SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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PATRICK COAKLEY,

Plaintiff,

Index No.: 655924/2018

-against-

Mot. Seq. No. 001

MICHAEL D. PLANTE, PLANTE PROPERTIES, INC., and A.H. ROOT BUILDING, LLC,

Defendants.

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MELISSA A. CRANE, J.S.C.:

Plaintiff Patrick Coakley (hereinafter "plaintiff" or "Coakley") seeks to recover under a theory of quantum merit, unjust enrichment, and quasi contract. Defendants, Michael D. Plante, Plante Properties, Inc., and A.H. Root Building, LLC (collectively, the "defendants") move, pursuant to CPLR 3211, to dismiss plaintiff's complaint.

Background

Plaintiff, Coakley, has a self-proclaimed expertise in investing in real estate (Compl ¶ 2). From an early age, Coakley immersed himself in the real estate industry. His family owned and operated several large companies responsible for massive construction projects in Washington D.C. and surrounding areas (Compl ¶ 13). In 1994, Coakley received a Master of Science from Columbia University (Compl ¶ 3). He graduated as the valedictorian. From 1995 to 1999 Coakley worked for the Werner Otto Family of Germany where he assisted in the purchase of over two billion dollars in real estate (Compl ¶ 15). In 1999, Coakley went to work for Blackrock, an asset management and investment company (Compl ¶ 16). In 2001, Coakley left Blackrock to invest his money privately. Private investing was lucrative for Coakley and became his full-time job (Compl ¶ 17).

In 2011, Coakley married Caroline Blackman ("Blackman"), his now estranged wife. Blackman introduced Coakley to defendant Michael D. Plante ("Plante"), her stepfather (Compl ¶ 18). In 2012, Plante sought Coakley's expertise for a 26 U.S.C.A. 1031 Exchange ("1031 Exchange"). Plante asked if Coakley would manage the sale or refinance Plante's properties in Colorado (the "Colorado Properties") that Plante controlled through various corporations that he owned (Compl ¶ 19). Coakley had learned a great deal about 1031 Exchanges while working at Werner Otto Family of Germany (Compl ¶ 15). It is a mechanism that allows an investor to defer capital gains and federal income taxes associated with the sale or purchase of an investment property, so long as another similar property is purchased with the profit that the first property sale generated (Compl ¶ 23). Ultimately, Plante wanted to invest the funds earned from the Colorado Properties sale in a 1031 Exchange.

To that end, Coakley and Plante met with prospective buyers, reviewed purchase offers, and assisted in negotiating the potential sale of the Colorado Properties (Compl ¶ 20). Coakley spent time communicating with Plante either over the phone or via email. Coakley also worked with investment broker Dean Britton, of Allegiance Investment Advisors in New York, to review possible investments available to Plante after the Colorado Properties sale (Coakley Aff, dated February 15, 2019, ¶12). Despite Coakley's best efforts to facilitate a sale, Plante decided to pull the Colorado Properties from the market in 2012. Plante thought he could get more money than buyers had offered (Compl ¶ 21).

In 2013, Plante relisted the Colorado Properties. A potential buyer, Unico, located in Seattle, Washington, expressed interest in the Colorado Properties and proposed a fund exchange (Compl ¶ 23). Under Unico's proposal, Plante would obtain a percentage interest in Unico's fund in return for Colorado Properties. Again, Plante asked Coakley for help with the

sale. After extensive research, Coakley advised Plante to pursue an outright sale rather than a fund exchange. Coakley concluded that a 1031 Exchange would yield greater returns. Plante took Coakley's advice.

Subsequently, Coakley sought out properties that would allow for a 1031 Exchange in the sale of the Colorado Properties. Larry Botel, founder of Joss Realty, passed along a property at 2301 Chestnut Street, Philadelphia, Pennsylvania 19103 ("2301 Chestnut") to Coakley and Plante for the 1031 Exchange (Compl ¶ 25). Coakley and Plante negotiated an agreement with Unico where Unico would purchase the Colorado Properties and, after, Plante and Unico would execute a separate 1031 Exchange for 2301 Chestnut. However, Unico could not meet fundraising requirements. 2301 Chestnut went under contract to another buyer (Compl ¶ 26). Unico later purchased the Colorado Properties for $24,591,500.00 (Compl ¶ 27).

In late 2013, Botel from Joss Realty offered Plante the opportunity to purchase 2301 Chestnut rather than the contracted buyer (Compl ¶ 29). Again, at Plante's request, Coakley offered advice and assistance with the purchase. He helped Plante obtain financing. At Coakley's recommendation, Plante worked with Jake Danielski, a banker in the New York Office of Customers Bank (Coakley Aff, dated February 15, 2019, ¶ 23). Neither Plante personally, nor A.H. Root Building, LLC ("Root"), had the money for the down payment, so Coakley advanced the $600,000. Plante repaid the advance to Coakley, but did not repay the fees incurred to organize the loan. On March 31, 2014, Plante closed on 2301 Chestnut for $23,000,000.00 in New York (Compl ¶¶ 28-30; Coakley Aff, dated February 15, 2019, ¶ 7).

In January 2014, Plante again reached out to Coakley for help. Coakley and his two partners, through their corporation "179 Montauk Highway Inc.," had purchased 179 Montauk Highway, East Hampton, New York 11937 ("179 Montauk"). Plante wanted to purchase 179

Montauk from Coakley in order to defer taxes otherwise due from the Colorado Properties sale, under a 1031 Exchange. 179 Montauk was Coakley's own investment property and he had to convince his partners to sell the property. Ultimately, in August 2014, an entity incorporated in New York that Plante owned, "AHR 179, LLC," purchased 179 Montauk from Coakley's corporation for $900,000 (Coakley Aff, dated February 15, 2019, ¶ 7). Plante agreed to lease the property back to Coakley for $54,000 for one year (Compl ¶ 33). In 2015, 179 Montauk Highway, Inc decided not to renew its lease with Root [sic] (Compl ¶ 34).

In the spring of 2016, the tenant at 2301 Chestnut approached Plante to review the lease. In addition, the tenant wanted to renovate the building. Plante retained Coakley to prepare and evaluate different proposals and apply for financing to renovate the property (Compl ¶ 35). Coakley traveled to Philadelphia to meet with the tenant and discuss renovations. While Coakley was in Philadelphia in negotiations, Plante contemplated the sale of 2301 Chestnut. Plante tried to meet with Dean Britton in New York while he visited for Passover. Ultimately, however, Plante decided not to sell 2301 Chestnut (Compl ¶ 36).

Finally, at the start of 2017, Plante sought Coakley's help to purchase 2300 Chestnut Street, Philadelphia, Pennsylvania 19103 ("2300 Chestnut"). Coakley went to see the Property in Philadelphia, negotiated with sellers, and attempted to obtain financing for the purchase (Compl ¶ 37). At one point, Plante attempted to create a joint venture with Joss Realty, a New York corporation, in order to purchase 2300 Chestnut (Coakley Aff, dated February 15, 2019, ¶ 7). Coakley spent at least 1000 hours advising Plante on potential sales for 2301 Chestnut and 2300 Chestnut (Compl ¶ 40).

Plante acknowledged that he did not pay Coakley for the past six years of work (Compl ¶ 39). Therefore, Plante credited Coakley $55,000 in partial compensation to

apply to any obligation of Coakley's choice. However, Plante then ignored Coakley's designation and decided to credit the $55,000 to the expired Montauk lease that AHR 179, LLC entered into with 179 Montauk Highway. Because Coakley had no obligation to pay under an expired lease, Plante essentially pocketed the money himself (Compl ¶ 39). Coakley did not receive any further compensation for his financial and investment advisory and analytic services.

Discussion

A court must deny a motion to dismiss under CPLR 3211 (a)(2) "if from the pleading's four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Richbell Info. Servs. v Jupiter Partners*, 309 AD2d 288, 289 [1st Dept 2003] [internal quotation marks omitted], quoting *511 W. 232nd Owners Corp. v Jennifer Realty Corp.*, 98 NY2d 144, 151-152 [2002]). The court must afford the pleading a "liberal construction," and "the benefit of every possible favorable inference" (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). However, the court may disregard "bare legal conclusions" and "inherently incredible" facts. *Matter of Sud v Sud,* 211 AD2d 423, 424 [1st Dept 1995]). Moreover, "[w]hen the moving party offers evidentiary material, the court is required to determine whether the proponent of the pleading has a cause of action, not whether [he or she has stated one" (*Asgahar v Tringali Realty, Inc.*, 18 AD3d 408, 409 [2d Dept 2000]).

Personal Jurisdiction

Defendants dispute that plaintiff has personal jurisdiction under CPLR 301 and CPLR 302. CPLR 301 confers general jurisdiction over an out-of-state or foreign defendant who "does business" in the state on his own behalf (*Laufer v Ostrow,* 55 NY2d 305, 312 [1982]). An individual does not subject himself to general jurisdiction in New York, pursuant to CPLR

301, unless he does business individually, rather than on the corporation's behalf. In 2014, *Daimler AG v Bauman,* 571 US 117 [2014], the Supreme Court heightened the standard for general jurisdiction over corporations. Under *Daimler,* a corporation is subject to general jurisdiction only where it was incorporated or maintains its principal place of business (571 US 117 [2014]). The inquiry becomes whether that corporation's affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State (*id.* at 139-140). Whether a corporation is "at home" in a state requires measuring its activities in that state against its total activities (*BNSF Railway Co. v Tyrell*, 137 SCt 1549 [2017] [finding that a corporation that operates in many places is not necessarily "at home" in all of them]).

After *Daimler,* plaintiffs are hard-pressed to obtain general jurisdiction over a foreign corporation in a forum that is neither the state of incorporation nor its principal place of business. Plaintiff admits that Plante is not a New York resident and that corporate defendants are neither incorporated in New York and not have their principal place of business here. Rather, Plante is a resident of the State of Colorado (Compl ¶ 8); Plante Properties is a Colorado corporation with its principal office located in Evergreen, Colorado (Compl ¶ 9); and A.H. Roots is a Colorado Limited Liability Company also with its principal office located in Evergreen, Colorado (Compl ¶ 10). Therefore, there is no general jurisdiction over the corporate defendants.

The issue then becomes whether Michael Plante acted individually or on behalf of Plante Properties, Inc and A.H. Root Building, LLC. Turning to New York's Long Arm Statute, CPLR 302(a)(1) confers specific jurisdiction over claims arising from the "transaction of business" in New York. To establish jurisdiction under this provision, defendants must have: (1) transacted business within New York; and (2) the claims must arise from that business

activity (*Aybar v US Tires and Wheels of Queens, LLC,* 65 Misc3d 932 [Sup Ct, Queens Co 2019]). Whether a defendant "transacted business" in New York requires a fact-intensive inquiry into whether the defendant has purposefully availed itself of the New York forum (*LaChapelle v Torres*, 1 FSupp3d 163, 175 [SDNY 2014]). Specific jurisdiction over foreign defendants are appropriate where defendants project themselves into the state to engage in a "sustained and substantial transaction of business" (*Fischbarg v Doucet,* 9 NY3d 375 [2007]).

Here, it is undisputed that Michael Plante and Root closed on 2301 Chestnut Street, Philadelphia, Pennsylvania 19103 in New York. Then, in 2014, Plante through a New York entity "AHR 179, LLC" purchased a property located in New York, 179 Montauk Highway, East Hampton, New York 11937, from Coakley. AHR 179, LLC is incorporated in New York (Plante Aff, dated December 3, 2018, ¶ 27, in related matter *Plante Properties, Inc. Profit Sharing Plan v Patrick Coakley* 654608/2018, NYSCEF doc no 28). Plante also had meetings in New York with several professionals working in the finance industry, including Larry Botel of Joss Realty and Dean Britton of Allegiance Investment Advisors. Plante had these New York meetings to discuss sales for the 1031 exchange for which he enlisted Coakley's help. Plante clearly projected himself into New York to transact business, including to purchase the Montauk property, to attend business meetings, and to close on Philadelphia property (*see, e.g., Brothers Pac Four, LLC v War Entertainment, LLC,* 179 AD3d 617 [1st Dept 2019] [California had long-arm jurisdiction over non-resident defendants where defendants solicited plaintiff on the phone in California, exchanged drafts of investor agreement and status reports of proposed venture via email, and flew to California to meet with plaintiff]; *see also, Deutsche Bank Sec. Inc. v Montana Bd. of Investments,* 7 NY3d 65, 72 [2006]). That Plante may have also traveled to New

York for personal reasons does not change defendants' reach into New York to access Coakley's investment and finance advice and services.

RPL 440 & 442

Defendant next argues plaintiff cannot recover because the complaint fails to allege plaintiff was a licensed real estate broker. Real Property Law ("RPL") 440-a provides:

> No person…shall engage in or follow the business or occupation of, or hold himself or itself out or act temporarily or otherwise as a real estate broker or real estate salesman in this state without first procuring a license therefor as provided in this article.

RPL includes someone who, for a fee, offers or attempts to negotiate a sale of an estate or interest in real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage, other than a residential mortgage loan, as offering real estate brokerage services. RPL 442-d provides:

> No person…shall bring or maintain an action in any court of this state for the recovery of compensation for services rendered…in the buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate without alleging and proving that such person was a duly licensed real estate broker or real estate salesman on the date when the alleged cause of action arose.

It is undisputed that plaintiff does not hold a license as a real estate broker in New York. Plaintiff claims, instead, that he acted as an investment and financial advisor and analyst. Plaintiff seeks compensation as a financial advisor. Indeed, plaintiff holds himself out as having an expertise in *investing* in the real estate industry. That plaintiff's work as a financial advisor overlapped with real estate transactions does not bar plaintiff's claims under RPL 440-a or 442-d. Further, each of the transactions that Coakley helped Plante with involved a licensed real estate broker. Plaintiff's particular expertise with 1031 exchanges allowed Coakley to advise Plante about how to negotiate deals with real estate professionals, so that Plante could receive the largest financial gain.

Finally, in a 2016 email between from the 2300 Chestnut tenant's lawyer to Plante, discussing potential renovations to the property of 2300 Chestnut, the lawyer referred to Coakley as Plante's finance expert. "It would be helpful to have Patrick on the call as well as he is your finance expert" (Coakley Aff, sworn to February 25, 2019, Exh R). That email demonstrates that not only did Plante consider Coakley his financial advisor for these real estate sales, but other professionals within the industry did as well. Thus, plaintiff's claims survive under RPL 440 despite plaintiff lacking a real estate license, because he provided advisory services financial in nature.

Quantum Merit Claim

The court also finds defendant's argument that the statute of frauds bars plaintiff's claims, unavailing. GOL 5-701(10) provides that real estate contracts need to be in writing where the contract involves negotiating a loan or real estate transaction. GOL defines "negotiating" to include "an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction" (GOL 5-701[10]). Where claims for quantum merit and unjust enrichment involved services beyond negotiation of a business opportunity, courts have cautioned against sweeping generalizations when assessing a claim under 5-701(10) (*Dorfam v Reffkin,* 144 AD3d 10, 17 [1st Dept App Div 2016]).

Plaintiff's financial and investment advice extends beyond negotiating real estate transactions. Coakley claims he offered advisory services that informed Plante's investment decisions, distinct from acting as an intermediary. Coakley did, in fact, give Plante specific financial advice. For instance, he advised against entering into a fund exchange with Unico. Plante heeded Coakley's advice, leading to an outright sale of the Colorado Properties (*see JF Capital Advisors, LLC v Lightstone Grp., LLC,* 25 NY3d 759, 766 [2015] [advisory

services performed to inform whether to take on certain business opportunities not subject to the statute of frauds]). Therefore, plaintiff's quantum merit and unjust enrichment claims survive the statute of frauds.

Plaintiff further makes out a claim for quantum merit. Plaintiff alleges that Plante admitted he did not pay Coakley for the past six years of work (Compl ¶ 39). Plante credited $55,000 to the expired 179 Montauk lease because he thought he owed Plante money for his services. Arguably, Plante would not have credited plaintiff had he not accepted services from Coakley. That Coakley and Plante had a familial relationship does not mean Coakley acted as Plante's advisor out of "love and affection." Private investing was Coakley's full-time job. (Compl ¶ 17). His entire career evolved around the investing in the real estate industry. Knowing this, Plante sought Coakley's advice over a six-year span. That Plante expected Coakley to work for free is not a basis to dismiss this action. Finally, the exact value of plaintiff's services must await the outcome of discovery. Plaintiff failure to plead the exact amount owed for his services rendered does not warrant dismissal of its quantum merit claim at this juncture (*see Brennan Beer Gorman / Architects, LLP v Cappelli Enters, Inc,* 85 AD3d 482 [1st Dept 2011]).

Unjust Enrichment Claim

Plaintiff's unjust enrichment claim is not duplicative of its quantum merit claim. Unlike in this case, in *Corsello* the unjust enrichment claim duplicated a conventional contract claim, and is, therefore, inapposite (*Corsello v Verizon NY, Inc.,* 18 NY3d 777, 790 [2012] [claim for unjust enrichment only available in "unusual situations" where defendant did not breach a contract). Here, plaintiff's financial advice allowed Plante to defer capital gains and federal

income taxes. Therefore, Plante benefitted from plaintiff's services and it would be unjust not to compensate plaintiff for those services.

Quasi Contract Claim

The elements of a claim for quasi-contract are, however, virtually identical to a claim for unjust enrichment, and therefore the court dismisses the claim as duplicative.

Statute of Limitations

Finally, plaintiff concedes, that to the extent plaintiff's claims accrued more than six years prior to the date of the filing of the notice of this lawsuit (prior to November 29, 2012), those claims are time barred. Thus, only those claims that accrued on or after November 29, 2012 are not time-barred.

Accordingly, it is

ORDERED that the court grants defendant's motion as to the third cause of action, dismisses the third cause of action, and otherwise denies defendant's motion, except as to those claims that accrued prior to November 29, 2012; and it is further

ORDERED that the parties are directed to appear for a compliance conference on December 12, 2019 at 10:00 a.m. in courtroom 304, at 71 Thomas Street, New York, NY 10013.

Dated: 12-6-2019

ENTER:

HON. MELISSA A. CRANE, J.S.C.

HON. MELISSA A. CRANE
J.S.C.