

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SILICON LABS INTEGRATION, INC.,
Plaintiff,
v.
SHMUEL MELMAN,
Defendants.

No. CV 08-04030 RMW
ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT
[Re Docket No.134]

Plaintiff Silicon Labs Integration, Inc. ("SLI") moves for summary judgment on defendant Shmuel Melman's ("Melman") counterclaim for breach of contract, quantum meruit, fraud, and negligent misrepresentation on the grounds that (1) there is no evidence that Melman entered into an enforceable contract with SLI (formerly Integration Associates, Inc. ("IA")) regarding payment of compensation for services rendered to IA in connection with Silicon Labs, Inc.'s ("Silicon Labs") acquisition of IA in July 2008; (2) that even if there was a contract, securities regulations required Melman to have a broker's license to perform the activities as issue, which he did not; and (3) Melman's activities do not fall within an exception to the broker's license requirement for individuals who make initial introductions. For the reasons stated below, the motion for summary judgment is

1 granted with respect to the breach of contract, fraud, and negligent misrepresentation claims. It is
2 denied with respect to the quantum meruit claim.

3 I. BACKGROUND

4 SLI is a California corporation that designs and manufactures semiconductors for radio
5 frequency, infrared, modem, and power management applications. Before the events that form that
6 basis for this suit, SLI was known as IA. Melman is the Chief Executive Officer of Crow Electronic
7 Engineering ("Crow") an Israeli corporation that manufactures electronic security systems, and
8 which used IA's and Silicon Lab's semiconductor products in its security systems.

9 On August 7, 2007, the president of Silicon Labs contacted consultant Brad Fluke regarding
10 a possible M&A transaction with one of three candidate companies, one of which was IA. (Fluke
11 Declaration, ¶ 3.) By August 21, 2007, Silicon Labs had identified IA as a target company and
12 decided to schedule a management presentation. (Roy Declaration, ¶ 5.) Fluke left several
13 messages for IA's CEO between August 7, 2007 and August 24, 2007, and the two spoke for over an
14 hour on August 24, 2007 about the compatibility of the companies. (Fluke Declaration, ¶¶ 5-7.)
15 IA's CEO agreed to visit Silicon Labs at its headquarters in Austin, Texas to assess the possibility of
16 a M&A transaction. (*Id.*)

17 IA's CEO visited Silicon Labs on September 5, 2007, and the parties discussed the possibility
18 of an M&A transaction in detail. (*Id.*, at ¶ 9.) On September 25, 2007, IA's CEO discussed the
19 possibility of an acquisition with IA's board of directors, and the board voted to entertain the offer.
20 (*Id.*, at ¶ 12.) Silicon Labs began reviewing IA's profits and loss statements and other detailed
21 financial information. (Roy Declaration, ¶ 18.) In November 2007, Silicon Labs gave a presentation
22 about IA, stated that IA's expertise was aligned with Silicon Labs' core competency, and provided
23 strategic reasons for the merger. (*Id.*, at ¶ 8.) On November 30, 2007, Silicon Labs and IA executed
24 a nondisclosure agreement. (*Id.*, at ¶ 13.) On December 12, 2007, IA forwarded its financial
25 information for Silicon Labs to use in evaluating IA's financial condition. (*Id.*, at ¶ 18.) On March
26 28, 2008, Silicon Labs circulated for internal review a letter of intent stating its intention to purchase
27 IA. (*Id.*, at ¶ 14.) Silicon Labs sent the letter of intent to IA on April 9, 2008. (*Id.*, at ¶ 15.) IA
28 executed the letter of intent on April 29, 2008. Following the due diligence period, Silicon Labs and

1 IA executed an Agreement and Plan of Reorganization and announced that Silicon Labs would
2 acquire IA for \$80 million on June 24, 2008. After the agreement closed, the two companies
3 became known as SLI.

4 This case is about whether a brokerage or finder's commission agreement existed between IA
5 and Melman. On February 28, 2008, Melman met with Rafael Fried, Vice President and General
6 Manager of IA's wireless division, to discuss IA's technology, including new generation short range
7 wireless technology. (Melman November 6, 2008 Declaration, ¶ 7-9). On March 6, 2008, Melman
8 spoke with Fried on the telephone and explained that he could find an appropriate acquirer or partner
9 for IA based on his understanding of wireless technology and his experience in the electronics
10 industry. (*Id.*, at ¶ 10). Melman explained that he "expected to be compensated for [his] efforts on
11 behalf of IA," and Fried agreed that he would be compensated. (*Id.*) Following the March 6, 2008
12 call, Melman invested considerable time and resource to study IA's technology and to identify a
13 suitable candidate to acquire or partner with IA. (*Id.*, at ¶ 14.) On March 11, 2008, Melman met
14 with Silicon Labs' Vice President of European Sales, Vaughan Price, and with Silicon Labs' Israeli
15 distributor, and Price described the company's new wireless chips. (*Id.*) Melman explained that in
16 his opinion, it would be a waste of time for Silicon Labs to develop wireless technology, and that
17 Silicon Labs should instead consider acquiring IA. (*Id.*) On April 9, 2008, Melman repeated those
18 statements to Price during a call arranged to solicit Melman's view on the Silicon Lab's plan to
19 develop short-range wireless chip products. (*Id.*, at ¶ 16.) Melman further communicated with
20 Fried, who "reaffirmed that IA would compensate [Melman] for his efforts" and who told Melman
21 that representatives from Silicon Labs had met with IA, praised Melman's expertise, and noted that
22 Melman recommended IA's technology. (*Id.*, at ¶ 16-17.)

23 After the acquisition closed, Melman contacted SLI regarding the commission to which he
24 contends he was entitled. It is undisputed that Fried and Melman never discussed the type or
25 amount of compensation that Melman would receive. Melman has claimed that at the time of the
26 transaction, there existed in Israel a trade custom and usage that in all contracts for the facilitation of
27 a strategic transaction, the service provider is entitled to a commission of at least 5% of the value of
28 the facilitated transaction. Because IA was acquired for \$80 million, Melman contends that he is

1 entitled to \$4 million. Melman has provided no additional evidence in support of his statement that
2 the 5% fee "in Israel is and at all times mentioned has been certain and uniform, and of general
3 continuity and notoriety and acquiesced in by the industry." (Answer and Counterclaim to Amended
4 Complaint, ¶ 7.)

5 On August 19, 2008, Melman met with Kurt Hoof, Vice President of Worldwide Sales for
6 Silicon Labs, without success regarding his claims. On August 22, 2008, SLI filed a complaint for
7 declaratory relief and intentional interference with prospective economic advantage. Melman
8 moved to dismiss the complaint on November 6, 2008, on the basis that the court lacked personal
9 jurisdiction over Melman, that SLI's declaratory judgment claim involved a misuse of the
10 Declaratory Judgment Act, that the doctrine of forum non conveniens precluded going forward in
11 this court and required the case to be transferred to Israel, and that SLI's claim for intentional
12 interference with prospective economic advantage failed to state a claim upon which relief could be
13 granted. The court denied the motion to dismiss on all but the last grounds, and gave SLI leave to
14 amend on the dismissed claim. SLI filed its amended complaint on July 29, 2009. Melman again
15 brought a motion to dismiss, which was denied. On April 15, 2010, Melman filed an answer to the
16 amended complaint, and added counterclaims for breach of oral contract, quantum meruit, fraud, and
17 negligent misrepresentation. On November 24, 2010, SLI's counsel sent a letter to the court
18 explaining that the parties had reached an agreement that SLI would dismiss its second claim for
19 relief for intentional interference with prospective economic advantage under California law.

20 II. ANALYSIS

21 Melman does not dispute SLI's contention that the court should apply California law to
22 determine whether he entered into a valid contract with IA. Under California law, as elsewhere,
23 every contract requires mutual assent or consent. *Weddington Production, Inc. v. Flick*, 60 Cal.
24 App. 4th 793, 811 (1998). "Consent is not mutual, unless the parties all agree upon the same thing
25 in the same sense." *Id.*, citing Cal. Civil Code §1580. In order for acceptance of an offer to result in
26 the formation of a contract, the offer "must be sufficiently definite, or must call for such definite
27 terms in the acceptance, that the performance promised is reasonably certain." *Id.*; see also *Ladas v.*
28 *California State Automobile Association*, 19 Cal. App. 4th 761, 770 (1993).

1 In this case, even interpreting the evidence in the light most favorable to Melman, there is
2 insufficient evidence that Melman and IA (through Fried) entered into a valid contract as a result of
3 their telephone conversations in March 2008. To support contract validity, Melman now states "My
4 agreement with IA, through its No. 2 executive Rafi Fried, was clear and definite: I was to identify
5 potential strategic partners for a merger with or acquisition of IA in order to preserve and develop
6 IA's newest wireless technology. Upon the completion of such a transaction, we agreed that I would
7 be paid the fee that is customary in Israel for such transactions: five percent of the value of the
8 transaction." (Melman November 27, 2010 Declaration, ¶ 4.) But these statements are belied by
9 Melman's earlier and more detailed descriptions of his conversations with Fried and do not create a
10 triable issue of fact. (See Melman November 6, 2008 Declaration, ¶ 7-9.) The mere fact that Fried
11 stated that Melman would be "compensated" is simply too vague and uncertain to demonstrate that
12 there was any agreement as to price. The conversation between Fried and Melman, as discussed by
13 Melman's counsel at oral argument, in which Melman offhandedly mentioned to Fried that Melman
14 "would do much better" if the deal was consummated than Fried would do as the result of a 2%
15 interest in the company is also too vague, and the connection to the alleged enforceable contract
16 term too attenuated, to provide adequate support for Melman's contention that there was an
17 agreement about compensation. Further, there is no evidence in the record to support Melman's
18 contention that Fried agreed to pay Melman 5% of the value of any eventual transaction or that such
19 a fee is customary and usual in Israel.

20 To the contrary, the record clearly establishes that by March 2008, Silicon Labs and IA were
21 at an advanced stage of merger discussions and had no need for Melman's assistance in introducing
22 them or facilitating a merger, let alone that IA could possibly have intended to pay Melman \$4
23 million for research into Silicon Labs or for suggesting to the salesmen for Silicon Labs with whom
24 he conducted business that Silicon Labs should consider acquiring IA. At most, Melman may have
25 believed that simply by conducting some basic research and complimenting IA's technology to
26 Silicon Labs' Vice President of Sales, he would become entitled to a \$4 million fee. No rational
27 factfinder could find that IA could have intended those terms.

