Level Group, Inc. v Gan Quan
2026 NY Slip Op 30609(U)
February 18, 2026
Supreme Court, New York County
Docket Number: Index No. 654425/2024
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PHAEDRA F. PERRY-BOND** **PART** **35**

Justice

---X

LEVEL GROUP, INC.,

Plaintiff,

- v -

GAN QUAN, and VIOLET FENG

Defendants.

---X

INDEX NO. 654425/2024

MOTION DATE 01/06/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, Plaintiff Level Group, Inc.'s ("Plaintiff") motion for summary judgment against Defendants Gan Quan ("Quan") and Violet Feng ("Feng") (collectively "Defendants") is denied without prejudice and with leave to renew after further discovery. Defendants' cross motion seeking leave to serve an Amended Answer is granted in part and denied in part.

I. Background

Plaintiff is a real estate brokerage firm that was allegedly retained by Defendants to assist them in finding an apartment. In August of 2020, one of Plaintiff's brokers, Benjamin Getman ("Getman"), arranged a showing of Apartment #A702 at 370 East 76th Street, New York, New York. Subsequently, on November 3, 2020, the parties allegedly entered a contract titled "Client and Retention and Fee Agreement" wherein Defendants allegedly agreed to be exclusively represented by Plaintiff in their apartment search and to pay a six percent commission to Plaintiff if Defendants purchased a "covered property." A "covered property" was defined as "any and all

addresses listed below, shown in person, emailed to/from Client and/or discussed between Broker and Client" (*see* NYSCEF Doc. 2). The agreement went on to include in the definition of "covered properties" the following:

> "Covered Properties include all apartments/units/spaces in the building(s), complex(es), and/or managed by the same management company(ies) and/or owned by the same owner and/or represented by the same brokerage firm as the Covered Properties, even if the apartments/units/spaces ultimately acquired or leased are not specifically listed below. For the avoidance of doubt, this Agreement applies to the Covered Properties whether or not Client is physically shown the acquired or leased apartments/units/spaces in person. Client acknowledges that Covered Properties include properties even if Client has already seen/visited or already submitted an offer for during or prior to the beginning of the Sourcing Period unless it is listed on an exclusion list provided with this agreement. All Covered Properties sourced by Level during the Sourcing Period shall be covered by this Agreement for three (3) years following termination of the Sourcing Period."

At the bottom of the one-page agreement there is a space with the title "Covered properties include but are not limited to:" but the spaces following, where covered properties are to be identified, were left blank. On September 30, 2021, Defendants purchased Apartment #A1908 at 370 East 76th Street, New York, New York, which was a different apartment in the same building as the apartment Plaintiff showed Defendants in August 2020. Plaintiff invoiced Defendants for commission but were not paid, leading to this lawsuit alleging breach of contract and account stated. Defendants filed their Answer with affirmative defenses and counterclaims on November 15, 2025 and shortly thereafter, on January 6, 2026, Plaintiff filed the instant motion for summary judgment.

Defendants oppose and cross move for leave to serve an Amended Answer to include several new affirmative defenses, including, *inter alia*, fraud, forgery, lack of capacity, mistake, unconscionability, and ambiguity. According to Defendants' affidavits, Getman asked Defendants to be their exclusive broker in October of 2019 to which Defendants said no, and after which

Getman continued to work with Defendants. According to Defendants, on November 3, 2020, Getman asked Defendants to sign a Covid waiver and a waiver of dual representation, as Getman was showing an apartment where he also represented the seller. Defendants were allegedly presented a packet of documents which they were purportedly told were waivers and Defendants were not informed the one paged broker agreement inside the packet of documents. Defendants swear they have no recollection of ever signing a broker agreement on November 3, 2020 and the only time they recall seeing the broker agreement is after this lawsuit was commenced. Defendants claim to the extent they signed the broker agreement they signed because of fraud or deception. According to Defendants, they terminated their relationship with Plaintiff and a year later purchased Apartment #A1908 at 370 East 76th Street, New York, New York after being shown it by a different brokerage firm.

II. Discussion

A. Plaintiff's Motion for Summary Judgment

Plaintiff's motion for summary judgment is denied without prejudice as premature and and with leave to renew upon further discovery. "On a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial" (*Nellenback v Madison County*, 44 NY3d 329, 334 [2025] [internal quotations and citations omitted]). The movant's burden is heavy, and the facts must be viewed in the light most favorable to the non-movant (*Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]).

"If the moving party fails to meet this initial burden, summary judgment must be denied 'regardless of the sufficiency of the opposing papers'" (*Voss v Netherlands Ins. Co.*, 22 NY3d 728,

734 [2014] quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). "It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact" but rather the Court's function is to identify material triable issue of fact or point to the lack thereof (*Vega, supra* at 505 [2012]). To make out a *prima facie* breach of contract claim, a movant must demonstrate the absence of material issues of fact with respect to (a) the existence of a contract; (b) the movant's performance; (c) the non-movant's breach, and (d) the movant's damages (*see Markov v Katt*, 176 AD3d 401 [1st Dept 2019]).

Viewing the facts in the light most favorable to the non-movants, considering Plaintiff's heavy burden, given the lack of any discovery, and considering the contradicting sworn statements, the motion for summary judgment is denied, without prejudice, and with leave to renew after further discovery. There remain issues of fact as to the validity of the brokerage agreement which forms the basis of this action. Specifically, there are issues of fact as to whether there was mutual assent to the terms of the brokerage agreement because, as sworn to by Defendants, they believed they were handed a packet of documents which they were told included a waiver of dual representation and a Covid-19 related waiver – they were never told inside that packet was a one-page exclusive brokerage agreement and claim they repeatedly told Getman that they did not want to sign an exclusive brokerage agreement with him. There also remain issues of fact as to whether the signatures were forged, as claimed by Defendants (*see, e.g. Seoulbank, New York Agency v D7J Export 7 Import Corp.*, 270 AD2d 193, 194 [1st Dept 2000]).

The issues of fact are further compounded by Plaintiff's submissions on reply. Although Plaintiff relied on an allegedly signed brokerage agreement dated November 3, 2020, it now introduces on reply another brokerage agreement dated August 5, 2020 that Defendants allegedly signed electronically. It is unclear on this pre-discovery juncture why Plaintiff would request

Defendants sign the same agreement twice if Defendants' intention to retain Plaintiff as their exclusive broker was clear, unambiguous, and uncontested, let alone why they are relying on a later signed brokerage agreement as opposed to the earlier one. Finally, the conflicting affidavits of Defendants and Getman require denying summary judgment so the parties can try and resolve some of these issues through written and oral discovery. Therefore, the motion for summary judgment is denied, without prejudice, and with leave to renew upon further discovery.

B. Leave to Amend

Defendants' motion seeking leave to amend to assert several new affirmative defenses is granted in part and denied in part. Leave to amend is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinksy v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. v National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]).

Plaintiff is correct that the proposed affirmative defense of lack of capacity is devoid of merit. Defendants claim they lacked capacity to enter the brokerage agreement because Chinese is their first language, and the brokerage agreement is in English. If Defendants were not sufficiently proficient in English, that does not void their capacity to enter a contract but simply requires them to make a reasonable effort to have the document explained to them (*see Kassab v Marco Shoes Inc.*, 282 AD2d 316, 316 [1st Dept 2001]).

Likewise, the affirmative defense claiming the contract violates public policy and is unconscionable is without merit. To show unconscionability there must be a showing that Defendants lacked a "meaningful choice" to enter the agreement or negotiate its terms (*see*

Kaufman v Relx Inc., 211 AD3d 580, 581 [1st Dept 2022]). However, Defendants expressly argue in opposition to the motion for summary judgment that they told Plaintiff that they refused any exclusive brokerage agreement and would have never signed it, which completely contradicts any claim that they lacked a "meaningful choice" to enter the agreement. Further Defendants fail to show how the brokerage agreement violates public policy. Therefore, leave to amend is denied as to the tenth affirmative defense alleging unconscionability and violation of public policy and the eleventh affirmative defense alleging lack of capacity.

However, leave to amend is granted as to the remainder of the affirmative defenses. The arguments raised in opposition to those affirmative defenses are fact intensive and do not meet the high bar of demonstrating the proposed amendments are patently devoid of merit. It remains an issue of fact as to whether the signatures on the brokerage agreements were procured through fraud, forgery, or mistake. Likewise, the affirmative defense of ambiguity is not patently devoid of merit given what seems to be poor and improper wording of the paragraph defining what a "covered property" is coupled with the fact that there are no covered properties listed in the brokerage agreement where the parties were to fill in the addresses deemed to be "covered properties." While these affirmative defenses may be ultimately dismissed after further discovery and on a more fully developed record, for purposes of a motion seeking leave to amend, they are not patently devoid of merit.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment is denied, without prejudice, and with leave to renew after further discovery; and it is further

ORDERED that Defendants' motion seeking leave to amend is denied as to the proposed tenth and eleventh affirmative defense, but is otherwise granted, and within ten days of entry,

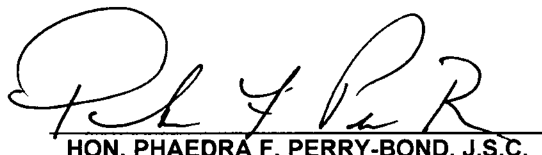
Defendants shall serve an Amended Answer in the proposed form annexed to the motion papers (NYSCEF Doc. 31) but with the tenth and eleventh affirmative defenses removed; and it is further

ORDERED that the parties shall immediately meet and confer and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed order be submitted any later than March 17, 2026. If the parties have a serious discovery dispute requiring a conference with the Court, the parties shall notify the Court so that an in-person conference can be scheduled; and it is further

ORDERED that if the parties elect to resolve this dispute through the Court's ADR program rather than engage in the expense and time of pre-trial discovery, they shall notify the Court so the appropriate referral order may be made; and it is further

ORDERED that within ten days of entry counsel for Defendants 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.



2/18/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[x] NON-FINAL DISPOSITION	
APPLICATION:	[ ] GRANTED	[ ] DENIED	[x] GRANTED IN PART	[ ] OTHER
	[ ] SETTLE ORDER		[ ] SUBMIT ORDER	
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