circumstances, the maximum that Eyzenberg could receive was \$550,000 because the email exchange does not say that. To wit, it does not say, that Eyzenberg agrees under all circumstances that notwithstanding anything in the Brokerage Agreement, monies due to the plaintiff are capped at this amount as the defendants now argue. Discovery on the issue is required to decipher what the parties intended and whether this is intended as a writing to modify the brokerage agreement. What is however clear from the complaint and the fact that \$50,000 was paid is that there is evidence of part performance on behalf of the defendant as to the obligations that the plaintiff alleges were breached (NYSCEF Doc. No. 1 ¶ 45).