

<b>Gruber v Maran, Inc.</b>
2012 NY Slip Op 31495(U)
June 4, 2012
Supreme Court, New York County
Docket Number: 111084/2009
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: Saliann Scarpulla

PART 19

Index Number : 111084/2009  
GRUBER, JENNY  
vs  
MARAN, INC.  
Sequence Number : 002  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is determined in accordance with the accompanying decision/paper.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

JUN 06 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 6/4/12

Saliann Scarpulla  
J.S.C.

SALIANN SCARPULLA

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X  
JENNY GRUBER,

Plaintiff,

Index No.: 111084/09

- against-

MARAN, INC.,

Defendant.

**DECISION AND ORDER**

-----X  
For Plaintiff:  
Leonard N. Flamm  
880 Third Avenue, Suite 1300  
New York, NY 10022

For Defendant:  
Hartmann Doherty Rosa Berman & Bulbulia LLC  
565 Fifth Avenue, 7<sup>th</sup> Floor  
New York, NY 10017

Papers considered in review of this motion for summary judgment and cross motion for summary judgment:

Notice of Motion/Aff in Support . . . . . 1  
Notice of Cross Motion/Aff in Support . . . . . 2  
Reply Affs . . . . . 3, 4

**FILED**

**JUN 06 2012**

HON. SALIANN SCARPULLA, J.:

NEW YORK  
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In this action to recover damages for breach of an employment agreement, defendant Maran, Inc. ("Maran") moves for summary judgment dismissing the complaint and plaintiff Jenny Gruber ("Gruber") cross moves for summary judgment on her complaint.

Maran hired Gruber on August 1, 2006 for a one year term as vice-president of Maran's Living InStyle division. The employment agreement provided that Gruber would receive a base salary of \$200,000 per year and a bonus of \$50,000 "provided the gross sales of the [division] exceed[ed] \$2,000,000 per annum." The bonus would be paid within ten days of the end date of the employment term, July 31, 2007. Gruber was also to receive "commissions equal to 2% of the net sales of the products of the division

generated by [Gruber] that are in excess of \$2,000,000.” Pursuant to the employee handbook, Gruber was also entitled to ten days of vacation pay after each year of employment. The employment agreement defined “net sales” as “those New Division products with a minimum markup of not less than twenty (20%) percent from landed costs less sales taxes, credits, discounts, returns and charge backs to customers.”

Maran renewed the employment agreement for a second year with the same terms, covering the period October 31, 2007 through October 31, 2008. Maran declined to renew Gruber’s contract for a third year. At that time, Maran had not paid Gruber any bonus or commissions.

Gruber then commenced this action alleging that Maran owed her \$50,000 as her 2007 bonus payment, \$50,000 as her 2008 bonus payment, commission payments incurred during her two years of employment, and \$7,692.00 in vacation pay incurred during her two years of employment.

Maran now moves for summary judgment dismissing the complaint, arguing that Gruber failed to meet the required sales numbers to entitle her to receive either a bonus or commissions. In support of its motion, Maran submits an affidavit from its Chief Financial Officer Richard Huang (“Huang”), in which he maintains that the Living InStyle division’s gross sales and net sales were below \$2,000,000 for each of Gruber’s employment terms. Pursuant to an invoice summary analysis prepared by Huang, gross sales for Gruber’s first employment term was \$1,230,913.01 and for her second

employment term was \$2,695,804.15. Of the \$2,695,804.15, \$1,926,376.10 was from invoices to the merchant Linens 'N Things. That merchant never paid \$726,223.66 of its amounts owed, which brought the total amount of invoices actually paid for the second employment term to below \$2,000,000. According to Maran's president David Greenberg ("Greenberg"), "gross sales" are sales that are fully paid less charge backs and discounts.

Further, Huang explains that when Gruber's employment was terminated, Maran voluntarily provided her with two weeks of severance pay. This payment was not required under the employment contract and according to Huang, this payment was intended to cover any accrued vacation time.

Gruber cross moves for summary judgment on her complaint. She first maintains that the measuring period for calculating her bonus payments should be the January - December calendar year, and she reached over \$2,000,000 in gross sales for both years. Gruber next argues that "gross sales" does not, pursuant to the terms of the employment agreement, include any deductions or charge-backs.

She further maintains that her commission payment should be calculated based on cumulative net sales from her two employment terms. Specifically, her commission payment was due at any point during her two year employment that her net sales exceeded \$2,000,000. Finally, she argues that Maran's payment of two weeks severance pay does

not excuse its obligation to pay her accrued vacation pay and there was no agreement that the severance pay would be tendered in lieu of vacation pay.

### Discussion

A movant seeking summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851, 853 (1985). Once a showing has been made, the burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980).

The interpretation of an unambiguous contract is a question of law for the court. *Taussig v. Clipper Group, L.P.*, 13 A.D.3d 166 (1<sup>st</sup> Dept. 2004). A written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms. *R/S Assocs. v. N.Y. Job Dev. Auth.*, 98 N.Y.2d 29 (2002); *Excel Graphics Techs., Inc. v. CFG/AGSCB 75 Ninth Ave., L.L.C.*, 1 A.D.3d 65 (1<sup>st</sup> Dept. 2003). The mere assertion by one that contract language means something to him, where it is otherwise clear, unequivocal and understandable when read in connection with the whole contract, is not in and of itself enough to raise a triable issue of fact. *Bethlehem Steel Co. v. Turner Constr. Co.*, 2 N.Y.2d 456, 460 (1957); *Riverside S. Planning Corp. v. CRP/Extell Riverside, L.P.*, 60 A.D.3d 61 (1<sup>st</sup> Dept. 2008).

[\* 6]

The Court finds that pursuant to the clear terms of the employment agreement, Gruber's first term of employment was from August 1, 2006 through July 31, 2007, and second term of employment was from October 31, 2007 through October 31, 2008. Any bonus or commissions claimed are to be calculated based on each of these two term periods.

The evidence presented establishes that gross sales for Gruber's first year of employment totaled \$1,230,913.01. Therefore, she was not entitled to her \$50,000 bonus for that year. Gross sales for her second year of employment totaled \$2,695,804.15. Maran attempts to define gross sales as sales that are fully paid less charge backs and discounts, which essentially, characterizes gross sales as similar to net sales. The contract does not include a definition of "gross sales," however, this Court finds that based on the common and well-understood definition of "gross sales" and the evidence presented, gross sales constitutes the total invoice sales. The total invoice sales for Gruber's second employment term was \$2,695,804.15 and therefore, she is entitled to her \$50,000 bonus.

Gruber's claim that commission payment should be calculated based on cumulative net sales from her two employment terms is not consistent with the terms of the employment agreement. No evidence has been presented to establish that Gruber was entitled to receive commission payments for either of her two employment terms.

Finally, it is undisputed that Maran was required to provide Gruber with payment for accrued vacation time pursuant to the terms of the employee handbook. No evidence

was presented to establish that the parties agreed that Maran would provide Gruber with severance pay in lieu of vacation pay. Maran's decision to provide Gruber with severance pay did not excuse it from providing her with the vacation pay that she was owed.

In accordance with the foregoing, it is hereby

ORDERED that defendant Maran, Inc.'s motion for summary judgment dismissing the complaint is granted to the extent that plaintiff Jenny Gruber's second cause of action seeking commission payments is dismissed; and it is further

ORDERED that plaintiff Jenny Gruber's cross motion for summary judgment on her complaint is granted to the extent that she is awarded judgment in the amount of \$50,000.00 on her first cause of action for her unpaid bonus, and she is awarded judgment in the amount of \$7,692.00 on her third cause of action for her unpaid vacation pay, with interest from October 31, 2008.

This constitutes the decision and order of the Court.

Dated: New York, New York  
June 4, 2012

**FILED**

JUN 06 2012

ENTER:

NEW YORK  
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*Saliann Scarpulla*  
Saliann Scarpulla, J.S.C.