



D.A.Y. regarding the potential sale and development of certain real estate in the Dominican Republic (the Dominican Republic Real Estate). The Dominican Republic Real Estate is owned by Marcos Marte (Marte) and/or MEBESA, who was interested in locating a buyer for the property. D.A.Y. executed the Agreement with Ianiero and Ms. Bueno with the express purpose of compensating them “for their participation should the proposed sale generate compensation for [D.A.Y.]” Ianiero and Ms. Bueno jointly facilitated an introduction between D.A.Y. and Marte, through which D.A.Y. was believed to be presented with the opportunity to sell the Dominican Republic Real Estate in some capacity on behalf of Marte.

Neither the Agreement nor Ianiero’s Amended Verified Complaint explicitly states in what capacity D.A.Y. was to operate relative to its relationship with Marte; more specifically, there is no evidence as to whether or not D.A.Y. had been retained as a real estate broker on behalf of Marte or served some other function. Moreover, the Agreement fails to identify what role, if any, Ianiero and Ms. Bueno played in the relationship between D.A.Y. and Marte, other than bringing D.A.Y. the “real estate offer” from Marte. Interestingly, however, Ianiero alleges in Paragraph nine of the Amended Verified Complaint that “D.A.Y. and R. Daniel Harrop, its President, worked with Plaintiff and others to find a suitable buyer for the Dominican Republic Real Estate.” Consequently, the Agreement fails to shed light on whether the bargained-for compensation was for his services in merely introducing D.A.Y. to Marte, or if the Agreement indeed contemplated compensating him for helping to find a buyer as well.

In any event, pursuant to the terms of the Agreement, Ianiero and Ms. Bueno would equally divide the compensation in “an amount equal to ten (10%) per cent of the compensation paid to [D.A.Y.]” and the fees would be immediately paid out of any compensation earned by D.A.Y. that arises from the sale of the Dominican Republic Real Estate. As Ianiero presupposes

in the Amended Verified Complaint, this compensation arrangement was for a so-called “Finders Fee.” Through a series of extensions due to the pendency of a closing on the Dominican Republic Real Estate, the Agreement was extended to December 31, 2014. According to Ianiero, however, Ms. Bueno did not sign the extension. In July 2014, Ianiero received a document entitled “Amendment to Agreements” (the Proposed Amendment) from D.A.Y., signed by Harrop on July 4, 2014, seeking to modify the original terms of the Agreement. The Proposed Amendment, inter alia, sought to increase Ms. Bueno’s percentage of compensation while simultaneously decreasing Ianiero’s percentage. Harrop informed Ianiero that the Dominican Republic Real Estate would be sold for \$420,000,000 rather than \$235,000,000 as originally contemplated. Based on the increased sale price of the property, Ianiero claims that he would have received \$630,000 under the original Agreement, but instead would receive only \$400,000 under the Proposed Amendment.

Ianiero’s Amended Verified Complaint sets out the following counts: (1) breach of contract as to both Defendants; (2) breach of the covenant of good faith and fair dealing as to both Defendants; (3) quantum meruit; (4) constructive trust; (5) accounting; and (6) a declaratory judgment with respect to Ianiero’s rights to compensation under the Agreement. D.A.Y. filed the instant Motion to Dismiss these counts grounded on the overarching theory that Ianiero is not entitled to compensation under the Agreement because the underlying real estate transaction has yet to occur. Ms. Bueno has also filed a Motion to Dismiss founded on similar theories that the action against D.A.Y. and Ms. Bueno is premature and Ianiero’s claim is not ripe for review. Ianiero objects to the Motions to Dismiss.

## II

### Standard of Review

The criteria the Court considers in determining whether to grant a motion to dismiss are well settled in this jurisdiction. In reviewing a motion to dismiss, the Court “examines the allegations contained in the plaintiff’s complaint, assumes them to be true, and views them in the light most favorable to the plaintiff.” Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (citing Ellis v. R.I. Pub. Transit Auth., 586 A.2d 1055, 1057 (R.I. 1991)). In Rhode Island, “the sole function of a motion to dismiss is to test the sufficiency of the complaint.” Barrette v. Yakavonis, 966 A.2d 1231, 1234 (R.I. 2009). While the Court’s review on a motion to dismiss is confined to the four corners of the complaint, a trial justice may also consider those documents attached to a complaint that are deemed incorporated therein by reference and may rely on such documents in deciding a Rule 12(b)(6) motion. See Narragansett Elec. Co. v. Minardi, 21 A.3d 274, 278 (R.I. 2011); Bowen Court Assocs. v. Ernst & Young, LLP, 818 A.2d 721, 725-26 (R.I. 2003). Accordingly, a trial justice must grant a Rule 12(b)(6) motion to dismiss “when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff’s claim.” Ellis, 586 A.2d at 1057; see also McKenna v. Williams, 874 A.2d 217, 225 (R.I. 2005) (“If it appears beyond a reasonable doubt that plaintiff would not be entitled to relief, under any facts that could be established, the motion to dismiss should be granted.”).

## III

### Discussion

In order to address the specific counts alleged in Ianiero’s Amended Verified Complaint, the Court must first resolve a threshold issue raised by D.A.Y. in its Motion to Dismiss which, in

fact, may ultimately prove dispositive in this case. The foundation of such argument rests on the assertion that Ianiero is improperly seeking to recover a commission from the sale of real estate without a real estate broker's license as required by § 5-20.5-21. Specifically, D.A.Y. contends that Ianiero runs afoul of the statute and is not entitled to any safe harbor from the licensing requirement that may have been carved out for "finders" through our case law. As a result, D.A.Y. maintains Ianiero is precluded from recovering any fee through the maintenance of an action before this Court. In opposition, Ianiero claims that at no point was he required to have a license<sup>1</sup> because he acted as a finder with respect to the underlying real estate transaction and is thus only seeking to recover a finder's fee pursuant to the Agreement.

The Court is thus faced with deciding whether § 5-20.5-21 may be read so as to exclude "finders" from the general licensing requirement for real estate brokers and whether Ianiero should qualify here for such an exception. To begin, § 5-20.5-21 governing real estate brokers and salespersons reads:

"Except as provided in this chapter, no person shall maintain an action in any court of this state for the recovery of a commission, fee, or compensation for any act done, the doing of which is prohibited under this chapter to other than licensed brokers, unless that person was licensed under this chapter as a broker at the time of the doing of the act." Sec. 5-20.5-21.

In other words, § 5-20.5-21 suggests any individual attempting to recover his or her due compensation emanating from a real estate transaction through a civil action before this Court must have a valid real estate broker's license. See New England Retail Props., Inc. v. Commerce Park Assocs. 11, LLC, 824 A.2d 504, 508 (R.I. 2003) (finding real estate agency not entitled to maintain suit in Rhode Island to recover broker commissions where agency did not possess valid

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<sup>1</sup> Ianiero, through his opposing memorandum, makes clear that he does not plead whether or not he was a licensed broker at any time relevant herein. See Mem. in Supp. of Obj. 6.

license in accordance with requirements of § 5-20.5-21). The statute does, however, fail to clarify whether “any act done” extends to acts commonly associated with that of “finders.” Our Supreme Court has provided limited guidance on the distinction between brokers and finders. See, e.g., Bottomley v. Coffin, 121 R.I. 399, 404, 399 A.2d 485, 488 (1979) (drawing distinction between finder and broker in context of whether plaintiff required license to collect fee from sale of business).

In Bottomley, the Court articulated that an individual acting as a finder rather than a broker was not required to have a broker’s license when seeking to recover compensation from the *sale of a business*. Bottomley, 121 R.I. at 404, 399 A.2d at 488. In reaching its opinion, the Court centered on the inherent differences between finders and brokers, finding:

“Generally . . . a finder finds, introduces, and brings the parties to a transaction together. The parties then proceed to negotiate and consummate the deal themselves. The finder does not negotiate any terms of the agreement. A broker does more; he attempts to bring the parties to agreement on his principal’s terms. Typically, a broker is aligned with the interest of one party and against the interests of the other.” Id. (citing several cases therein for the same proposition).

In this case, Ianiero claims that the distinction between finders and brokers—as discussed by the Bottomley Court—applies to the instant matter. Yet, as D.A.Y. argues, the focus on the underlying nature of the transaction as a real estate transaction should be determinative in this case, as held by the Court in Mut. Dev. Corp. v. Ward Fisher & Co., LLP, 47 A.3d 319 (R.I. 2012). The Court in Ward Fisher, however, focused on the nature of the transaction in that case only with respect to whether the Statute of Frauds applied and not with respect to the distinction set forth in Bottomley. See id. at 326. In other words, the Ward Fisher Court held there was no distinction between the two categories in a real estate transaction only on the limited issue of whether the Statute of Frauds applied in that case. As a result, no clear authority appears to exist

in this jurisdiction on whether a finder-broker distinction also exists with respect to the licensing statute *for the sale of real estate*.

Even if such a distinction existed, what remains unclear—and indeed, what the Amended Verified Complaint is silent as to—is exactly what Ianiero purportedly “found.” The subject inquiry on the distinction between a finder and broker with respect to the payment of fees under the licensing statute here ultimately depends on what roles Ianiero and D.A.Y. were assuming relative to the underlying real estate transaction. It is unclear whether Ianiero was acting as a “real estate broker” as that term is defined under § 5.20.5-1(4), whether he had a broker’s license at any time during the transaction, or remained involved in the transaction after bringing together the seller of the property and D.A.Y. Thus, based on a plain reading of § 5-20.5-21, it is difficult for the Court at this time to determine whether Ianiero was indeed required to have a broker’s license because it is unclear exactly what acts he has committed and in what capacity D.A.Y. was retained by Marte.

As the Court has indicated, according to the Amended Verified Complaint, D.A.Y. worked with Ianiero and others to find a suitable buyer for the Dominican Republic Real Estate. Depending on D.A.Y.’s function with respect to the transaction, this Court may not be able to determine that Ianiero was indeed a “finder” as that term is used in various jurisdictions demarcating an exception from the general licensing requirement. On one hand, if Ianiero acted as a “finder” of a particular real estate broker for the transaction, the Court may be hard-pressed to find that a real estate broker’s license would be required for such a transaction because the jurisdictions mandating finders to be licensed contemplate only situations where finders introduced a buyer and a seller. See, e.g., Harrison v. Soffer, 289 A.2d 752, 755-56 (Pa. Super. 1972). If, on the other hand (as appears to be the case from Paragraphs 9 and 10 of the Amended

Verified Complaint), Ianiero remained involved in the transaction, then most likely he “cross[ed] the line and [took] part in actual negotiations for a transaction” and thus was acting as a broker and needed to be licensed in order to retrieve his commission. See Barlow Burke, Jr., Law of Real Estate Brokers § 12.05 (3d ed. 2013).

#### **IV**

#### **Conclusion**

Accordingly, the Court directs Ianiero to file a more definite statement consistent with the provisions of Rule 12(e) with respect to the issues raised herein by the Court. Specifically, the Court requires a more definite statement within ten days of an order consistent with this Decision with respect to the following: what was the “real estate opportunity” delivered to D.A.Y. as a result of Ianiero and Ms. Bueno’s introduction; what was D.A.Y.’s specific role or function with respect to that transaction; and what role, if any, did Ianiero play in the transaction after he introduced the seller of the Dominican Republic Real Estate to D.A.Y—i.e., did Ianiero assist in any way in locating a buyer for the real estate.





**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Ianiero v. D.A.Y. Global Trading Company, Inc., et al.

**CASE NO:** PB 14-4299

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** November 19, 2014

**JUSTICE/MAGISTRATE:** Silverstein, J.

**ATTORNEYS:**

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