

Echevarria v Shahar
2016 NY Slip Op 32104(U)
September 19, 2016
Supreme Court, Queens County
Docket Number: 34136/09
Judge: Allan B. Weiss
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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS

IA PART 2

-----x
TANIA ECHEVARRIA AND ARTURO PEROCIER,

Plaintiff,

Index No: 34136/09

Motion Date: 6/22/16

-against-

Motion Seq. No.: 6

RON SHAHAR, TRS, INC., EXCLUSIVE HOMES
ENTERPRISES CORP., RAJESH MADDIWAR,
BENJAMIN AMIRIAN, MORTGAGE ENTERPRISE,
LTD., AND WELLS FARGO BANK NATIONAL
ASSOCIATION,

Defendants.

The following papers read on this motion by defendants Ron Shahar, TRS, Inc. and Exclusive Homes Corp. for an order granting summary judgment dismissing the complaint.

Papers
Numbered

Notice of Motion-Affidavit-Affirmation-Exhibits	1-4
Opposing Affirmation-Affidavit-Exhibits.....	5-7
Reply Affidavit-Exhibits.....	8-10

Upon the foregoing papers the motion is determined as follows:

In December 2005 plaintiffs Tania Echevarria and Arturo Perocier entered into a contract of sale with TRS, Inc. to purchase improved real property known as 114-11 Augusta Court, Jamaica, New York, for the sum of \$495,500.00. The contract of sale provided that the purchaser had inspected the building on the premises and agreed to purchase it in their “as is” condition, and to order a title report with “Register Abstract old title nos: R-4071Q (718) 423-5333”.

The December 2015 rider to the contract of sale provides, at paragraph 6 that “[s]eller represents premises as they exist constitute a legal 2 family dwelling, Seller will deliver a

Certificate of Occupancy for all existing structures at closing if required by the Municipality in which the property is located. However, if the Municipality requires an updated survey before they will issue any certificate, Purchaser must furnish an updated survey satisfactory to the Municipality at its cost and expense. If the cost of compliance with this paragraph exceeds \$500.00 Seller shall have the option to cancel the contract and upon return of the downpayment the contract shall be deemed null and void.”

Said rider is typewritten and the words “2 family” that were inserted in said paragraph 6 are handwritten. The December 2015 contract and rider were executed by Ms. Echevarria and Mr. Perocier, and by Ron Sharar “as Pres” of the seller, TRS Inc.

The Certificate of Occupancy report provided by S. J. Carroll Jr. Inc., for Register Abstract Co. Inc., dated July 27, 2005, states that according to the Department of Buildings index, no Certificate of Occupancy was issued for said building; that it was an old building erected prior to the enforcement of Certificate of Occupancy regulations; and that it is a “TWO STORY FRAME BUILDING; ONE FAMILY DWELLING; “BUILDING CLASS -“B3” (CONVERTED TWO FAMILY DWELLING)”, with a garage.

The closing was held on January 20, 2006, at which time said real property was conveyed to Ms. Echevarria and Mr. Perocier by TRS Inc. pursuant to a bargain and sale deed.

Ms. Echevarria received a letter from the New York City Department of Buildings (DOB) dated August 24, 2009, stating that the agency had received a complaint on July 15, 2009, regarding alleged illegal conditions at the Augusta Court property and requested that she schedule an appointment for an inspection of the premises. The DOB inspected said premises on August 17, 2009, and issued a Notice of Violation for the failure to properly maintain the premises and a Notice of Violation for work without a permit finding that the water and waste lines for a three piece bathroom on the first floor had been installed and that there was an extension of the first floor at the rear of the premises that was being used as a bedroom. The owner was directed to maintain the premises and to obtain a permit or restore the premises to the original condition.

Plaintiffs commenced the within action against on December 21, 2009, and allege a fraudulent real estate transaction with respect to their purchase of the Augusta Court property, naming as defendants Ron Shahar and his companies TRS Inc. and Exclusive Homes Enterprises Corp. (Exclusive Homes), their own attorneys Rajesh Maddiwar and Benjamin Amirian, Mortgage Enterprise Ltd. (MEL), and Wells Fargo Bank, National

Association¹.

Plaintiffs allege in their verified complaint that on February 9, 2005, that defendant Shahar purchased the subject real property as a one-family house for the sum of \$255,000.00; that defendant TRS Inc. purchased the subject real property as a one-family house for the sum of \$255,000.00; that defendant Shahar and defendant TRS Inc. “did not obtain permits to convert, alter, improve, renovate or otherwise construct and/or modify the subject property from a one-family to a two-family property (“building permits”); and that Shahar individually, “and/or either” TRS Inc., or Exclusive Homes “caused the property to be modified, renovated or altered to appear as a two family house by adding additional bathrooms, toilets, plumbing fixtures, kitchen, kitchen equipment, walls and floorings”, without the proper permits and approvals from the Department of Buildings.

Plaintiffs allege that although the contract of sale required the seller to convey a “legal 2 family dwelling”, it failed to do so; that the prior owner Shahar and TRS Inc., purchased the subject property, a one family house February 9, 2005; that Shahar knew that the property was a one-family property; that Shahar, and/or TRS Inc. or Exclusive Homes made alterations without a permit; that between February 9, 2005 and January 20, 2006, Shahar individually or as an agent of TRS Inc. or Exclusive Homes represented to the plaintiffs on more than one occasion that the subject real property was a legal two-family house; that Shahar knew that said representations were false and that plaintiffs would reasonably rely upon said representations, to their detriment.

Plaintiffs also allege that on or after December 1, 2005, defendant Shahar introduced plaintiffs to the co-defendants Mortgage Enterprises Ltd, Maddiwar and Amirian, and that the co-defendants “knew, or should have known, that the subject real property was a one-family property”. Plaintiffs allege that all of the defendants acted in concert and conspired against them and that all of the defendants pursuant to the terms of contract of sale restricted and limited information regarding the title to the property, in order to sell the property at a sum above its real market value, and obtain fees and payment for their services in connection with this transaction.

The first cause of action for breach of contract alleges that Ron Shahar, individually and/or as an agent of TRS Inc., agreed to sell and the plaintiffs agreed to purchase a “legal 2 family dwelling”; that said defendants failed to deliver a “legal 2 family dwelling”; and that said defendants failed to perform to the detriment of the plaintiffs.

¹The complaint has been dismissed against defendants Wells Fargo National Association, Maddiwar, Amirian and Mortgage Enterprises Ltd., pursuant to orders of this court.

The second cause of action against Ron Shahar, individually and/or as an agent of TRS Inc., alleges that Shahar has been unjustly enriched in the sum of \$250,000, which represents the difference between the 2005 purchase price of the subject property and the purchase price under the contract of sale.

The third cause of action alleges that all of the defendants “acting in concert and conspiring against the Plaintiffs fraudulently transferred title of the subject property to Plaintiff for value grossly in excess of its true market value”, and that as a result the plaintiffs have suffered damages of not less than \$250,000.00, and that defendants acting in concert and conspiring against the Plaintiffs acted with reckless and wanton disregard for the truth, and seek an award of punitive damages.

The fourth cause of action alleges that all of the defendants acted in concert and conspired against the plaintiffs to “avoid the implication of applicable laws prohibiting excessive financing by causing the plaintiffs to secure two separate mortgages and loans; that they failed to engage in proper and adequate due diligence in examining the subject property; that they caused the plaintiffs to engage in the closing transaction causing them to incur excessive financing and charges; that they caused the plaintiffs to finance points, broker fees and other closing costs in excess of such fees, points and costs permitted by law; and that defendants violated Banking Law 6-1. Plaintiffs seek to set aside the mortgages and recover damages.

The fifth and sixth causes of action are for legal malpractice, and do not assert claims against Shahar, TRS Inc. or Exclusive Homes.

Defendants Ron Shahar, TRS Inc. and Exclusive Homes served a verified answer and interposed fifteen affirmative defenses, a counterclaim and a cross claim against the co-defendants.

Defendants Ron Shahar, TRS Inc., and Exclusive Homes now seeks an order granting summary judgement dismissing the complaint in its entirety.

It is well established that the proponent of a summary judgment motion “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The failure to make such a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851[1985]).

With respect to the first cause of action, the elements of a breach of contract claim are:

(1) the existence of a valid contract; (2) performance of the contract by the injured party; (3) breach by the other party; and (4) resulting damages (*JP Morgan Chase v. J.H. Elec. of N.Y., Inc.*, 69 AD3d 802 [2d Dept 2010], *Furia v Furia*, 116 AD2d 694 [2d Dept 1986]). It is undisputed that the plaintiffs entered into a contract with TRS, Inc. to purchase the subject real property. Said the contract was executed by Ron Shahar, as President of TRS Inc. The contract of sale identifies Exclusive Homes as the broker, and the seller agreed to pay the broker's commission. The deed to the subject property was also executed by Mr. Shahar, as President of TRS, Inc.

Paragraph 6, of the typed written rider to the contract of sale, entitled Certificate of Occupancy, provides as follows: "Seller represents premises as they exist constitute a legal 2 family dwelling. Seller will deliver a Certificate of Occupancy for all existing structures at closing if required by the Municipality in which the property is located. However, in the event the Municipality requires an updated survey before they will issue any certificate, Purchaser must furnish an updated survey satisfactory to the Municipality at its cost and expense. If the cost of compliance with this paragraph exceeds \$500.00 Seller shall have the option to cancel the contract and upon return of the down payment the contract shall be deemed null and void".

Mr. Shahar, in his affidavit states that the property was owned by TRS, Inc. and that he never owned the subject real property in his individual capacity. He essentially denied participating in any of the conduct described in the verified complaint in any capacity other than as an officer of TRS Inc. He further states that at the closing he produced a title report and papers from the Department of Buildings, that showed that the subject property was taxed as a "two-family B3"; that it was clear at the closing that subject property did not have an actual Certificate of Occupancy; and that he was relying on the tax classification documents from the Department of Finance and Department of Buildings, which were included in the title report and presented at the closing. He further states that a conversation ensued between the plaintiffs and their attorney, Mr. Maddiwar, who informed them that the papers presented were not sufficient proof that the subject real property was a two family house; that the plaintiffs were asked how they wished to proceed; and that the plaintiffs did not elect to cancel the contract of sale, executed an acknowledgment setting forth their understanding of the contract of sale entitled "Attorney Disclosure and Waiver", and proceeded to close title and accept the premises.

Plaintiffs' counsel, in opposition, asserts that TRS Inc. and Exclusive Homes are shell companies that Shahar created to serve his own personal purposes; that defendants have failed to establish that Shahar acted as an officer of these companies in all of his dealings with the plaintiffs; and that triable issues of fact exist as to whether Shahar acted within his capacity as a corporate officer for both TRS Inc. and Exclusive Homes in his dealings with

the plaintiffs and whether these are shell companies, so as to allow for the piercing of the corporate veil. In support of these claims, plaintiffs' seek to rely upon an excerpt from Mr. Shahar's deposition, in which he stated that he is the sole owner of the corporation and that it does not have a chief financial officer.

Ms. Echeverria stated at her deposition that at the January 20, 2006 closing there was no discussion as to whether the subject property was a legal two-family dwelling. Ms. Echeverria, however, acknowledged signing a written attorney disclaimer and hold harmless agreement, dated January 20, 2006, on her attorney's letterhead, which provides, in pertinent part, as follows: "The purchasers above [Tania Echevarria and Arturo Perocier] fully understand that they are purchasing a property that may not be a legal two family house. The property was originally built as a one family house and is not being taxed as a two family house. A property may be taxed as a legal two family dwelling prior to 1938 for it to be recognized as a legal two family house. In this case a tax assessor's letter could not be obtained because according to the title company, the City does not issue tax assessor's letters anymore. As a result it is impossible to determine whether or not the property was taxed as a two legal family before 1938."

Mr. Shahar, in a reply affidavit states that TRS Inc. was formed in 2003, and that he stopped doing transactions with this company sometime in 2011; and that Exclusive Homes was formed in 2002 and is still active as his real estate brokerage company. He states that he has always maintained separate bank accounts and tax returns, and separate employees for each company. He further states that he did not recommend Mr. Maddiwar to the plaintiffs and that Ms. Echeverria used MEL because her mother had previously used this entity in other transactions.

The evidence presented establishes that Mr. Shahar did not execute the subject contract of sale in his individual capacity, nor did he execute it on behalf of Exclusive Homes. Mr. Shahar stated at his deposition that he acted as the broker on behalf Exclusive Homes. Thus, as there is no privity of contract between the plaintiffs and Mr. Shahar individually, or between plaintiffs and Exclusive Homes, the first cause of action for breach of contract must be dismissed as against these defendants.

Plaintiffs, in opposition, have failed to raise a triable issue of fact with respect to Mr. Shahar and Exclusive Homes. "While complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather than the corporate business, such domination, standing alone, is not enough; some showing of a wrongful or unjust act toward plaintiff is required" (*Matter of Morris v New York State Dept of Taxation & Fin.*, 82 NY2d 135, 141-142 [citation omitted][1993]; *612 Wortman, LLC v Varsity Bus Co., Inc.*, 137 AD3d 1251, 1251-1252 [2d

Dept 2016]). Here, apart from conclusory allegations (*see Prichard v 164 Ludlow Corp.*, 49 AD3d 408[1st Dept 2008]; *UMG Recs., Inc. v FUBU Records, LLC*, 34 AD3d 293[1st Dept 2006]; *see also 612 Wortman, LLC v Varsity Bus Co., Inc.*, 137 AD3d at 1251-1252), no evidence has been presented which demonstrates that Mr. Shahar used his corporations for something other than their corporate purposes.

“When the terms of a written contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and the parties’ reasonable expectations” (*Costello v Casale*, 281 AD2d 581, 583[2d Dept 2001]; *see Hedgepeth v Christensen*, 119 AD3d 898, 899 [2d Dept 2014]). Here, paragraph 6 of the contract rider contains a representation by the seller, TRS Inc., that the premises as they exist constitutes a legal 2 family dwelling and required that the seller provide a certificate of occupancy for the property at closing if the municipality required such a certificate. The same provision limited the seller’s obligation and liability with respect to certificate of occupancy issues to cancellation of the contract of sale in the event the municipality required an updated survey in order to obtain a certificate of occupancy and the purchasers’ cost of obtaining such a survey exceeded \$500.00.

At the January 20, 2006 closing the seller’s president, Mr. Shahar, did not provide a certificate of occupancy, and instead asserted that none was required by the municipality because the residence on the property was built in 1922, and produced a title report which stated that the residence was classified as a “B3 (converted two family dwelling)” with a garage. Mr. Shahar asserted that said residence was being taxed as a two-family dwelling.

There is no evidence that the City of New York required an updated survey in order to obtain a certificate of occupancy for the subject premises, and the seller did not cancel the contract. Although there is some dispute as to whether the parties at the closing discussed whether the premises was a legal two-family dwelling, Ms. Echeverria executed a document contemporaneous with the closing date in which she acknowledged that the subject premises may not be a legal two-family dwelling, even though it was presently being taxed as a two-family residence.

Mr. Shahar, however, testified that after his company TRS Inc. purchased the subject real property in February 2005 and prior to entering into the subject contract of sale, he replaced two kitchens in the premises but did not add any kitchens or bathrooms. As defendant TRS Inc., has not established that a certificate of occupancy was not required for the premises as it then existed following the renovations, (*see Costello v Casale*, 281 AD2d 581 [2d Dept 2001]; *see also Huang v Shih*, 73 AD3d 981[2d Dept 2010]), that branch of the defendants’ motion is granted to the extent that the first cause of action is dismissed as to defendants Exclusive Homes and Shahar and is denied as to defendant TRS, Inc.

A party asserting a claim for unjust enrichment must show “ ‘ that (1) the other party was enriched, (2) at that party’s expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered”” (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 1821 [2011], *quoting Citibank, N.A. v Walker*, 12 AD3d 480, 481, [2d Dept 2004] [internal quotation marks omitted], 142 AD3d 701 [2d Dept 2016]). An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim (*Corsello v Verizon N.Y., Inc.*, 18 NY3d 777, 790-791 [2012], *rearg denied* 19 NY3d 937[2012]; *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388-389, [1987]; *Samiento v World Yacht Inc.*, 10 NY3d 70, 81[2008]; *Town of Wallkill v Rosenstein*, 40 AD3d 972, 974 [2d Dept 2007]).

Here, plaintiffs’ in their second cause of action for unjust enrichment against defendant Shahar “individually, and/or as an agent of TRS, Inc.” alleges that Shahar has been enriched in the sum of \$250,000.00, “that being the difference between the 2005 purchase price of the subject property and the purchase price under the Contract of Sale.” As the subject real property was neither purchased nor sold by Mr. Shahar in his individual capacity, plaintiffs’ may not maintain a claim against Mr. Shahar for unjust enrichment. As regards TRS, Inc., recovery is not available to plaintiffs under their unjust enrichment cause of action inasmuch as that cause of action merely duplicates the breach of contract causes of action (*see Corsello v Verizon N.Y., Inc.*, 18 NY3d at 790-791; *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d at 388-389 [1987]). Therefore, that branch of the defendants’ motion which seeks to dismiss the second cause of action for unjust enrichment, is granted.

With respect to the third cause of action, “New York does not recognize civil conspiracy to commit a tort . . . as an independent cause of action” (*Dickinson v Igoni*, 76 AD3d 943, 945[2d Dept 2010]; *see Alexander & Alexander of N.Y. v Fritzen*, 68 NY2d 968, 969 [1986]; *Brackett v Griswold*, 112 NY 454, 466-467 [1889]; *Blanco v Polanco*, 116 AD3d 892, 896 [2d Dept 2014]). However, “a plaintiff may plead the existence of a conspiracy in order to connect the actions of the individual defendants with an actionable, underlying tort and establish that those actions were part of a common scheme” (*Litras v Litras*, 254 AD2d 395, 396[2d Dept 1998]; *see Alexander & Alexander of N.Y. v Fritzen*, 68 NY2d at 969; *Brackett v Griswold*, 112 NY at 466-467; *Blanco v Polanco*, 116 AD3d at 896; *Romano v Romano*, 2 AD3d 430, 431-432, [2d Dept 2003]). “The allegation of conspiracy carries no greater burden, but also no less, than to assert adequately common action for a common purpose by common agreement or understanding among a group, from which common responsibility derives. Therefore, under New York law, [i]n order to properly plead a cause of action to recover damages for civil conspiracy, the plaintiff must allege a cognizable tort, coupled with an agreement between the conspirators regarding the tort, and an overt action in furtherance of the agreement. A bare conclusory allegation of conspiracy is usually held insufficient” (*Blanco v Polanco*, 116 AD3d at 896, *quoting Faulkner v City*

of *Yonkers*, 105 AD3d 899, 900-901,340 [2d Dept 2013] [internal quotation marks and citations omitted]).

“To recover damages for fraudulent misrepresentation, a plaintiff must prove (1) a misrepresentation or an omission of material fact which was false and known to be false by the defendant, (2) the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it, (3) justifiable reliance of the plaintiff on the misrepresentation or material omission, and (4) injury” (*Bernardi v Spyrtos*, 79 AD3d 684, 687 [2d Dept 2010]; *Lewis v Wells Fargo Bank, N.A.*, 134 AD3d 777, 778-779 [2d Dept 2015]; *Blanco v Polanco*, 116 AD3d 892, 895-896 [2d Dept 2014]).

“A cause of action alleging fraud does not lie where the only fraud claim relates to a breach of contract” (*WIT Holding Corp. v Klein*, 282 AD2d 527, 528 [2d Dept 2001]). A breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated (*see Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d at 389; *Board of Mgrs. of Beacon Tower Condominium v 85 Adams St., LLC*, 136 AD3d 680, 684 [2d Dept 2016]). “This legal duty must spring from circumstances extraneous to, and not constituting elements of, the contract, although it may be connected with and dependent upon the contract” (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d at 389; *see Board of Mgrs. of Beacon Tower Condominium v 85 Adams St., LLC*, 136 AD3d at 684).

Here, the buyers posited in their third cause of action that defendants Shahar, Exclusive Homes and TRS, Inc, together with the co-defendants, acted in concert and conspired against the plaintiffs, and, “fraudulently transferred title to the subject property to Plaintiff for value grossly in excess of its true market value”.

In support of its motion for summary judgment, Mr. Shahar states that he made no representations to the plaintiffs in his individual capacity; that he had no conversations or communications with the plaintiffs in his individual capacity; that he did not list the house, and never initially showed the subject property to the plaintiffs; that Tania Echevarria’s mother, who worked as a real estate agent for Exclusive Homes, informed the plaintiffs about the house, and provided all of the information to them; and that all of the negotiations for the house were between Ms. Echevarria and her mother. He states that neither he, nor his companies, made any fraudulent representations to the plaintiffs in manner. Mr. Shahar further states that he did not introduce the plaintiffs to Mr. Maddiwar or MEL, and that Ms. Echevarria had prior dealings with MEL.

Ms. Echevarria testified at her deposition that her mother knew she was looking for a two-family house; that her mother showed her the subject property on two occasions; that on the second occasion, her husband also viewed the house; that she did not recall whether

Mr. Shahar was present when she viewed the property; that there was an online advertisement that had a virtual tour of the subject real property and that her mother gave her the website information for the for advertisement; that she could not recall the name of the website; and that the name Exclusive Homes was on the website.

Ms. Echevarria stated that she wanted to purchase a two-family house; that she had viewed the property and based on what she had seen believed that it was a two family house; and that she had no discussions with Mr. Shahar at the time she executed the contract of sale as to whether the subject real property was a two-family house. She stated that prior to executing the contract of sale did not recall if she spoke with Mr. Shahar; that she did not do any independent research regarding the house; that she did not Google the proeprty's address; and did not look at any other websites, including that of the Department of Buildings.

She stated that she did not know who drew up the contract of sale; that she did not seek counsel until after she signed the contract of sale; that her mother and Mr. Shahar were present when she signed the contract of sale; that Mr. Shahar informed her that the down payment was \$5,000.00; and that Mr. Shahar added the following handwritten portions to the contract of sale: "two stoves", "seller agrees to provide 6% for purchaser closing costs", and that Shahar also added the words " 2 family" to paragraph 6 of the rider. She stated that Mr. Maddiwar represented her at the closing and that she did not remember how they were introduced.

Mr. Maddiwar, in an affidavit submitted in support of his separate prior motion to dismiss the complaint stated that he inserted the handwritten words "2 family", and that he discussed the property's tax status and lack of a certificate of occupancy with the plaintiffs at the closing.

The evidence presented by defendants Shahar, TRS, Inc. and Exclusive Homes demonstrates that these defendants did not make any representations to the plaintiffs regarding the value of the subject real property, or whether it was a legal two-family dwelling. Moreover, plaintiff Tania Echeverria at her deposition was unable to recall the specifics of her conversations with Mr. Shahar. Defendants Shahar, TRS Inc. and Exclusive Homes, thus have established prima facie, that plaintiffs are unable to demonstrate that these defendants made any misrepresentations to them. As the only fraud claim relates to the breach of contract, that branch of the defendants' motion which seeks to dismiss the third cause of action, is granted.

With respect to the fourth cause of action, there is no evidence that defendants Shahar, TRS Inc., or Exclusive Homes compelled plaintiffs to obtain a loan. The fact that the contract of sale required plaintiffs to obtain a title report from a particular title company, did not

prevent them from obtaining public information regarding the subject real property. Plaintiffs did not have the property appraised prior to purchasing it, and there is no evidence that defendants Shahar, TRS Inc. or Exclusive Homes agreed to or was required to appraise the subject real property or produce any records on plaintiffs' behalf in connection with their loan application. There is also no evidence that these defendants approved her loan application, or directed that the lender enter into two loans and mortgages with the plaintiffs.

It is undisputed that that the plaintiffs' agreed to a purchase price that was much greater than the purchase price paid by TRS Inc. when it acquired the subject real property, in February 2005. However, plaintiffs, in opposition, have not established that the purchase price paid by plaintiffs violated any laws, and have not raised any triable issues of fact. The court further notes that Banking Law §6-1 may not be applicable here, as Ms. Echeverria testified that she and family resided in another property, that they never lived in the subject real property, and that the subject real property was occupied by their tenants. Defendants Shahar, TRS Inc., and Exclusive Homes thus, has established prima facie, that no evidence exists that it participated in a scheme to avoid any laws pertaining to excessive financing and to earn excessive fees.

Accordingly, defendants Shahar, TRS Inc., and Exclusive Homes' motion for summary judgment is granted to the extent that the first cause of action for breach of contract is dismissed as to Shahar and Exclusive Homes, and is denied as to TRS Inc., and the remaining second, third and fourth causes of actions against these defendants are dismissed in their entirety.

Dated: September 19, 2016

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J.S.C.