

Dark Blue Fin. LLC v Kopacz
2026 NY Slip Op 31991(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 654591/2024
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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DARK BLUE FINANCIAL LLC

Plaintiff,

- v -

SUSAN KOPACZ,

Defendant.

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INDEX NO. 654591/2024

MOTION DATE 01/28/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

This action arises out of an allegation of breach of an oral contract. Defendant now moves for summary judgment. Plaintiff opposes the instant motion and cross-moves for discovery. For the reasons set forth below, the motion for summary judgment is granted and the cross-motion is denied.

Summary Judgment Standard

The proponent of a summary judgment motion must make prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. CPLR § 3212. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. Alvarez v Prospect Hosp., 68 NY2d 320, 322 [1986].

Discussion

The complaint, as well as the documents submitted by plaintiff, allege that a non-party and defendant entered into an oral agreement sometime in 2014, wherein defendant agreed to pay non-party "\$71,889.14 for reimbursement of salary and expenses related to [her] employment at Freestream during 2013." See NYSCEF Doc.1 and 2. The complaint asserts that it is the assignee of this claim. The complaint alleges the agreement resulted from defendant's employment with Freestream and alleged misconduct that caused defendant's separation. The complaint refers to the alleged oral agreement as both a separation agreement and a settlement agreement, however other than defendant's alleged promise to pay when she "gets on her feet", there are no other terms of the purported agreement.

In support of its motion for summary judgment, defendant advances numerous arguments in its notice of motion however does not fully brief all grounds in its memorandum of law. Notwithstanding, defendant submits an affidavit denying that an agreement was made between it and Freestream, specifically no agreement was made to return income earned. Defendant contends that this matter is barred by the statute of limitations although the complaint does not contain a date by which performance was expected to be completed by defendant. The affirmation submitted in opposition also fails to provide a date and simply restates the language in the complaint. While the affirmation of Rebecca Posoli-Cilli, former president of Freestream Aircraft USA, Inc. purports to have personal knowledge of the oral agreement, the affirmation generically alleges that an agreement was made between Freestream and defendant although she alleges that she confronted plaintiff but does not affirm that she was the individual with whom the agreement was made.

In the affirmation submitted in opposition to the motion, Posoli-Cilli, details the alleged misconduct by defendant, the alleged promise to pay and information that forms that basis of her belief that defendant is now in a position to perform under the agreement. Notably missing is plaintiff's performance under the agreement or any allegation that plaintiff performed under the agreement. Simply, there is no allegation, and no admissible evidence submitted in opposition to the motion for summary judgment that identifies what consideration was given for defendant's purported promise to perform. The complaint and affirmation submitted are devoid of any details regarding the agreement and the subsequent alleged breach thereof, specifically there is no information regarding where this agreement was made.

To state a claim for breach of contract, a plaintiff must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages. *VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013]. "To establish the existence of an enforceable agreement, a plaintiff must establish an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound. That meeting of the minds must include agreement on all essential terms" (*Kowalchuk v Stroup*, 61 AD3d 118, 121 [1st Dept 2009] internal citations omitted).

Here, the Court finds in the light most favorable to plaintiff, defendant has established that there is insufficient evidence to establish an agreement between the parties. The essential material terms of the contract are in neither the complaint nor in the affirmation submitted in opposition to the motion. There is no indication of what consideration was given to defendant to induce the alleged promise to pay. Neither the complaint nor the affirmation in opposition establish that plaintiff performed under the purported agreement to require defendant to perform. Similarly, there is no indication of when defendant's performance was due, thereby an inability

to establish a breach occurred, much less when the breach occurred. The affirmation submitted in opposition also fails to provide a date for performance and simply restates the language in the complaint.

While the affirmation of Posoli-Cilli purports to have personal knowledge of the oral agreement, the affirmation generically alleges that an agreement was made between Freestream and defendant although she alleges that she confronted plaintiff but does not purport to have knowledge of the terms of the oral contract. While defendant is the alleged party to this contract and denies any agreement was made, the plaintiff has not provided an affirmation from nor identified the individual to with whom the alleged oral contract was made.

There are multiple issues with respect to the assignment of the alleged agreement, the date of alleged breach and what if any damages resulted therefrom. The Court is satisfied at this juncture that based on the lack of essential terms of the alleged oral agreement and the lack of the identification or the affirmation of the individual with whom the alleged oral agreement was made, defendant has established with unrebutted admissible evidence that no such oral agreement was made, which has not been properly refuted, thus summary judgment is appropriate.

As to the cross-motion seeking discovery, plaintiff has not specified what specific discovery is necessary, not within its position, is necessary or requires denial of the instant motion. Accordingly, it is hereby

ORDERED that the complaint is dismissed in its entirety.

5/7/2026
DATE


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LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	OTHER	<input type="checkbox"/>

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE