

**Krikorian v LaCorte**

2012 NY Slip Op 32494(U)

October 1, 2012

County Court, Albany County

Docket Number: 7625-10

Judge: Joseph C. Teresi

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STATE OF NEW YORK  
COUNTY COURT  
SCOTT KRIKORIAN,

COUNTY OF ALBANY

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Plaintiff,

-against-

**DECISION AND ORDER**  
**INDEX NO. 7625-10**  
**RJI NO. 01-11-0102784**

EILEEN LACORTE,

Defendant.

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**APPEARANCES:**

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Attorneys for Plaintiff  
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**TERESI, J.:**

The defendant moves for summary judgment pursuant to CPLR 3212 and seeks the dismissal of the complaint. The plaintiff opposes the motion.

Plaintiff commenced this action and alleges he and the defendant had an enforceable real estate joint venture agreement. The plaintiff seeks 1) specific performance of the joint venture partnership, 2) an accounting, 3) damages for the breach of the alleged joint venture agreement, 4) a constructive trust over the proceeds and profits from the sale of real property and 5) payment for services rendered *quantum meruit*.

Plaintiff alleges he and the defendant entered into a joint venture partnership in 2004. The plaintiff claims he and the defendant agreed to purchase and renovate properties to rent or sell. The plaintiff claims the defendant was the financial backer of the company and owned several properties that were to be renovated. The plaintiff alleges was going to contribute his time, knowledge, skills and man power to run the day to day operation of the business and to oversee the renovation of the properties. The plaintiff claims he and the defendant intended to form an LLC and they were to be equal members. The plaintiff alleges Global Real Estate Group, LLC was formed on September 15, 2006 and the defendant was listed as the sole member of the LLC. The plaintiff maintains he was the President of the new company. The plaintiff claims he invested up to \$100,000.00 in the company which consisted of cash (\$60,000.00), his time and skills. The plaintiff claims he was the contact person for the operation of the company. The plaintiff alleges he did not keep time sheets for the work he performed because he was an equal owner of the company. The plaintiff alleges none of the properties that he was involved with were ever transferred to Global Real Estate Group, LLC. The plaintiff contends the defendant refused to make him an equal owner of the company and refused to place any of the properties in the LLC. The plaintiff alleges the defendant has acknowledged his investment in the company. The plaintiff contends the defendant failed to account for the rental income and mortgage proceeds she received. The plaintiff alleges since the defendant created all of the debt associated with the company, he should not be held responsible for the debt the defendant created.

The plaintiff alleges the defendant breached the joint venture by failing to distribute one-half of the proceeds from the sale of real property, by failing to transfer title of property she owned to the LLC and failed to reimburse him for labor, services and work he performed for the joint venture partnership.

The defendant denies she ever entered into a joint venture partnership with the plaintiff. The defendant alleges she never agreed to transfer properties she owns to the plaintiff nor did she ever agree to share the proceeds for the sale of her real property. The defendant claims she purchased three properties in Troy, New York upon the advice of the plaintiff. The defendant contends she still owns the properties, is liable for the mortgages and the properties turned out to be bad investments. The defendant maintains she formed Global Real Estate in 2006 and she is the sole member of the company. Once the LLC was formed, the defendant alleges she obtained a line of credit from Pioneer Savings Bank in the amount of \$500,000.00 to use for the purchase, improvement, development and marketing of investment properties. The defendant used the line of credit to purchase and improve other investment properties upon the advice of the plaintiff. The defendant claims her real estate ventures have not been profitable and she currently owes \$497,000.00 on the line of credit. The defendant claims the plaintiff is residing in a home she purchased and improved. The defendant alleges after purchasing and/or improving her properties, she has yet to realize a profit. The defendant claims she never agreed to pay the plaintiff \$100.00 per hour and he never worked 40-50 hours per week for her. The defendant claims at no time did the plaintiff provide any financial support towards the purchase and improvements of the properties. The defendant maintains any funds expended by the plaintiff were reimbursed by her or the company.

The defendant alleges that during discovery the plaintiff failed to produce a single document that supported the allegation that he was a partner in a joint venture with her. The defendant claims the plaintiff failed to produce any documentary evidence to support his claim that he worked 40-50 hours per week for six years at \$100 per hour. The defendant contends the plaintiff only offered a bank statement showing withdrawals totaling \$3,000 to demonstrate that he provided \$100,000.00 of his funds towards the joint venture. The defendant claims at the plaintiff's deposition, he admitted

there was no written joint venture agreement, he never kept any records, the defendant owned all of the properties and she financed all of the improvements to the properties. The plaintiff did admit that he received a commission payment for the sale of 188 First Street, Troy, New York. The plaintiff acknowledges that the defendant handled all of the finances relating to the properties and the LLC. The plaintiff also states that he assumed no responsibility for any of the business losses as he was not the one who incurred them.

On a motion for summary judgment, the movant must establish by admissible proof, the right to judgment as a matter of law. (Alvarez v. Prospect Hospital, 68 NY2d 230 [1986]). The burden shifts to the opponent of the motion to establish by admissible proof, the existence of genuine issues of fact. (Zuckerman v. City of New York, 49 NY2d 557 [1980]). It is well established that on a motion for summary judgment, the court's function is issue finding, not issue determination. (Barr v. County of Albany, 49 NY2d 557 [1980]), and all evidence must be viewed in the light most favorable to the opponent of the motion. (Davis v. Klein, 88 NY2d 1008 [1996]).

A joint venture is “an association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill and knowledge.” (Kaufman v. Torkian, 51 AD3d 977 [2<sup>nd</sup> Dept. 2008]). The essential elements of a joint venture are an agreement manifesting the intent of the parties to be associated as joint venturers, a contribution of by the joint venturers to the undertaking, some degree of joint proprietorship and control over the enterprise and a provision for the sharing of profits and losses. (Commander Terms, Holdings, LLC . v. Poznanski, 84 AD3d 1005 [2<sup>nd</sup> Dept. 2011]).

Although it appears the plaintiff provided services to the defendant and the company, he has not demonstrated as a matter of law that he and the plaintiff entered into a joint venture agreement. The plaintiff has the burden of proof to show that such an agreement and relationship existed

between the parties. (Ramierz v. Goldberg, 82 AD2d 850 [2<sup>nd</sup> Dept. 1981]). The plaintiff has not met that burden. The plaintiff admits he never entered into a written partnership agreement with the defendant. The defendant was the sole owner of the properties slated to be improved and she was responsible for the payment of the line of credit with Pioneer Savings Bank. In support of his claims, the plaintiff has failed to provide any records, time sheets, bank statements (except one) that demonstrate his financial and time contributions to the company for the purchase and renovation of the subject properties. Most importantly, the plaintiff has admitted that he had no intention to share any losses of the company as he did not incur them. Plaintiff's claims of a breach of a fiduciary duty pursuant to a joint venture must fail as a matter of law since there is no provision for the sharing of losses. (Kaufman v. Torkan, 51 AD3d at 979]). A definite agreement with respect to the sharing of profits and losses is an indispensable element of any joint venture agreement, oral or written. (Schnur v Marin, 285 AD2d 639 [2<sup>nd</sup> Dept. 2001]). Since the defendant owned the properties and was responsible for the line of credit, the plaintiff has not shown that he was at risk for any of the business losses. (Rocchio v. Biondi, 40 AD3d 615 [2<sup>nd</sup> Dept. 2007]). Plaintiff's four causes of action based upon a joint venture agreement are dismissed.

Plaintiff also seeks to recover for services provided by *quantum meruit*. The elements of a cause of action sounding in *quantum meruit* are 1) the performance of services in good faith, 2) the acceptance of the services by the person to whom they are rendered, 3) an expectation of compensation therefore and 4) the reasonable value of the services. (Nehrum v. Illmensee, 74 AD3d 796 [2<sup>nd</sup> Dept. 2010]).

The record reveals the plaintiff has not presented any evidence detailing his services to the defendant and/or the company and the compensation sought. The plaintiff admits he did not keep time sheets for services performed because he "was an equal owner of the company." The plaintiff

also admitted that since this was a new business “I might not get back my time, efforts, skills or knowledge in running the business.” The plaintiff has not satisfied the requirements for payment under the theory of *quantum meruit*. Without proof of the value of the services provided, a claim for *quantum meruit* must fail. (Lundeman Elec, Inc. v. Dickran, 74 AD3d 1155 [2<sup>nd</sup> Dept. 2010]).

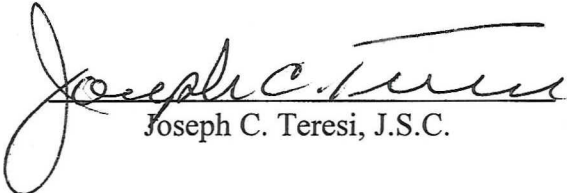
As a result, the cause of action for *quantum meruit* is dismissed.

Accordingly, the motion for summary judgment is granted and the complaint is dismissed.

This Decision and Order is being returned to the attorneys for the defendant. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: Albany, New York  
October / , 2012

  
Joseph C. Teresi, J.S.C.

**PAPERS CONSIDERED:**

1. Notice of Motion dated August 22, 2012;
2. Affidavit of Eileen LaCorte dated August 22, 2012;
3. Affirmation of James J. Barriere, Esq. dated August 21, 2012 with attached Exhibits A-H;
4. Defendant's Memorandum of Law dated August 22, 2012;
5. Affirmation of Andrew J. Healey, Esq. dated September 14, 2012 with attached exhibits 1-17;
6. Affidavit of Scott Krikorian dated September 14, 2012;
7. Defendant's Memorandum of Law dated September 20, 2012.