

Aerotek, Inc. v Ideal Interiors, Inc.

2009 NY Slip Op 32917(U)

December 8, 2009

Supreme Court, New York County

Docket Number: 111486/2008

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JANE S. SOLOMON

PRESENT: _____

PART 55

Justice

Index Number : 111486/2008

AEROTEK

VS.

IDEAL INTERIORS

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1-4

5-7, 8-9

10-11

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

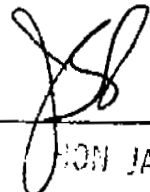
Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion ^{and adjudge} is decided by the annexed
Decision, order and Judgment.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based thereon. The party must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 12/8/09



HON. JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 55

-----X

AEROTEK, INC.,

plaintiff,

UNFILED JUDGMENT

Index No.: 111486/2008

*This judgment has not been entered by the County Clerk
and notice of entry cannot be served based on
obtain entry, counsel or authorized representative
-against
appear in person at the Judgment Clerk's Desk (Room
141B)*

IDEAL INTERIORS, Inc.

Defendants.

-----X

JANE S. SOLOMON, J.:

Plaintiff, Aerotek, Inc. (Aerotek), a Maryland corporation, sues Defendant, Ideal Interiors, Inc. (Ideal), for breach of four contracts in the aggregate amount of \$153,750. It moves for summary judgment. Defendant opposes the motion, and cross moves for summary judgment on the ground that Aerotek has failed to comply with Business Corporation Law (BCL) §1312. For the following reasons, Defendant's cross motion is denied and Plaintiff's motion is granted.

FACTS

Aerotek is a corporate staffing company which places workers with companies seeking employees. On August 28, 2007, Aerotek and Ideal entered into two "Direct Placement Agreements" (Agreements) wherein Ideal agreed to hire Steven Borer and Aleksandra Chulak. Similarly, on October 8, 2007, Ideal entered into two more Agreements with Aerotek wherein Ideal agreed to hire Joseph Marino and Jim Marxhausen. Each Agreement called for Ideal to pay Aerotek a "Candidate Referral Fee" totaling "25% of

the first year annual salary (including expected bonuses) earned while hired or engaged by Client, in addition to all applicable sales or other tax" (Motion, Exs. A-D). The Agreements contain a guarantee clause in which Aerotek would refund 100% of its fee if the candidate was terminated within 30 days of employment; 67% if within 60 days; 33% if within 90 days. After 90 days, no refund is authorized.

Under the agreements, the amount due for each employee is: \$37,500 for Borer, \$30,000 for Chulak, \$46,250 for Marino, and \$40,000 for Marxhausen. Ideal has not paid and this lawsuit followed.

DISCUSSION

A. Cross Motion

Defendant's cross motion is on the ground that Aerotek is an unregistered foreign corporation. Aerotek counters that it is registered, and submits a print-out from the Department of State, Division of Corporations, website, which shows that "Aerotek of Maryland," properly named "Aerotek, Inc." is a registered foreign business corporation in New York State. Accordingly, Ideal's cross motion is denied.

B. Motion for Summary Judgment

Defendant's next objection to the motion is that the moving affirmation of Paula R. Gilbert, counsel to Aerotek, is unsigned. This is rendered moot by the executed affidavit of

Edward T. Chiolo, the corporate credit manager of Aerotek, who identifies each exhibit to which Ms. Gilbert refers.

On the merits, Aerotek argues that there are no questions of fact that the contracts were entered into, that Aerotek performed, that Ideal breached each Agreement by nonpayment, and that damages ensued. Ideal counters that summary judgment would be inappropriate because discovery is not complete.

"[A] claimed need for discovery, without some evidentiary basis indicating that discovery may lead to relevant evidence, is insufficient to avoid an award of summary judgment.... Stated another way, the mere chance that somehow, somewhere, on cross examination or otherwise plaintiffs will uncover something which might add to their case but obviously of which now they have no knowledge, is mere speculation and conjecture and is not sufficient" (*Hariri v. Amper*, 51 AD3d 146, 152 [1st Dept. 2008]; see also *Bachrach v. Farbenfabriken Bayer AG*, 36 NY2d 696, 697 [1975] ["Hope alone will not raise a triable issue"]).

It is undisputed that the parties entered into four contracts, that Aerotek located the four individuals, and that Ideal hired them. The submissions further establish that: Borer's employment start date was October 29, 2007 (Motion, ex C), and he was terminated on or around February 15, 2008

(Opposition, ex B); Chulak's employment start date was November 5, 2007 (Motion, ex D), and she was terminated on or around January 10, 2008 (Opposition, ex B); Marino's exact start date is not submitted, and defendant does not submit a termination date, only arguing that he was terminated "less than one year from the commencement of his employment"; and Marxhausen's exact start date is not listed, but Ideal has not stated that he was terminated.

Ideal does not explain what pertinent information it expects that it will gain from discovery that has not already been submitted, or is not within its control. Accordingly, Aerotek's motion is granted as to Ideal's liability for breach of each Agreement.

1. Damages:

Ideal has not submitted any evidence that Marxhausen, Marino or Borer were terminated before working for a full 90 days. Accordingly, Aerotek is entitled to the amount sought under the Agreements for them in the sum of \$123,750. However, Chulak was terminated between 60 and 90 days from the date of employment, entitling Ideal to a credit of 33% of the fee, leaving Aerotek entitled to \$20,000 under the Chulak agreement.

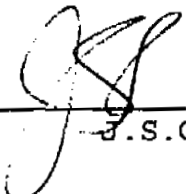
For the foregoing reasons, it hereby is

ORDERED that the motion is granted to the extent that Plaintiff is entitled to judgment against Ideal in the amount of:

A: \$46,250 on the contract of Joseph Marino, with interest at the statutory rate from October 13, 2007;
 B: \$40,000 on the contract of James Marxhausen, with interest at the statutory rate from October 20, 2007;
 C: \$37,500 on the contract of Steve Borer, with interest at the statutory rate from November 10, 2007;
 D: \$20,000 on the contract of Aleksandra Chulak, with interest at the statutory rate from November 10, 2007;
 together with costs and disbursements as taxed, upon submission of an appropriate bill of costs, and the Clerk of the Court is directed to enter judgment accordingly.

Dated: December 8, 2009

ENTER:



 J.S.C.

JANE S. SOLOMON

UNFILED JUDGMENT
 This judgment has not been entered by the Clerk and notice of entry cannot be served. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).