

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

611

CA 23-01982

PRESENT: LINDLEY, J.P., BANNISTER, OGDEN, GREENWOOD, AND HANNAH, JJ.

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LIBERTY MAINTENANCE, INC.,  
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ALLIANT INSURANCE SERVICES, INC.,  
DEFENDANT-APPELLANT.

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GORDON & REES, LLP, WALNUT CREEK, CALIFORNIA (DON WILLENBURG, ADMITTED  
PRO HAC VICE, OF COUNSEL), FOR DEFENDANT-APPELLANT.

KENNEY SHELTON LIPTAK NOWAK LLP, BUFFALO (DEBORAH A. SUMMERS OF  
COUNSEL), FOR PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Deborah A. Chimes, J.), entered October 27, 2023. The order denied the motion of defendant to dismiss plaintiff's second amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by granting the motion in part and dismissing the fifth cause of action and as modified the order is affirmed without costs.

Memorandum: In this action to recover damages for, inter alia, defendant's alleged breach of its brokerage services agreement (agreement) with plaintiff, defendant appeals from an order denying its motion to dismiss plaintiff's second amended complaint pursuant to CPLR 3211 (a) (1) and (7).

We agree with defendant that Supreme Court erred in denying the motion insofar as it sought dismissal of the fifth cause of action, for promissory estoppel, pursuant to CPLR 3211 (a) (1), and we therefore modify the order accordingly. "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388 [1987]; see *Grossman v New York Life Ins. Co.*, 90 AD3d 990, 991-992 [2d Dept 2011], *lv dismissed* 19 NY3d 991 [2012], *rearg denied* 20 NY3d 965 [2012]). Here, defendant established not only that the parties had a contract, i.e., the brokerage services agreement, but also that the agreement included an integration clause prohibiting modification of the agreement except by written amendment. We conclude that plaintiff has "no tenable claim that [it] reasonably relied upon [defendant's alleged oral or implied promise] in support

of [its promissory] estoppel cause of action" (*Gebbia v Toronto-Dominion Bank*, 306 AD2d 37, 38 [1st Dept 2003]; see *IBT Media Inc. v Pragad*, 220 AD3d 530, 532 [1st Dept 2023]). We otherwise affirm for reasons stated in the decision at Supreme Court.

Entered: October 4, 2024

Ann Dillon Flynn  
Clerk of the Court