

<b>Troy Contr., LLC v Colorado Assoc., L.L.C.</b>
2026 NY Slip Op 31106(U)
March 19, 2026
Supreme Court, New York County
Docket Number: Index No. 654705/2023
Judge: Kathleen Waterman-Marshall
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. KATHLEEN WATERMAN-MARSHALL PART 31**

*Justice*

-----X

TROY CONTRACTOR, LLC,

Plaintiff,

- v -

COLORADO ASSOCIATES, L.L.C., BETTER RETAIL 1,  
LLC, BETTER MANAGEMENT HOLDINGS, LLC, SIMPLE  
DENTAL, PLLC D/B/A DNTL BAR, NEDAL SHAMI, BEN  
ELCHAMI

Defendant.

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INDEX NO. 654705/2023

MOTION DATE 10/23/2024

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 42, 43, 44, 45, 46, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78

were read on this motion to/for DISMISSAL.

This matter was administratively transferred to Part 31 after the instant motion was filed.

Upon the foregoing documents, the motion by Simple Dental (“Dental”), Nedal Shami (“Shami”), and Ben Elchami (“Elchami”) (together “Dental Defendants”) to dismiss the crossclaims of Colorado Associates, LLC (“Colorado”) is denied. The cross-motion of Colorado to amend its answer and crossclaims is granted.

**Background**

Defendant Better Retail 1, LLC (“Better Retail”) leased a commercial space from landlord and co-defendant Colorado for a ten-year term. Defendant Better Management Holdings, LLC (“Better Management”) guaranteed Better Retail’s performance under the lease. Both the lease and the guaranty were signed by defendant Shami in his corporate capacity as a principal of Better Retail and Better Management.

Better Retail entered into a construction contract with plaintiff Troy Contractor (“Troy”) for renovation work of the commercial premises, pursuant to a written construction contract, executed by defendant Shami as a principal of Better Retail. Troy contends that it received a partial payment of approximately \$560,000 from Better Management on behalf of Better Retail’s contractual obligation, but that roughly \$342,000 remains outstanding. Troy filed a mechanics lien against the property for the allegedly unpaid work, and commenced this action to, inter alia, foreclose on the lien. Simple briefly opened its dental business at the premises, but closed in short order.

Colorado contends that it never received any rent from Better Retail under the lease or Beter Management under the guaranty. Colorado contends that Better Retail breached the lease by failing to discharge Troy's lien, as required under the lease, and asserted cross-claims against the Dental Defendants under a veil piercing theory. At bottom, Colorado contends that defendants Shami and Elchami used Better Retail, Better Management, and Dental interchangeably, as Troy signed the contract with Better Retail, received payment from Better Management, and Dental actually occupied the space – albeit briefly.

The Dental Defendants move to dismiss the claims against them, arguing that they were not parties to the transactions and contracts at issue, and that Colorado's pleading fails to provide any factual basis sufficient to pierce the corporate veil. Colorado opposes dismissal, and cross-moves to amend its answer with cross-claims to assert additional facts upon which it bases its veil piercing claims.

## **Discussion**

### *I. Amend Pleading*

CPLR 3025(b) governs permissive leave to amend a pleading upon terms which are just. Leave is to be freely given absent a showing that amendment would cause surprise or prejudice (*Fahey v County of Ontario*, 44 NY2d 934 [1978]; *170 W. Vil. Assoc. v G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *Lanpont v Savvas Cab Corp., Inc.*, 244 AD2d 208 [1st Dept 1997]). However, “[i]n order to conserve judicial resources, an examination of the underlying merits of the proposed causes of action is warranted. Where a court concludes that an application to amend a pleading clearly lacks merit, leave is properly denied” (*Eighth Ave. Garage Corp. v HKL Realty Corp.*, 60 AD3d 404 [1st Dept 2009] [internal citation omitted]). The motion to amend the pleading “shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading” (CPLR 3025[b]).

Colorado's proposed amended answer with crossclaims does not present any new theory of recovery, or otherwise surprise or prejudice any party. Instead, it merely provides additional factual allegations related to its attempt to pierce the corporate veil. For the reasons discussed below, Colorado's amended pleading does not clearly lack merit such that amendment should be denied. Accordingly, Colorado's cross-motion to amend its pleading is granted.

Colorado's proposed amended answer with crossclaims alleges that Shami and Elchami used the corporate forms of Better Retail, Better Management, and Dental interchangeably. In support of its allegations, it alleges that Better Retail signed the contract, Better Management paid on behalf of Better Retail, and Dental occupied the premises – with communication for all entities flowing through Shami and Elchami. Both the construction contract and the lease were signed by Shami, in his corporate capacity, on behalf of Better Retail and Better Management, respectively. Colorado further contends that based upon the disregard of corporate forms, and Better Retail's failure to pay any of its obligations (rent to Colorado and construction costs to Troy), Colorado believes Shami and Elchami misused and/or dominated the corporate entities to comingle and/or improperly transfer assets and deliberately under-capitalize the entities to avoid liabilities. In short, Colorado alleges that Shami and Elchami abused the corporate forms of these entities and deliberately undercapitalized Better Retail to avoid paying its debts. The factual allegations in the amended pleading do not present a new theory of recovery, but rather serve to

amplify the allegations and claims in the original pleading. Given that this matter is in an early pre-discovery stage, there is no prejudice to the Dental Defendants in permitting leave to amend. Accordingly, the cross-motion for leave to amend the answer with crossclaims is granted.

### *II. Dismiss*

As Colorado has been granted leave to amend its answer with crossclaims, dismissal of its initial pleading is academic. In any event, the Court of Appeals and Appellate Division, First Department have determined that the “fact-laden claim to pierce the corporate veil is unsuited for resolution on a pre-answer, pre-discovery motion to dismiss” (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]; see also *Kralic v Helmsley*, 294 AD2d 234, 236 [1st Dept 2002]; *Oxford Health Plans (NY) v BetterCare Health Care Pain Mgt. & Rehab*, 305 AD2d 223 [1st Dept 2003]). There has been no meaningful discovery in this matter, which has not yet had a preliminary conference. Put simply, on this pre-discovery motion to dismiss, it appears that “facts essential to justify opposition may exist but cannot then be stated” as Colorado contends that the facts related to their veil piercing claims are in the possession of the movants and co-defendants (CPLR 3211[d]). Accordingly, the Dental Defendants’ motion to dismiss is denied with leave to renew after discovery is complete (see e.g. *Jacobs v Basile*, 232 AD3d 949, 951 [3d Dept 2024] [Fisher, J.]; *Lemle v Lemle*, 92 AD3d 494, 499 [1st Dept 2012]; *Cerchia v V.A. Mesa, Inc.*, 191 AD2d 377, 378 [1st Dept 1993]).

### *III. Sanctions*

The Court declines to impose sanctions under 22 NYCRR § 130-1.1. The Court is afforded discretion to impose sanctions and costs for frivolous conduct (22 NYCRR § 130-1.1[a]). “Conduct is frivolous if it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law” (*Newman v Berkowitz*, 50 AD3d 479 [1st Dept 2008] [internal quotations omitted]; 22 NYCRR § 130-1.1[c]).

Dental Defendants have not demonstrated any basis for sanctions. Dental Defendants contend that they were unnecessarily “forced” to bring this motion and therefore, sanctions should lie. In response, Colorado contends that it was “forced” to bring this action in the first instance. That the parties have strong differing opinions regarding the claims asserted in this matter does not render the opinions completely without merit in law sufficient to support an award of sanctions. Accordingly, sanctions are denied.

Accordingly, it is

**ORDERED** that the motion to dismiss by Simple Dental, Nedal Shami, and Ben Elchami is denied; and it is further

**ORDERED** that the cross-motion by Colorado Associates LLC for leave to amend its answer with cross-claims is granted; and it is further

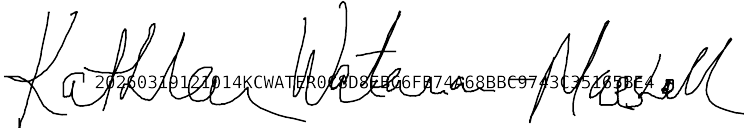
**ORDERED** that the proposed amended answer with cross-claims annexed to this motion shall be deemed served upon all parties upon notice of entry of this decision and order; and it is further

**ORDERED** that all parties shall answer or otherwise respond to the amended answer with cross-claims in accordance with the CPLR; and it is further

**ORDERED** that a **Preliminary Conference is scheduled for May 6, 2025 at 10:00am in Courtroom 335 at 60 Centre Street New York, NY 10013**. Counsel are reminded of the Part Rules, including those regarding the submission of a joint proposed conference order in lieu of an in-person appearance.

3/19/2026

DATE



**KATHLEEN WATERMAN-MARSHALL,  
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