

**ThinkForward Fin. Group, LLC v On the Level
Enters., Inc.**

2026 NY Slip Op 31308(U)

March 31, 2026

Supreme Court, New York County

Docket Number: Index No. 652693/2019

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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THINKFORWARD FINANCIAL GROUP, LLC, and
GREENBRIER DEVELOPMENT PARTNERS, LLC,

INDEX NO. 652693/2019

Plaintiffs,

MOTION DATE _____

- v -

MOTION SEQ. NO. 005 006

ON THE LEVEL ENTERPRISES, INC., DELSHAH
CAPITAL LLC, DELSHAH-OTL-START 22 CHAPEL JV
LLC, DELSHAH-OTL-START 22 CHAPEL PROPERTY
OWNER LLC, DELSHAH/OTL 22 LLC, ANGELO
COSENTINI, and MICHAEL SHAH,

**DECISION + ORDER ON
MOTION**

Defendants.

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 252, 253, 254, 257

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 250, 251, 255, 256, 258

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

This action arises out of defendants' alleged failure to honor their payment obligations pursuant to a fee agreement between the parties, in which defendants agreed to pay plaintiffs consulting fees in exchange for plaintiffs introducing defendants to a joint development project for the redevelopment of a property owned by START Treatment and Recovery Centers (START). (NYSCEF Doc. No. [NYSCEF] 28, First Amended Complaint [FAC] ¶¶ 1-4.)

In motion sequence 005, defendants On the Level Enterprises, Inc. (OTL), Delshah Capital LLC (Delshah Capital), Delshah-OTL-Start 22 Chapel JV LLC (Chapel

JV), Delshah-OTL-Start 22 Chapel Property Owner LLC (Owner), Delshah/OTL 22 LLC (Delshah/OTL, and collectively the Delshah Defendants), and Michael Shah move pursuant to CPLR 3212 for summary judgment dismissing the amended complaint.¹ (NYSCEF 186, Notice of Motion.)

In motion sequence 006, plaintiffs ThinkForward Financial Group, LLC (ThinkForward) and Greenbrier Development Partners, LLC (Greenbrier) also move pursuant to CPLR 3212 for summary judgment on their second cause of action for breach of contract. (NYSCEF 208, Notice of Motion.)

Background

In late 2012 to early 2013, START, a New York non-for-profit corporation, began exploring the possibility of redeveloping the property located at 22 Chapel Street, Brooklyn, New York (the Property). (NYSCEF 28, FAC ¶¶ 16-18.)

On March 27, 2013, START provided OTL with a request for proposal (RFP), the purpose of which was “to solicit offers from qualified real estate developers to engage in a Joint Venture . . . to develop the [P]roperty.” (NYSCEF 199, March 27, 2013 RFP Letter.) Over the next few months, OTL and Delshah Capital worked with plaintiffs to prepare a proposal. (NYSCEF 218-223, April-May 2013 Email Correspondence.)

On May 24, 2013, OTL and Delshah Capital jointly submitted a proposal for the development of the Property. (NYSCEF 31, Joint Venture Proposal.) The proposal contemplated that the Property would be transferred to a newly formed special purpose

¹ In motion sequence 001 the court dismissed the first, third, fourth, and fifth causes of action of the amended complaint. (NYSCEF 61, October 2, 2020 Decision and Order at 1.) Thus, only the second cause of action for breach of contract survives. (*Id.*)

entity jointly owned by START, OTL, and Delshah Capital, and governed by an operating agreement. (*Id.* at 13-14.)

On June 28, 2013, OTL and Delshah Capital entered into a fee agreement with plaintiffs (the Fee Agreement). (NYSCEF 29, Fee Agreement.) The Fee Agreement set forth that plaintiffs had been retained to provide consulting services in connection with the project and would be paid “a consulting fee equal to Two Percent (2%) of the total land price²” (the Consulting Fee) for their services. (*Id.* §§ 1-2.) Moreover, the Fee Agreement provided for payment of “\$100,000 at the time that the land is contributed to the Joint Venture” and “[t]he remainder in equal monthly installments upon commencement of the construction loan for the [P]roject.” (*Id.* § 2.) The Fee Agreement is “binding on and inure to the benefit of the undersigned, and the heirs, distributees, executors, administrators, affiliates, designees, successors, and assigns of the undersigned, and any other actual or proposed parties to the aforementioned contract.” (*Id.* § 3.)

In the summer of 2013, START awarded the Project to OTL and Delshah Capital, and the joint venture began its undertaking. (See NYSCEF 225, June 2013 Email Correspondance; NYSCEF 238, Press Release.)

On December 17, 2014, START and Delshah/OTL executed an operating agreement for Chapel JV (the Operating Agreement), for the purpose of transferring title to the Property and constructing the project. (NYSCEF 200, Operating Agreement § 1.04.) Also, on December 17, 2014, START and Delshah/OTL entered into a

² The “agreed fair market value” of the Property was \$24,000,000. (NYSCEF 32, Contribution Agreement § 2 [a].)

Contribution Agreement that provided for the transfer of the Property. (NYSCEF 32, Contribution Agreement at 1.)

On December 6, 2018 ThinkForward sent an invoice to Chapel JV for fees due in the amount of \$480,000, calculated as 2% of the \$24,000,000 capital contribution value. (NYSCEF 195, December 6, 2018 Invoice; NYSCEF 231, December 7, 2019 Email.)

On December 31, 2018, the Property was conveyed to Owner, the Joint Venture purchaser. (NYSCEF 34, Property Deed.)

On January 9, 2019, ThinkForward sent a second invoice to Chapel JV, this time for \$131,666, which included a \$100,000 payment for transfer of the Property into the Joint Venture and \$31,666 for the first of twelve installment payments. (NYSCEF 196, January 9, 2019 Invoice; NYSCEF 231, January 9, 2019 Email.)

After making repeated demands for payments (NYSCEF 232, January 16, 2019 Email; NYSCEF 233, March 21, 2019 Demand Letter), plaintiffs initiated this action on May 7, 2019. (NYSCEF 1, Summons and Complaint.)

Legal Standard

Under CPLR 3212, “the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citations omitted].) Once the movant has made such a showing, the burden shifts to the opposing party to demonstrate, with admissible evidence, facts sufficient to require a trial, or summary judgment will be granted. (*Winegrad v NY Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].)

Discussion

In the FAC, plaintiffs allege that defendants breached the Fee Agreement by failing to pay (i) the \$100,000 fee due upon START's transfer of the Property to Owner and (ii) twelve equal monthly installments of \$35,750 beginning when defendants closed on the construction loan for the project. (NYSCEF 28, FAC ¶¶ 90, 94-95.) Plaintiffs move for summary judgment on their breach of contract claim against defendants on the grounds that they have established the requisite elements as a matter of law. Defendants also seek summary judgment on plaintiffs' breach of contract claim, arguing that the fee claimed by plaintiffs is prohibited by Real Property Law § 442-d. For the reasons stated below, both plaintiffs' and defendants' motions for summary judgment are denied, as material issues of fact abound.

Motion 005

In motion sequence 005, defendants move for summary judgment on plaintiffs' breach of contract claim on the grounds that the claim is barred by Real Property Law (RPL) § 442-d. RPL § 442-d bars a breach of contract claim where real estate is the "dominant feature" of the transaction between the parties, and plaintiff was not a licensed real estate broker or salesperson on the date the cause of action allegedly accrued. (*Cooper v Arnpr Realty Trust, Inc.*, 239 AD3d 566, 566 [1st Dept 2025].) Specifically, RPL § 442-d provides that

"[n]o person, copartnership, limited liability company or corporation shall bring or maintain an action in any court of this state for the recovery of compensation for services rendered, in any place in which this article is applicable, in the buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate without alleging and proving that such person was a duly licensed real estate broker or real estate salesperson on the date when the alleged cause of action arose." (Real Property Law § 442-d.)

Here, it is undisputed that plaintiffs were not licensed real estate brokers or salespersons. (See Real Property Law §§ 440 [1], [3]; NYSCEF 28, FAC ¶ 5 [provides that plaintiffs are “not [] licensed real estate brokers”] NYSCEF 64, Tr [mot. seq. no. 002] at 19:1-2 [plaintiffs’ counsel states that plaintiffs “weren’t brokers; they weren’t real estate brokers.”]; NYSCEF 204, eAccessNY Printout [showing that plaintiffs do not have any licenses].) Thus, plaintiffs’ breach of contract claim is barred by RPL § 442-d if real estate was the “dominant feature” of the transaction between the parties and plaintiffs performed services akin to those of a real estate broker or salesperson.

Real estate is the dominant feature of a transaction if real estate is “the principal element involved in the transaction” and not “a mere incident or incidental feature.” (*Sorice v Du Bois*, 267 NYS2d 227, 228 [1st Dept 1966].) Here, defendants have made a prima facie showing that real estate was the dominant feature of the transaction between the parties by submitting the recorded deed for the Property, evidencing the conveyance of the real property located at 22 Chapel Street, Brooklyn, New York from START to defendant Owner on December 31, 2018. (NYSCEF 34, Property Deed.) Defendants also point out that the Real Property Transfer Report annexed to the deed, describes the transaction as a “sale” and sets forth the sale price of \$26,450,000. (*Id.* at 11/14 [NYSCEF pagination].) Moreover, defendants note the demolition of a building and construction of a new building on the Property, as described in of the Contribution Agreement (NYSCEF 32), as further evidence that real estate was “the essential component of the transaction” because without the conveyance of the Property, “the planned redevelopment would be impossible.” (NYSCEF 206, Defendant’s MOL at 11.)

Defendants also make out a prima facie showing that plaintiffs rendered services akin to that of real estate brokers. Specifically, defendants point to the Fee Agreement, in which plaintiffs agreed to be paid 2% of “the total land price” for “facilitating this transaction advising on deal terms and structuring and advising on an ongoing basis.” (NYSCEF 29, Fee Agreement § 2.) Defendants also note that payment being due upon the transfer of the Property (*id.* § 2 [a]), and the fee demanded increasing along with the market value of the Property (see NYSCEF 8, March 21, 2019 Letter at 3 [demanding a Consulting Fee in the amount of \$529,000 due to the adjusted Property value]), is further evidence of a broker relationship. Finally, defendants point out that the services rendered by plaintiffs, as detailed by ThinkForward’s owner, Sunil Aggarwal (NYSCEF 192, Tr at 124: 13-25 [services included “providing information on the project,” having meetings with the START team, “arrang[ing] a tour of the facility,” and reviewing the RFP]) all helped “to facilitate the purchase and sale of the [Property]” (NYSCEF 206, Defendants’ MOL at 19 [internal quotation marks omitted]; see also *PrinceRidge Grp. LLC v Oppidan, Inc.*, 2014 US Dist LEXIS 201073, *16 [SD NY 2014], *affd* 589 Fed Appx 38 [2d Cir 2015] [provides that “[f]inding a potential buyer for a property is a type of service” that fits within the scope of § 442-d]; *Ling’s Props., LLC v Bode*, 94 AD33 951, 952 [2d Dept 2012] [held that “charg[ing] a fee for services facilitating the purchase and sale of the property” may fall within the scope of § 442-d].)

To defeat a summary judgment motion based on RPL § 442-d, a plaintiff must generally “demonstrate[] that the underlying transaction was actually more than a straight forward purchase of real property, or that the services purportedly rendered . . . were for any purpose other than to facilitate defendants' purchase.” (*Levinson v*

Genessee Assocs., 172 AD2d 400, 400 [1st Dept 1991] [internal citation omitted]; see also *Fieger v Pitney Bowes Credit Corp.*, 2002 US Dist LEXIS 17416, *28 [SD NY 2002], *affd* 69 Fed Appx 31 [2d Cir 2003] [“[i]n determining whether a person has engaged in real estate brokering or some other kind of service, courts look to the nature of the services provided and disregard the labels chosen by the parties.” (citations omitted)].)

Here, plaintiffs satisfy their burden by arguing that “the dominant feature of the [p]roject was redevelopment of the Property in order to satisfy START’s desire to generate revenue from the Property.” (NYSCEF 252, Plaintiffs’ MOL in Reply at 4.) Plaintiffs evidence this by submitting (i) the affidavit of Sudhakar “Sam” Duvoor, START’s Chief Financial Officer, in which Duvoor explains that START sought to redevelop the Property because it was “underutilized” and redevelopment could provide START “new administrative offices” and the opportunity to “generate income” (NYSCEF 243, Duvoor aff ¶ 2) and (ii) the deposition transcript of Michael Shah, Delshah Capital’s principal, where he testifies that START “could have sold the property and gotten money, but they wanted it developed to create a recurring revenue stream” (NYSCEF 212, Tr at 123:25-124:3). Plaintiffs also point out that the stated purpose of START’s RFP was “to develop the [P]roperty” (NYSCEF 211, RFP) and defendants’ joint venture proposal similarly defined the purpose to be development of the land “into a residential rental building” whose “distribution will constitute a return of capital to [START]” (NYSCEF 224, Joint Venture Proposal at 13). Moreover, plaintiffs dispute that a “sale” of the Property ever took place because the Property was transferred from START to Chapel JV, a joint venture that START held an 85% ownership interest in. (See

NYSCEF 31, Joint Venture Proposal at 13 [provide that ownership will be allocated according to the value of capital contribution].)

Moreover, plaintiffs satisfy their burden of demonstrating “that the services purportedly rendered . . . were for any purpose other than to facilitate defendants' purchase.” (*Levinson*, 172 AD2d at 400 [1st Dept 1991].) Plaintiffs argue that their roles were as advisors, not real estate brokers. (See *Zedeck*, 106 AD3d at 465 [1st Dept 2013] [RPL § 442-d “is not broad enough to cover . . . every transaction in which an interest in real estate may be part of the transaction” (internal quotation marks and citations omitted)].) In support, plaintiffs submit Shah’s testimony (NYSCEF 212, Depo Tr at 178: 5-24, 194: 10-21), and email correspondence between the parties (NYSCEF 218-223, April-May Emails; NYSCEF 225, June Emails; NYSCEF 226, August Emails), showing that plaintiffs advised defendants on how to respond to the RFP and structure their Joint Venture Proposal “in a way that would be more receptive to START.” (See *Transaction Advisory Servs., LLC v Silver Bar Holding, LLC*, 38 AD3d 241, 241 [1st Dept 2007] [found that providing “an array of investment advice and services, including finding investors” to purchase real estate, did not automatically make someone a real estate broker].)

Ultimately, whether real estate was the “dominant feature” of the transaction between the parties and the services rendered by plaintiffs were akin to those of a real estate broker are questions of material fact. (*Zedeck v Derner Mgt. Inc.*, 106 AD3d 465, 466 [1st Dept 2013] [held that “[t]he issue of whether a party’s services fall under [RPL § 442-d] is one of fact” (citations omitted)].) Accordingly, defendants’ motion for summary judgment must be denied.

Motion 006

In motion sequence 006, plaintiffs move for summary judgment on their breach of contract claim as a matter of law. The elements of breach of contract claim are “the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages.” (*Lebedev*, 193 AD3d at 182-83 [1st Dept 2021] [internal quotation marks and citation omitted].)

Here, plaintiffs submit the June 28, 2013 Fee Agreement executed by plaintiffs, OTL, and Delshah Capital (NYSCEF 229) as evidence of a contract. Further, plaintiffs offer proof of their performance of the services called for under the Fee Agreement with correspondence between themselves and defendants demonstrating that plaintiffs advised defendants on how to respond to the RFP and provided insights and information on how to best structure the Joint Venture Proposal. (NYSCEF 218-223, April-May Emails.) As to breach, plaintiffs offer (i) the December 31, 2018 deed for the Property (NYSCEF 228) that shows the contribution of the land to the joint venture, which, in turn, triggered the payment obligation pursuant to the Fee Agreement (see NYSCEF 229, Fee Agreement § 2 [a]) and (ii) January 2019 email correspondence (NYSCEF 231-232) and a March 21, 2019 demand letter (NYSCEF 233) setting forth defendants’ refusal to pay the agreed Commission Fee. Finally, plaintiffs offer the deed (NYSCEF 228) that states the Property’s sale price of \$26,450,000 and the Fee Agreement (NYSCEF 229) entitling plaintiffs to 2% of the total land price value, as evidence of damages of \$529,000.

Moreover, plaintiffs have also demonstrated that the non-signatory defendants are bound by the Fee Agreement. Specifically, plaintiffs have submitted the Joint

Venture Proposal of OTL and Delshah Capital, bearing the signature of the principal of each entity, Michael Shah and Angelo Cosentini, as evidence that the two entities were joint venturers. (NYSCEF 3, Joint Venture Proposal at 1.) The Joint Venture Proposal was shared with Cosentini on May 24, 2013, about a month prior to Cosentini signing the Fee Agreement on behalf of OTL and Delshah Capital. (NYSCEF 2, June 28, 2013 Fee Agreement; see also NYCEF 241, July 10, 2013 Email from Cosentini to Shah stating “[t]his is what Sunil and Stephan Parnes would like **us** to sign. Thoughts?” [emphasis added].) Because the parties held themselves out as joint-venturers, OTL’s execution of the Fee Agreement is binding on Delshah Capital. (*Travelers Prop. Cas. Co. of Am. v Harleysville Ins. Co. of NY*, 2020 NY Slip Op 50658[U], *3 [Sup Ct, NY County 2020] “[u]nder New York law, joint ventures are governed by the same legal rules as partnerships . . . [l]ike partners in a partnership, members of a joint venture act as principals and as agents for each other . . . [and] the acts of one member within the scope of the venture are binding upon the others” (citations omitted)).) Plaintiffs also offer evidence that the remaining Delshah Defendants are bound by the Fee Agreement, by pointing to the language therein, which provides that the agreement “shall be binding on and inure to the benefit of the undersigned, and the heirs, distributees, executors, administrators, affiliates, designees, successors, and assigns of the undersigned, and any other actual or proposed parties to the aforementioned contract.” (NYSCEF 2, Fee Agreement § 4.) The Delshah Defendants are affiliates of Delshah Capital. (NYSCEF 212, Shah Depo Tr at 45: 7-9 [Shah testifying that “[t]here are affiliates of Delshah Capital that are . . . involved in the ownership of 22 Chapel.”].)

