

Moore v Parks

2012 NY Slip Op 32816(U)

November 14, 2012

Supreme Court, New York County

Docket Number: 101256/11

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

RENEE MICHELLE MOORE and MOORE TRUST
REAL ESTATE GROUP LLC,

INDEX NO. 101256/11

Plaintiff,

MOTION DATE _____

-v-

FILED

MOTION SEQ. No. 001

*JUSTIN S. PARKS, THE SCOTT PARKS
ORGANIZATION, et al.,*

NEW YORK
COUNTY CLERK'S OFFICE

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion to _____

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... 1, 2

Answering Affidavits- Exhibits 3

Replying Affidavits 4

CROSS-MOTION: _____ YES NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: November 14, 2012


DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 58

----- x
RENEE MICHELLE MOORE and MOORE
TRUST REAL ESTATE GROUP LLC,
Plaintiffs,

Index No.: 101256/11

-against-

JUSTIN S. PARKS, THE SCOTT PARKS
ORGANIZATION, et al.,

DECISION AND ORDER

FILED

Defendants.

-----x
MILLS, J.

NOV 23 2012

NEW YORK
COUNTY CLERKS OFFICE

FACTUAL BACKGROUND

This is an action brought by Renee Michelle Moore ("Plaintiff") and Moore Trust Real Estate Group LLC ("Moore Trust"), to recover real estate brokerage commissions from Justin S. Parks ("Defendant") and The Scott Parks Organization ("Scott Parks").

The following facts are not in dispute. Plaintiff is an attorney with a real estate broker's license while Defendant is a licensed real estate salesperson. In or about April 2008, Plaintiff offered Defendant the opportunity to serve as a co-broker on real estate transactions. Defendant accepted Plaintiff's offer to serve as a co-broker and, in exchange, Plaintiff agreed to share with defendant fifty percent of any real estate brokerage commissions received on the deals that they co-brokered, regardless of who was responsible for more of the day-to-day-work on any particular real estate transaction.

In 2008, the parties did split one transaction where they worked together to consummate a real estate purchase. However, the agreement at issue centered around the parties working with a prospective purchaser, Pat Langer in April 2008. Ms. Langer engaged Plaintiff to represent her in the purchase of an apartment in Manhattan. Plaintiff offered defendant fifty percent of the real estate brokerage commission which was accepted. The Langer Transaction did not close until December 9, 2010. However, before the Langer Transaction closed, Defendant became affiliated with a brokerage firm, Charles Rutenberg LLC ("Rutenberg").

The parties agreed that Rutenberg would be listed as the broker on the Langer Transaction. They also agreed that the brokerage commission would be paid to Rutenberg who would then pay 100% of the commission to defendant less a two thousand dollar transaction fee.

On or about December 10, 2010, Defendant received a check made payable to Rutenberg in the amount of sixty-three thousand dollars, representing the real estate brokerage commission for the Langer Transaction. Defendant does not deny that he received a check from Rutenberg in the amount of fifty thousand dollars on December 13, 2010 as his commission for the Langer Transaction. To date, defendant has failed to pay plaintiff what she considers to be, her fifty percent share of the real estate brokerage commission for the Langer Transaction.

DISCUSSION

"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 eliminate any material issues of fact from the case [internal quotation marks and citation omitted]." *Santiago v Filstein*, 35 AD3d 184, 185-186 (1st Dept 2006). The burden then shifts to the motion's opponent to "present facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006); see *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied. See *Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 (1978).

The essence of the parties' agreement was to co-broke the lease commission. From the affidavits and exhibits submitted upon consideration of Plaintiff's motion for summary judgment, it is apparent that there was agreement between the parties to split the commissions earned from the Langer Transaction equally. Here, the evidence demonstrates, as a matter of law, that the Plaintiff did have an express contract with the Defendant.

In light of the express agreement governing commissions, Plaintiff's claim of breach of contract is viable. Like the proponent of the motion, the party opposing the motion must set forth evidentiary proof in admissible form in support of his or

her claim that material triable issues of fact exist, requiring a trial of the action (Zuckerman at 562). Defendant's contentions in opposition are not valid. Defendant's contention that the Plaintiff sued the wrong party is without merit, and the Plaintiff has demonstrated an entitlement to a commission of fifty percent as in accordance with their prior real estate transactions, and in accordance with their agreement for the Langer Transaction. Defendant acknowledged this fact in correspondence with plaintiff in an effort to renegotiate the percentage of the fee splitting agreement on the Langer Transaction, well after the transaction closed.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the plaintiffs' motion for summary judgment is granted and the Clerk is directed to enter judgment in favor of plaintiffs and against defendants in the amount of \$30,500.00, together with interest at the rate of 9% per annum from the date of December 10, 2010, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Dated: _____

FILED

NOV 23 2012
 ENTER: 11/14/12
 NEW YORK
 COUNTY CLERK'S OFFICE *[Signature]*

DONNA M. MILLS, J.S.C.