

JF Capital Advisors, LLC v Lightstone Group, LLC
2012 NY Slip Op 33262(U)
November 21, 2012
Supreme Court, New York County
Docket Number: 651902/11
Judge: Melvin L. Schweitzer
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

JF CAPITAL ADVISORS LLC

INDEX NO. 651902/11

-v-

THE LIGHTSTONE GROUP, LLC et al

MOTION DATE _____

MOTION SEQ. NO. 002

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion ~~is~~ *by defendants to dismiss*
the Complaint is GRANTED, in part,
and DENIED, in part per the
attached Decision and Order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: November 21, 2012

Melvin L. Schweitzer
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED *in part* GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

-----x

JF CAPITAL ADVISORS, LLC,

Plaintiff,

-against-

THE LIGHTSTONE GROUP, LLC,
LIGHTSTONE VALUE PLUS REAL ESTATE
INVESTMENT TRUST, INC. and
LIGHTSTONE VALUE PLUS REAL ESTATE
INVESTMENT TRUST II, INC.,

Defendants.

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Index No. 651902/11

DECISION AND ORDER

Sequence No. 002

MELVIN L. SCHWEITZER, J.:

Preliminary Statement

JF Capital Advisors, LCC, (JF Capital) brings this action against defendants Lightstone Group, LLC, Lightstone Plus Real Estate Investment Trust, Inc., and Lightstone Value Plus Real Estate Investment Trust, Inc. (Lightstone), asserting causes of action for quantum meruit and unjust enrichment. Lightstone moves to dismiss JF Capital’s complaint pursuant to CPLR 3211(a) (7) for failure to state a cause of action.

Standard of Review

On a motion to dismiss for failure to state a claim, the court takes the facts alleged in the complaint as true and grants the benefit of every favorable inference to the plaintiff. *AG Capital Funding Partners, LP v State Street Bank and Trust Co.*, 5 NY 581 (2005). “The motion should be denied if ‘from [the pleading’s] four corners factual allegations are discerned which taken together manifest any cause of action cognizable in law.’” *Ackerman v 305 E. 40th Owners Corp.*, 189 AD2d 665, 667 (1st Dept 1993) (quoting *Guggenheimer v Ginzburg*, 43 NY2d 268,

275 (1977). Vague and conclusory allegations, however, are not sufficient to sustain a cause of action. *Fowler American Media, Inc.*, 306 AD3d 113 (1st Dept 2003).

Background

JF Capital, a New York limited liability company, and its principals are advisors and consultants specializing in the hospitality industry. They provide a broad range of investment and advisory services, including financial analysis and modeling, industry intelligence, transaction evaluation and structuring, deal sponsorship, asset management, due diligence and data extraction analysis. Lightstone is a group comprised of public and private real estate investment companies, with New York as its principal place of business.

According to the Verified Amended Complaint (VAC), on or about November 10, 2010, E. Jonathan Falik (Mr. Falik), a JF Capital managing member, met with Lightstone Executive Vice President Arvind Bajaj (Mr. Bajaj), and discussed a previous hotel portfolio transaction JF Capital had worked on. Mr. Bajaj requested Mr. Falik to present an overview of the hotel industry to the entire Lightstone acquisitions team. Mr. Falik complied with Mr. Bajaj's request on November 15, 2010 and, thereafter, requested that JF Capital perform additional advisory services.

From November 2010 to May 2011 JF Capital alleges that it performed a broad range of financial services for Lightstone such as financial analysis and modeling, market research, data analysis, due diligence, property tours, site visits, investment analysis and evaluation services for which it has not been compensated.

JF Capital filed the initial complaint on July 13, 2011, in order to recover damages for advisory work. Lightstone filed a motion to dismiss the initial complaint on August 31, 2011, arguing that JF Capital's claims for quantum meruit and unjust enrichment were barred by

GOL 5-701(a)(10). On January 31, 2012 this court found that JF Capital's claim with regard to the Waterpark Portfolio project was barred by New York's statute of frauds. The court, however, granted JF Capital "leave to serve and file an amended complaint alleging causes of action for quantum meruit and unjust enrichment . . ." specifying the work JF Capital had done which did not consist of "procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction."