Accordingly, plaintiffs have met their burden on summary judgment by submitting admissible evidence that defendants have an obligation to pay the Commission Fee and their refusal to do so constitutes a breach of the Fee Agreement. (*See Sears Holdings Mgt. Corp. v Rockaway Assoc., LP*, 176 AD3d 433, 433 [1st Dept 2019].) To defeat plaintiffs' motion for summary judgment, defendants must "establish the existence of material issues of fact." (*Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439, 454 [2016].) To satisfy this burden, defendants (i) dispute the Delshah Defendants' liability under the Fee Agreement, and (ii) invoke Real Property Law § 442-d.

Delshah Defendants' Liability Under the Fee Agreement

Defendants argue that Delshah Capital cannot be held liable for breach of the Fee Agreement because Delshah Capital was not a signatory to this contract and Cosentini was not authorized to bind Delshah Capital. Defendants offer the testimony of Aggarwal, ThinkForward's owner, who testifies that he was never told that Cosentini was an officer, agent, or employee of Delshah Capital. (NYSCEF 192, Depo Tr at 215:5-216:20.) However, this does not raise a triable issue of fact.

As previously stated, joint ventures are governed by the same legal rules as partnerships. Thus, where parties hold themselves out as joint venturers, the acts of one member are binding upon the other. (*Travelers Prop. Cas. Co. of Am.*, 2020 NY Slip Op 50658[U], *3 [Sup Ct, NY County 2020].) Thus, it is not determinative that Aggarwal was never *told* that Cosentini was not an officer, agent, or employee of Delshah Capital. (*See Partnership Law § 27.*) OTL and Delshah Capital held themselves out as joint venturers when they jointly submitted and signed the May 24, 2013 Joint Venture Proposal (NYSCEF 3). The July 10, 2013 email from Cosentini to

Shah, in which Cosentini requests Shah's input on the Fee Agreement that plaintiffs' "would like **us** to sign", is further evidence that Cosentini acted on behalf of both OTL and Delshah Capital when he signed the Fee Agreement. (NYSCEF 241, Jul 10, 2013 Email.) Based on the foregoing, the court finds that Cosentini's signature is binding upon Delshah Capital, and Delshah Capital can be held liable under the Fee Agreement.

Defendants further argue that the Delshah Defendants cannot be held liable under the Fee Agreement because the contract explicitly states that the agreement is binding only upon the affiliates "of the undersigned" and the Delsha Defendants were not affiliates of the undersigned, OTL. (NYSCEF 2, Fee Agreement § 4.) Having found that Cosentini's signature was binding upon Delshah Capital, it follows that the affiliates of Delshah Capital were bound by the Fee Agreement pursuant to § 4 of the contract. Thus, the court finds that defendants fail to raise an issue of triable fact.

Real Property Law § 442-d

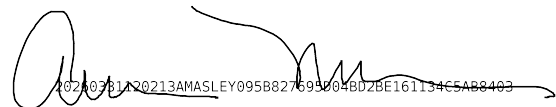
Defendants also argue that Real Property Law § 442-d bars plaintiffs' breach of contract claim. Applying the same analysis as detailed above, the court finds that material questions of fact exist as to whether real estate was the "dominant feature" of the transaction between the parties and the services rendered by plaintiffs were akin to those of a real estate broker or salesperson. Because these questions must be answered to establish if plaintiffs' breach of contract claim can be maintained, the issue of defendants' liability for breach is premature and plaintiffs' motion for summary judgment must be denied.

Accordingly, it is

ORDERED that motion sequence 005 is denied; and it is further

ORDERED that motion sequence 006 is denied; and it is further

ORDERED that a pre-trial conference will be held on May 8, 2026 at 12:30, to discuss motions in limine and trial dates. If there are no motions in limine, then the parties will select a trial date. The trial date will not be selected until the court issues decisions on any motions in limine. The next available trial date is in March 2027.



<u>3/31/2026</u> DATE		<u>ANDREA MASLEY, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE