

Martinez v Jerome Med., PLLC
2019 NY Slip Op 34144(U)
March 11, 2019
Supreme Court, Nassau County
Docket Number: 612237-18
Judge: Timothy S. Driscoll
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**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----X

VIRGINIA MARTINEZ,

Plaintiff,

-against-

**JEROME MEDICAL, PLLC, HECTOR
FLORIMON, and JASON FAENA,**

Defendants.

-----X

TRIAL/IAS PART: 10

NASSAU COUNTY

Index No: 612237-18

Motion Seq. No. 1

Submission Date: 1/17/19

Papers Read on these Motions:

- Memorandum of Law in Support.....X**
- Affirmation in Opposition with Exhibits.....X**
- Reply Affidavit.....X**
- Reply Memorandum of Law.....X**

This matter is before the Court on defendants Jerome Medical, PLLC, Hector Florimon, and Jason Faena’s (collectively, “Defendants”) motion to dismiss or, alternatively, transfer venue. For the following reasons, Defendants’ motion to dismiss is granted in part and denied in part, and Defendants’ motion to transfer venue is denied.

BACKGROUND

A. Relief Sought

Defendants move to dismiss the Complaint based on documentary evidence and failure to state a claim pursuant to CPLR §§ 3211(a)(1), (a)(7), 3016(a) and (b), and 3013, and alternatively, seek to change venue to the Supreme Court, Bronx County, pursuant to CPLR § 510(3). Plaintiff Virginia Martinez (“Plaintiff” or “Dr. Martinez”) opposes Defendants’ motion.

B. The Parties' History

The Amended Complaint, Pl. Exh. B, alleges as follows:

Dr. Martinez, a resident of Queens, is a duly licensed, board certified physician in New York specializing in family medicine. From July 1, 2010, through September 8, 2018, Dr. Martinez was employed by Jerome Medical, PLLC ("Jerome Medical"), an entity formed and licensed to practice medicine in New York with an office located at 2383 Jerome Avenue, Bronx, New York 10468. Hector Florimon ("Dr. Florimon"), is a duly licensed physician practicing medicine in New York. Dr. Florimon, a resident of Nassau County, is the sole owner of Jerome Medical. Jason Faena ("Faena") was and is an employee of Jerome Medical.

On or about May 19, 2010, Dr. Martinez began her employment with Jerome Medical pursuant to a written agreement (the "Agreement"). The Agreement automatically renewed on an annual basis and contained the same terms and conditions regarding the parties' rights and obligations. The Agreement provides a one-year term of employment and is subject to and conditional upon Dr. Martinez maintaining her medical license.

On September 8, 2018, Dr. Martinez involuntarily terminated her employment due to "impossible working conditions." Defendants' creation of these impossible working conditions constitutes a breach of the Agreement and a breach of the implied duty of good faith and fair dealing. Additionally, Dr. Florimon, as a licensed physician, owed Dr. Martinez a fiduciary duty to not permit anything illegal in Dr. Martinez's work environment that would jeopardize her medical license, and breached his fiduciary duty when he failed to correct or address such illegal conduct. As a result of the illegal and/or unethical conduct Dr. Florimon created and/or permitted, Dr. Martinez filed complaints with the New York Attorney General's Medical Fraud Unit and Office of Professional Misconduct. Dr. Martinez filed these complaints to satisfy her duties as a licensed physician and to protect her license.

Dr. Florimon encouraged and condoned illegal, unethical, and/or unprofessional acts of Jerome's Medical employees. Faena photocopied and appended Dr. Martinez's signature on Form MIIQs and photocopied her signature on other documents without her knowledge or consent, and ordered unnecessary home care for Jerome Medical's patients. After Dr. Martinez confronted Faena about photocopying her signature, Jerome Medical's staff improperly and secretly erased information

from patient charts. Jerome Medical's staff members, including Luisa Ortega, Arlenys Alcantara, Awilda Hiraldo, Cecilla Inoa (Florimon's sister-in-law), and Faena (collectively, "Staff Members") directed patients to file complaints with insurance providers and government agencies falsely claiming that Dr. Martinez acted improperly as their doctor even though the patients and Staff Members knew this was untrue. The Staff Members also hid important patient information from Martinez to the detriment of patients. A patient asked Dr. Martinez if she was gay, which the patient only could have known if told by one of the Staff Members.

Additionally, Defendants and Staff Members 1) falsely told patients that Dr. Martinez did not want to see them, 2) hid information from Dr. Martinez regarding Jerome's business operations so she did not know what was occurring with the medical practice or patients, 3) falsely told patients that Dr. Martinez missed performing tests for patients and/or patient follow-up appointments, 4) called patients and told them to come in early so they would need to wait for their appointments with Dr. Martinez, 5) falsely told patients that Dr. Martinez denied services to them, and 6) provided MIIQ forms to patients and told patients that Dr. Martinez would suggest they use Royal Company for home care, then told patients that they should not accept services from Royal Company and directed them to request specific other companies.

Defendants also called a gastroenterologist assistant and advised him or her of operational problems or other clinic issues to coerce the assistant to take their side on disputes. On a daily basis, patients screamed at Dr. Martinez and threatened to sue her for referrals, follow-ups, transportation, home aides, and equipment at the direction of Jerome Medical's staff. Luisa Ortega instructed a patient not to complete her laboratory testing, and the patient later went to Jerome Medical for an MIIQ form to obtain home health care.

On September 10, 2018, Dr. Martinez commenced the instant action. On November 9, 2018, Defendants filed the instant motion to dismiss or, alternatively, transfer venue. On January 7, 2019, Dr. Martinez filed an Amended Complaint asserting the following causes of action: 1) breach of contract against Jerome Medical, 2) tortious interference with contract against Dr. Florimon and Faena, 3) defamation with malice against Defendants, and 4) forgery against Defendants. In addition to compensatory damages, Plaintiff seeks punitive damages on her forgery claim.

C. The Parties' Positions

Defendants argue that Plaintiff's claims should be dismissed in their entirety. Defendants contend that Plaintiff's breach of contract claim fails because 1) Plaintiff has not either alleged the contractual provisions her claim is based upon or explained what obligation Jerome breached, 2) Plaintiff has not performed under the Agreement because her notice of termination failed to provide the required sixty-day notice, 3) Plaintiff voluntarily relinquished her rights under the Agreement by tendering her resignation, and 4) Plaintiff has not alleged facts to support a constructive discharge claim in the absence of any allegations that Dr. Florimon acted with the requisite intent to create an intolerable workplace, or that Jerome Medical constituted a hostile work environment. Defendants aver that Plaintiff's tortious interference with contract claim is similarly defective because Plaintiff fails to allege a breach of the Agreement or that Dr. Florimon acted outside of the scope of his authority, and Plaintiff fails to allege a causal connection between Faena's alleged forgeries and a breach of the Agreement or that Faena intentionally procured such breach.

Defendants also argue that the facts alleged by Plaintiff do not support a claim for defamation with malice as they fail to specifically allege the person or persons to whom the statements were made. To the extent statements were made to Jerome Medical's patients, any such statements concerned patient care and are thus subject to a qualified privilege, and Plaintiff has not sufficiently alleged the malice necessary to overcome that privilege. Additionally, Defendants' alleged statement that Dr. Martinez was acting improperly constitutes nonactionable opinion. With respect to Dr. Florimon, Plaintiff's allegation that he "encouraged and condoned" certain statements does not suffice to plead defamation with malice against him.

Defendants argue that Plaintiff's forgery claim fails to state the occasions of the alleged forgeries, Defendants' involvement in or connection to the alleged forgeries, or that Defendants acted with the requisite intent to defraud. It follows that Plaintiff's request for punitive damages should be stricken, as Plaintiff does not allege that Defendants' forgeries were directed at the public or that a member of the public was injured by the alleged fraud, or that the forgeries were willful, wanton, or involving high moral culpability.

In the event the Court finds that Plaintiff has stated a claim against one or more of the Defendants, Defendants alternatively request that venue be transferred to Bronx County, as the

underlying transactions and occurrences giving rise to Plaintiff's claims took place in the Bronx, and Plaintiff's only connection to Nassau County is through her counsel. Plaintiff alleges that Defendants made defamatory statements to Jerome Medical's patients, who either reside in the Bronx or have sufficient ties to the Bronx to warrant transferring venue, and Jerome Medical's employees who are alleged to have participated in the underlying conduct also either reside in the Bronx or have sufficient ties to the Bronx.

Plaintiff argues that Defendants have circumvented the requirement in CPLR § 511 that a demand be made fifteen days before a motion to change venue by making a motion without first making the demand. The grounds for change of venue set forth in CPLR § 510(2) and (3), inability to obtain an impartial trial and inconvenience of witnesses, are discretionary. Defendants do not meet the requirements for transfer by simply stating that unnamed Jerome Medical employees will be inconvenienced, and Defendants have failed to submit the required affidavits from material witnesses attesting to the fact that they are material and necessary witnesses, they are willing to testify, and they will be inconvenienced absent a change in venue.

Plaintiff argues that its Amended Complaint does not include any significant changes to the factual allegations set forth in the initial Complaint but clarifies certain aspects of Plaintiff's claims. More particularly, while Defendants claim that Plaintiff failed to allege the provision of the Agreement that was breached, the Agreement obligated Plaintiff to maintain her medical license in good standing and Defendants' willfully illegal actions jeopardized her ability to do so, thereby breaching the Agreement. Defendants argue that Jerome Medical's obligations are limited to compensation and benefits, but the Agreement had a definite term of one-year, was not terminable at will, and thus contained an implied covenant of good faith and fair dealing that Defendants breached by willfully permitting illegal acts that jeopardized Plaintiff's ability to maintain her license. Additionally, the Amended Complaint clarifies that Plaintiff did not voluntarily resign, as Defendants' illegal conduct caused Plaintiff's involuntary resignation. Plaintiff asserts that Defendants' actions support a constructive discharge claim and alleges that in a July 29, 2018 email, Dr. Florimon acknowledged that he allowed a medical assistant to commit illegal acts that jeopardized Plaintiff's medical license.

Plaintiff argues that Dr. Florimon is liable for tortious interference with contract, as permitting a medical assistant to forge Plaintiff's name on documents is outside of the scope of his employment or, alternatively, demonstrates Jerome Medical's culpability in sanctioning Dr. Florimon's conduct. Finally, the Amended Complaint includes facts supporting Plaintiff's defamation claim, specifically, facts and circumstances indicating that Defendants' illegal acts regarding Plaintiff's license were performed with malice.

On reply, Defendants assert that the Amended Complaint does not contain any new allegations and should be included in the record on the pending motion, which should be based on the sufficiency of the Amended Complaint. Defendants argue that the Agreement was of indefinite duration and terminable at will, as it provides that it is terminable at Defendants' discretion for any reason. Plaintiff's breach of contract claim fails as it cannot be based on an at-will contract. It follows that Plaintiff's tortious interference with contract fails in the absence of a breach.

Defendants contend that the Amended Complaint does little to clarify Plaintiff's claims. Plaintiff's letter to the New York Attorney General dated August 9, 2018, Am. Compl. at Exh. C, states that Plaintiff was terminated by Dr. Florimon at some point prior to August 9, 2018; however, the Amended Complaint alleges that Plaintiff involuntarily terminated her employment on September 8, 2018 due to impossible working conditions. The Amended Complaint also attaches an employment agreement with Plaintiff's current employer, rather than the subject Agreement. Further, Plaintiff's argument that Jerome Medical breached the Agreement by jeopardizing Plaintiff's ability to maintain her license still fails to refer to any obligation that Jerome Medical breached under the Agreement and imposes a duty on Jerome Medical to ensure that Plaintiff maintains her medical license that is not set forth in the Agreement. Moreover, to the extent Plaintiff attempts to plead a claim for breach of the implied duty of good faith and fair dealing, New York does not recognize a separate cause of action on that theory when it is based on the same facts as a breach of contract claim. Further, Defendants contend that the Amended Complaint does not allege that Dr. Florimon or Faena were acting outside of the scope of their authority such as to hold them liable for tortious interference with contract.

While Plaintiff attempts to establish the existence of malice by alleging that Dr. Florimon owed her a fiduciary duty, she does not allege that she was Dr. Florimon's partner or plead any facts

supporting the notion that Dr. Florimon owed her a fiduciary duty. In any event, the question of whether Dr. Florimon owed Plaintiff fiduciary duties is irrelevant to a claim for defamation with malice. Should Plaintiff's defamation claim survive Defendants' motion, Defendants request limited discovery regarding who heard the allegedly defamatory statements to determine proper venue.

Defendants also submit the Affidavit of Dr. Florimon, which is signed but not notarized. Dr. Florimon affirms that he is prohibited by the Health Insurance Portability and Accountability Act ("HIPAA") and applicable state laws from disclosing the identity of any patient allegedly provided with false information regarding Plaintiff. However, he is "fairly certain" that any patient referenced by Plaintiff would be inconvenienced by traveling to Nassau County. Jerome Medical is a managed care provider that contracts with Managed Care Organizations ("MCOs") to provide medical care at reduced cost to patients who are often on Medicare and Medicaid. MCOs restrict their patients to a limited number of qualifying providers, who are assigned based on factors that include their proximity to the patient. Many of Jerome Medical's patients live in or near the Bronx, many do not drive, and nearly every individual referenced in the pleading is either an employee of Jerome Medical who works in the Bronx or a patient of the office who most likely a resident of the Bronx.

RULING OF THE COURT

A. Motion to Dismiss

A motion to dismiss pursuant to CPLR § 3211(a)(1) may only be granted where "the documentary evidence utterly refutes the plaintiff's factual allegations, thereby conclusively establishing a defense as a matter of law." *Karpovich v. City of N.Y.*, 162 A.D.3d 996, 997 (2d Dept. 2018), quoting *Mawere v. Landau*, 130 A.D.3d 986, 987 (2d Dept. 2015), citing *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326 (2002). Documentary evidence must be "unambiguous, authentic, and undeniable." *Karpovich*, 162 A.D.3d at 997, quoting *Granada Condominium III Ass'n v. Palomino*, 78 A.D.3d 996, 996-97 (2d Dept. 2010).

On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court is required to "accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 141 (2017), quoting *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). Dismissal is warranted where the non-movant "fails to assert facts in

support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton*, 29 N.Y.3d at 142, citing, *inter alia*, *Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc.*, 115 A.D.3d 128, 134 (1st Dept. 2014).

B. Breach of Contract

The elements of a breach of contract claim are 1) the existence of a contract, 2) plaintiff’s performance under the contract, 3) defendant’s breach of its contractual obligations, and 4) damages resulting from the breach. *El-Nahal v. FA Mgt., Inc.*, 126 A.D.3d 667, 668 (2d Dept. 2015), citing, *inter alia*, *Dee v. Rakower*, 112 A.D.3d 204, 208-209 (2d Dept. 2013). To state a claim for breach of contract, the plaintiff must identify the provisions of the contract that were breached. *Barker v. Time Warner Cable, Inc.*, 83 A.D.3d 750, 751 (2d Dept. 2011).

C. Tortious Interference with Contract

A claim for tortious interference with contract requires “the existence of a valid contract between the plaintiff and a third party, defendant’s knowledge of that contract, defendant’s intentional procurement of the third-party’s breach of the contract without justification, actual breach of the contract, and damages resulting therefrom.” *Lama Holding Co. v. Smith Barney*, 88 N.Y.2d 413, 424 (1996). An officer or director acting on behalf of the corporation may not be held liable for inducing the corporation to breach its contractual obligations unless his or her activity involves separate tortious conduct or results in personal profit. *Stern v. H. DiMarzo, Inc.*, 77 A.D.3d 730, 731 (2d Dept. 2010).

D. Defamation

The elements of a claim for defamation are 1) a false statement, 2) published without privilege or authorization to a third party, 3) constituting fault as judged by, at a minimum, a negligence standard, and 4) it must either cause special harm or constitute defamation per se. *Dillon v. City of N.Y.*, 261 A.D.2d 34, 38 (1st Dept. 1999). CPLR § 3016(a) requires that a defamation complaint include the particular words complained of, and allege the time, place, and manner of the false statement and to whom it was made. *Id. See, e.g., Arvanitakis v. Lester*, 145 A.D.3d 650, 652 (2d Dept. 2016) (affirming dismissal of defamation claims predicated upon statements made during general time periods, i.e. “September 2012 through the present”); *Raymond v. Marchand*, 125

A.D.3d 835, 836 (2d Dept. 2015) (affirming dismissal of slander claim where the plaintiff “failed to identify exactly who overheard the alleged publication of a defamatory statement”); *Bell v. Alden Owners, Inc.*, 299 A.D.2d 207, 208 (1st Dept. 2002) (affirming dismissal of defamation claim for lack of specificity where “[t]he claimed defamatory remarks were alleged to have been made by unknown persons to certain unspecified individuals, at dates, times and places left unspecified”).

E. Forgery

In New York, forgery is considered to be a species of fraud and is “defined by the common law to be the fraudulent making of a writing to the prejudice of another’s rights . . . or the making *malo animo* of any written instrument for the purpose of fraud and deceit.” *Shelley v. Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.*, 899 N.Y.S.2d 63 (Sup. Ct. N.Y. Cty. 2009), quoting *Piedra v. Vanover*, 174 A.D.2d 191, 194 (2d Dept. 1992).

F. Punitive Damages

Punitive damages are available where the defendant’s wrongdoing is not just intentional but “evinces a high degree of moral turpitude and demonstrate[s] such wanton dishonesty as to imply criminal indifference to civil obligations.” *Ross v. Louise Wise Servs., Inc.*, 8 N.Y.3d 478, 489 (2007), quoting *Walker v. Sheldon*, 10 N.Y.2d 401, 405 (1961). An award of punitive damages serves to both punish the offending party and deter others from engaging in similar conduct. *Gomez v. Cabatic*, 159 A.D.3d 62, 72. Punitive damages are not available in ordinary fraud and deceit cases and may only be recovered on a fraud claim where the fraud is directed at the general public, is gross, and involves high moral culpability. *Kelly v. Defoe Corp.*, 223 A.D.2d 529, 529 (2d Dept. 1996).

G. Transfer of Venue

CPLR § 510 provides that the court, upon motion, may change the place of trial where 1) the county designated for that purpose is not the proper county, 2) there is reason to believe that an impartial trial cannot be had in the proper county, or 3) the convenience of material witnesses and the ends of justice will be promoted by the change. Motions to transfer venue based on the convenience of material witnesses and the promotion of the ends of justice pursuant to CPLR § 510(3) are addressed to the trial court’s sound discretion. *Leake v. Constellation Brands, Inc.*, 112 A.D.3d 792, 792-93 (2d Dept. 2013). The movant bears the burden of demonstrating that a transfer of venue is warranted and must set forth: “1) the names, addresses, and occupations of the

prospective witnesses, 2) the facts to which the witnesses will testify at trial, so that the court may assess whether the proposed evidence is necessary and material, 3) a statement that the witnesses are willing to testify, and 4) a statement that the witnesses would be greatly inconvenienced if the venue of the action was not changed.” *Gorodetsky v. Bridgewater Wholesalers, Inc.*, 161 A.D.3d 722, 723 (2d Dept. 2018). These factors should not be applied with “absolute rigidity [or] inexorability.” *Schwartz v. Walter*, 141 A.D.3d 641, 642 (2d Dept. 2016), quoting *O’Brien v. Vassar Bros. Hosp.*, 207 A.D.2d 169, 172 (2d Dept. 1995). The convenience of the parties, their employees, and experts is not relevant to the court’s determination. *Leake*, 112 A.D.3d at 793.

CPLR § 511(a) provides that a demand for change of place of trial on the ground that the designated county is not a proper county shall be served with the answer or prior to the service of the answer. Then, the defendant may move to change venue within fifteen days after service of the demand, unless the plaintiff serves a written consent to change the place of trial to that specified by the defendant within five days after such service. CPLR § 511(b). A motion to change venue on any other ground shall be made within a reasonable time after commencement of the action. CPLR § 511(a).

RULING OF THE COURT

A. Motion to Dismiss

The Court grants in part and denies in part Defendants’ motion to dismiss. Preliminarily, the Court deems Defendants’ motion to dismiss the Complaint as directed toward the subsequently filed Amended Complaint. *See Livadiotakis v. Tzitzikalakis*, 302 A.D.2d 369, 369 (2d Dept. 2003). The Court grants Defendants’ motion to dismiss Plaintiff’s breach of contract claim. The Amended Complaint purports to annex a copy of Plaintiff’s most recent Agreement with Jerome Medical but, in actuality, annexes what appears to be an employment agreement between Dr. Martinez and another medical practice. *See* Am. Compl. at Exh. A. Plaintiff’s opposition similarly annexes that same employment agreement with an unrelated medical practice, *see* Pl. Exh. A, and fails to annex a copy of the subject employment agreement with Jerome Medical. Putting aside Plaintiff’s error in submitting the incorrect agreement, even if the Court looks back to the May 19, 2010 Agreement between Dr. Martinez and Jerome Medical annexed to the original Complaint, *see* Compl. at Exh. A, Plaintiff has failed to plausibly plead a breach. Plaintiff alleges that Jerome Medical breached

the Agreement by engaging in conduct that jeopardized her ability to satisfy *her* obligation to maintain her medical license. Aside from the fact that the Agreement does not obligate Jerome Medical to ensure that Plaintiff maintains her medical license, Plaintiff's circular breach of contract theory is wholly speculative, as Plaintiff has not alleged that her medical license was actually revoked, suspended, or otherwise adversely impacted.

To the extent Plaintiff references the implied covenant of good faith and fair dealing and argues that the Agreement entitled her "to be employed in an environment in which she could maintain her medical license in good standing in compliance with the agreement's terms," *see* Am. Compl. ¶ 12; Pl. Opp. at p.7, Plaintiff has not sufficiently alleged that Jerome Medical prevented her performance under the Agreement or withheld benefits from her. *See Rayham v. Multiplan, Inc.*, 153 A.D.3d 865, 868 (2d Dept. 2017) (the covenant of good faith and fair dealing is breached where one party seeks to prevent its performance by, or to withhold its benefits from, the other party).

Similarly, Plaintiff's reference to her "involuntary" resignation does not support a breach of contract claim on a constructive discharge theory. *See* Am. Compl. ¶ 11 (Plaintiff "involuntarily terminated her employment on September 8, 2018, due to the 'impossible working conditions' being set forth hereinafter"). The Agreement provides that it may be terminated by Jerome Medical without notice if Plaintiff fails to meet the responsibilities, representations, and warranties in the Agreement, or by either party on sixty days written notice. *See* Compl. at Exh. A, ¶ 14. While the Agreement states that it is for a one-year term and with automatic renewal for subsequent one-year terms unless terminated, *see* Compl. at Exh. A, ¶ 1, Plaintiff was effectively an at-will employee insofar as Jerome Medical could terminate the Agreement for any reason or no reason at all so long as it provided notice. *Cf. Ferraro v. Seamen's Church Institute of N.Y. and N.J.*, 856 N.Y.S.2d 498 (Sup. Ct. N.Y. Cty. 2007) (constructive discharge claim was barred by the employment at-will doctrine in the absence of an agreement fixing the duration of the plaintiff's employment, and "if the defendant had the right to terminate the plaintiff for any reason, it also had the right to constructively discharge him"). While there are, of course, statutes prohibiting constructive discharge based on race, religion, gender, nationality, age, or sexual preference, Plaintiff has not alleged that she suffered any employment discrimination under any such statute. *See Ferraro*, 856 N.Y.S.2d at 498, citing N.Y. Labor Law § 740(2); N.Y. Executive Law § 296.

The Court grants Defendants' motion to dismiss the tortious interference with contract claim against Dr. Florimon and Faena based on Plaintiff's failure to allege an underlying breach of the Agreement. *See, e.g., Brooklyn History Ry. Ass'n v. City of N.Y.*, 126 A.D.3d 837, 840-41 (2d Dept. 2015) ("[a]s the plaintiffs did not allege an actual breach or allege that performance was not possible, they failed to state a cause of action for tortious interference of their contract with [the third-party]).

The Court grants Defendants' motion to dismiss Plaintiff's defamation claim. The Amended Complaint alleges the following instances of defamation: 1) Staff Members directed patients to file complaints with insurance providers and government agencies falsely claiming that Plaintiff acted improperly, 2) Defendants and Staff Members falsely told patients that Plaintiff did not want to see them, 3) Defendants and Staff Members falsely told patients that Plaintiff missed performing testing or follow-up appointments for patients, and 4) Defendants and Staff Members told patients that Plaintiff denied services to patients. *See* Am. Compl. ¶ 16. The Court finds that Plaintiff has not pled defamation with the particularity required by the CPLR. First, Plaintiff fails to allege a specific time frame in which the defamatory comments were made. The Amended Complaint alleges that the allegedly defamatory statements were made after Dr. Martinez confronted Faena about photocopying her signature, Am. Compl. ¶ 16; however, Plaintiff fails to allege when this confrontation occurred. Second, Plaintiff fails to allege the identity of the persons to whom the allegedly defamatory comments were made. Plaintiff's allegations that statements were made to unnamed patients is not sufficiently specific. While the Court is mindful of the potential privacy implications in identifying particular Jerome Medical patients, Plaintiff has not alleged that she has withheld this information due to privacy concerns, nor has she made any application to submit this information either under seal or in some other manner that preserves patient confidentiality and complies with any applicable laws.

The Court denies Defendants' motion to dismiss the forgery claim. Plaintiff expressly alleges that Faena photocopied and appended her signature on Form MIIQs without her knowledge or consent, and photocopied her signature on other documents for Jerome Medical and its patients without her knowledge or consent. Am. Compl. ¶ 16. The Court finds that Plaintiff's forgery claim contains the requisite level of specificity notwithstanding Plaintiff's failure to detail each instance of forgery and expressly state that Faena forged the documents with intent to defraud or deceive.

Faena's alleged forgery of Dr. Martinez's signature on medical documents is an act undertaken with an inherent intent to deceive either a governmental authority, insurance carrier, or patient into believing that Dr. Martinez actually signed the document. Though thin, Plaintiff alleges that Dr. Florimon, the owner of Jerome, encouraged and condoned the forgeries and "ratified Faena's acts by failing to cause said acts to cease or otherwise address said acts." Am. Compl. ¶ 16.

The Court declines to dismiss Plaintiff's request for punitive damages on her forgery claim. Plaintiff's allegations that Faena intentionally forged her signature on medical documents rises to the significant level of dishonesty such as to imply a criminal indifference to civil obligations. Moreover, Faena's actions were aimed at the public to the extent that he allegedly altered patient documents, and if Plaintiff can prove her claim, an award of punitive damages would serve to further the public policy of safeguarding confidential medical documents and deter medical professionals and their employees from altering medical records. *Cf. Gomez*, 159 A.D.3d at 72-77 (punitive damages may be recovered for a medical professional's alteration or destruction of medical records to evade potential medical malpractice liability); *Randi A.J. v. Long Island Surgi-Ctr.*, 46 A.D.3d 74, 82-85 (2d Dept. 2007) (issue of punitive damages was properly submitted to the jury on the plaintiff's claims for breach of confidentiality, privacy, and fiduciary duty based on nurse's disclosure of the plaintiff's medical information to her mother).

B. Motion to Change Venue

Defendants' motion to change venue to Bronx County is denied. Plaintiff's remaining claim is for forgery. While Defendants argue that Nassau County is an inconvenient forum for its patients, who largely reside in or near the Bronx, the potential testimony of Jerome Medical patients relates solely to Plaintiff's dismissed defamation claim. Defendants have not demonstrated that Jerome Medical patients will be material witnesses on Plaintiff's forgery claim, which only appears to involve Jerome Medical employees. However, the convenience of Jerome Medical's employees is not part of the Court's consideration on a CPLR § 510(3) motion, *see Leake*, 112 A.D.3d at 793, and in any event, Defendants have not set forth the names and addresses of its staff members, the facts to which they will testify, or a statement that they will be inconvenienced if the case proceeds in Nassau County, *see Gorodetsky*, 161 A.D.3d at 723. Plaintiff's argument that Defendants circumvented the demand requirement set forth in CPLR § 511 is irrelevant, as a written demand is

only required where the change of venue is based on the ground that the county designated is not a proper county . Defendants expressly moved under CPLR § 510(3) and do not dispute that venue in Nassau County is properly based on Dr. Florimon’s residence. *See* Defs. Memo of Law at p. 1.

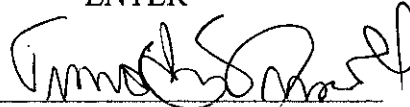
CONCLUSION

Defendants’ motion to dismiss is granted in part and denied in part. Defendants’ motion to dismiss is granted as to Plaintiff’s claims for breach of contract, tortious interference with contract, and defamation. Defendants’ motion is denied as to Plaintiff’s claim for forgery. Defendants’ motion to transfer venue is denied.

All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

DATED: Mineola, NY
March 11, 2019

ENTER

HON. TIMOTHY S. DRISCOLL
J.S.C.

ENTERED
MAR 13 2019
NASSAU COUNTY
COUNTY CLERK’S OFFICE