On May 18, 2012 JF Capital filed the VAC, alleging specific types of work requested by Lightstone and performed by JF Capital allegedly not covered by GOL 5-701(a)(10).

Discussion

JF Capital's first and second causes of action state quasi-contractual claims of quantum meruit and unjust enrichment. JF Capital alleges that it is entitled to recover \$480,175.00 for the performance of advisory services rendered for, at the request of, and to the benefit of Lightstone, who accepted these services.

Under the theories of quantum meruit and unjust enrichment, JF Capital is entitled to recover the reasonable value of the work it has performed. GOL 5-701 (a)(10); *see also Snyder v Bronfman*, 13 NY3d 504, 508-509 (2009). Because the contracts in question are contracts implied in law, New York's statute of frauds bars recovery for these claims if they are based on the plaintiff "negotiating the purchase, sale, exchange, renting or leasing of any real estate. . . or of a business opportunity." GOL 5-701 (a)(10). The statute provides that "[n]egotiating" includes producing an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction." *Id.*

JF Capital argues that *Freedman v Chemical Construction Corp.*, 43 NY2d 260 (1977), and cases that follow its holding, apply only to intermediaries such as finders, originators and

introducers. In *Freedman*, the Court of Appeals found that the statute of frauds applies in cases where an intermediary provides the “know-how” and “know-who” necessary for the principals to negotiate or consummate certain kinds of commercial transactions. 43 NY2d at 266-67.

JF Capital argues that since it is neither a finder, originator or introducer, monetary recovery for the “know-how” and “know-who” services it provided to Lightstone is not barred by the statute of frauds. However, JF Capital fails to cite any cases which limit the application of the statute of frauds to finders, originators and introducers. Further, the cases it does cite in order to show that the *Freedman* analysis is inapplicable to the instant case are factually distinguishable. See *e.g. Streit v Bushnell*, 242 F Supp 2d 633, 641 (SDNY 2006) (where the court declined to dismiss a complaint under GOL 5-701 (a)(10) because the relationship between the defendant and plaintiff did not “pertain solely to the marketing and negotiation of a business opportunity [but was more akin to] . . . an employment agreement for professional management services not subject to [the statute of frauds]. . . .”). The court thus rejects JF Capital’s argument that *Freedman*’s “know-how” and “know-who” analysis does not apply to JF Capital’s advisory services.

Notwithstanding Lightstone’s arguments regarding *Freedman*, GOL 5-701 (a) (10) applies to situations where the plaintiff assists in the negotiation or consummation of a business transaction, not to situations where negotiations do not occur at all or where business transactions are not pursued. In such instances, JF Capital, through its advisory services, could not be said to have assisted in the negotiation or consummation of a business transaction.

The court addresses JF Capital’s claims with respect to work performed on discreet projects.

Waterpark Portfolio

In its brief, JF Capital alleges that after Lightstone decided not to acquire the Waterpark Portfolio at the price offered by the seller, it expressed its willingness to *negotiate* a lower price. JF Capital then assisted Lightstone in acquiring target assets within the portfolio. While JF Capital claims that it is only seeking compensation for work unrelated to negotiations or introductory meetings, it makes clear in the VAC that the work it provided to Lightstone in this regard was work that was used to assist Lightstone in the negotiation of a business opportunity. Recovery under this claim is clearly prohibited by the statute of frauds and the claim is dismissed.

Innkeepers Project

JF Capital alleges that it assisted Lightstone in the Innkeepers Project, an investment opportunity, by helping Lightstone better understand the opportunity. To the extent that this information was not later used to assist in the negotiation or consummation of this investment opportunity, recovery under this claim is not prohibited by the statute of frauds. JF Capital has sufficiently pleaded a claim under quantum meruit and unjust enrichment.

Fitchburg and Omaha Projects

These projects were related to the acquisition of a waterpark and hotel. It is unclear whether the advisory services provided by JF Capital to help Lightstone better understand these business opportunities were later used to negotiate these contracts. To the extent that this information was not later used to assist in the negotiation or consummation of these investment opportunities, JF Capital has sufficiently pleaded a claim under quantum meruit and unjust enrichment.

Towneplace Suite Metairie Project

This project is related to the acquisition of a hotel. It is unclear whether the work conducted by JF Capital, which included due diligence and expert analysis of the financial information provided to Lightstone, was later used to negotiate this contract. To the extent that this information was not later used to assist in the negotiation of this business opportunity, recovery under this claim is not prohibited by the statute of frauds. JF Capital has sufficiently pleaded a claim under quantum meruit and unjust enrichment.

Hotel Victor Project

This project is related to the acquisition of a hotel. It is unclear whether the work conducted by JF Capital, which included review of financial information provided to Lightstone as well as site visits, was later used to negotiate this contract. To the extent that this information was not later used to assist in the negotiation of this business opportunity, recovery under this claim is not prohibited by the statute of frauds. JF Capital has sufficiently pleaded a claim under quantum meruit and unjust enrichment.

CBRE 7 Loan Portfolio Project

This project was related to the purchase of a loan portfolio. JF Capital states in the complaint that it prepared documents in anticipation of Lightstone's possible bid for the loans. Thus, plaintiff acknowledges that it prepared documents to assist Lightstone in the consummation of a business opportunity. Recovery under this claim is clearly prohibited by the statute of frauds, and the claim is therefore dismissed.

The Allegria Hotel Loan Purchase

This project was related to the purchase of a hotel loan. In addition to providing services which it clearly identifies as negotiations, JF Capital also provided Lightstone with other

services meant to *assist* Lightstone in the negotiation of this contract. Recovery under this claim is clearly prohibited by the statute of frauds and the claim is therefore dismissed.

Crowne Plaza Somerset Project

With respect to this project, JF Capital prepared pro forma financials and diligence materials on short notice. JF Capital also provided feedback on two rounds of financial models performed and online due diligence. Lightstone also provided assistance in reviewing projections related to decreasing room count and building out additional meeting space. JF Capital has sufficiently pleaded a claim under quantum meruit and unjust enrichment.

Miscellaneous Projects

JF Capital has not sufficiently pleaded with clarity or any particularity facts necessary to state a cause of action under quantum meruit on unjust enrichment.

Conclusion

JF Capital's amended complaint contains sufficient allegations to sustain the quantum meruit and unjust enrichment causes of action related to the Inkeepers Project, Fitchburg and Omaha Projects, Towneplace Suite Metairie Project, Hotel Victor Project and Crowne Plaza Somerset Project. JF Capital's complaint does not plead sufficient facts necessary to sustain the quantum meruit and unjust enrichment causes of action related to the Waterpark Portfolio, CBRE Loan Portfolio Project, Allegria Hotel Loan Purchase and miscellaneous Projects.

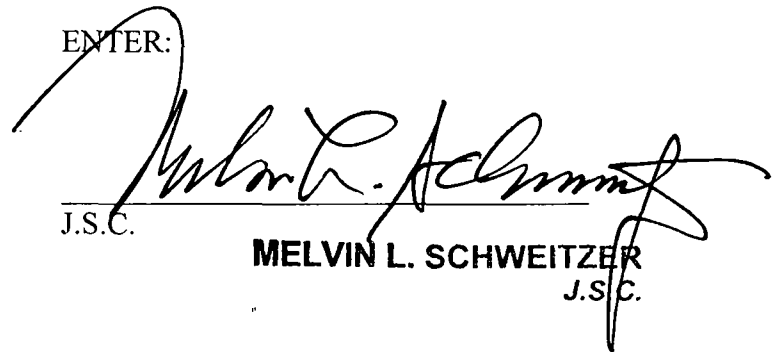
Accordingly, it is

ORDERED that Lightstone's motion to dismiss the quantum meruit and unjust enrichment causes of action related to the Inkeepers Project, Fitchburg and Omaha Projects, Towneplace Suite Metairie Project, and Hotel Victor Project is denied; and it is further

ORDERED that Lightstone's motion to dismiss the quantum meruit and unjust enrichment causes of action related to the Waterpark Portfolio, CBRE Loan Portfolio Project, Allegria Hotel Loan Purchase and Miscellaneous Projects is granted.

Dated: November 21, 2012

ENTER:



J.S.C.

MELVIN L. SCHWEITZER
J.S.C.