

**Massoud v Patterson Dental Supply, Inc.**

2025 NY Slip Op 30879(U)

March 18, 2025

Supreme Court, New York County

Docket Number: Index No. 650544/2023

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARLENE P. BLUTH **PART** **14**

*Justice*

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YEHIA MASSOUD

Plaintiff,

- v -

PATTERSON DENTAL SUPPLY, INC.,

Defendant.

-----X

**INDEX NO.** 650544/2023

**MOTION DATE** 03/14/2025

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 were read on this motion to/for SUMMARY JUDGMENT.

Defendant’s motion for summary judgment dismissing the remaining cause of action is denied and plaintiff’s cross-motion for summary judgment is denied.

**Background**

Plaintiff runs a dentistry practice in Manhattan and brings this lawsuit in connection with various items he purchased from defendant. He contends that defendant told him he should purchase a particular suction unit and insisted it was the best available model for his needs. Plaintiff maintains he spent \$10,995.00 for the unit, but it malfunctioned multiple times. He argues that these failures caused plaintiff to incur expenses to replace the product and he lost out on revenue from running his dental practice. Plaintiff admits that the manufacturer eventually replaced the model he purchased and sold plaintiff a more basic model. He complains that defendant did not refund to plaintiff the difference between the initial unit and the replacement model.

Defendant moves for summary judgment and contends that each of the items was purchased pursuant to equipment finance agreements, all of which required plaintiff to acknowledge that he had selected these items, that defendant was not the manufacturer of the equipment and that he was not relying upon any representations from defendant. It explains that each of the equipment finance agreements contained a forum selection clause designating Minnesota as the proper forum for any litigation. Defendant points out that each agreement contained a limitation of liability clause in which plaintiff waived any right to damages resulting from any equipment.

Defendant contends it commenced its own action against plaintiff in Minnesota arising out of his alleged failure to make payments under one of the agreements. It alleges that plaintiff only later brought this case.

Defendant contends that the consequential damages that plaintiff seeks are barred under the terms of the agreements. It contends that each of the remaining claims (the Court previously dismissed one of plaintiff's claims) relate to the loss of patient appointments and revenue from the rental of treatment rooms to other dentists all of which are prohibited under the agreements. Defendant argues that plaintiff's other allegations are also barred under the agreements, including reference to various representations made by defendant, unsuitability of certain items selected and any defects.

In opposition and in support of his cross-motion, plaintiff argues that defendant waived its purported defense of another action pending and there is no agreement at issue between the parties pertaining to the specific equipment at issue. Plaintiff contends that for at least one piece of equipment, an iOptima Unit, defendant affirmatively represented that it was a new item when, in fact, it was repacked and had been used by another dentist.

He emphasizes that defendant has not produced a single document containing a forum selection, limitation of liability or merger clause for the equipment cited in the remaining causes of action. Plaintiff argues that the Vacstar Unit was paid for in full and not subject to an installment payment agreement and that he did the same thing for the iOptima Unit. He points out that this Vacstar Unit failed on many occasions and required multiple service calls.

Plaintiff also seeks summary judgment on his second cause of action related to the iOptima Unit. He claims that he met with a representative from defendant who recommended this unit for root canal treatment. Plaintiff insists he was promised a new unit but that after receipt of the equipment, it immediately began to fail. He claims he eventually called the manufacturer and that he discovered that the unit was repackaged and that defendant had sold and registered it previously with another dentist—according to plaintiff, the unit was no longer under warranty.

In reply and in opposition to the cross-motion, defendant asserts that for Count I (the Vacstar unit), plaintiff signed an agreement that contained various limitations on his ability to bring a lawsuit relating to this piece of equipment. For the second cause of action, defendant contends that it believed it was referencing an earlier iOptima unit plaintiff allegedly purchased in 2017. However, it claims that “Based on a further review of Patterson’s records, and the documents submitted by Dr. Massoud in his affidavit of February 7, 2025, Patterson has determined that Dr. Massoud did, in fact, purchase an iOptima unit in May 2018 and another in July 2018, but none in June 2018 (NYSCEF Doc. No. 70 at 2). It adds that “Any iOptima unit Patterson did sell to Dr. Massoud was not used, but a new unit with the original manufacturer’s seal intact. If the iOptima unit did not perform as required, it is likely an issue with the performance of the equipment itself which the manufacturer may be responsible” (*id.*).

## Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a 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 from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d’Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

The Court observes that there are two causes of action remaining as it dismissed plaintiff’s third cause of action in a prior decision on the ground that defendant produced a valid agreement containing a forum selection clause (NYSCEF Doc. No. 23).

