

selected as a Decision of Interest

Cook & Associates Realty Inc. v. Chesnutt, 603642/04
Decided: July 31, 2008

Justice Walter B. Tolub

NEW YORK COUNTY
Supreme Court

Justice Tolub

Findings of Fact and Conclusions of Law

This matter was tried before this court on May 19, 2008. This constitutes the court's findings of fact and conclusions of law.

FINDINGS OF FACT

Plaintiff Cook & Associates Realty, Inc. is a real estate brokerage company licenced in the State of New York. Plaintiff's principal shareholder is Elizabeth Cook.

Defendant Christopher Chesnutt is the principal of Teddy's International, Inc., d/b/a El Teddy's Mr. Chesnutt is now also the principal of L-Ray d/b/a Alta.

In or about August, 2000, Plaintiff contacted Christopher Chesnutt at a restaurant known as El Teddy's in order to determine whether he might be interested in an alternate restaurant space. Mr. Chesnutt expressed interest in finding a new space and a new lease for El Teddy's.

Between August 2000 and January 2001, Plaintiff and Mr. Chesnutt began looking at several spaces in Manhattan. In January 2001, Plaintiff learned of a space that she thought would be suitable for El' Teddy's. The space was located at 64 W. 10th Street and was occupied by L-Ray, LLC d/b/a Alta. Plaintiff called Mr. Chesnutt and Fernano Saralegui, L-Ray's principal, to set up an appointment to view the space.

After the space was viewed by Mr. Chesnutt, he and Mr. Saralegui began discussing the restaurant business and entering into a membership purchase agreement for L-Ray. Mr. Chesnutt and Mr. Saralegui met three to five times between January and February 2001. Both Mr. Chesnutt and Mr. Saralegui hired lawyers to assist them in these discussions. Plaintiff was never present at these meetings and played no part in the meetings or the ensuing transaction.

On February 5, 2001, El Teddy's "confirmed" a commission agreement it entered into with Plaintiff. The letter was signed by Mr. Chesnutt on behalf of El Teddy's. This was the only agreement that was signed with regard to a commission.

On February 12, 2001, Mr. Chesnutt, individually, and Mr. Saralegui, on behalf of L-Ray, entered into a Membership Purchase Agreement. The Membership Agreement provided that, inter alia, Mr. Chesnutt purchased a controlling interest in L-Ray, would be the sole manager of L-Ray and take on the L-Ray's lease.

Plaintiff brought this action for breach of contract arguing that it is owed a commission pursuant to the agreement signed between Plaintiff and El Teddy's since Mr. Chesnutt obtained a new space and a lease for a restaurant. Plaintiff also argues that Mr. Chesnutt is personally liable for all commissions owed.

Defendants moved to dismiss the action.

CONCLUSIONS OF LAW

The elements of a cause of action for breach of contract are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, (4) resulting damage ([PJI 4:1](#) citing [Furia v. Furia](#), 116 AD2d 694 [2nd Dept 1986]).

The only agreement that Plaintiff was a party to was between Cook & Associates Realty and El Teddy's. The commission agreement provided that if Plaintiff succeeded in assisting El Teddy's in acquiring a new lease or purchase of new space, Plaintiff would receive a commission. El Teddy's did not acquire a new lease or new space through Plaintiff or anyone else for that matter. Therefore Plaintiff is not owed a commission from El Teddy's, Teddy's

International or Christopher Chesnutt.

At trial Plaintiff argued that even though the commission agreement was between Cook & Associates and El Teddy's Mr. Chesnutt signed the document and therefore may be held personally liable. Plaintiff's argument is misguided.

The commissions agreement was between two corporations, Cook & Associated and El Teddy's. A corporate officer signing a contract for a corporation cannot be held personally liable absent direct and explicit evidence of an actual intent to be personally liable ([Salzman Sign Co. v. Beck, 10 NY2d 63 \[1961\]](#)). It is well settled that a corporation exists independently of its owners as a separate legal entity ([Morris v. Department of Taxation, 82 NY2d 135 \[1993\]](#)). Owners are normally not liable for the debts of the corporation (*Id.*). Furthermore, it is even legal to incorporate for the express purpose of limiting the liability of corporate owners (*Id.*). Plaintiff did not proffer any evidence at trial that Mr. Chesnutt had any intention of being held personally liable for El Teddy's. In fact, the letter confirming an agreement was signed "El Teddy's *by* Christopher Chesnutt (emphasis added). It follows that even if El Teddy's retained a new lease and owed Plaintiff commissions, which it does not, Mr. Chesnutt cannot be held personally liable.

Although Plaintiff did introduce Mr. Saralegui to Mr. Chesnutt with the hopes that El Teddy's would acquire the L-Ray lease, no such transaction took place.

At trial Plaintiff argued that the Membership Purchase Agreement provided Mr. Chesnutt with a lease for a new space and that therefore Mr. Chesnutt owes Plaintiff money pursuant to her commission agreement with his Teddy's International d/b/a El Teddy's business.

However, Mr. Chesnutt entered into the Membership Purchase Agreement in his individual capacity and not on behalf of Teddy International d/b/a El Teddy's. Mr. Chesnutt purchased controlling shares in L-Ray d/b/a Alta and by virtue of his purchase, acquired the L-Ray lease. The lease was and continues to be for L-Ray and no other entity.

Neither Mr. Chesnutt, L-Ray not Alta can be liable since none of the parties ever entered into a contract with Plaintiff. Additionally, Teddy's International, Inc., d/b/a El Teddy's cannot be liable for breach of contract since no new lease or space was acquired for El Teddy's. It follows that the action is

dismissed.

This memorandum opinion constitutes the court's findings of fact and conclusions of law.