SHORT FORM ORDER

INDEX No. 000207/2022
CAL. No. 202500939CO

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY

PRESENT:

Hon. FRANK A. TINARI
Justice of the Supreme Court

MOTION DATE 12/23/25
ADJ. DATE 2/17/26
Mot. Seq. # 002 MG

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NEST SEEKERS LLC, d/b/a NESTSEEKERS INTERNATIONAL,

Plaintiff,

- against -

ANDREW SILBERSTEIN, MICHELE SILBERSTEIN, 949 OCEAN LLC, DOUGLAS ELLIMAN, LLC and BEL SONGO REALTY LLC,

Defendants.

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Upon the following papers read on this motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendants Andrew Silberstein and Michele Silberstein, filed November 21, 2025; Notice of Cross-Motion and supporting papers __; Answering Affidavits and supporting papers by plaintiff, filed January 20, 2026; Replying Affidavits and supporting papers by defendants Andrew Silberstein and Michele Silberstein, filed February 16, 2026; Other __; it is

ORDERED that the motion by defendants Andrew Silberstein and Michele Silberstein for summary judgment dismissing the complaint against them is granted.

Plaintiff Nest Seekers LLC d/b/a Nest seekers International commenced this action to recover a real estate brokerage commission purportedly due it by defendant Douglas Elliman, LLC, for the sale of property located at 949 Ocean Road in Bridgehampton, New York. The property was owned by defendant Bel Songo Realty LLC prior to the subject sale. Plaintiff allegedly procured buyers, defendants Andrew Silberstein and Michele Silberstein (hereinafter referred to collectively as the Silberstein defendants), for the property. The first cause of action alleges that defendants Bel Songo Realty Investments LLC and Douglas Elliman repudiated their contracts with plaintiff in refusing to recognize it as the real estate broker entitled to a two percent commission upon the sale of the subject property. The second cause of action asserts a claim for tortious interference with a contract against the

Silberstein defendants, alleging that while they were represented by plaintiff's agent, they knowingly entered into a contract to purchase the subject property, omitting plaintiff as the real estate broker.

The Silberstein defendants move for summary judgment dismissing the complaint against them, arguing that no contract was breached and that plaintiff was not the procuring cause of the sale. In support of their motion, the Silberstein defendants submit, among other things, copies of the pleadings, an affirmation of Andrew Silberstein, a transcript of the deposition testimony of Mark Langowski, a real estate agent employed by plaintiff, and correspondence between the parties. Plaintiff opposes the motion, arguing that it raised a triable issue of fact as to whether it was the procuring cause of the sale. It also contends that the Silberstein defendants' conduct demonstrates a conscious effort to avoid paying the commission. In opposition, plaintiff submits, among other things, an affirmation of Langowski and correspondence between the parties.

Mark Langowski, who is employed by Nestseekers International as a real estate agent, testified that he initially met the Silberstein defendants through his physical fitness business. He testified that he met with the Silberstein defendants to discuss what they were looking for in a home and their price range. He testified that he did not discuss a commission payment as the seller pays the commission on the sale of a house. He also testified that he did not have a written agreement with the Silberstein defendants as he viewed them as friends. He testified that he brought the house located on 949 Ocean Road, which at the time was listed for sale by Sotheby's, to the attention of the Silberstein defendants. Although the property was under contract, the listing agent had informed him that the sale might not happen, so he visited the house with the Silberstein defendants and they made an offer on the house in January 2020 for $12,500,000. He testified while he included a 2% commission for himself in the offer, a 2% commission was already indicated on the listing. Langowski testified that the Silbersteins' offer was not accepted, and that the subject property was back on the market in the spring of 2020 with Zachary Tunick as the listing agent. He testified that he contacted Tunick to inform him that he had interested buyers, and on April 21 he made an offer to purchase the 949 Ocean Road property for $11,900,000, with a 2.5% commission, that the Silberstein defendants authorized the offer, and that the offer was not accepted

Langowski further testified that during the same time period the Silberstein defendants were also interested in a property located on Rose Way, which was under construction. He testified that the Silberstein defendants were "stringing" the builder along for some time, and that he entered into an agreement on June 18, 2020 with the builder to protect himself. He explained that the agreement was between him, the builder and another agent whereby he and the other agent would split a 5% commission if they found a buyer for the property. He testified that the agreement with the builder did not disadvantage the Silberstein defendants as other potential buyers would also have to pay a commission. According to Langowski, when he informed the Silberstein defendants about the agreement with the builder, Andrew was upset about it and communication with him lessened, but that he primarily communicated with Michelle. He testified that the Silberstein defendants eventually purchased the subject property for $11,250,000.

Langowski's affirmation was similar to his deposition testimony, though in his affirmation he states that he showed the Silberstein defendants the subject property on July 22, 2020. He also states that on November 21, 2020, when he was advised by the listing agent for the subject property that the seller intended to reduce the asking price to $11,850,000, he promptly communicated this information to Michelle and contacted the listing agent as to the Silberstein defendants' renewed interest. He states that during a November 25, 2020 conversation with the listing agent, the agent expressed confusion as she had been communicating directly with the Silberstein defendants regarding the property, notwithstanding his ongoing involvement and prior negotiations on their behalf. Langowski states that he contacted Michelle to clarify the status of the transaction and his role, but she provided evasive responses and avoided any substantive discussion regarding the property or negotiations. He states that he introduced the Silberstein defendants to the subject property, arranged showings, conveyed pricing guidance, and negotiated material terms, believing he remained their broker, and that the Silberstein defendants' conduct of secrecy and evasiveness showed a deliberate effort to exclude Nest Seekers from the final transaction.

Andrew Silberstein states in his affirmation that his family met Langowski at Harmony Athletic Club. He states that when Langowski learned that they were interested in purchasing a home, he informed them he had recently gotten his real estate license and asked if he could help with the search. Silberstein states that he was skeptical given Langowski's lack of experience, but agreed to meet with him, and that Langowski sent some listings for their consideration. He states that Langowski never asked them to sign any disclosure forms or a buyer's agent agreement, and that they never discussed what commission was expected. He states that in January 2020, Langowski sent them the listing for the subject property, but that when they expressed interest, they were notified that it had gone to contract. He states that later that month, Langowski advised them that the property might be falling out of contract and they submitted an offer of $12,500,000. He states that he did not authorize Langowski to include a demand for a 2% commission in the offer. He states that the offer was not accepted.

Silberstein states that in March 2020, he and his wife became interested in a property located at 114 Rose Way in Bridgehampton, New York, which was still under construction and had not yet been listed for sale. He states that Langowski and the builder of the Rose Way property signed an exclusion agreement on June 18, 2025, under which the builder agreed to pay Langowski a 5% commission, regardless of the listing real estate agent, and that the agreement was valid for 12 months. He states that Langowski never informed them about this exclusion agreement, but that he learned of it when Langowski e-mailed them a copy of it in September 2020. Silberstein states that he explained to Langowski the exclusion agreement put them in a clear disadvantage as they would be less desirable buyers compared to unrepresented buyers or buyers whose agents were merely willing to accept a portion of another broker's commission. He states that Langowski contacted him on September 9th and 12th, asking to explain how the exclusion agreement would not put the Silbersteins at a disadvantage and whether he should attend a meeting regarding the Rose Way property. Silberstein states that he told Langowski not to attend the meeting and did not respond to further attempts by Langowski to contact him. He states that he responded one time to Langowski to express that what occurred with the Rose Way property was "entirely unacceptable" and that he had nothing more to discuss. Silberstein states that on September 19, he reached out to Zachary Tunick of Douglas Elliman, who was the new listing agent for the 949 Ocean Road property, and met with him to express continued interest in the property. He states that Langowski was not informed or invited to this meeting.

Silberstein further states that he did not believe there was any obligation to continue working with Langowski regarding the subject property as there was no buyer's agent agreement or disclosure forms, and that their relationship had been terminated in early September 2020. He states that the independent dealings with the seller through Douglas Elliman included a walk-through of the property with Tunick on September 19 and several subsequent phone calls regarding the property and purchase price over the subsequent months. He states that on November 25, 2020, he sent a text message to Tunick with an offer to purchase the property for $11,250,000, that the offer was accepted the same day, and that they negotiated the terms of the contract through counsel and closed on the property on December 16, 2020. He states that Langowski played no role in making the offer on the property, negotiating the terms of the contract, or preparing for the closing. Silberstein states that he was never advised by Tunick, Langowski, or anyone else that Douglas Elliman was obligated to pay 50% of its commission to plaintiff if he and his wife purchased the property. He further states that the price they paid for the property was the same price paid at closing, completely unaffected by whether Douglas Elliman chose to split half of the commission it was paid by the seller.

On a motion for summary judgment the movant bears the initial burden and must tender evidence sufficient to eliminate all material issues of fact (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). Once the movant meets this burden, the burden shifts to the opposing party to demonstrate that there are material issues of fact, however, mere conclusions and unsubstantiated allegations are insufficient to raise any triable issues of fact (*see* ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]; ***Perez v Grace Episcopal Church***, 6 AD3d 596, 774 NYS2d 785 [2d Dept 2004]). The court's function is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility; therefore, in determining the motion for summary judgment, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see* ***Roth v Barreto***, 289 AD2d 557, 735 NYS2d 197 [2d Dept 2001]; ***O'Neill v Town of Fishkill***, 134 AD2d 487, 521 NYS2d 272 [2d Dept 1987]).

"Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom" (***Lama Holding Co. v Smith Barney***, 88 NY2d 413, 424, 646 NYS2d 76 [1996]; *see* ***Hildreth Real Estate Advisors, LLC v Learned Hands Ct., LLC***, 247 AD3d 1159, 253 NYS3d 299 [2d Dept 2026]). "To make out a claim [of] tortious interference with business relationships, a plaintiff must show that the defendant interfered with the plaintiff's business relationships either with the sole purpose of harming the plaintiff or by means that were unlawful or improper" (***Qosina Corp. v C&N Packaging, Inc.***, 96 AD3d 1032, 1034, 948 NYS2d 308 [2d Dept 2012]; *see* ***Moulton Paving, LLC v Town of Poughkeepsie***, 98 AD3d 1009, 950 NYS2d 762 [2d Dept 2012]).

Here, the Silberstein defendants have established their prima facie entitlement to summary judgment by demonstrating that they did not tortiously interfere with a brokerage agreement (*see*

Delibero v Duloc, 199 AD3d 600, 158 NYS3d 68 [1st Dept 2021]; ***Fire Is. Real Estate, Inc. v Colwell Banker Residential Brokerage***, 131 AD3d 507, 15 NYS3d 159 [2d Dept 2015]; ***Jagarnauth v Massey Knakal Realty Servs., Inc.***, 104 AD3d 564, 961 NYS2d 415 [2d Dept 2013]; ***Commercial Realty Servs. of Long Is., Inc. v Mehran Enters., Ltd.***, 194 AD3d 1008, 149 NYS3d 493 [2d Dept 2001]). While the second amended complaint alleges that there is a co-brokerage agreement whereby plaintiff is entitled to a two percent commission, no co-brokerage agreement was ever produced. It also alleges that as defendant Douglas Elliman is a member of the multiple listing service (MLS), it is a member to the "universal Co-Brokerage Agreement Rules and Regulations." However, there is no evidence that the Silberstein defendants had knowledge of such agreement. Rather, Andrew Silberstein states in his affirmation that he was never advised that Douglas Elliman was bound by any sort of co-brokerage agreement. Moreover, Langowski testified that he did not discuss a commission payment with the Silberstein defendants as the seller pays the commission on the sale of a house. Furthermore, there is no evidence that the Silberstein defendants intentionally procured a breach of the purported co-brokerage agreement. Silberstein states in his affirmation that he did not believe there was an obligation to continue working with Langowski regarding the subject property as they never signed a buyer's agent agreement and Langowski never provided any disclosure forms. It further states that the relationship with Langowski had been terminated in early September 2020. The evidence submitted by the Silberstein defendants demonstrates that the offers submitted by Langowski on behalf of the Silberstein defendants for the subject property were rejected, and that the offer which was eventually accepted by the seller of the subject property was negotiated by the Silberstein defendants. In opposition, plaintiff failed to raise a triable issue of fact (*see* ***City RE Group, LLC v 2633 Ocean Realty, LLC***, 221 AD3d 653, 200 NYS3d 28 [2d Dept 2023]; ***Astro Kings, LLC v Scannapieco***, 185 AD3d 537, 127 NYS3d 493 [2d Dept 2020]). Accordingly, the motion by the Silberstein defendants for summary judgment dismissing the complaint against them is granted.

Dated: June 8, 2026

Frank A. Tinari
Hon. Frank A. Tinari, J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION