

Artifact, LLC v BB Young, LLC
2019 NY Slip Op 32251(U)
July 25, 2019
Supreme Court, New York County
Docket Number: 650742/2017
Judge: Gerald Lebovits
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. GERALD LEOVITS PART IAS MOTION 7EFM

Justice

-----X	INDEX NO.	<u>650742/2017</u>
ARTIFECT, LLC,	MOTION DATE	<u>10/19/2018</u>
Plaintiff,	MOTION SEQ. NO.	<u>003</u>
- v -		

BB YOUNG, LLC and BLU REBEL LLC,
Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65
were read on this motion for SUMMARY JUDGMENT

Lynch Schwab & Gasparini, PLLC (Caitriona A. Robbins of counsel), for plaintiff.
Weitz & Luxenberg, P.C. (Gary Klein of counsel), for defendants.

Gerald Lebovits, J.

Plaintiff, Artifact, LLC, sued defendants, BB Young, LLC, and Blu Rebel, LLC, for breach of contract and quantum meruit. Artifact contends that Blu Rebel failed to pay commissions and fees owed to Artifact under an agreement in which Artifact furnished several candidates to Blu Rebel for the latter to interview and hire in preparation for New York Fashion Week in February 2016. Blu Rebel counterclaimed for approximately \$100,000 in damages, alleging that Williams's and Cooke's job performance was unsatisfactory, and also that Williams improperly ceased performing work for Blu Rebel altogether shortly before Fashion Week. Artifact now moves under CPLR 3212 for summary judgment on Blu Rebel's counterclaims.

BACKGROUND

Artifact provides staffing services to companies in the fashion industry on a commission basis. Blu Rebel manufactures and markets clothing. In October 2015, Blu Rebel's owner contacted Artifact, seeking candidates for several positions at the company in anticipation of New York Fashion Week and the launch of an additional clothing collection. These positions included a chief executive, an assistant designer, and a pattern maker.

Artifact referred several candidates for the positions to Blu Rebel. Blu Rebel chose two of the candidates after conducting interviews. Blu Rebel selected Kathy

Kalesti to serve as Blu Rebel's chief executive and engaged Lorna Williams to make patterns for it. Artifact also referred Julia Cooke to Blu Rebel for the position of assistant designer; Blu Rebel ultimately hired Cooke on a full-time basis several months after the referral.

Artifact claims that under an agreement reached between the parties, Blu Rebel owes Artifact approximately \$62,227.50. This amount allegedly represents the commission fees payable to Artifact for placing Kalesti and Williams with Blu Rebel and the fee for Cooke's conversion from temporary to full-time Blu Rebel employee. Artifact asserts that it is entitled to recover those fees either in breach-of-contract damages or in quantum meruit.

Blu Rebel, on the other hand, claims that Cooke's job performance after being hired was unsatisfactory (and indeed that Cooke committed a number of errors that cost Blu Rebel money to fix), that Williams failed to produce usable patterns for Fashion Week as she had been commissioned to do, and that Williams ultimately ceased altogether to carry out her commissions for Blu Rebel.

Blu Rebel asserts that as a result, it sustained significant economic injuries, in excess of \$100,000. Blu Rebel brings two breach-of-contract counterclaims to Artifact's complaint, alleging that (i) the work of Cooke and Williams was generally unsatisfactory; and (ii) Williams's work stoppage and Cook's errors forced Blu Rebel to incur additional, unplanned costs and expenses.

Artifact now moves for partial summary judgment dismissing Blu Rebel's counterclaims.

DISCUSSION

To obtain summary judgment, a movant must establish its cause of action sufficiently to permit the court, as a matter of law, to direct judgment in its favor and "must do so by tender of evidentiary proof in admissible form." (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1066 [1979].) Where, however, the opposing party submits affidavits and other evidence that, considered in the light most favorable to the non-moving party, raise triable issues of fact, summary judgment will be denied. (*See id.*; *Brunetti v Musallam*, 11 AD3d 280, 280 [1st Dep't 2004].)

I. Blu Rebel's Counterclaim for Damages Due to Cooke and Williams' Unsatisfactory Work

Blu Rebel's first counterclaim seeks damages because Cooke and Williams allegedly did unsatisfactory work for Blu Rebel when they were hired after Artifact's referral but were not replaced by Artifact. (*See Defendants' Answer & Counterclaims*, NYSCEF No. 55, at ¶¶ 35-38.) Artifact contends that it is entitled to summary judgment on this counterclaim because its obligations under the contract consisted solely of providing candidates for Blu Rebel to interview and hire (or not hire). (*See O'Connor*

Affidavit, NYSCEF No. 52, at ¶¶ 5-7.) Thus, Artifact claims, any harm to Blu Rebel for unsatisfactory post-hiring performance was outside the scope of their contract.

Artifact's summary-judgment motion on this counterclaim is granted, but only as to the claims pertaining to Cooke.

Artifact is correct that to the extent its role was limited to referring candidates to Blu Rebel to consider, Blu Rebel cannot recover for poor post-hiring performance. (*See Wexler v Veerman*, 276 AD 1021, 1021 [2d Dep't 1950]; *Arrow Empl. Agency v Favors Remodeling and Constr. Co.*, 2008 N.Y. Slip Op. 52228 [U], 2008 WL 4816318, at *2 [App. Term, 2d Dep't 2008]; *Globalforce Intern. Inc. v Urostar Management Inc.*, 2002 N.Y. Slip Op. 50650 [U], 2002 WL 32075424, at *1 [App Term 2002].)

Here, the summary-judgment record reflects that Blu Rebel hired Cooke to serve as a Blu Rebel employee several months after Artifact referred Cooke to Blu Rebel for its consideration. Artifact's contractual obligations to Blu Rebel regarding Cooke ceased following that referral — regardless of how Cooke performed after Blu Rebel hired her. (*Wexler*, 276 AD at 1021; *see also Arrow*, 2008 WL 4816318, at *2.)

Williams, however, presents a different case. Blu Rebel has submitted evidence that it did not hire Williams to serve as its employee, but rather commissioned Williams to make patterns for Blu Rebel in her role as a freelance designer working for *Artifact*. (*See Klein Affirmation*, NYSCEF No. 62, at ¶ 6, 16; *Young Affidavit*, NYSCEF No. 63, at ¶¶ 8-10.) Indeed, Artifact has admitted that Williams was working for Artifact on a freelance basis for at least part of the period in which Blu Rebel supposedly employed her. (*See Plaintiff's Answer to Defendant's Counterclaims*, NYSCEF No. 56, at ¶ 35.)

Blu Rebel also provides affidavits stating that Williams invoiced Artifact (not Blu Rebel) for her time, that Williams had submitted time sheets for approval only to Artifact (and not Blu Rebel), and that Blu Rebel never signed off on Williams's claimed hours. (*See NYSCEF No. 62*, at ¶ 6; *NYSCEF No. 63*, at ¶¶ 11-12.) Furthermore, according to these affidavits, Williams refused to turn over completed patterns to Blu Rebel in January 2016 because *Artifact* had not paid her; and Blu Rebel responded to Williams's refusal by contacting Artifact rather than dealing with Williams directly. (*See NYSCEF Doc. No. 63*, at ¶ 13.)

Blu Rebel's evidence, if credited, would establish that Artifact's contractual obligations to Blu Rebel regarding Williams and her work were not limited merely to the initial referral (as was the case with Cooke). Artifact has not rebutted Blu Rebel's showing. Instead, Artifact's reply on the present motion merely repeats its original arguments, without addressing the substance of Blu Rebel's evidence regarding the nature of its engagement of Williams. Artifact is not entitled to summary judgment on Blu Rebel's first counterclaim as to Williams.

II. Blu Rebel's Counterclaim for Damages Due to Williams's Ceasing Work and Cooke's Errors


Blu Rebel's second counterclaim is based on allegations that Williams unilaterally ceased performing work for Blu Rebel at the end of January 2016, causing Blu Rebel to lose business and to incur expenses to replace the work it expected to get from Williams; and that Cooke committed several errors that forced Blu Rebel to incur further unplanned costs and expenses. (See NYSCEF Doc. No. 55, at ¶¶ 40-41.)

For the same reasons as set forth above, Artifact's motion for summary judgment on this counterclaim is granted, but only as to the claims pertaining to Cooke.

Accordingly, it is

ORDERED that Artifact's motion for summary judgment under CPLR 3212 to dismiss Blu Rebel's counterclaims is granted as to the allegations in Blu Rebel's counterclaims pertaining to Cooke but denied as to the allegations pertaining to Williams.

07/25/2019
DATE


GERALD LEBOVITS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

APPLICATION:

CHECK IF APPROPRIATE:

INCLUDES
TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE