

**Hartman v Pilata Inc.**

2023 NY Slip Op 34231(U)

December 1, 2023

Supreme Court, New York County

Docket Number: Index No. 650961/2022

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**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 08/09/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 58, 59, 60, 61, 62, 63

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, plaintiff’s motion to reargue is granted, and third and fourth causes of action are restored.

Background

This action arises out of a dispute between defendants, a corporation, its shareholder, 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. Defendants previously moved to dismiss plaintiff’s claims pursuant to CPLR § 3211. The Court partially granted defendants motion to dismiss as to its claims under the Freelance Isn’t Free Act (FIFA), finding that because plaintiff failed to allege there was an agreement between the parties, she failed to allege the necessary prerequisites to avail herself of FIFA. Plaintiff now moves to reargue, contending that the Court erred in holding that an agreement is a necessary prerequisite to FIFA.

Standard

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), 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]. “In a motion to dismiss pursuant to CPLR 3211 (a) (1), the defendant has the burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim” (*Fortis Fin. Servs., LLC v Fimat Futures USA, Inc.*, 290 AD2d 383, 383 [1st Dept 2002] internal quotations and citations omitted). Further, dismissal pursuant to CPLR § 3211(a)(1) is warranted where documentary evidence “conclusively establishes a defense to the asserted claims as a matter of law.” *Gottesman Co. v A.E.W, Inc.*, 190 AD3d 522, 24 [1st Dept 2021].

### Discussion

In its prior decision this Court found that pursuant to FIFA, there must be a written contract between the freelancer and the employer for FIFA to apply. The Court's basis for this holding rested on §20-928 of FIFA, which provides in relevant part,

“Written contract required. a. Whenever a hiring party retains the services of a freelance worker and the contract between them has a value of \$800 or more, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding 120 days, the contract shall be reduced to writing. Each party to the written contract shall retain a copy thereof...”

As plaintiff and defendant did not have a written contract, the Court dismissed plaintiff's third and fourth causes of action which rested on FIFA. In its motion to reargue, plaintiff argues the court erred in its interpretation of this provision of FIFA. Plaintiff claims Section §20-928 of FIFA does not require a contract as a prerequisite for FIFA's applicability but rather imposes a duty on employers to provide a freelancer with a written contract. Therefore, rather than

requiring that the parties have a written contract for FIFA to apply, employers can be penalized for failure to provide a written contract under FIFA.

The Court acknowledges that it erred in its previous interpretation of FIFA. As Section §20-933 provides a cause of action for freelancers when their employers fail to comply with FIFA, it would be illogical to simultaneously find that the same failure to comply with FIFA bars a plaintiff from asserting a cause of action. Moreover, Section §20-933 provides, “a plaintiff who solely alleges a violation of Section §20-928 must prove that such plaintiff requested a written contract before the contracted work began.” This section of FIFA provides a cause of action for freelancers where the employer has failed to provide a written contract. As such, it would therefore be impossible for the lack of a written contract to simultaneously bar plaintiff from asserting their rights under FIFA.

Next, defendants argue plaintiff cannot assert an action under FIFA because “this set of facts falls squarely outside the scope of FIFA. FIFA was enacted to extend protections to freelance workers. It was not designed to allow parties involved in business negotiations to create undue leverage by rejecting all of the terms offered to them, failing to agree on any payment terms, and thereby manufacturing a nonpayment issue.” A Court recently addressed this issue in *Tan v. Breathing AI LLC*. In *Tan*, the Honorable Gerald Lebovits held that where a plaintiff was allegedly in negotiations to be an equity partner rather than an independent contractor, FIFA was still applicable. The Court reasoned, “FIFA's language is not so limited: It covers any natural person . . . that is hired or retained as an independent contractor by a hiring party to provide services in exchange for compensation. Protecting gig workers may be a central purpose of FIFA; but FIFA's reach is not limited to affording those protections.” (internal quotations omitted). The Court agrees with Justice Lebovitz’s interpretation. Moreover, plaintiff

alleges in addition to the promise of equity partnership, she was promised compensation. Therefore, in the light most favorable to plaintiff, the Court finds plaintiff has sufficiently plead a cause of action under FIFA.

Accordingly, it is hereby

ADJUDGED that plaintiff's motion for re-argument is granted; and it is further

ORDERED that plaintiff's third and fourth causes of action are restored.

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12/1/2023

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE