

Supreme Court, Appellate Division, First Department, New York.  
JDF REALTY, INC., Plaintiff–Appellant,  
v.  
Scott SARTIANO, et al., Defendants–Respondents.

March 1, 2012.

GONZALEZ, P.J., SWEENEY, MOSKOWITZ, RENWICK, RICHTER, JJ.

Order, Supreme Court, New York County (Saliann Scarpulla, J.), entered June 28, 2010, which granted the individual defendants' motion to dismiss the complaint as against them, unanimously affirmed, without costs. Order, same court and Justice, entered June 24, 2011, which denied plaintiff's motion to add a party defendant and granted the LLC defendant's cross motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

The motion court properly reasoned that there was no ground for holding the individual defendants liable for plaintiff's commission based on media reports of their activities and plaintiff's references to them as partners; there was no clear and explicit evidence that Sartiano intended to be personally bound despite acting as an agent for a disclosed principal ( *see Savoy Record Co. v. Cardinal Export Corp.*, 15 N.Y.2d 1, 4, 254 N.Y.S.2d 521, 203 N.E.2d 206 [1964] ). The promoter liability cases involving the preincorporation liability of individuals, relied on by plaintiff, are distinguishable from the instant circumstance; notably, here the LLC was in existence two weeks before plaintiff was sent a copy of the landlord's executed brokerage agreement containing the commission provision.

The lease and the landlord's brokerage agreement were properly found to be the operative contract for commissions; the existence of these writings barred evidence of any agreement set forth in e-mails and offer sheets generated by plaintiff ( *see New York Fruit Auction Corp. v. City of New York*, 81 A.D.2d 159, 165, 439 N.Y.S.2d 648 [1981], *affd.* 56 N.Y.2d 1015, 453 N.Y.S.2d 640, 439 N.E.2d 356 [1982] ).

In light of the express agreement governing commissions, plaintiff's claim of unjust enrichment was not viable. The limited right to a commission set forth in the writings also precluded the addition of the landlord as a defendant ( *see generally Thompson v. Cooper*, 24 A.D.3d 203, 205, 806 N.Y.S.2d 32 [2005] ).

We have considered plaintiff's other contentions and find them unavailing.