Fred Kastenbaum, D.M.D., LLC v NYC Dental Smile Team, P.L.L.C.

2025 NY Slip Op 33137(U)

August 15, 2025

Supreme Court, New York County

Docket Number: Index No. 656044/2023

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. EMILY MORALES-MINERVA** **PART** **42M**

Justice

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FRED KASTENBAUM, D.M.D., LLC., and FRED KASTENBAUM, D.M.D.,

Plaintiff,

- v -

NYC DENTAL SMILE TEAM, P.L.L.C.,

Defendant.

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INDEX NO. 656044/2023

MOTION DATE 02/02/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17

were read on this motion to/for DISMISS.

APPREARANCES:

Mandelbaum Salbsurg P.C. (Boris Peyzner, Esq) for plaintiffs.

Steven Landy & Associates, PLLC (Steven Landy, Esq) and Landy Wolf PLLC (David A Wolf, Esq) for defendant.

HON. EMILY MINERVA MORALES, J.S.C.

In this breach of contract action, NYC DENTAL SMILE TEAM, P.L.L.C (defendant) moves pursuant to CPLR § 3211(a)(1) and (7) for a motion to dismiss (seq. no. 001) plaintiff FRED KASTENBAUM, D.M.D., LLC., and plaintiff FRED KASTENBAUM, D.M.D.'s (plaintiffs) second and third causes of actions. Said actions are for unjust enrichment and quantum meruit. Plaintiffs appear and oppose the motion, contending that their quasi-contractual claims for unjust enrichment and quantum

meruit are properly pleaded in the alternative to their breach of contract claim and should not be dismissed at this stage. For the reasons set forth below, the defendant's motion is granted.

BACKGROUND

Plaintiffs and defendant entered into an Asset Purchase Agreement (APA) on or about January 3, 2025, whereby plaintiffs agreed to sell, and defendant agreed to purchase, a dental practice located at 580 Park Avenue, New York, New York (see NYSCEF Doc. No. 001, Summons and Complaint). The APA required defendant to pay plaintiffs the sum of $750,000.00, pursuant to the payment terms specified in section 1.05 of the APA (see NYSCEF Doc. No. 001, Complaint; see also NYSCEF Doc. 007, Exhibit 2, Asset Purchase Agreement).

The payment schedule included five installments. Defendant made the first four payments: an initial payment of $250,000.00, a second payment of $35,000.00, and third and fourth payments of $155,000.00 each, on January 31, 2023, and May 31, 2023, respectively (see NYSCEF Doc. No. 001, Complaint). The fifth and final payment of $155,000.00, due on October 31, 2023, was contingent upon defendant hiring a suitable prosthodontist and successfully transferring the business to that individual (see NYSCEF Doc. No. 001, Complaint ¶ 10[c]). Although defendant

hired a suitable prosthodontist and completed the transfer, it allegedly failed to make the final payment (see NYSCEF Doc. No. 001, Complaint ¶ 12).

Plaintiffs subsequently filed a complaint asserting three causes of action for breach of contract, unjust enrichment, and quantum meruit (see NYSCEF Doc. No. 001, Complaint). Defendant now moves to dismiss plaintiffs' second and third causes of action, arguing that the existence of the APA precludes these quasi-contractual claims (see NYSCEF Doc. No. 005, Memorandum of Law at 3).

ANALYSIS

Motion to Dismiss Upon Documentary Evidence

"A party may move for judgment dismissing one or more causes of action asserted against [them] on the ground that . . . a defense is founded upon documentary evidence" (CPLR 3211 [a] [1]). "[D]ocuments reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable, . . . qualify as documentary evidence" where they unambiguously contradict the allegations supporting a cause of action (Attias v Costiera, 120 AD3d 1281, 1283 [2d Dept 2014] [citation omitted]; see also 150 Broadway N.Y. Assocs., L.P. v. Bodner, 14 AD3d 1, 5-6 [1st Dept

2004] [providing a written agreement that unambiguously contradicts the allegations supporting a litigant's cause of action constitutes documentary evidence warranting the dismissal of the cause of action pursuant to CPLR 3211 (a) (1)]; Excel Graphics Tech. v CFG/AGSCB 75 Ninth Ave., 1 AD3d 65, 69 [1st Dept 2003], lv dismissed 2 NY3d 794 [2004]). Dismissal is warranted only if the documentary evidence conclusively establishes a defense to the asserted claims as a matter of law (see Leon v. Martinez, 84 NY2d 83, 88 [1994]).

Here, defendant seeks dismissal of plaintiffs' claims for unjust enrichment and quantum meruit on the ground that a written contract exists which conclusively prohibits the assertion of quasi-contractual causes of action arising from the same subject matter. The court agrees.

To assert a viable claim for unjust enrichment, a plaintiff must allege: (1) that the defendant was enriched, (2) at plaintiff's expense, and (3) that equity and good conscience demand restitution (see Georgia Malone & Co. v. Rieder, 19 NY3d 511, 516 [2012]). Quantum meruit, similarly, allows a plaintiff to recover the reasonable value of services rendered when there exists an inference of an implied contract. It is designed to prevent unjust enrichment by ensuring fair compensation for benefits received (see Farina v. Bastianich, 116 AD3d 546, 546

[1st Dept 2014]). As both claims are quasi-contractual, they can only be sustained in the absence of a valid, enforceable contract or if contractual terms are ambiguous or disputed (see Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co., 70 NY2d 382, 388-89 [1987]; see also Corsello v. Verizon N.Y., Inc., 18 NY3d 777, 790-91 [2012]).

Here, no dispute exists that the APA is a valid and enforceable contract between the parties. Neither party alleges ambiguity nor disputes the contract's terms. Therefore, defendant established plaintiffs' unjust enrichment and quantum meruit claims are precluded and they shall be dismissed.

Defendant's motion to dismiss on the ground that "the pleading fails to state a cause of action" requires the same result (CPLR 3211 [a] [7]). Quasi-contractual remedies cannot survive when, as here, a valid, enforceable, and undisputed agreement covers the parties' relationship and the transaction in dispute (see Maor v. Blu Sand Int'l, Inc., 143 AD3d 579 [1st Dept 2016]; see also Loheac v. Children's Corner Learning Ctr., 51 AD3d 476 [1st Dept 2008]; see also Villnave Constr. Servs. v. Crossgates Mall Gen. Co., LLC, 201 AD3d 1183, 1185 [3d Dept 2022]). In other words, because the APA -- a written agreement whose validity and enforceability is not in dispute -- governs this breach of contract dispute, plaintiffs' claims for unjust

enrichment and quantum meruit based on the same subject matter do not lie (see generally A.N.L.Y.H. Invs. LP v. JDS Principal Highline LLC, 231 AD3d 570, 572 [1st Dept 2024] [holding the same principal applies even against a nonparty to the written agreement]; see also Dragons 516 Ltd. v GDC, 138 E 50 LLC, 201 AD3d 463, 464 [1st Dept 2022] [providing the "prohibition against quasi-contractual claims in the face of an express contract applies not only to the parties in privity of contract, but noncontracting parties . . . as well"]).

Accordingly, it is hereby

ORDERED that the motion (seq. no. 001) of defendant NYC DENTAL SMILE TEAM, P.L.L.C pursuant to CPLR 3211(a)(1) and 3211(a)(7) for dismissal of the second and third causes of actions is granted; and it is further

ORDERED, that the Clerk of the Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/15/2025
DATE

EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE