

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

INNOVESTUS, LLC,

Plaintiff,

COMPLAINT

v.

Civil Action No.: _____

CANANDAIGUA FINGER LAKES RESORT,
LLC,

Defendant.

Plaintiff, InnoVestus, LLC (hereinafter “InnoVestus” or “Plaintiff”) by and through its attorneys, the Law Offices of Pullano & Farrow PLLC, as and for its Complaint against the Defendant named above, alleges as follows:

1. InnoVestus, LLC is a foreign limited liability company with its principal place of business located at 14 Hobart Street, Exeter, New Hampshire 03833.

2. Upon information and belief, Canandaigua Finger Lakes Resort, LLC (hereinafter “Canandaigua Resort” or “Defendant”) is a domestic limited liability company with its principal place of business located at 1711 Wayneport Road, Macedon, New York 14502, and the ownership entity of the property located at 205 Lakeshore Drive, Canandaigua, New York 14424.

JURISDICTION, VENUE, AND CONTROLLING LAW

3. This Court has personal jurisdiction over the named Defendant because Canandaigua Resort’s principal office is located in the state of New York.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

5. Venue is proper in the Western District of New York pursuant to 28 U.S.C. § 1391 as it is the judicial district where Canandaigua Resort resides, in which a substantial part of the events giving rise to the claim occurred, and where the property that is the subject of the action is situated.

6. Venue is also proper in the Western District of New York because Canandaigua Resort does business in the State of New York, within the Western District of New York.

7. The parties' Consulting Agreements, which are the basis for InnoVestus's claims against Canandaigua Resort, were entered into between InnoVestus and Canandaigua Resort and specify that New Hampshire law is controlling.

FACTUAL ALLEGATIONS

2014 Consulting Agreement

8. On or about July 18, 2014, Robert Murphy, on behalf of Canandaigua Resort, entered into a Consulting Agreement with InnoVestus (hereinafter "2014 Consulting Agreement") for the purpose of engaging InnoVestus as its exclusive representative for a period of sixty days "to arrange for traditional financing and/or investment funds for the purpose of funding the construction of the Canandaigua Finger Lakes Resort." A copy of the 2014 Consulting Agreement is attached hereto as **Exhibit A**.

9. In consideration for arranging for financing or investment funds, Canandaigua Resort agreed to pay InnoVestus a consulting fee equal to one percent (1%) of any loan amount and two percent (2%) of any investment amount, upon a successful closing of a transaction between Canandaigua Resort and an individual or entity brought forth by InnoVestus. *See id.* at 1.

10. Under the terms of the 2014 Consulting Agreement, Canandaigua Resort agreed that it “may not circumvent payment of the InnoVestus fee by dealing directly, or indirectly through other brokers, with such prospective lender, investor, prospective lender’s/investor’s representative. It is understood that any lending/investing source(s) and/or broker(s) that have been developed by InnoVestus shall remain exclusive to them.” *Id.* at 2.

11. Furthermore, pursuant to the 2014 Consulting Agreement, the parties agreed that “[i]n the event [Canandaigua Resort] closes a future transaction with one of InnoVestus’s lenders or investors, InnoVestus shall be paid one percent (1%) of the transaction, or \$5,000, whichever is greater.” *Id.*

12. Additionally, under the 2014 Consulting Agreement, the parties agreed that “[i]n the event a suit or action is filed to collect monies due under this agreement, InnoVestus shall be reimbursed by [Canandaigua Resort] for all costs and expenses incurred in connection with the suit or action, including without limitation reasonable attorney’s fees.” *Id.*

13. Following the parties’ entrance into this agreement, InnoVestus connected Canandaigua Resort with several prospective lenders or investors in pursuit of obtaining financing in accordance with the 2014 Consulting Agreement.

14. On or around October 3, 2014, David Richards, the Managing Member of InnoVestus, informed Canandaigua Resort that he had engaged ACRES Capital, LLC (hereinafter “Acres”) on Canandaigua Resort’s behalf and that Acres expressed an interest in lending to Canandaigua Resort.

15. Upon information and belief, on or about October 7, 2014, Mr. Richards arranged for an introductory meeting between Mark Fogel (Acres’ President and Chief Executive Officer), Marty Reasoner (Acres’ Managing Partner), Mr. Murphy, and David Genecco (former co-owner

of Canandaigua Resort), to meet, during which Canandaigua Resort's financing needs were discussed.

16. Upon information and belief, construction began on the Canandaigua Resort project in or around October 2014.

17. Throughout 2014 and 2015, InnoVestus and Acres maintained communication and exchanged information in an effort to establish financing for Canandaigua Resort.

18. Upon information and belief, in or around February 2015, Mr. Richards met Mr. Fogel and Mr. Reasoner at the site of Canandaigua Resort to provide a tour of the construction and plans.

19. Upon information and belief, on or about March 5, 2015, InnoVestus received from Acres a Term Sheet for a Bridge Mortgage Loan, outlining the terms of a Thirty Million Dollar (\$30,000,000.00) loan, which InnoVestus then provided to Canandaigua Resort to obtain signatures.

20. Thereafter, on or about March 12, 2015, Acres provided to InnoVestus and Canandaigua Resort a revised Term Sheet for a Bridge Mortgage Loan (hereinafter "Acres Term Sheet"), scheduled to expire on March 13, 2015.

21. Upon information and belief, the principals of Canandaigua Resort, Mr. Murphy and Mr. Genecco, did not sign the Acres Term Sheet before its expiration.

22. Upon information and belief, InnoVestus maintained communication with Acres on behalf of Canandaigua Resort in an attempt to salvage the former deal Acres provided and/or to consummate a financing solution for Canandaigua Resort with Acres as a funding source.

23. Upon information and belief, the relationship between Canandaigua Resort and Acres deteriorated to such an extent, as a result of the parties' inability to agree to terms, that discussions of financing between the parties came to a halt.

24. Upon information and belief, in the summer of 2015, a contractor filed a mechanic's lien in the amount of Two Million Eight Hundred Sixty-Two Thousand Eight Hundred Eighty-Five Dollars and Ten Cents (\$2,862,885.10) against Canandaigua Resort.

25. Upon information and belief, work halted on the project in 2015 and did not resume until 2019.

26. Upon information and belief, throughout 2016 and 2017, InnoVestus continued to make efforts with several other lenders to obtain financing for Canandaigua Resort, but such efforts proved fruitless, as the lenders and the principals of Canandaigua Resort could not come to an agreement on loan terms. During this time, InnoVestus billed Canandaigua Resort on a monthly basis for its extensive efforts toward acquiring financing.

2018 Consulting Agreement

27. On or about January 19, 2018, Robert Murphy, on behalf of Canandaigua Resort, entered into a second Consulting Agreement with InnoVestus (hereinafter "2018 Consulting Agreement") for the purpose of engaging InnoVestus as its non-exclusive representative for a period of ninety days "to arrange for a financial solution for Canandaigua Finger Lakes Resort." A copy of the 2018 Consulting Agreement is attached hereto as **Exhibit B**.

28. Upon information and belief, at this time, Canandaigua Resort sought a buyer of the property.

29. In consideration for InnoVestus's services, Canandaigua Resort "agree[d] to pay InnoVestus a consulting fee equal to \$300,000 (hereinafter "Consulting Fee") upon a successful transaction with an individual or entity brought to [Canandaigua Resort] by InnoVestus." *Id.* at 1.

30. Canandaigua Resort agreed that "submission of relevant information to a prospective lender, investor, or prospective lender's/investor's representative and subsequent closing of a transaction with said lender, investor, or lender's/investor's representative shall be sufficient to warrant payment of the InnoVestus fees." *Id.*

31. Canandaigua Resort also agreed that it "may not circumvent payment of the InnoVestus fee by dealing directly, or indirectly through other brokers, with such prospective lender, investor, prospective lender's/investor's representative." *Id.* at 1-2.

32. Moreover, Canandaigua Resort accepted that "it is understood that any lending/investing source(s) and/or broker(s) that have been developed by InnoVestus shall remain exclusive to them. In the event [Canandaigua Resort] closes a future transaction with one of InnoVestus's lenders or investors, InnoVestus shall be paid one percent (1%) of the transaction amount or \$50,000, whichever is greater." *Id.* at 2.

33. Additionally, under the 2018 Consulting Agreement, the parties agreed that "[i]n the event a suit or action is filed to collect monies due under this agreement or with respect to any other agreement between the parties herein, InnoVestus shall be reimbursed by [Canandaigua Resort] for all costs and expenses incurred in connection with the suit or action, including without limitation reasonable attorney's fees." *Id.* at 2.

34. Subsequently, InnoVestus began reaching out to its contacts to find, introduce, and secure a financing solution for Canandaigua Resort.

35. On or about February 5, 2018, InnoVestus approached Acres once again and informed them that the owners of Canandaigua Resort were out of funds and had decided to sell the property. InnoVestus provided a summary of the deal and asked if Acres knew of anyone who would be interested in the contemplated deal structure.

36. Acres responded by inquiring into the status of the permits, asked if the use was still for “hotel condo,” and stated that Acres would “take a look and get back” to InnoVestus.

37. On or about February 6, 2018, an associate for Acres provided Mr. Reasoner “the list of things I need to model out the deal” by email, which Mr. Reasoner subsequently sent to Mr. Richards, asking if he could respond with any of the list items. Later that day, Mr. Richards responded by providing the requested information.

38. On or about February 26, 2018, Mr. Richards inquired into whether Acres had any continued interest in Canandaigua Resort, to which Acres responded that it had been unable to find an operator for the hotel.

39. Upon information and belief, between March 2018 and March 2019, Acres and Canandaigua Resort entered into new negotiations for a bridge loan.

40. Upon information and belief, in or around April 2019, Canandaigua Resort obtained a Thirty-Seven Million Dollar (\$37,000,000.00) twenty-four (24) month bridge loan from Acres (hereinafter “Bridge Loan”).

41. Upon information and belief, Canandaigua Resort made no effort to inform or include InnoVestus of its renegotiation with Acres, to circumvent InnoVestus and avoid payment of InnoVestus’s Consulting Fee.

42. On multiple occasions, InnoVestus has attempted to obtain payment from Canandaigua Resort for establishing and developing the relationship with Acres in 2014 and 2015 that directly led Canandaigua Resort to obtain its subsequent financing in 2019.

43. Canandaigua Resort, in violation of the terms of the 2014 Consulting Agreement, has failed to make any payment of the agreed-upon broker fee where “[i]n the event the Client closes a future transaction with one of InnoVestus’s lenders or investors, InnoVestus shall be paid one percent (1%) of the transaction amount or \$5,000, which is greater.” Exhibit A at 1.

44. In accordance with the terms of the 2014 and 2018 Consulting Agreements, any lending sources which had been developed by InnoVestus, remained exclusive to InnoVestus.

45. At no point did InnoVestus sign, or acknowledge, that either party was released from their obligations pertaining to the 2014 or 2018 Consulting Agreements.

46. Upon information and belief, Canandaigua Resort would not have had any knowledge of or relationship to Acres, but for the connection developed and established by InnoVestus initially in 2014-2015 and again subsequently in 2018.

47. Upon information and belief, Canandaigua Resort attempted to circumvent the payment of the Consulting Fee due and owing to InnoVestus by independently arranging for the Bridge Loan with Acres, without the involvement of InnoVestus and in violation of the terms of the 2014 and 2018 Consulting Agreements.

48. Ultimately, InnoVestus was the effective cause of the procurement of the Acres Bridge Loan to Canandaigua Resort by joining the two parties together, and as such, InnoVestus has earned its commission. As a result of this connection established by InnoVestus, Canandaigua Resort obtained its funding from Acres. To date, InnoVestus has not received the Consulting Fee

for acting as the effective cause of the relationship between Acres and Canandaigua Resort, which allowed for their entrance into the future transaction of the Bridge Loan in 2019.

49. Accordingly, InnoVestus is entitled to 1% of the Thirty-Seven Million Dollar transaction (\$37,000,000.00), which is equal to Three Hundred Seventy Thousand Dollars (\$370,000.00).

AS AND FOR A FIRST CAUSE OF ACTION

Breach of Contract

50. Plaintiff repeats and realleges paragraphs 1 through 49 as if fully stated herein.

51. On or about July 18, 2014, the parties entered into the 2014 Consulting Agreement.

52. InnoVestus has performed its duties under the terms of the 2014 Consulting Agreement by attempting to make arrangements to obtain financing or investments.

53. Under the terms of the 2014 Consulting Agreement, Canandaigua Resort was prohibited from circumventing payment of InnoVestus's fee by dealing directly with other brokers or lenders.

54. Under the terms of the 2014 Consulting Agreement, Canandaigua Resort accepted that investment or lending sources developed by InnoVestus would remain exclusive to InnoVestus and that Canandaigua Resort would pay one percent (1%) of the total transaction cost of any future transactions made with InnoVestus's exclusive lenders.

55. Canandaigua Resort and Acres entered into a "future transaction" when Acres offered and Canandaigua Resort accepted the Bridge Loan in 2019.

56. Canandaigua Resort breached the 2014 Consulting Agreement when it failed and subsequently refused to pay InnoVestus its broker fee when InnoVestus acted as the effective cause of the relationship between Canandaigua Resort and Acres and was therefore entitled to such fees.

57. As a result, InnoVestus has suffered damages in the amount of Three Hundred Seventy thousand dollars (\$370,000.00).

58. Given the foregoing, InnoVestus seeks a judgment against Canandaigua Resort in the principal amount of Three Hundred Seventy Thousand dollars (\$370,000.00), plus statutory interests and costs.

AS AND FOR A SECOND CAUSE OF ACTION
Implied Covenant of Good Faith and Fair Dealing

59. Plaintiff repeats and realleges paragraphs 1 through 58 as if fully stated herein.

60. In every contract under New Hampshire law, there is an obligation of good faith and fair dealing between the parties in a contract.

61. Canandaigua Resort has breached its obligation by, among other things, failing to pay as agreed, failing to honor its agreement, and failing to comply with the terms of performance as specified in the agreement.

62. Canandaigua Resort has misled and misrepresented that payments were to be made to InnoVestus.

63. Canandaigua Resort promised to make payments as agreed and has failed to do so.

64. Canandaigua Resort made attempts to avoid their obligation to pay and coordinated the financing with Acres independently of InnoVestus, to circumvent the Consulting Agreements.

65. Canandaigua Resort has failed, and continues to fail, to pay the broker fee owed to InnoVestus, despite securing funding through the connection and relationship to Acres that was established by InnoVestus.

66. As a result, InnoVestus has suffered damages in the amount of Three Hundred Seventy Thousand Dollars (\$370,000.00).

67. Given the foregoing, InnoVestus seeks a judgment against Canandaigua Resort in the principal amount of Three Hundred Seventy Thousand Dollars (\$370,000.00), plus statutory interests and costs.

AS AND FOR A THIRD CAUSE OF ACTION
Unjust Enrichment

68. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 67 as if fully stated herein.

69. Canandaigua Resort has been and continues to be unjustly enriched by retaining the fees it owes InnoVestus while benefitting from the Bridge Loan established as a result of the relationship between Canandaigua Resort and Acres, which was initiated and fostered by InnoVestus.

70. Because of Canandaigua Resort's conduct, it has been unjustly enriched with the funding received by Acres and the retention of the fees owed to InnoVestus.

71. Canandaigua Resort knowingly and voluntarily entered into an agreement with Acres, knowing that Acres was an exclusive lender of InnoVestus since 2014, and has since refused to pay any broker fees as a result of Canandaigua Resort's 2019 Bridge Loan with Acres.

72. It would be inequitable for Canandaigua Resort to retain the broker fee it agreed to pay in the event Canandaigua Resort entered into any future financing with any of InnoVestus's exclusive lenders.

73. As a result of its actions alleged herein, Canandaigua Resort has been unjustly enriched to the detriment of InnoVestus, in the amount of 1% of the total Bridge Loan provided by Acres, equal to Three Hundred Seventy Thousand Dollars (\$370,000.00). InnoVestus is entitled to the restitution of such amounts.

74. As a result, InnoVestus has suffered damages in the amount of Three Hundred Seventy Thousand Dollars (\$370,000.00).

75. Given the foregoing, InnoVestus seeks a judgment against Canandaigua Resort in the principal amount of Three Hundred Seventy Thousand Dollars (\$370,000.00), plus statutory interests and costs.

WHEREFORE, Plaintiff demands judgment against the herein-named Defendant in the amount of Three Hundred Seventy Thousand Dollars (\$370,000.00), plus statutory interests, attorneys' fees, costs, and disbursements, and for such other and further relief at the Court deems just and proper.

JURY TRIAL DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, InnoVestus hereby demands a trial by jury of the claims raised herein for which InnoVestus has a right to a trial by jury.

Dated: December 11, 2019
Rochester, New York

PULLANO & FARROW

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