

**Alison's Bright Ideas, Inc. v Urbandaddy, Inc.**

2021 NY Slip Op 32778(U)

December 17, 2021

Supreme Court, New York County

Docket Number: Index No. 650532/2019

Judge: Nancy M. Bannon

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM**

*Justice*

-----X

ALISON'S BRIGHT IDEAS, INC.,

Plaintiff,

- v -

URBANDADDY, INC.,

Defendant.

-----X

INDEX NO. 650532/2019

MOTION DATE 08/05/2021

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98

were read on this motion to/for

DEFAULT JUDGMENT

In this breach of contract action, the plaintiff, a provider of recruitment and placement services, seeks to recover unpaid fees from the defendant, a media company that used the plaintiff's services. By a decision and order dated September 4, 2020, the court granted the plaintiff's second motion pursuant to CPLR 3126 to strike the defendant's answer for failure to comply with the court's discovery directives to the extent that the defendant's answer would be stricken unless it provided all outstanding discovery set forth in the court's orders, or a Jackson affidavit where appropriate, within 30 days of service of the decision and order. The court noted that the order was self-executing and would become absolute upon the defendant's failure to comply with the court's directives, without the necessity of further motion practice. The court directed that if the defendant failed to comply, the plaintiff was permitted to file an affirmation of noncompliance. On October 12, 2020, the plaintiff filed an affirmation of noncompliance and notified chambers of the filing. By a supplemental order dated March 24, 2021, the court ordered the defendant's answer automatically stricken pursuant to CPLR 3126. The court further permitted the plaintiff to move for leave to enter a default judgment against the defendant within 90 days, if it be so advised.

The plaintiff has timely moved pursuant to CPLR 3215 for leave to enter a default judgment against the defendant on (i) the first cause of action (breach of contract), (ii) the fourth cause of action (account stated), and (iii) the fifth cause of action (violation of NYC Admin. Code § 20-927 *et seq.*, also known as the Freelance Isn't Free Act [FIFA]). No opposition is submitted. The motion is granted in part.

"On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts

constituting the claim, and proof of the defaulting party's default in answering or appearing (see CPLR 3215[f]; Allstate Ins. Co. v Austin, 48 AD3d 720, 720)." Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2<sup>nd</sup> Dept. 2011). While the "quantum of proof necessary to support an application for a default judgment is not exacting . . . some firsthand confirmation of the facts forming the basis of the claim must be proffered." Guzetti v City of New York, 32 AD3d 234, 236 (1<sup>st</sup> Dept. 2006). The proof submitted must establish a *prima facie* case. See Silberstein v Presbyterian Hosp., 95 AD2d 773 (2<sup>nd</sup> Dept. 1983).

In support of its motion, the plaintiff submits, *inter alia*, (i) an attorney's affirmation, (ii) the subject services agreement between the parties, signed by Aiden Murtagh on behalf of the defendant, dated June 26, 2017, (iii) an invoice the plaintiff sent to the defendant for the plaintiff's professional placement services of Adam Mankuta (Mankuta) in the sum of \$19,500, dated July 26, 2017, (iv) an invoice the plaintiff sent to the defendant for the plaintiff's professional placement services of Tess Konter (Konter) in the sum of \$16,500.00, dated January 12, 2018, (v) email communications between the parties dating back to August 23, 2017, in which the candidates Mankuta and Konter were discussed, (vi) the affidavit of Alison Bright<sup>1</sup> (Bright), the sole shareholder of the plaintiff, and (vii) the affidavits of Mankuta and Konter.

The proof submitted establishes that the parties entered into an agreement on June 27, 2017, whereby the plaintiff agreed to refer candidates to the defendant for potential placement as employees, consultants, or independent contractors. For each candidate that the defendant hired, the defendant would pay the plaintiff a fee equal to 15 percent of the candidate's first year base salary. Per the agreement, two thirds of such fee became payable after 90 days of the candidate's employment, and the remaining third of the fee became due after 120 days of employment. Further, during the 90-120-day initial period of a candidate's employment, if any candidate whom the defendant hired voluntarily resigned or was terminated by the defendant due to unsuitability, and any invoices sent by the plaintiff were paid when due, the plaintiff guaranteed a 66 percent "credit or refund or employee replacement," at the defendant's option.

The plaintiff's proof further demonstrates that the plaintiff referred Mankuta to the defendant and the defendant subsequently hired Mankuta as an account manager with a base salary of \$130,000.00 per year, commencing on July 26, 2017. On July 28, 2017, the plaintiff sent an invoice for the placement of Mankuta to the defendant via email. The invoice states that "[i]nterest for accounts unpaid over 14 days will be charged at 1-1/2% per month." In or around October 2017, the defendant informed Mankuta that it planned to terminate his employment but would allow him to continue working for approximately four more weeks, such that the last day of Mankuta's employment was November 17, 2017. Thus, Mankuta was employed with the defendant for a period of 114 days. Since Mankuta's employment was for less than 120 days,

---

<sup>1</sup> The court notes that Bright's affidavit was executed and notarized in the State of California and does not include a certificate of conformity as required by CPLR 2309(c). This defect does not require the denial of the motion and may be cured by the submission of the proper certificate *nunc pro tunc*. See Bank of New York v Singh, 139 AD3d 486 (1<sup>st</sup> Dept. 2016).

Bright issued a credit to the defendant of 66 percent of the two thirds of the 15 percent fee (\$13,000.00) that was due and payable, leaving a balance of \$4,420.00 in fees owed to the plaintiff in relation to the placement of Mankuta. The defendant refused to pay the plaintiff any fees and to date has failed to pay the plaintiff any monies. Consequently, the defendant owes \$4,420.00 plus interest at a rate of 1.5% per month from November 7, 2017 for the placement of Mankuta.

Finally, the plaintiff's proof demonstrates that the plaintiff referred Konter to the defendant and the defendant subsequently hired Konter as a marketing director with a base salary of \$110,000.00 per year, commencing on January 29, 2018. Konter ceased working for the defendant in or around August 2018. On January 12, 2018, the plaintiff issued an invoice to the defendant demanding payment in the amount of \$16,500.00, with two thirds due on or before April 29, 2018 and the balance due on or before May 29, 2018. The invoice also states that accounts unpaid over 14 days will accrue interest at 1.5% per month. The defendant failed to pay any fees related to the placement of Konter and accepted the invoices related to Konter without objection. The defendant failed to make any payments and owes \$16,500.00 plus interest at a rate of 1.5% per month from June 12, 2018 for the placement of Konter.

By this evidence, the plaintiff has submitted sufficient proof of the facts constituting its first cause of action for breach of contract with respect to the placements of both Mankuta and Konter. The plaintiff has established that a valid contract existed, the plaintiff performed thereunder, the defendant failed to perform, and resulting damages. See Second Source Funding, LLC v Yellowstone Capital, LLC, 144 AD3d 445 (1<sup>st</sup> Dept. 2016); Harris v Seward Park Hous. Corp., 79 AD3d 425, 426 (1<sup>st</sup> Dept. 2010) (citing Morris v 702 E. Fifth St. HDFC, 46 AD3d 478 [1<sup>st</sup> Dept. 2007]); Flomenbaum v New York Univ., 71 AD3d 80 (1<sup>st</sup> Dept. 2009), aff'd, 14 NY3d 901 (2010). Indeed, the defendant's answer having been stricken, the defendant is "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003). Thus, the plaintiff is entitled to \$4,420.00, plus contractual interest, for breach of the agreement with respect to Mankuta and \$16,500.00, plus contractual interest, with respect to Konter.

The proof submitted also establishes, *prima facie*, the fourth cause of action for an account stated, in part. That is, the plaintiff establishes its entitlement to an account stated as it relates to Konter in that the plaintiff has demonstrated that the defendant "received [and] retained without objection" the invoices sent by the plaintiff. Scheichet & Davis, P.C. v Nohavicka, 93 AD3d at 478 (1<sup>st</sup> Dept. 2012) (quoting Gamiel v Curtis & Reiss-Curtis, P.C., 60 AD3d 473, 474 [1<sup>st</sup> Dept. 2009]). It is well settled that a cause of action for account stated may be established by demonstrating either partial payment or retention of bills without objection. See Morrison Cohen Singer and Weinstein, LLP v Waters, 13 AD3d 51 (1<sup>st</sup> Dept. 2004); M&R Constr. Corp. v IDI Constr. Co., 4 AD3d 130 (1<sup>st</sup> Dept. 2004). In contrast to the invoices sent with respect to Konter, the record makes plain that the defendant objected to the invoices sent in relation to Mankuta, asserting that it believed it owed nothing. Therefore, the plaintiff is entitled judgment on the fourth cause of action to the extent that the defendant is liable on the Konter invoice in the principal sum of \$16,500.00, plus contractual interest.

As to the fifth cause of action seeking to recover under FIFA, the plaintiff, a foreign corporation with its principal place of business in San Antonio, Texas, has not demonstrated entitlement to relief thereunder. “FIFA was passed largely to protect freelance workers who were denied compensation by, *inter alia*, imposing double damages on companies that breached agreements.” Turner v Sheppard Grain Enterprises, LLC, 68 Misc 3d 385, 387 (NY Sup Ct 2020) (citing Caitlin M. Baranowski, Freelance Isn't Free: The High Cost of New York City's Freelance Isn't Free Act on Hiring Parties, 12 Brooklyn J Corp Fin & Com L 439, 443 [2018]). However, FIFA is silent on the issue of its applicability to freelancers who perform work for New York City businesses outside of New York City. Nor have the appellate courts of this state yet issued any binding ruling or guidance on this question. Nonetheless, the court finds that purpose and intent of FIFA demonstrate that it should not be applicable in this case.

In Turner v Sheppard Grain Enterprises, LLC, the trial court considered FIFA's application to a freelancer based out of state doing work remotely for a company based in New York City. The court relied upon the impact requirement the Court of Appeals adopted in Hoffman v Parade Pubs., 15 NY3d 285 (2010), in reaching its conclusion that FIFA was not applicable. In Hoffman, the Court of Appeals held that in order to demonstrate entitlement to relief under the New York City Human Rights Law, NYC Admin. Code. § 8-101 *et seq.*, “the nonresident plaintiff must demonstrate that the alleged discriminatory conduct had an ‘impact’ within the city.” *Id.* at 290. Though Hoffman involved a determination as to the applicability of a different New York City law, the court agrees with Turner that its guiding principle is instructive here. In limiting FIFA's coverage accordingly, the court avoids improperly expanding FIFA “exponentially to cover every person hired to do freelance work for a New York city company regardless of where [the] work is performed,” when there is no indication that the legislature intended such broad protections. Turner v Sheppard Grain Enterprises, LLC, *supra* at 390.

Thus, the relevant inquiry is whether the plaintiff demonstrates sufficient connections to New York City such that the defendant's failure to pay had an impact in New York City. The plaintiff is not a New York City resident and the record is devoid of any facts that would suggest that it, or its sole shareholder, performed any of its work in New York City. Indeed, it appears that all communications between the parties were electronic and that the work the plaintiff performed for the defendant primarily involved the remote coordination of interviews. Further, the invoices sent by the plaintiff direct the defendant to issue checks to the plaintiff at two different addresses in Texas and list a phone number for the plaintiff with a Massachusetts area code. The affidavit submitted by the sole principal of the plaintiff was executed in California. In light of the foregoing, there is no showing that the plaintiff was impacted by the defendant's nonpayment in New York City. Thus, the plaintiff is not entitled to FIFA's protections and its motion is denied as to the fifth cause of action.

Accordingly, it is hereby

ORDERED that the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment against the defendant is granted on the first cause of action and the fourth cause of action in part, without opposition, and the motion is otherwise denied; and it is further

ORDERED that the Clerk shall enter judgment in favor of the plaintiff and against the defendant in the sums of (i) \$4,420.00, plus costs and contractual interest at 1.5% per month from November 7, 2017, and (ii) \$16,500.00, plus costs and contractual interest at 1.5% per month from June 12, 2018; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

  
 \_\_\_\_\_  
 NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**

<u>12/17/2021</u> DATE	<table border="0"> <tr> <td style="padding-right: 10px;">CHECK ONE:</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>CASE DISPOSED</td> <td style="padding-left: 20px;"></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>DENIED</td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>GRANTED</td> <td style="padding-left: 20px;"></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>GRANTED IN PART</td> </tr> <tr> <td>APPLICATION:</td> <td style="text-align: center;"><input type="checkbox"/></td> <td>SETTLE ORDER</td> <td style="padding-left: 20px;"></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>SUBMIT ORDER</td> </tr> <tr> <td>CHECK IF APPROPRIATE:</td> <td style="text-align: center;"><input type="checkbox"/></td> <td>INCLUDES TRANSFER/REASSIGN</td> <td style="padding-left: 20px;"></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>FIDUCIARY APPOINTMENT</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="padding-left: 20px;"></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>OTHER</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="padding-left: 20px;"></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>REFERENCE</td> </tr> </table>	CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	DENIED		<input type="checkbox"/>	GRANTED		<input checked="" type="checkbox"/>	GRANTED IN PART	APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT					<input type="checkbox"/>	OTHER					<input type="checkbox"/>	REFERENCE	<table border="0"> <tr> <td style="padding-right: 10px;">NON-FINAL DISPOSITION</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>GRANTED IN PART</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>SUBMIT ORDER</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>FIDUCIARY APPOINTMENT</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>OTHER</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>REFERENCE</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	NON-FINAL DISPOSITION	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	OTHER	<input type="checkbox"/>	REFERENCE	<input type="checkbox"/>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	DENIED																																													
	<input type="checkbox"/>	GRANTED		<input checked="" type="checkbox"/>	GRANTED IN PART																																													
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER																																													
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT																																													
				<input type="checkbox"/>	OTHER																																													
				<input type="checkbox"/>	REFERENCE																																													
NON-FINAL DISPOSITION	<input type="checkbox"/>																																																	
GRANTED IN PART	<input checked="" type="checkbox"/>																																																	
SUBMIT ORDER	<input type="checkbox"/>																																																	
FIDUCIARY APPOINTMENT	<input type="checkbox"/>																																																	
OTHER	<input type="checkbox"/>																																																	
REFERENCE	<input type="checkbox"/>																																																	