

Hartman v Pilata Inc.
2023 NY Slip Op 31868(U)
June 2, 2023
Supreme Court, New York County
Docket Number: Index No. 650961/2022
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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MAREN HARTMAN,

Plaintiff,

- v -

PILATA INC. F/K/A PILAT INTERACTIVE TECHNOLOGIES,
INC., MATT COHEN, HEATHER DORAK

Defendant.

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INDEX NO. 650961/2022

MOTION DATE 06/01/2023,
06/01/2023

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion to dismiss is granted in part.¹²

FACTS

This action arises out of a dispute between defendants, a corporation and two of its shareholders, and plaintiff, who allegedly performed services for defendants for several months but was never compensated. Plaintiff claims she was promised the title of “founder” with an equitable share in defendant corporation, as well as compensation for her work. Plaintiff claims she was an employee of defendant corporation and, thus, defendants violated New York Labor Law article 6. Plaintiff also poses an alternative theory to their employee status claim under the

¹ The Court would like to thank Chris Markos for his assistance in this matter.

² While motion sequence 1 remains open, this motion is decided based on the amended complaint.

Freelance Isn't Free Act. Finally, plaintiff claims unjust enrichment and fraud by defendants.

Defendants move to dismiss certain claims the complaint pursuant to CPLR § 3211.

STANDARD OF REVIEW

Under CPLR § 3211, the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. See *Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD2d 348 [2d Dept 2003]. Additionally, “the complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.” *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011].

DISCUSSION

A. Employment Status

The issue is whether plaintiff, in the course of her work for defendant corporation, was an “employee” or “freelance worker.” Defendants contest that plaintiff was neither an “employee” of defendant corporation under 6 NYLL §§ 190, 196 nor a “freelance worker” under the Freelance Isn't Free Act (FIFA).

Determining whether NYLL article 6 protects plaintiff as an “employee” is determined by inquiry into the “degree of control exercised by the purported employer over the results produced or the means used to achieve the results.” *Hernandez v. Chefs Diets Delivery, LLC*, 81 A.D.3d 596, 597 (2d Dep't 2011). For a valid claim under NYLL article 6, “a plaintiff must first demonstrate that he or she is an employee entitled to its protections. Although the definition of

employee is broad, independent contractors are not included.” *Bhanti v Brookhaven Mem. Hosp. Med. Ctr., Inc.*, 260 AD2d 335 [2d Dept 1999].

Barring irrelevant exceptions, FIFA defines “freelance workers” as “any natural person or any organization composed of no more than one natural person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation.” N.Y.C. Admin. Code §§ 20-927. For a claim under FIFA, there must be a written contract between parties for services rendered over \$800. N.Y.C. Admin. Code §§ 20-928.

In this case, there appears to be no dispute that the work by plaintiff was worth more than \$800, and that there was no agreement between the parties. As such, it appears to this Court that the plaintiff has failed to allege the necessary prerequisites to avail herself of FIFA. As such, those causes of action will be dismissed.

As to the employee issue, defendants cite a five-factor test for determining employment status; this test was adopted pursuant to a motion for summary judgment following discovery and this court is unable to set out this test with the limited record before the Court at this time. *Thomas v. Meyers Assocs., L.P.*, 39 Misc. 3d 1217(A), at *3 [N.Y. Sup. Ct. 2013].

Fraud

Plaintiff’s fraud claim should be dismissed because the complaint and affidavits do not satisfy the heightened pleading standard enumerated by CLPR § 3016(b). A cause of action based on fraud must state the circumstances constituting the fraud in detailed factual allegations. N.Y. C.P.L.R. 3016 (McKinney). Furthermore, “3016(b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct.” *Pludeman v N. Leasing Sys., Inc.*, 10 NY3d 486 [2008].

Here, the amended complaint claims defendant Cohen promised to compensate plaintiff and include her as a founder of the defendant corporation. Both parties have conceded, through written documentation and oral argument, that these statements were the first step in a series of negotiations leading to this case. These general and conclusory statements do not make out fraudulent misrepresentation, even in the light most favorable to the non-moving party. Moreover, it would appear that this cause of action is duplicative of the plaintiff's claim for quantum meruit/unjust enrichment, which will remain following this motion.

Defendant Dorak

The Court agrees that the matter should be dismissed as to Defendant Dorak. Put simply, there are no allegations of any wrongdoing on the part of this defendant.

According to the amended complaint, all communications and promises in question were made by defendant Cohen. Even while viewing the affidavits and complaint in a light most favorable to plaintiff, the court has not been presented with evidence indicating that defendant Dorak committed any of the alleged wrongdoing nor has plaintiff given any indication that there should be a piercing of the corporate veil.

Based on the foregoing, it is hereby

ORDERED that the complaint is dismissed in its entirety as against defendant Dorak and the Clerk of the Court is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants, Pilata Inc. and Cohen; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that plaintiff's third, fourth and sixth causes of action are hereby dismissed;
and it is further

ADJUDGED that the motion is otherwise denied.

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6/2/2023

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

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CASE DISPOSED

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NON-FINAL DISPOSITION

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GRANTED

☐

DENIED

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GRANTED IN PART

☐

OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE