

Fiat Risus, Inc. v. Frank and Beans Productions LLC, et al.
BC 400180
February 4, 2010 (continued from February 3, 2010)

Motion of Defendant Gold Circle Films LLC for Summary Judgment/Summary Adjudication of issues

Plaintiff's evidentiary objections to the Declaration of Adam Mehr are ruled on as follows: 1-16, overruled; 17-21, sustained; 22 and 23, overruled. Plaintiff's evidentiary objection to the Declaration of Michael D. Holtz is sustained. Plaintiff's evidentiary objections to the Declaration of Paul Brooks are ruled on as follows: 1-9, overruled; 10, sustained.

Plaintiff sets forth evidentiary objections in its response to defendant's separate statement. Objections on specific evidence may be referenced by the objection number in the right column of a separate statement in opposition to a motion but may not be restated or reargued in the separate statement. CRC Rule 3.1354(b). Accordingly, the objections that are set out solely in the separate statement are overruled.

The motion for summary judgment is granted.

Breach of contract. An obligation will not be enforced unless its terms are sufficiently definite so that the performance promised is reasonably certain. *Weddington Productions v. Flick* (1998) 60 Cal. App. 4th 793, 811. "To be enforceable, a promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770. "A contract which leaves an essential element for future agreement of the parties is usually held fatally uncertain and unenforceable." *Okun v. Morton* (1988) 203 Cal.App.3d 805, 817. Thus, an "agreement to agree" is not a contract if essential terms of the agreement are not specified. *Copeland v. Baskin Robbins U.S.A.* (2002) 96 Cal.App.4th 1251, 1256.

Plaintiff alleges that the alleged oral agreement was memorialized in a written Deal Memorandum, which plaintiff's and Williams' representatives transmitted to Adam Mehr, Gold Circle's Senior Vice President, Business Affairs, via e-mail on December 15, 2007, and which set forth all the material terms of the parties' agreement under which plaintiff agreed to furnish the services of Williams to defendants for the Picture. (Complaint ¶9.) However, Adam Mehr's email in response (plaintiff's Exh. B) indicates that defendant did not agree to all of the terms set forth in the Deal Memorandum. Based on the Mehr declaration and other evidence presented by defendant, defendant has met its initial burden of demonstrating that there is no triable issue of material fact regarding whether the parties reached an agreement as to all material terms of the agreement.

Plaintiff's attempt to identify a triable issue by arguing that the terms set forth in the deal memorandum as to which there was no agreement were not material is unavailing. As explained above, plaintiff admits in the complaint that the Deal Memorandum memorializes the parties'

oral agreement concerning all of the essential terms of the agreement between the parties. Plaintiff cannot now attempt to create a disputed issue of material fact by denying its own admission that the deal memorandum contained all "material" terms where it has been demonstrated that the parties did not agree to all of the terms set forth in the deal memorandum. In addition, while plaintiff asserts that defendant's post-agreement conduct confirmed the existence of a valid agreement between the parties, plaintiff relies in part on misstated evidence and evidence taken out of context, with the result that plaintiff fails to show with admissible evidence the existence of a triable issue of material fact as to whether a contract was formed. It cannot be disputed that the parties did not reach agreement regarding all concededly material terms and did not therefore make an enforceable agreement as a matter of law.

Promissory Estoppel. A claim for promissory estoppel requires (1) a clear promise, (2) reliance, (3) substantial detriment, and (4) damages "measured by the extent of the obligation assumed and not performed." 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts §§249-250. As described above, defendant meets its initial burden of presenting sufficient admissible evidence to establish no triable issue of material fact regarding the existence of a promise by defendant to plaintiff. In addition, defendant shows that there is no triable issue of material fact regarding plaintiff's damages.