

CC Realty Servs. LLC v S. Cavallo Inc.
2017 NY Slip Op 32568(U)
December 6, 2017
Supreme Court, New York County
Docket Number: 656282/2016
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 39

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CC REALTY SERVICES LLC,

Plaintiff,

- v -

S. CAVALLO INC., STEFAN CAVALLO, STEPHEN CAVALLO,

Defendants.

INDEX NO. 656282/2016

MOTION DATE 6/23/2017

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this application to/for _____ Dismiss _____

HON. SALIANN SCARPULLA:

In this action for a real estate brokerage commission, defendants S. Cavallo Inc. ("S. Cavallo"), Stefan A. Cavallo and Stephen Cavallo move to dismiss the amended complaint of plaintiff CC Realty Services LLC ("CC Realty). The parties initially entered into brokerage commission agreement in 2012, in which CC Realty was granted the exclusive right to represent S. Cavallo in the sale or lease of the property located at 1495 Third Avenue, New York, NY (the Premises"). In a subsequent, second agreement dated June 24, 2014 (the "2014 Agreement"), the parties again set forth the terms under which S. Cavallo would receive a brokerage commission for the sale of the Premises.

The 2014 Agreement provides that:

No compensation shall be earned by [CC Realty] for any services which [CC Realty] has rendered or hereafter may render with respect to the Contract unless and until the 'Closing' under the Contract has occurred and [S. Cavallo] has unconditionally delivered a deed to the Premises to Purchaser or its assignee under an amendment to the Contract, satisfactory in form and substance to be recorded and evidence such conveyance, at which time [CC Realty] shall be paid the entire commission. If for any reason whatsoever, including but not limited to [S. Cavallo's] arbitrary refusal to enter into the Contract, [S. Cavallo] and Purchaser do not enter into a Contract for the Premises then [CC Realty] shall not be entitled to any commission or part thereof or any compensation whatsoever.

The 2014 Agreement further provides that "the letter agreement . . . dated July 11, 2012 between [S. Cavallo] and [CC Realty] is hereby terminated, and that "[t]he shareholders, officers and directors (collectively the 'Principals') of [S. Cavallo] shall not be liable for the performance of [S. Cavallo's] obligations hereunder, and [CC Realty] shall look solely to [S. Cavallo] to enforce [S. Cavallo's] obligations hereunder and shall not seek any damages against any of the Principals."

In its complaint, CC Realty alleges that S. Cavallo breached the 2014 Agreement by failing to pay the agreed upon commission. CC Realty alternatively pleads quantum meruit and unjust enrichment causes of action for its real estate brokerage services. Finally, CC Realty pleads a cause of action for piercing the corporate veil, and seeks to hold the individual defendants liable for the alleged brokerage fee.

Defendants moves to dismiss the complaint based on documentary evidence, *i.e.*, the 2014 Agreement. S. Cavallo argues that the 2014 Agreement specifically conditions CC Realty's right to receive a commission on the happening of certain conditions

precedent, and CC Realty has not pled that those conditions precedent were satisfied. S. Cavallo also argues that the quantum meruit and unjust enrichment causes of action should be dismissed as duplicative of the breach of contract cause of action. Finally, defendants argue that, in the 2014 Agreement, the parties specifically agreed that the individual defendants, Stefan A. Cavallo and Stephen Cavallo, would not be liable for performance thereunder, and that CC Realty would look solely to S. Cavallo for any brokerage commission.

I agree with S. Cavallo that in the 2014 Agreement CC Realty specifically and plainly agreed that the individual defendants, Stefan A. Cavallo and Stephen Cavallo, would not be liable for performance thereunder. CC Realty's claims against Stefan A. Cavallo and Stephen Cavallo therefor fail as a matter of law, regardless of whether the cause of action is pled as a direct claim or a veil piercing claim.

Further, CC Realty has failed adequately to allege a veil piercing cause of action against Stefan A. Cavallo and Stephen Cavallo. The amended complaint is filled with boilerplate veil piercing language, all alleged on information and belief, without any real factual support. Accordingly, I grant the motion to dismiss the complaint against the individual defendants, Stefan A. Cavallo and Stephen Cavallo.

CC Realty and S. Cavallo agree that the parties' obligations are set out in a written contract, the 2014 Agreement. Accordingly, I dismiss CC Realty's second cause of action for quantum meruit and/or unjust enrichment as duplicative of CC Realty's first cause of action for breach of contract.

Finally, S. Cavallo argues that CC Realty has not adequately pled that two conditions precedent to its earning a commission have occurred: 1) a “Closing’ under the Contract” and 2) that “[S. Cavallo] has unconditionally delivered a deed to the Premises to [SMA Equities, LLC or any entity in which Samy Mahfar is a principal or for which he is a nominee or successor or assign of any of the foregoing] . . .” Reviewing the amended complaint, I find that CC Realty has adequately alleged that a closing of the purchase contract did occur between S. Cavallo and one of the purchasers enumerated in the 2014 Agreement. Accordingly, I deny that part of defendants’ motion in which they seek to dismiss CC Realty’s first cause of action for breach of contract.

In accordance with the foregoing, it is

ORDERED that the motion of defendants S. Cavallo Inc. (“S. Cavallo”), Stefan A. Cavallo and Stephen Cavallo to dismiss the amended complaint of plaintiff CC Realty Services LLC is granted as to the second cause of action alleging a claim for quantum meruit and/or unjust enrichment, and as to the third cause of action against Stefan A. Cavallo and Stephen Cavallo alleging alter ego liability. The motion is denied as to the first cause of action for breach of contract against defendant S. Cavallo, Inc. It is further

ORDERED that the Clerk of the Court is directed to sever and enter judgment dismissing the complaint in its entirety against defendants Stefan A. Cavallo and Stephen Cavallo, and dismissing the second and third causes of action against defendant S. Cavallo Inc. It is further

ORDERED that defendant S. Cavallo Inc. answer the amended complaint within thirty (30) days of this decision and order.

This constitutes the decision and order of the Court.

12/6/2017
DATE

Saliann Scarpulla
SALIANN SCARPULLA, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- DO NOT POST

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

APPLICATION:

CHECK IF APPROPRIATE:

REFERENCE