

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 63M

Justice

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VESNA TODOROV,

Plaintiff,

- v -

MICHAEL SPEISER,

Defendant.

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INDEX NO. 650926/2016

MOTION DATE 12/08/2020

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, the decision on defendant’s motion for partial summary judgment is as follows:

On February 23, 2016, Plaintiff commenced this action by filing a Summons and Complaint alleging Breach of Contract, Breach of Fiduciary Duty, Quantum Meruit, Unjust Enrichment, Replevin, and Conversion and requesting the imposition of a constructive trust in favor of the plaintiff. On March 18, 2016, defendant interposed an Answer with a Counterclaim alleging defamation. In sum, plaintiff Vesna Todorov's action seeks to recover funds allegedly owed to her by the Defendant Michael Speiser arising out of her alleged business dealings with Defendant, with whom she also had a personal relationship. Defendant’s contention is that plaintiff’s claims are essentially a claim for palimony, seeking compensation for her companionship and affection premised upon business theories.

In an Order entered July 27, 2016, defendant’s counterclaim was dismissed. In a decision entered December 4, 2018, this Court denied defendant’s first motion for partial summary

judgment seeking dismissal of plaintiff's First (Breach of Tesla Agreement); Second (Breach of Armonk Insurance Claim Agreement); Third (Breach of Ritz Carlton Agreement); Fourth (Breach of Palm Beach Buyer's Agreement); Fifth (Breach of Palm Beach Seller's Agreement); Sixth (Breach of Fiduciary Duty); Seventh (Quantum Meruit for Broker Services) ; Eighth (Unjust Enrichment for Broker Services); Ninth (Quantum Meruit for Interior Design and Other Services at Armonk House); Tenth (Restitution based upon Unjust Enrichment for the Armonk House Services); and Thirteenth (Constructive Trust) causes of action. Defendant now moves again for partial summary judgment, seeking the identical relief as discovery is now complete.

Summary Judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 (1980). The function of the court when presented with a motion for Summary Judgment is one of issue finding, not issue determination. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Weiner v. Ga-Ro Die Cutting, Inc.*, 104 A.D.2d 331, 479 N.Y.S.2d 35 (1st Dept., 1984) *aff'd* 65 N.Y.2d 732, 429 N.Y.S.2d 29 (1985). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 (1986); *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party. *Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 (1st Dep't 1989). Summary judgment will only be granted if there are no material, triable issues of fact *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 (1957).

In denying defendant’s initial motion for summary judgment, this Court held: “A careful examination of the papers reveals a disagreement between the parties concerning the intention of the \$70,000 payment. There are also issues regarding the nature and extent of the relationship, strictly personal or was it strictly business, and certainly defense counsel when questioned by the court regarding the different versions conceded there are different versions. Conceded that the parties differ regarding the scope of the relationship and certainly credibility determinations are not to be decided on a motion for summary judgment. Therefore, the Court's motion for summary judgment is denied.” Defendant’s submissions on its second motion for summary judgment are insufficient to resolve these issues of fact. As such, the instant motion must be denied for the same reasons.

The sole new evidence submitted with regard to plaintiff’s third cause of action alleging breach of contract based upon an alleged agreement that Defendant would pay plaintiff half of the profit earned from the sale of a unit at the Ritz Carlton in Miami Beach that Defendant entered into a contract to purchase through Plaintiff’s connections is that Defendant cancelled his purchase agreement and did not earn a profit in this transaction. Based upon said representation, plaintiff discontinues her third and thirteenth causes of action, without prejudice.

Defendant’s motion is GRANTED to the extent that plaintiff’s third and thirteenth causes of action are dismissed without prejudice.

Defendant’s motion is DENIED in all other respects.

1/7/2021
DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

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|--------------------------|---------------|-------------------------------------|-----------------------|
| <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
| <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED |
| | | <input checked="" type="checkbox"/> | GRANTED IN PART |
| | | <input type="checkbox"/> | OTHER |

APPLICATION:

CHECK IF APPROPRIATE:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE