

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

PATTERSON-WOODS &)
ASSOCIATES, LLC,)
)
Plaintiff,)
)
v.)
)
INDEPENDENCE MALL, INC.,)
)
Defendant.)

C.A. No. N18C-01-173 JRJ

MEMORANDUM OPINION

Date Submitted: September 10, 2019

Date Decided: October 10, 2019

Upon Plaintiff's Motion for Summary Judgment: GRANTED.

Charles J. Brown, III, Esquire, Gellert Scali Busenkell & Brown, LLC, 1201 N. Orange Street, Suite 300, Wilmington, Delaware, Attorney for Plaintiff.

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Jurden, P.J.

I. INTRODUCTION

This matter involves a contract dispute between Plaintiff Patterson-Woods & Associates, LLC (“Plaintiff”), a real estate broker, and Defendant Independence Mall, Inc. (“Defendant”), a commercial property owner. Plaintiff alleges Defendant has refused to pay Plaintiff a commission under the terms of the contract (the “Commission Agreement”) for Plaintiff’s services in negotiating a lease between Defendant and Breakwater Accounting + Advisory Corp., Inc. (“Tenant”). Plaintiff has moved for summary judgment, arguing it is entitled to judgment as a matter of law because there is no genuine issue of material fact that Plaintiff and Defendant entered into a valid contract, Plaintiff performed under the terms of the contract, and Defendant failed to pay Plaintiff a commission.¹ For the reasons explained below, Plaintiff’s Motion for Summary Judgment is **GRANTED**.

II. BACKGROUND

The following facts are drawn from the admissions in the pleadings and uncontested facts presented in the Parties’ submissions.

A. Commission Agreement

¹ Plaintiff’s Motion for Summary Judgment (“Mot. Summ. J.”), (Trans. ID. 62924915); Plaintiff’s Reply in Support of its Motion for Summary Judgment (“Pl. Reply”), (Trans. ID. 63283216); Plaintiff’s Supplemental Briefing in Support of its Motion for Summary Judgment (“Pl. Supp. Br.”), (Trans. ID. 64137211).

On March 22, 2017, Plaintiff Patterson-Woods & Associates, LLC entered into an agreement (the “Commission Agreement”) with Defendant Independence Mall, Inc.² Pursuant to the Commission Agreement, Defendant agreed to pay Plaintiff a commission for its services in negotiating a lease between Defendant and Tenant regarding Defendant’s property (“Independence Mall”).³ Under the terms of the Commission Agreement, the commission is calculated as a percentage of the annual rent of each lease year.⁴ The Commission Agreement also provides an accelerated payment provision (the “Acceleration Provision”) in the event Defendant fails to pay Plaintiff the agreed upon commission.⁵

B. Timeline of Events

On March 8, 2017, Plaintiff introduced Tenant to Defendant regarding Tenant’s interest in leasing a unit in the Independence Mall.⁶ On April 18, 2017, Defendant and Tenant executed a lease for a particular unit in the Independence Mall.⁷ On May 15, 2017, Defendant advised Plaintiff by letter it was not entitled to a commission under the Commission Agreement and Plaintiff’s request for a

² Mot. Summ. J. ¶ 1, Ex. A (“Commission Agreement”).

³ Commission Agreement.

⁴ *Id.*

⁵ *Id.*

⁶ Mot. Summ. J. ¶ 5; Defendant’s Response to Plaintiff’s Motion for Summary Judgment ¶ 1, Ex. A (“Def. Resp.”), (Trans. ID. 63213625); Defendant’s Response to Plaintiff’s Supplemental Briefing ¶ 2 (“Def. Supp. Br.”), (Trans. ID. 64187905).

⁷ Mot. Summ. J. ¶ 12.

commission was denied.⁸ In response to this letter, Plaintiff filed the instant suit alleging Defendant breached the Commission Agreement.⁹

The following chronology is drawn from undisputed facts:

March 8, 2017 Plaintiff introduces Tenant to Defendant.¹⁰
Defendant sends Plaintiff proposed lease terms.¹¹

March 9, 2017 Plaintiff forwards Defendant's proposed lease terms to Tenant.¹²

March 13, 2017 Plaintiff sends Tenant a Letter of Intent ("LOI") to review.¹³
Tenant approves the LOI.¹⁴

March 14, 2017 Plaintiff sends the LOI to Defendant.¹⁵

March 20, 2017 Tenant and Plaintiff discuss lease terms different from those in the LOI.¹⁶

March 21, 2017 Defendant sends a proposed lease (the "Proposed Lease") to Plaintiff reflecting the terms in the LOI.¹⁷
Plaintiff sends the Proposed Lease to Tenant.¹⁸
Plaintiff sends the Commission Agreement to Defendant to sign.¹⁹

⁸ *Id.* ¶ 13, Ex. F; Def. Resp., Ex. I.

⁹ Compl. ¶ 14, 17 (Trans. ID. 61571428). Plaintiff pled unjust enrichment as an alternative of its breach of contract claim; however, the Court will not address this claim as it is moot.

¹⁰ Mot. Summ. J. ¶ 5; Def. Resp. ¶ 1, Ex. A; Def. Supp. Br. ¶ 1.

¹¹ Def. Resp. ¶ 1.

¹² *Id.*, Ex. B.

¹³ *Id.* ¶ 2, Ex. C.

¹⁴ *Id.*

¹⁵ Mot. Summ. J. ¶ 5; Def. Resp. ¶ 2, Ex. D ("Letter of Intent"); Def. Supp. Br. ¶ 2.

¹⁶ Def. Resp. ¶ 2, Ex. E; Def. Supp. Br. ¶ 2.

¹⁷ Mot. Summ. J. ¶ 5; Def. Resp. ¶ 3, Ex. F ("Proposed Lease"); Def. Supp. Br. ¶ 2.

¹⁸ Def. Resp. ¶ 3, Ex. G.

¹⁹ Commission Agreement; Def. Resp. ¶ 3; Def. Supp. Br. ¶ 2.

- March 22, 2017 Defendant sends the signed Commission Agreement to Plaintiff.²⁰
Plaintiff sends a counteroffer (the “Counterproposal”) to Defendant.²¹
- March 23, 2017 Plaintiff informs Tenant that it attempted to contact Defendant regarding the Counterproposal.²²
- March 30, 2017 Defendant rejects the Counterproposal.²³
Plaintiff forwards Defendant’s rejection to Tenant.²⁴
Tenant informs Plaintiff it wants to schedule a telephone conference with Defendant for March 31, 2017.²⁵
Tenant explains to Plaintiff the lease terms it intends to discuss with Defendant during the telephone conference.²⁶
Plaintiff offers to discuss any concerns or details with Tenant prior to the telephone conference with Defendant.²⁷
- April 3, 2017 Plaintiff asks Tenant about the telephone conference with Defendant.²⁸
Tenant responds that the telephone conference did not occur on March 31, 2017.²⁹
Tenant emails Defendant asking to reconsider negotiating a lease for a unit in the Independence Mall.³⁰

²⁰ Commission Agreement; Def. Resp. ¶ 4; Pl. Reply ¶ 4; Def. Supp. Br. ¶ 2.

²¹ Mot. Summ. J. ¶ 6, Ex. B (“Counterproposal”); Def. Resp. ¶ 4; Def. Supp. Br. ¶ 2.

²² Def. Resp., Ex. L.

²³ Mot. Summ. J. ¶ 7, Ex. C (“Rejection Letter”); Def. Resp. ¶ 5.

²⁴ Def. Resp., Ex. N.

²⁵ Mot. Summ. J. ¶ 8; Def. Resp., Ex. N; Pl. Reply ¶ 4.

²⁶ Mot. Summ. J. ¶ 9; Def. Resp. Ex. N.

²⁷ Def. Resp., Ex. N.

²⁸ *Id.*, Ex. O.

²⁹ *Id.*

³⁰ Mot. Summ. J. ¶ 9; Def. Resp. ¶ 6, Ex. Q; Pl. Reply ¶ 4.

Defendant emails Tenant about returning Tenant's phone call.³¹

- April 10, 2017 Defendant sends a revised lease (the "Revised Lease") to Tenant.³²
- April 11, 2017 Tenant forwards the Revised Lease to Plaintiff.³³ Tenant informs Plaintiff that Defendant included a provision ("Article 50") in the Revised Lease that a broker's commission will not be due upon signing of the Revised Lease.³⁴ Tenant notifies Plaintiff that it intends to sign the Revised Lease.³⁵ In response, Plaintiff sends Tenant the Commission Agreement signed by Plaintiff and Defendant.³⁶
- April 13, 2017 Tenant signs the Revised Lease (the "Final Lease").³⁷
- April 14, 2017 Plaintiff and Tenant communicate regarding alternatives to personal guaranty.³⁸
- April 18, 2017 Defendant signs the Final Lease.³⁹
- April 24, 2017 Plaintiff contacts Tenant about the lease terms.⁴⁰ Tenant informs Plaintiff the Final Lease was executed and Tenant crossed out Article 50 regarding no broker's commission.⁴¹

³¹ Def. Resp., Ex. O.

³² Mot. Summ. J. ¶ 10.

³³ *Id.* ¶ 11, Ex. D; Def. Resp., Ex. R.

³⁴ Mot. Summ. J., Ex. D.

³⁵ *Id.*

³⁶ Def. Resp., Ex. S.

³⁷ Mot. Summ. J., Ex. E ("Final Lease"); Pl. Reply ¶ 4.

³⁸ Def. Resp., Ex. U at 3 ("Tenant/Plaintiff's Text Messages").

³⁹ Mot. Summ. J. ¶ 12.

⁴⁰ Tenant/Plaintiff's Text Messages at 6.

⁴¹ *Id.* at 9; Pl. Reply ¶ 4.

- April 25, 2017 Tenant sends Plaintiff the Final Lease.⁴²
- May 11, 2017 Plaintiff contacts Defendant regarding the Commission Agreement.⁴³
- May 15, 2017 Defendant sends Plaintiff a letter informing Plaintiff that Defendant will not pay Plaintiff a commission.⁴⁴

IV. DISCUSSION

A. Standard of Review

Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.⁴⁵ The moving party bears the burden of establishing the non-existence of material issues of fact,⁴⁶ and the Court must view the record in a light most favorable to the non-moving party.⁴⁷ Under Delaware law, summary judgment is appropriate in a contract dispute where the language at issue is clear and unambiguous.⁴⁸

B. Contract Interpretation

Delaware adheres to the ‘objective’ theory of contracts, i.e. a contract's construction should be that which would be understood by an objective, reasonable

⁴² Def. Resp., Ex. T.

⁴³ *Id.*, Ex. I.

⁴⁴ Mot. Summ. J. ¶ 13, Ex. F; Def. Resp., Ex. I.

⁴⁵ Super. Ct. Civ. R. 56(c).

⁴⁶ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

⁴⁷ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

⁴⁸ *GMG Capital Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 783 (Del. 2012).

third party.⁴⁹ When interpreting a contract, Delaware courts give priority to the intentions of the parties as “reflected in the four corners of the agreement.”⁵⁰ Where the contractual language is clear and unambiguous, the Court will give effect to the plain meaning of the contract’s terms and provisions.⁵¹ “A contract is not rendered ambiguous simply because the parties do not agree upon its proper construction.”⁵² Ambiguity exists “[w]hen the provisions in controversy are fairly susceptible of different interpretations or may have two or more different meanings.”⁵³ The determination of ambiguity lies within the sole province of the Court.⁵⁴ For the reasons set forth below, the Court finds the Commission Agreement is clear and unambiguous.

C. The Commission Agreement is Enforceable Against the Parties.

Defendant asserts that the Commission Agreement is void, and therefore, Defendant is not obligated to pay Plaintiff a commission.⁵⁵ According to Defendant, the Commission Agreement is contingent on the terms in the Proposed Lease, and

⁴⁹ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (quotations omitted) (quoting *NBC Universal v. Paxson Commc'ns*, 2005 WL 1038997, at *5 (Del. Ch. Apr. 29, 2005)).

⁵⁰ *Salamone v. Gorman*, 106 A.3d 354, 368 (Del. 2014) (internal quotations omitted) (quoting *GMG Capital Invs., LLC*, 36 A.3d at 779).

⁵¹ *Rhone-Poulenc Basic Chems. Co. v. Amer. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992); see also *DeLucca v. KKAT Mgmt., L.L.C.*, 2006 WL 224058, at *2 (Del. Ch. Jan. 23, 2006) (“[I]t is the court's job to enforce the clear terms of contracts.”).

⁵² *Rhone-Poulenc Basic Chems. Co.*, 616 A.2d at 1195.

⁵³ *GMG Capital Invs., LLC*, 36 A.3d at 780 (internal quotations omitted) (quoting *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997)).

⁵⁴ *Osborn ex rel. Osborn*, 991 A.2d at 1160.

⁵⁵ Def. Supp. Br. ¶ 6.

when Defendant voided the Proposed Lease on March 30, 2017, the Commission Agreement was voided as well.⁵⁶

Pursuant to the Commission Agreement:

In consideration for its services in negotiating a lease between [Defendant] . . . and [Tenant] . . . in the property known as the Independence Mall . . . [Defendant] agrees to pay [Plaintiff] . . . commission(s) equal to that defined . . . by the Schedule of Commission Rates and Fees, whether under conditions of the [P]roposed [L]ease between [Defendant] and Tenant, *or* under the same or different terms by virtue of any extension, option, expansion, renewal or new lease.⁵⁷

The Commission Agreement is expressly conditional upon the terms in the Proposed Lease or, in the alternative, upon any modified terms in the Proposed Lease as a result of any extension, option, renewal or new lease. This provision preserves the Commission Agreement in the event the terms of the Proposed Lease are altered or the Parties choose to create a new lease. Here, after Defendant withdrew the Proposed Lease, the Parties continued to negotiate a new lease under “the same or different terms” of the Proposed Lease. The Revised Lease which became the Final Lease constitutes a “new lease” under the Commission Agreement. There are multiple provisions in the Proposed Lease which are reflected in the Final Lease, and both Parties refer to the Final Lease as the “revised” Proposed Lease.⁵⁸

⁵⁶ Def. Supp. Br. ¶ 6.

⁵⁷ Mot. Summ. J., Ex. A (emphasis added).

⁵⁸ Def. Resp., Ex. R.

Therefore, on March 30, 2017, the Commission Agreement was not rendered void and is enforceable against the Parties.

D. The Commission Agreement Provides Plaintiff a Right to a Commission for Its Services in Negotiating a Lease.

Plaintiff contends it is entitled to a commission because it provided “services in negotiating” the Final Lease, including: introducing Tenant to Defendant; drafting the LOI on Tenant’s behalf; reviewing Defendant’s Proposed Lease with Tenant; drafting the Counterproposal; and assisting Tenant with the final lease negotiations which resulted in the execution of the Final Lease.⁵⁹

Defendant argues that, under the Commission Agreement, Plaintiff is only entitled to a commission for “negotiating a lease,” and Plaintiff did not negotiate the Final Lease.⁶⁰ Defendant claims that “procuring a tenant” is not the equivalent of negotiating a lease, and therefore, Plaintiff is not entitled to a commission.⁶¹ Further, according to Defendant, Plaintiff did not comply with the terms of the Commission Agreement because after the rejection of the Counterproposal on March 30, 2017, Plaintiff was not involved in the negotiations.⁶²

The Court must interpret the Commission Agreement as a whole and give effect to the plain meaning of its terms. The plain meaning of this provision provides

⁵⁹ Mot. Summ. J. ¶¶ 5–6, 9.

⁶⁰ Def. Resp. ¶¶ 5, 9; Def. Supp. Br. ¶¶ 1, 7.

⁶¹ Def. Resp. ¶ 9; Def. Supp. Br. ¶¶ 7–8.

⁶² Def. Resp. ¶¶ 6, 9; Def. Supp. Br. ¶ 3.

Plaintiff a right to a commission for rendering its services in negotiating a lease between Defendant and Tenant. Contrary to Defendant’s argument, the Commission Agreement does not state that Plaintiff is required to “negotiat[e] a lease.” The Commission Agreement states, “[i]n consideration for its **services in negotiating** a lease”⁶³ The Court must therefore determine whether there is a genuine issue of material fact as to whether Plaintiff provided “services in negotiating” the Final Lease.

E. Tenant’s Communications with Defendant Do Not Affect Plaintiff’s Rights Under the Commission Agreement.

Defendant argues that Plaintiff’s right to a commission is precluded because, after Defendant rejected the Counterproposal on March 30, 2017, Tenant directly communicated with Defendant and negotiated a lease.⁶⁴ Defendant cites to multiple electronic communications between Defendant, Tenant, and Plaintiff in its effort to establish that Tenant—not Plaintiff—negotiated the Final Lease.⁶⁵ However, the Court finds that Tenant’s communications with Defendant do not affect Plaintiff’s rights under the Commission Agreement.

First, the terms of the Commission Agreement do not prohibit Tenant from directly communicating with Defendant, and nothing in the Commission Agreement states Plaintiff would forfeit its right to a commission if it permitted Tenant to do

⁶³ Commission Agreement (emphasis added).

⁶⁴ Def. Resp. ¶ 9; Def. Supp. Br. ¶ 3.

⁶⁵ See Def. Resp., Exs. N–O, R–U.

so.⁶⁶ Second, Defendant's March 30, 2017 letter to Plaintiff rejecting the Counterproposal shows that Defendant did not sever its relationship with Plaintiff.⁶⁷ Defendant states in that letter: "We will await your response and look forward to fulfilling [Tenant's] needs for [its] new space in Independence Mall."⁶⁸ This shows that Defendant did not intend to terminate the lease negotiations between Plaintiff and Tenant and awaited Plaintiff's and Tenant's response to its letter.

Defendant's claim that Plaintiff was no longer involved after the rejection of the Counterproposal is belied by the electronic communications submitted by Defendant itself.⁶⁹ On March 30, 2017, immediately after receiving Defendant's rejection of the Counterproposal, Tenant emailed Plaintiff stating it wanted to schedule a telephone conference with Defendant and specified which lease terms and provisions it wished to discuss with Defendant.⁷⁰ In response, Plaintiff's agent offered to speak with Tenant about any questions or concerns Tenant might have prior to the telephone conference.⁷¹ In its April 11, 2017 email, Tenant forwarded the Revised Lease to Plaintiff to review and notified Plaintiff that Tenant intended to execute the Revised Lease.⁷² Tenant and Plaintiff continued to discuss and

⁶⁶ See Commission Agreement.

⁶⁷ See Mot. Summ. J., Ex. C.

⁶⁸ *Id.*

⁶⁹ See Def. Resp., Exs. N–O, R–U.

⁷⁰ Mot. Summ. J. ¶ 8; Def. Resp., Ex. N; Pl. Reply ¶ 4.

⁷¹ Def. Resp., Ex. N.

⁷² Mot. Summ. J. ¶ 11, Ex. D; Def. Resp., Ex. R.

reassess lease terms up until Tenant and Defendant signed the Final Lease.⁷³ Approximately two weeks later, on April 25, 2017, Tenant sent the Final Lease to Plaintiff.⁷⁴ The communications between Plaintiff and Tenant show that Plaintiff participated in the final negotiations with Tenant and continued to provide its services in negotiating the Final Lease.⁷⁵

Upon review of the record, the Court determines there is no genuine issue of material fact as to whether Plaintiff provided services in negotiating a lease between Defendant and Tenant regarding a unit in the Independence Mall. According to both Parties, Plaintiff introduced Tenant to Defendant, relayed communications between Tenant and Defendant, drafted and reviewed the Proposed Lease with Tenant, delivered a counteroffer to Defendant on Tenant's behalf, assisted Tenant throughout the negotiation process until Tenant and Defendant executed the Final Lease, and Defendant did not pay Plaintiff a commission.⁷⁶ Under the express terms of the Commission Agreement, the fact that Tenant directly communicated with Defendant does not sever Plaintiff's involvement in the negotiations nor affect its right to a commission. Based on the undisputed facts, and viewing the record in the light most favorable to the non-moving party, Defendant breached the Commission

⁷³ See Def. Resp., Ex. U at 3 (Four days prior to the signing of the Final Lease, Plaintiff and Tenant discussed alternatives to personal guaranty for the lease).

⁷⁴ Def. Resp., Ex. I.

⁷⁵ See Def. Resp., Exs. N–O, R–U.

⁷⁶ See Mot. Summ. J. ¶¶ 5–6, 9, 13; *see also* Def. Resp. ¶¶ 1–4, Exs. D, I, N–O, R–U.

Agreement, and under the clear and unambiguous terms of the Commission Agreement, Plaintiff is entitled to a commission for its services in negotiating the lease.

F. Accelerated Payment of Commissions.

According to the express terms of the Commission Agreement, Plaintiff is entitled to an accelerated payment of its commissions for the five-year lease term and the additional option to renew five-year term included in the Final Lease. Defendant argues the Commission Calculator chart attached to the Commission Agreement does not provide a commission for an option to renew, and therefore, the acceleration provision allows the acceleration of commissions for only the first five-year term—not the option to renew.⁷⁷ But, the commissions referenced in the Commission Calculator chart are computed under the terms of the Proposed Lease at the time the Parties entered into the Commission Agreement. After Defendant rejected the Proposed Lease, the Commission Agreement became conditional upon the terms of the Final Lease, and therefore, the commission is based on the annual rent of the Final Lease.

The Acceleration Provision states:

In the event said commissions are not paid within thirty (30) days of the due date, [Plaintiff] shall have the right to accelerate payment of the balance of all future

⁷⁷ Def. Supp. Br. ¶ 10.

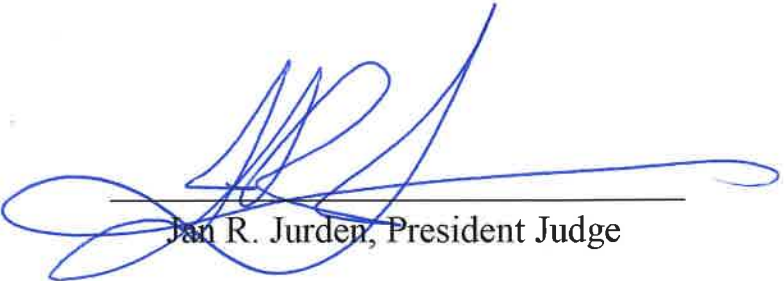
commissions based upon the tenant exercising all options to renew and extend this lease⁷⁸

The Acceleration Provision expressly states Plaintiff may “accelerate payment of the balance of all future commissions” which includes all options to renew under the Final Lease. The Final Lease includes a five-year term and an option to renew for an additional five-year term. Therefore, pursuant to the Commission Agreement, the Court finds Plaintiff is entitled to an accelerated payment of the commissions for the five-year lease term and the additional option to renew five-year term.

VI. CONCLUSION

Viewing the record in a light most favorable to Defendant, there is no genuine issue of material fact in dispute, and therefore, Plaintiff is entitled to judgment as a matter of law.⁷⁹ For the foregoing reasons, Plaintiff Patterson-Woods & Associates, LLC’s Motion for Summary Judgment is **GRANTED**.

IT IS SO ORDERED.



Jan R. Jurden, President Judge

cc: Prothonotary

⁷⁸ See Commission Agreement.

⁷⁹ Defendant’s arguments regarding fraud in the inducement, misrepresentation, and unilateral mistake are not pled with particularity, and therefore, the Court will not address these contentions. See Super. Ct. Civ. R. 9(b) (“In all averments of fraud, negligence or mistake, the circumstances constituting fraud, negligence or mistake shall be stated with particularity.”).