

SHORT FORM ORDER

INDEX No. 610349/2024SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY**PRESENT:**Hon. FRANK A. TINARI
Justice of the Supreme CourtMOTION DATE 1/7/25 (002)
MOTION DATE 2/11/25 (003)
MOTION DATE 3/4/25 (004)
ADJ. DATE 7/8/25
Mot. Seq. # 002 MG
Mot. Seq. # 003 MD
Mot. Seq. # 004 MG-----X
SIMON HARRISON REAL ESTATE, LLC,

Plaintiff,

- against -

20 FOREST ROAD LLC, 20 FOREST LLC,
FOREST ROAD PARTNERS, LLC AARON
STONE, CAROL KONNER, GREG KONNER,
YALE FISHMAN & JOEL KOBLENTZ,Defendants.
-----XDAVID J. ARONSTAM, ESQ.
Attorneys for Plaintiff
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PASCA, LLP
Attorneys for Defendants 20 Forest Road, LLC
and Joel Koblentz
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Attorneys for Defendants 20 Forest LLC and
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Upon the E-file document list numbered 42-55, 58-73, 76-77, 79, 81-89 and 94 read on these applications for various relief; it is

ORDERED that the motion of the defendants 20 Forest Road LLC and Joel Koblentz (002) for summary judgment pursuant to CPLR § 3212 on plaintiff's first, second, and sixth causes of action is granted; and it is further

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ORDERED that plaintiff's cross-motion (003) to amend the complaint to add a cause of action for third-party beneficiary against defendant 20 Forest Road LLC is denied; and it is further

ORDERED that the motion of defendants 20 Forest LLC and Aaron Stone (004) for summary judgment pursuant to CPLR § 3212 on plaintiff's fourth and seventh causes of action is granted; and it is further

ORDERED that a preliminary conference in this matter is hereby scheduled for February 5, 2026 at 9:30 a.m., before which the parties shall confer, complete, and execute a proposed preliminary conference (PC) order, which must be uploaded to the New York State Courts Electronic Filing system (NYSCEF) no less than one business day prior to the conference date. In person appearances are required by counsel on this date.

This action involves claims by plaintiff Simon Harrison Real Estate, LLC ("Simon Harrison"), licensed real estate broker, against multiple defendants arising from the sale of real property owned by defendant 20 Forest Road, LLC ("20 Forest Road, LLC") located at 20 Forest Road, Sag Harbor, New York (the "subject property"). Simon Harrison alleges that in or about April, 2019, Saunders & Associates real estate brokerage company ("Saunders"), listed the subject property for sale. Plaintiff further alleges that on or about February 21, 2021, a memorandum of sale was issued for the subject property with 20 Forest Road, LLC as seller and defendants Carol Konner, Greg Konner and Yale Fishman LLC to be formed ("Forest Road Partners, LLC"), as purchasers, which defendants Simon Harrison introduced to the property. In or about February, 2021 a residential contract of sale was fully executed for a purchase price of \$9,750,000.00 with no mortgage contingency clause. Thereafter, on or about April 26, 2021, defendant 20 Forest Road, LLC and defendant Forest Road Partners, LLC entered into a written agreement which terminated the contract of sale in consideration for the payment of \$150,000.00 from 20 Forest Road to Forest Road Partners, LLC. The written termination agreement did not provide for the payment of any real estate brokerage commission to Simon Harrison. Plaintiff further alleges that thereafter, defendant 20 Forest Road, LLC deeded the subject property to defendant 20 Forest LLC for consideration of \$10,450,000.

The action commenced by plaintiff against 20 Forest Road, LLC alleges causes of action sounding in breach of contract and quantum meruit/unjust enrichment. The sixth cause of action contained in the complaint is brought against defendant Joel Koblentz ("Koblentz") personally (alleged sole member of 20 Forest Road, LLC). The action commenced by plaintiff against 20 Forest LLC ("20 Forest") alleges tortious inducement to breach and deliberate interference with a contract and against defendant Aaron Stone ("Stone") personally.

Defendants 20 Forest Road, LLC and Koblentz move for summary judgment on plaintiff's first, second and sixth causes of action. In support of their application, defendants submit, among other things, the pleadings, the Exclusive Right to Sell agreement ("ERS"), the Co-Brokerage agreement, and terminated contract. Plaintiff opposes the application and cross-moves for an order granting leave to file an amended complaint. Plaintiff submits, among other things, the proposed amended complaint. Defendants 20 Forest and Stone move for summary judgment on plaintiff's fourth and seventh causes of action. In support of their application, defendants submit, among other things, the pleadings and the 20

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Forest LLC sales contract. Plaintiff opposes the defendants' application and submits, among other things, the deed to 20 Forest LLC, unsigned correspondence dated March 22, 2021, and the deed from 20 Forest LLC.

It is well settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient proof to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923, 925 [1986]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316, 318 [1985]). Further, the credibility of the parties is not an appropriate consideration for the Court (*S.J. Capelin Assoc., Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478 [1974]), and all competent evidence must be viewed in a light most favorable to the party opposing summary judgment (*Benincasa v Garrubbo*, 141 AD2d 636, 637, 529 NYS2d 797, 799 [2d Dept 1988]). Once a *prima facie* showing has been made, the burden shifts to the party opposing the summary judgment motion to produce evidence sufficient to establish the existence of a material issue of fact (see *Alvarez v Prospect Hosp.*, *supra*). However, conclusory allegations unsupported by competent evidence are insufficient to defeat a summary judgment motion (*Alvarez*, *supra*, 68 NY2d at 324-325, 508 NYS2d 923).

"A real estate broker is entitled to recover a commission upon establishing that it '(1) is duly licensed, (2) had a contract, express or implied, with the party to be charged with paying the commission, and (3) was the procuring cause of the sale'" (*Hentze-Dor Real Estate, Inc. v D'Allessio*, 40 AD3d 813, 815, 836 NYS2d 265 [2d Dept 2007], quoting *Stanzoni Realty Corp. v Landmark Props. of Suffolk, Ltd.*, 19 AD3d 582, 583, 796 NYS2d 549 [2d Dept 2005]). Further, for a broker to be entitled to a commission from the seller of real property, the broker must establish that it had a contract, either express or implied, with the seller (see *RWSP Realty, LLC v Agusta*, 42 AD3d 490, 491, 840 NYS2d 608 [2d Dept 2007]; *Re/Max Homes & Estates v Leist*, 308 AD2d 439, 764 NYS2d 107 [2d Dept 2003]). "Unless the parties agree otherwise, a real estate broker will be deemed to have earned his commission when he produces a purchaser who is not only ready and willing to purchase at the terms set by the seller, but able to do so as well" (*CS Empire Realty, LLC v Hussain*, 150 AD3d 1075, 1077, 52 NYS3d 664 [2d Dept 2017]; see also *Sibbald v The Bethlehem Iron Co.*, 83 NY 378 [1881]; *Kaplon-Belo Assoc., Inc. v D'Angelo*, 79 AD3d 930, 913 NYS2d 728 [2d Dept 2010]; *M.A. Salazar, Inc. v Levy*, 237 AD2d 583, 655 NYS2d 612 [2d Dept 1997]). However, a broker's right to a commission may be modified by agreement of the parties, "including a condition that the contract of sale actually be consummated before the broker is deemed to have earned his commission" (*CS Empire Realty, LLC v Hussain*, 150 AD3d 1075, 1077, 52 NYS3d 664 [2d Dept 2017]; see also *Pantigo Realty, Inc. v Estate of Schrenko*, 249 AD2d 525, 672 NYS2d 369 [2d Dept 1998]; *Liggett Realtors, Inc. v Gresham*, 38 AD3d 214, 831 NYS2d 59 [1st Dept 2007]).

Here, defendant 20 Forest Road, LLC and Joel Koblentz established that there was no contract with plaintiff, implied or express. The submissions of defendants establish that the only contract entered into by defendant 20 Forest Road, LLC was the "ERS" with non-party Saunders and the terminated contract of sale with Forest Road Partners, LLC. The submissions establish that the plaintiff herein was not a party to either the "ERS", nor the terminated contract of sale and that plaintiff was only a party to the Universal Co-Brokerage Agreement 2007 with Saunders, not a party named herein. Further, the

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submissions established that the “ERS” between 20 Forest Road, LLC and Saunders provided that a 4% commission would be “payable ONLY if, as and when title passes.” The language contained in the “ERS” is undisputed and it is also undisputed that title did not pass between 20 Forest Road, LLC and Forest Road Partners, LLC. As such, a condition precedent to plaintiff earning a commission had not occurred. As plaintiff has failed to raise a triable issue of fact, defendants’ motion for summary judgment dismissing plaintiff’s first cause of action against 20 Forest Road, LLC is granted (**Fischer v RWSP Realty, LLC**, 19 AD3d 540, 798 NYS2d 72 [2d Dept 2005]; **Valdina v Martin**, 47 AD3d 1159, 849 NYS2d 364 [3d Dept 2008]).

As to the plaintiff’s claims for quantum meruit and unjust enrichment, it is well established that “the existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter” (**Clark-Fitzpatrick v Long Is. R.R. Co.**, 70 NY2d 382, 388, 521 NYS2d 653 [1987]; **CSI Group, LLP v Harper**, 153 AD3d 1314, 61 NYS3d 592 [2d Dept 2017]; **R&B Design Concepts, Inc. v Wenger Constr. Co., Inc.**, 153 AD3d 864, 60 NYS3d 364 [2d Dept 2017]; **Weiss v Benetton U.S.A. Corp.**, 124 AD3d 633, 2 NYS3d 515 [2d Dept 2015]; **Whitman Realty Group, Inc. v Galano**, 41 AD3d 590, 41 AD3d 590 [2d Dept 2007]. “[A] quasi-contractual obligation is one imposed by law where there has been no agreement or expression of assent, by word or act, on the part of either party involved. The law creates it, regardless of the intention of the parties, to assure a just and equitable result” (**Clark-Fitzpatrick v Long Is. R.R. Co.**, 70 NY2d 382, 388, 521 NYS2d 653 [1987]). In the instant case, the defendants have established that seller’s contractual obligation to pay a brokerage commission related to the sale of the subject property is governed by the “ERS” between itself and Saunders. An express contract exists which governs the subject matter, plaintiff is just not a party to it. And moreover, the express contract dictates that no commission is due by the seller until title passes, which title undisputably did not pass to the buyer procured by Simon Harrison. As plaintiff has failed to raise a triable issue of fact, defendants’ motion for summary judgment dismissing plaintiff’s second cause of action against 20 Forest Road, LLC is granted. In light of the above determinations by the Court, defendants’ motion for summary judgment dismissing plaintiff’s sixth cause of action against Joel Koblentz individually is also granted.

It should be noted that the plaintiff requests that the Court find an implied contract existed between it and 20 Forest Road, LLC with respect to the payment of its commission regarding the sale of the subject property. Plaintiff acknowledges that no express contract existed between itself and 20 Forest Road, LLC. However, an express contract existed between Saunders, the listing agent, and 20 Forest Road, LLC which directly addresses the issue of payment of the brokerage fees at issue. Further, plaintiff and Saunders were parties to the express contract, the Universal Co-Brokerage Agreement 2007 which stated that the “Co-Broker shall be paid their share of the commission when title closes...” Under the circumstances of this particular case, the Court declines to find that any implied contract existed between 20 Forest Road, LLC and the plaintiff.

For the reasons set forth above, the motion of 20 Forest and Stone for summary judgment dismissing the plaintiff’s fourth and seventh causes of action is also granted. The elements of a tortious interference with contract claim are: (1) the existence of a valid contract with a third party, (2) defendant’s knowledge of that contract, (3) defendant’s intentional and improper procuring of a breach without justification, and (4) damages (**White Plains Coat & Apron Co., Inc. v Cintas Corp.**, 8 NY3d

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422, 426, 835 NYS2d 530 [2007]; *Ferrandino & Son, Inc. v Wheaton Bldrs., Inc., LLC*, 82 AD3d 1035, 920 NYS2d 123 [2d Dept 2011]). Defendants have established through their submissions, that no contract, express or implied existed between plaintiff and any defendant to this matter. In opposition, plaintiff failed to raise any triable issue of fact.

Generally, leave to amend a pleading “shall be freely given” (CPLR 3025 [b]), unless the proposed amendment is palpably insufficient as a matter of law, devoid of merit, or would prejudice or surprise the opposing party (see *Denisco v 405 Lexington Ave., LLC*, 203 AD3d 1025, 166 NYS3d 183 [2d Dept 2022]; *Lennon v 56th and Park (NY) Owner, LLC*, 199 AD3d 64, 153 NYS3d 535 [2d Dept 2021]). “A party asserting rights as a third-party beneficiary must allege: (1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for its benefit, and (3) that the benefit to it is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate it if the benefit is lost” (*Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 478, 59 NYS3d 381 [2d Dept 2017]). While plaintiff’s proposed amended complaint sets forth facts which establish the required elements of a third-party beneficiary cause of action, plaintiff has not overcome the fact that the contract for which it seeks third-party beneficiary status, contains a provision which sets forth that a commission is “payable ONLY if, as and when title passes.” There is no factual dispute that title did not pass between 20 Forest Road, LLC and Forest Road Partners, LLC. Accordingly, as the pleading is devoid of merit under the specific circumstances of the case, plaintiff’s motion to amend the complaint is denied.

The foregoing constitutes the decision and order of this Court.

Dated: January 7, 2026



FRANK A. TINARI, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION

TO: O’SHEA, MARCINCUK & BRUYN, LLP
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