

2D CIR.

Tayyib Bosque, Corp v. Emily Realty, LLC

No. 19-2203, 2d Cir. (May 13, 2020)

SUMMARY

Second Circuit affirmed summary judgment dismissing breach of contract, implied contract, unjust enrichment, quantum meruit, fraud, and veil-piercing claims. Applying New York choice-of-law rules, the court held that New Jersey law governed the broker fee dispute because the properties and business assets were in New Jersey, meetings occurred there, and New Jersey had an interest in regulating the sale of health care facilities within its borders. The broker failed to show he was the "efficient producing cause" of any sale, and his own text messages contradicted the claim that he was entitled to a commission if the deal did not close. Other claims were abandoned on appeal.

CASE DETAILS

COURT	2d Cir.
WRITING FOR THE COURT	Pierre N. Leval; Raymond J. Lohier, Jr.; Joseph F. Bianco
JURISDICTION	Federal
DECIDED	May 13, 2020
DOCKET	19-2203
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the United States District Court for the Southern District of New York (Edgardo Ramos, Judge) granting summary judgment in favor of defendants and dismissing plaintiffs' claims.
STANDARD OF REVIEW	De novo review for choice-of-law determination.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Tayyib Bosque, Corp, Tayyib Bosque v. Emily Realty, LLC, Joseph Lafrieda

TOPICS

- conflict of laws
- breach of contract
- summary judgment
- real estate
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court correctly applied New Jersey law under New York's choice-of-law rules
2. Whether the district court correctly granted summary judgment on Bosque's breach of contract claim under New Jersey law
3. Whether Bosque abandoned his other common law claims on appeal

KEY QUOTATIONS

“the first broker 'with signed contracts and deposit check wins’” (4)

“Listen, close the deal you owe me \$500kDon't close[,] send [the prospective buyer's] deposit back[,] you owe me nothing.” (5)

FACTUAL BACKGROUND

Plaintiffs Tayyib Bosque, Corp and Tayyib Bosque sought to sell defendants' health care and boarding facilities located in New Jersey. Bosque had a meeting with Lafrieda in New Jersey, inspected the properties, and conducted market research. Bosque introduced a prospective buyer, who signed an agreement and wired a deposit, but the sale did not close. Bosque claimed entitlement to a commission based on a text message, but another text message contradicted that claim.

PROCEDURAL HISTORY

The district court granted summary judgment to defendants, concluding that New Jersey law applied and that all of plaintiffs' claims failed as a matter of New Jersey law. Plaintiffs appealed.

DISPOSITION

affirmed

OPINION

PER CURIAM.

19-2203-cv Tayyib Bosque, Corp v. Emily Realty, LLC UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”).

A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. 1 At a stated term of the United States Court of Appeals for the Second Circuit, 2 held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the 3 City of New York, on the 13th day of May, two thousand twenty. 4 5 PRESENT: PIERRE N. LEVAL, 6 RAYMOND J. LOHIER, JR., 7 JOSEPH F. BIANCO, 8 Circuit Judges.

9 ----- 10 TAYYIB BOSQUE, CORP, TAYYIB BOSQUE, 11 12 Plaintiffs-Appellants, 13 14 v. No. 19-2203 15 16 EMILY REALTY, LLC, JOSEPH LAFRIEDA, 17 18 Defendants-Appellees. 19 -----
----- 20 21 22 1 FOR PLAINTIFFS-APPELLANTS: ROBERT G. LEINO, New York, 2 NY.

3 4 FOR DEFENDANTS-APPELLEES: JONATHAN I. EDELSTEIN, 5 Edelstein & Grossman, 6 New York, NY. 7 8 Appeal from a judgment of the United States District Court for the 9 Southern District of New York (Edgardo Ramos, Judge). 10 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, 11 AND DECREED that the judgment of the District Court is AFFIRMED. 12 Plaintiffs-Appellants Tayyib Bosque, Corp and Tayyib Bosque 13 (collectively, “Bosque”) appeal from a judgment of the District Court (Ramos, J.)

14 granting summary judgment in favor of Emily Realty, LLC and Joseph Lafrieda 15 (collectively, “Lafrieda”) and dismissing Bosque’s claims for breach of contract, 16 breach of implied contract, unjust enrichment, quantum meruit, and fraud, as 17 well as a claim to pierce the corporate veil.

We assume the parties’ familiarity 18 with the underlying facts and the record of prior proceedings, to which we refer 19 only as necessary to explain our decision to affirm. 2 1 1. Choice of Law 2 In granting summary judgment, the District Court concluded that New 3 Jersey rather than New York law applied and that all of Bosque’s claims fail as a 4 matter of New Jersey law.

Reviewing the District Court’s choice-of-law 5 determination de novo, see *Caruolo v. John Crane, Inc.*, 226 F.3d 46, 57 (2d Cir. 6 2000), we conclude, as a threshold matter, that the District Court, sitting in 7 diversity jurisdiction, was correct to apply the choice-of-law rules of the forum 8 state—here, New York, see *Md. Cas. Co. v. Cont’l Cas. Co.*, 332 F.3d 145, 151 (2d 9 Cir.

2003) (citing *Klaxon Co. v. Stentor Elect. Mfg. Co.*, 313 U.S. 487, 497 (1941)). 10 In contract cases, New York courts use a “center of gravity” or “grouping of 11 contacts” analysis to determine which State has the most substantial relationship 12 to the transaction and to the parties. *Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.*, 84 N.Y.2d 309, 317 (1994); *Equis Corp. v. Mack-Cali Realty Corp.*, 775 14 N.Y.S.2d 35, 38 (1st Dep’t 2004) (where the parties’ dispute

concerns “contracts 15 referring to the transfer of title to land... the heaviest weight in the [] grouping 16 of contacts analysis should be accorded to the location of the property”).

17 With that in mind, we also agree with the District Court that, under New 3 1 York choice-of-law rules, New Jersey law applies. Among other things, the 2 properties and business assets in question are located in New Jersey; Bosque’s 3 initial meeting with Lafrieda took place in New Jersey; Bosque travelled to New 4 Jersey several times to inspect the properties and to conduct market price 5 research on similar businesses in the area; and Bosque took at least three 6 potential investors to view the properties.

In addition, New Jersey has an 7 interest in regulating the sale and purchase of health care and boarding facilities 8 within its borders. 9 In urging a contrary conclusion, Bosque relies on *Intercontinental Planning 10 v. Daystrom, Inc.*, 24 N.Y.2d 372 (1969), which applied New York law instead of 11 New Jersey law to resolve a similar fee dispute. But *Intercontinental* relied on 12 the fact that at that time New Jersey, unlike New York, did not require a written 13 agreement to recover a broker’s fee.

Id. at 384–85; see also *Matter of Allstate Ins. 14 Co. (Stolarz—N.J. Mfrs. Ins. Co.)*, 81 N.Y.2d 219, 226 (1993). That reasoning has 15 little if any force today now that New Jersey also requires a written agreement to 16 recover such a fee. N.J. Stat. Ann. § 25:1-16 (1996).

We are also unpersuaded by 17 Bosque’s claim that Lafrieda chose Bosque to sell his businesses based on 4 1 Bosque’s ties to New York, since the record shows that Bosque initiated contact 2 with Lafrieda, not the other way around. 3 2. Common Law Claims 4 With respect to Bosque’s breach of contract claim under New Jersey law, a 5 broker must be the “efficient producing cause” of the transaction and can only 6 earn a commission for a transaction that he does not cause if the agreement 7 explicitly provides for it.

See *Vanguard Telecomms., Inc. v. S. New England Tel. 8 Co.*, 900 F.2d 645, 651 (3d Cir. 1990) (quoting *De Benedictis v. Gerechoff*, 134 N.J. 9 Super. 238, 242 (App. Div. 1975)). Bosque argues that Lafrieda’s text message, 10 which stated that the first broker “with signed contracts and deposit check 11 wins,” App’x 396, evidences an agreement that Bosque was entitled to a 12 commission once he introduced Lafrieda to the prospective buyer and his buyer 13 signed the agreement and wired a \$250,000 deposit.

But even assuming without 14 deciding that text messages can constitute an agreement that satisfies the statute 15 of frauds under New Jersey law, another Bosque text message contradicts his 16 claim that the agreement entitled him to a commission even if Lafrieda’s sale to 17 Bosque’s prospective purchaser did not close. See App’x 404 (“Listen, close the 5 1 deal you owe me \$500k....Don’t close[,] send [the prospective buyer’s] deposit 2 back[,] you owe me nothing.”).

Indeed, the record shows that that there was no 3 sale in which Bosque had any involvement or in which he was entitled to a 4 commission. 5 On appeal, Bosque fails to advance any argument that his other common 6 law claims survive under New Jersey law. Nor does he argue that piercing the 7 corporate veil of Emily Realty, LLC is justified under Nevada law, where that 8 company was incorporated.

See *Sweeney, Cohn, Stahl & Vaccaro v. Kane*, 773 9 N.Y.S.2d 420, 423 (2d Dep't 2004). Accordingly, Bosque's challenges to the 10 District Court's dismissal of his breach of implied contract, unjust enrichment, 11 quantum meruit, and fraud claims, as well as his claim to pierce the corporate 12 veil, are abandoned. See *Morrison v. Johnson*, 429 F.3d 48, 52 (2d Cir.

2005). 13 We have considered Bosque's remaining arguments and conclude that 14 they are without merit. For the foregoing reasons, the judgment of the District 15 Court is AFFIRMED. 16 FOR THE COURT: 17 Catherine O'Hagan Wolfe, Clerk of Court 6