

CSG RE Partners, LLC v Behar
2025 NY Slip Op 33746(U)
October 3, 2025
Supreme Court, New York County
Docket Number: Index No. 653469/2023
Judge: Melissa A. Crane
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

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CSG RE PARTNERS, LLC, CSG BSH PARTNERS III,
LLC, CSG REAL ESTATE PARTNERS, LLC,

Plaintiff,

INDEX NO. 653469/2023

MOTION DATE 12/17/2024

MOTION SEQ. NO. 005

- v -

IAN BEHAR, RYAN SASSON, DANIEL BLUMKIN, BIRDS
INVESTMENTS, INC., BIRDS FOUNTAINS FORESTWOOD
LLC

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 127, 128, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 211, 212, 213, 214, 242, 245, 251, 253, 254

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

This is defendants' motion for summary judgment. For the following reasons, the motion is granted in part.

Defendants' most viable argument for dismissal is that plaintiffs acted as unregistered real estate brokers and therefore New York Real Property Law (RPL) § 442-d precludes recovery. The parties do not dispute that RPL 442-d "prohibits unlicensed persons and corporate entities from recovering fees or commissions for the performance of services facilitating the sale of real property." (*ThinkForward Financial Group, LLC., v On the Level Enterprises*, 205 AD3d 440 [1st Dep't 2022]). This ban includes the "negotiating a loan upon any real estate." (RPL 442-d).

In complicated transactions involving real estate like this one, courts must determine "whether the dominant feature was the sale of real estate," before deciding whether to award fees

to an unlicensed broker (*ThinkForward Financial Group, LLC*, 205 AD3d 440; *Saunders v Foschi*, 209 AD3d 512 [1st Dep't 2022])

For example, in *Kucher v Sohayegh*, 182 AD3d 523, 524 [1st Dep't 2020], although the parties styled payment as a “Management Fee,” the court awarded defendants summary judgment, because “the record does not support plaintiff’s claim that the compensation he seeks is for any non-brokerage management services he rendered in connection with the transaction.”

On July 10, 2018, defendants Sasson, Behar and Blumkin as “Investors” (collectively defendants) and CSG BSH Partners III LLC (CSG or Plaintiff) entered into a Memorandum of Key Terms of the 1042 Real Estate Operating Company Proposal (MOA). The motivation for the MOA appears to have been defendants’ growing portfolio of real estate. This particular dispute involves property in Florida known as “Fountains.”

Pursuant to § 10 of the MOA, CSG was to approve a “qualified third-party commercial property management company acceptable to CSG...to provide day to day property management services.” Section 10 anticipates that these management companies would be paid separately “based on prevailing market terms.”

Meanwhile § 7, entitled “Management Consulting Agreement and Fees” appears to anticipate, *inter alia*, that the “qualified third-party commercial property management company” would be “CSG or its designated affiliate.” Section 7 also delegates other responsibilities to CSG:

“CSG will source properties to be acquired by the Company (through its LLC’s). For each Subject property approved by the Company to be so acquired, CSG will fully negotiate, on a best efforts basis, the most favorable acquisition terms available, and will negotiate definitive documents reflecting such terms, all for the benefit of investors, the company and the LLC.” (emphasis supplied).

In addition, § 3, that describes various “buckets” of property, states that “Bucket A properties...will be sourced by CSG and for which CSG will raise convertible debt/mezzanine financing.” CSG had similar responsibilities with respect to “Bucket C” properties (*id*).

The Fees

A. Incentive Fee

The MOA § 7 sets forth various fees to which CSG would be entitled under certain conditions. For Bucket A properties, “CSG or its designated affiliate for management and consulting services” would be entitled to “50% of current distributable cash flow.” Bucket C was to be 40% of cash flow. The parties also agreed that CSG would be entitled to “50% of the net sales and refinancing proceeds” for Bucket A and 40% of net sales and refinancing proceeds for Bucket C minus the “Cumulative Preferred Return.” These amounts for Bucket A and Bucket C properties the parties collectively called the “**Incentive Fee**”

Here, the record is replete with contradictory evidence concerning what the parties meant the “Incentive Fee” to compensate plaintiff for. One need look no further than the MOA to appreciate the contradiction. In § 7, the discussion of CSG providing management and consulting services immediately follows the term “Incentive Fee.” CSG’s payment was to be a percentage of cash flow from the properties as a going concern, as opposed to a percentage of a sale price. Therefore, it stands to reason from this language, that the “Incentive Fee” was to compensate CSG for managing or advising about the property after defendants acquired it.

Then, further along in the MOA, in § 10, the parties contemplated an “arms-length” third party would manage the properties. This suggests that CSG was not going to be the one to manage the properties. Couple this with the language from § 7 tasking CSG with the

responsibility to source and negotiate favorable acquisition terms for the properties, suggests that CSG was acting akin to a broker.

Therefore, the court cannot determine as a matter of law whether RPL § 442-d, prohibiting unlicensed entities from recovering fees or commissions for facilitating the sale of real property, applies to block plaintiff's recovery of the "Incentive Fee." It remains to be seen for which activities the parties intended the Incentive Fee to compensate CSG. Only a trial can show whether the "Incentive Fee" was perhaps to encourage CSG to do a great job at managing or advising about the properties after acquisition, as opposed to finding and facilitating their purchase.

B. Transaction Fees.

Section 7 provides for other fees to CSG. Under "Transaction Fees:"

"CSG will also be entitled to transaction fees at closing of Bucket A and C Subject Properties as follows: for Bucket A Subject Properties, a fee equal to 1% of the total purchase price and for Bucket C properties, a fee equal to 0.75% of the total purchase price."
(emphasis supplied)

Defendant contends that this language definitively shows that it involves the transfer of real estate. Meanwhile, Plaintiff has not suggested that these fees in particular were also for management services, just that all fees somehow were to pay CSG for its consulting advice.

Plaintiff's position ignores the plain language of the § 7 of the MOA. Unlike the Incentive Fee, the MOA ties the "Transaction Fees" to the purchase of the properties. The MOA tasks CSG with the responsibility to source the properties and raise financing. Plaintiff did, in fact, introduce the Fountains property to defendants (see EDOC142). Even the title "Transaction Fees" suggests a tie to the transfer of real estate. Thus, the MOA makes clear the "Transaction Fees" are to compensate CSG for facilitating the purchase of real estate and negotiating the

financing attendant thereto. As it is undisputed that CSG did not have a license, RPL § 442-d precludes recovery for the “Transaction Fees” (*see Kucher v Sohayegh*, 182 AD3d 523 [1st Dep’t 2020]). However, that the parties culled out and separately bargained for “Transaction Fees” to compensate plaintiff for sourcing and helping to acquire the properties, supports that the aforementioned “Incentive Fee” was for different services. If CSG’s services were only for acquiring the property or only for consulting and management, there would be no need for separate fee provisions.

To the extent defendant seeks summary judgment on the last fee category in § 7, the “Financing Fee,” the court will address it. According to § 7 of the MOA, CSG was to be paid a fee “upon the closing of any Personal Loans equal to 0.25 of the loan proceeds.” As these are personal loans, not for the purchase of real property, RPL § 442-d is not a bar to recovery.

In an attempt to preserve its ability to recover all fees, plaintiff argues that the arbitral tribunal already rejected defendants’ RPL § 442-d defense. Plaintiff is incorrect. The arbitral tribunal specifically left this issue for the court:

“this tribunal does not reach the question of whether fees must be paid pursuant to the various “Buckets” set forth in the OA for the Fountains transaction, and if so, in what amount. That is left to be decided in the New York State Court case that is pending.”
(EDOC 76 at pg. 51).

Defendant is correct that plaintiff’s third cause of action for unjust enrichment must be dismissed. That claim arises directly out of plaintiff’s breach of contract claim and cannot serve as an end run around contractual or statutory strictures (*see Shear Enters., LLC v. Cohen*, 189 A.D.3d 423, 424, [1st Dep’t 2020]; *Schultz v. Gershman*, 68 A.D.3d 426, 427 [1st Dep’t 2009]).

Defendants remaining contentions are unavailing. The argument that a future incentive fee is unduly speculative and incapable of proof was discussed in the decision and order on

motion sequence 6 [see EDOC 271]. In sum, the parties to the MOA, in § 8, specifically prepared for the possibility of early termination and an early BuyOut offer. Having negotiated for this exigency, the court cannot rule as a matter of law that the future incentive fee is speculative and incapable of proof. This is another issue for trial where plaintiff will have the burden of proof.

Accordingly, it is

ORDERED THAT the court grants defendants' motion to the extent of dismissing plaintiff's third cause of action for unjust enrichment and its claim for "Transaction Fees" and otherwise denies the motion; and it is further

ORDERED THAT the parties are to appear for a pre-trial conference on October 22, 2025 at ten am over Microsoft teams.


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<u>10/3/2025</u>			
DATE		MELISSA A. CRANE, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☐ GRANTED ☐ DENIED	☒ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE