

**Brown Harris Stevens Residential Sales, LLC v Von  
Karais**

2026 NY Slip Op 31950(U)

May 5, 2026

Supreme Court, New York County

Docket Number: Index No. 153159/2023

Judge: Ashlee Crawford

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART

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BROWN HARRIS STEVENS RESIDENTIAL SALES, LLC	INDEX NO.	<u>153159/2023</u>
Plaintiff,	MOTION DATE	<u>06/30/2023</u>
- v -	MOTION SEQ. NO.	<u>001</u>
BENEDIKTA KARAI SL VON KARAI S,		
Defendant.		

**DECISION + ORDER ON  
MOTION**

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HON. ASHLEE CRAWFORD:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18  
were read on this motion to/for DISMISS.

In this action alleging breach of a real estate brokerage agreement, defendant Benedikta Karaisl von Karais moves pursuant to CPLR 3211 (a) (1) and (a)(7) to dismiss the complaint. Plaintiff Brown Harris Stevens Residential Sales, LLC opposes the motion.

**Allegations**

Plaintiff, a real estate brokerage, entered a Rental Exclusive Right to Lease Agreement with Defendant on October 1, 2018 (“Agreement” [NYSCEF Doc. 6]). The Agreement, in effect from November 1, 2018 through April 1, 2019, authorized Plaintiff to act as Defendant’s agent for finding prospective tenants for Defendant’s Brooklyn townhouse (“property”) during its term. Plaintiff was entitled to a commission in the event the property was leased during the Agreement’s term, which also provided that Plaintiff would receive a commission in the event the property was purchased by a tenant it found:

When and if a lease of the property is fully executed, we will seek and be paid our commission and compensation for services rendered only from the tenant, at the rate of fifteen percent (15%) of one year's rent. The lease shall contain a provision recognizing us as a Broker in the transaction. Should the tenant, or anyone acting on their behalf purchase the property from you during or after the term of the lease, Brown Harris Stevens' commission to be paid by you will be six percent (6%) of the total sale price. This commission will be payable at the closing [Agreement § 8].

Defendant executed a lease with non-party Elizabeth Burch ("Tenant") during the Agreement's term on February 24, 2019 ("First Lease" [NYSCEF Doc. 7]). The First Lease recognized Plaintiff as the Broker and Plaintiff received a 15% commission as provided under the Agreement (Complaint ¶¶ 10-12). Plaintiff and Tenant executed a further lease for the property on August 1, 2020, for a one-year term, with Plaintiff again listed as broker ("Second Lease" [NYSCEF Doc. 8]). Tenant continued to reside at the property under a month-to-month tenancy after the Second Lease term expired.

On February 15, 2022, Tenant purchased the property from Plaintiff at a price of \$2.8 million (Complaint ¶ 13). By letter dated August 3, 2022, Plaintiff demanded that Defendant pay it a 6% commission in the sum of \$168,000 for the sale of the property, pursuant to Section 8 of the Agreement (NYSCEF Doc. 9). Defendant did not tender payment.

In the verified complaint, Plaintiff asserts a single cause of action alleging Defendant's breach of the Agreement due to her refusal to pay Plaintiff a commission equal to 6% of the property's sale price. Defendant argues for dismissal of the action on the grounds that Plaintiff was not involved with the property's sale, that the sale took place outside of the Agreement's term, that Section 8 of the Agreement cannot impose an indefinite duty to pay the sale commission, and that any ambiguities in the Agreement should be construed against Plaintiff as the drafting party.

### Discussion

On a motion to dismiss pursuant to CPLR 3211, “the allegations in the complaint are to be afforded liberal construction, and the facts alleged therein are to be accepted as true, according a plaintiff the benefit of every possible favorable inference and determining only whether the facts alleged fit within any cognizable legal theory” (*M & E 73-75 LLC v 57 Fusion LLC*, 189 AD3d 1, 5 [1st Dept 2020], *lv dismissed* 36 NY3d 1086 [2021]; *see also Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

A plaintiff pleads a cause of action for breach of contract where it alleges that a contract exists, that it performed in accordance with the contract, that the defendant breached its contractual obligations, and that the breach resulted in damages (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]). Where a written contract “unambiguously contradicts the allegations supporting a litigant’s cause of action for breach of contract, the contract itself constitutes documentary evidence warranting the dismissal of the complaint pursuant to CPLR 3211 (a) (1)” (*150 Broadway N.Y. Assocs., L.P. v Bodner*, 14 AD3d 1, 5 [1st Dept 2004]).

“[I]n the absence of an agreement to the contrary, a real estate broker will be deemed to have earned his commission when he [or she] produces a buyer who is ready, willing and able to purchase at the terms set by the seller” (*SPRE Realty, Ltd. v Dienst*, 119 AD3d 93, 97 [1st Dept 2014][citation omitted]). “[T]he broker must be the ‘procuring cause’ of the transaction, meaning that there must be a direct and proximate link, as distinguished from one that is indirect and remote, between the introduction by the broker and the consummation of the transaction” (*id.* at 98 [internal quotation marks and citation omitted]). However, “a broker with an exclusive right to sell need not show that it was the procuring cause of the sale” (*Sioni & Partners, LLC v Vaak Props., LLC*, 93 AD3d 414, 417 [1st Dept 2012]). “[A] contract giving rise to an exclusive right of sale must clearly and expressly provide[ ] that a commission [is] due upon sale by the owner or exclude[ ] the owner from independently negotiating a sale” (*Morpheus Capital*

*Advisors LLC v UBS AG*, 23 NY3d 528, 535 [2014] [internal quotation marks and citations omitted]).

Here, the Agreement expressly stipulates that Plaintiff is entitled to a commission in the event the Tenant procured by Plaintiff purchased the property during or after the lease term (Agreement § 8). As the plain language of the Agreement unambiguously authorizes a commission payment under the circumstances alleged in the complaint, the Court finds that Plaintiff sufficiently alleges it had an exclusive right of sale with respect to Tenant's purchase of the property (*cf. Far Realty Assocs. Inc. v RKO Delaware Corp.*, 34 AD3d 261, 262 [1st Dept 2006]). It is therefore unnecessary for Plaintiff to allege that it was the "procuring cause" of the property's purchase (*see Sioni & Partners, LLC*, 93 AD3d at 417).

Defendant's contention that Plaintiff is not entitled to a commission because the sale to Tenant occurred outside the six-month term of the Agreement is also unavailing. The Agreement's term set forth in Section 12 concerns Plaintiff's exclusive right to lease, as the preamble designating Plaintiff as exclusive agent makes clear: "during the term of this Agreement, Broker will be entitled to a commission, if Broker . . . finds a tenant." Section 8 does not refer to the six-month term of the Agreement when setting forth Plaintiff's entitlement to a sales commission; rather, it provides for the commission in the event Tenant purchased the property "from [Defendant] during or after the term of the lease." Applying the six-month term to this portion of Section 8 of the Agreement would undermine its sales commission provision (*see NRT N.Y., LLC v Morin*, 123 Ad3d 590, 590 [1st Dept 2014] [five-month expiration period in brokerage agreement only applied to broker's exclusive right to rent subject apartment, "not to the additional circumstances anticipated by the agreement where the renter, timely procured by the broker, ultimately purchased the apartment"]). Defendant therefore fails to establish that the Agreement's time limitation in Paragraph 12 refutes Plaintiff's claim for a sales commission as a matter of law (*id.* at 591).

Defendant last contends the Agreement is unenforceable insofar as its sale commission provision is too vague and indefinite because it creates the possibility of Plaintiff receiving the perpetual right to receive a commission for the sale of the property. The Court does not credit this argument as the Agreement’s sale commission provision contains the sort of “inherent limits that serve[] to adequately narrow its scope” – namely, limiting its applicability to the event the property was sold to a tenant found by Plaintiff during the Agreement’s duration (see *New York Commercial Realty Group, LLC v Beau Pere Real Estate, LLC*, 216 AD3d 793, 797 [2d Dept 2023]). On its face, the Agreement is sufficiently clear and definite in its terms, and the Court therefore finds Plaintiff states a cause of action for breach of contract with respect to Defendant’s failure to pay a sale commission as set forth in Section 8.

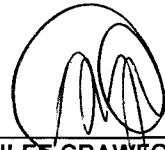
Accordingly, it is hereby

**ORDERED** that defendant’s motion to dismiss the complaint is DENIED; and it is further

**ORDERED** that defendant shall file and serve an answer within 30 days of service of this order with notice of entry; and it is further

**ORDERED** that the parties shall appear for a preliminary conference on July 15, 2026, at 10:00 AM in room 1166, 111 Centre Street, New York, New York.

This constitutes the decision and order of the Court.

5/5/2026			
DATE		ASHLEE CRAWFORD, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	
	<input checked="" type="checkbox"/> DENIED		