*The First Cause of Action*

The first claim concerns plaintiff's complaints about the suction unit, the Vacstar unit. Plaintiff maintains it needed constant attention and needed to be replaced on two occasions. The Court denies defendant's motion for summary judgment as there are issues of fact pertaining to whether plaintiff signed an installment agreement for this piece of equipment. Plaintiff correctly points out in his reply affidavit that the exhibits attached by defendant in its opposition to the cross-motion are ambiguous, at best. The installment contract number is manually crossed out and a different one is handwritten in (NYSCEF Doc. No. 72 at 2) and the affirmation from defendant's general manager for this area does not address this modification (*see* NYSCEF Doc. No. 71). And plaintiff contends that he paid for this unit in full and points to a payment schedule attached by defendant (NYSCEF Doc. No. 72 at 7) to show that there was no installment plan. The Court observes that the payment schedule does not contain any entries that support the existence of an installment plan; for instance, there are no monthly charges assessed to plaintiff.

On this record, the Court is unable to reach any conclusions as a matter of law. It is not clear that the documents defendant submitted show that there was an equipment finance agreement for the specific Vacstar unit at issue here and plaintiff vehemently denies that he entered into one for this unit. The Court also points out, as plaintiff stressed, that one of the terms and conditions pages (NYSCEF Doc. No. 72 at 5) is unsigned while the other one, which is signed, has a 2015 date listed in the lower right-hand corner (*id.* at 4). Plaintiff says this shows this relates to a different agreement.

As noted above, summary judgment is a drastic remedy and this Court's role is not to reach conclusions about likelihoods or probabilities. The Court can only grant relief where there is no material issue of fact and, with respect to this cause of action, the record is unclear

regarding whether plaintiff signed an installment agreement containing certain limitations for the particular Vacstar unit.

*The Second Cause of Action*

The Court denies both the portion of defendant's motion related to this claim and plaintiff's cross-motion. This claim concerns the iOptima unit. Plaintiff correctly points out that defendant did not attach any signed agreement that contained the terms and conditions upon which defendant relies to dismiss this cause of action. The Court observes that the exhibit attached by defendant in its reply merely contains an invoice for this unit (NYSCEF Doc. No. 72, exh B). And plaintiff, again, swears that he paid for this unit in full and not subject to an installment agreement.

Moreover, defendant's reply memorandum of law contends that there are "issues of fact" that should compel the Court to deny plaintiff's cross-motion with respect to this cause of action. Although not a specific admission, it seems that defendant abandoned its motion for summary judgment regarding this cause of action.

And the Court also denies plaintiff's cross-motion regarding this claim. The affirmation from Mr. Kelly (defendant's general manager for this area) admits that defendant will sometimes accept and sell returned items but that it does not sell items that were opened (NYSCEF Doc. No. 71, ¶ 5). Therefore, on this record, the Court is unable to conclude as a matter of law that defendant provided a "used" piece of equipment nor can the Court conclude that even if the iOptima unit was used that this fact caused it to malfunction and cause the damages plaintiff seeks. Nothing submitted on this record is sufficient to show that defendant (who was not the manufacturer) was the cause of the malfunction as a matter of law.

**Summary**

The key issue on this motion is the submission of documents. Defendant claims that installment agreements exist for specific equipment purchased by plaintiff; apparently, the parties have done a lot of business together over the years. The fact is that defendant failed to meet its burden to attach the relevant contracts to justify dismissal of plaintiff’s remaining causes of action. The documents relating to the first cause of action are not clear and defendant did not attach an installment agreement at all with respect to the second cause of action. The Court also denies defendant’s argument based on the fact that there are prior actions pending in Minnesota as defendant did not raise this issue in its answer; it was therefore waived.

The Court must also deny plaintiff’s cross-motion as his theory of recovery for the second cause of action is, on this record, too attenuated. Plaintiff describes all manner of damages due to a malfunctioning unit to defendant but did not meet his burden to show how defendant was responsible for this malfunctioning. Simply because the unit may not have been brand new does not mean defendant is therefore responsible (at least on a motion for summary judgment) for everything related to the unit, including that the unit did not work properly. For instance, there is no suggestion that defendant knowingly sold an inadequate unit to plaintiff.

Accordingly, it is hereby

ORDERED that defendant’s motion is denied and plaintiff’s cross-motion is denied.

3/18/2025

DATE



ARLENE F. BLUTH, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: