

Belair & Evans LLP v Rizzo

2025 NY Slip Op 33804(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 654131/2015

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDY H. KIM PART 04

Justice

-----X

BELAIR & EVANS LLP,

Plaintiff,

- v -

PETER F. RIZZO,

Defendant.

-----X

INDEX NO. 654131/2015

MOTION DATE 12/20/2023, 02/09/2024

MOTION SEQ. NO. 015 016

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 015) 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 543, 544, 546, 547, 550

were read on this motion for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 016) 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 542, 545, 548, 549, 551

were read on this motion to RENEW/REARGUE

Plaintiff's motion, pursuant to CPLR 3211 and 3212, to dismiss defendant's counterclaims (motion sequence 015) and defendant's motion to renew his motion to compel non-party New York Presbyterian to produce certain medical records (motion sequence 016) are consolidated for disposition. Upon the foregoing documents, that branch of plaintiff's motion pursuant to CPLR 3211 is granted and defendant's motion is denied.

In this action, plaintiff alleges that defendant failed to pay legal fees for plaintiff's representation of defendant in connection with defendant's investigation and prosecution by the New York State Department of Health and its Office of Professional Medical Conduct ("OPMC"),

and asserts claims for: (1) breach of contract; (2) account stated; (3) quantum meruit; and (4) unjust enrichment. Notably, this prosecution concluded with defendant signing a consent agreement with OPMC.

Defendant answered and asserted counterclaims sounding in legal malpractice, breach of contract, unjust enrichment, fraud, and violation of Judiciary Law §487 (NYSCEF Doc No. 8, answer). Defendant alleged that plaintiff: negligently failed to obtain certain medical records or procure an independent medical expert review to use in defending against OPMC's prosecution; improperly spoke with defendant's superiors without authorization (and prevailed upon them to pressure defendant to sign the consent agreement with OPMC); and failed to properly advise defendant of the consequences of signing that consent agreement (NYSCEF Doc No. 8, answer at 38-41).

In an order dated March 29, 2021, the Court (Hon. Frank P. Nervo) directed the parties to show cause as to why the legal malpractice counterclaim should not be dismissed (NYSCEF Doc No. 352). After briefing on this issue, Justice Nervo granted the motion and dismissed all of defendant's counterclaims, writing:

[D]efendant cannot establish that but for the alleged negligence of plaintiff he would have achieved a better result in the underlying disciplinary proceedings ... defendant, if found guilty of the misconduct faced, inter alia, the revocation of his medical license. Plaintiffs' negotiation of the settlement agreement avoided both suspension and revocation of defendant's medical license. Defendant's assertion that plaintiffs could have negotiated a better settlement but for their alleged negligence amounts to gross speculation, insufficient to establish the requisite proximate causation (*Lisi v. Lowenstein Sandler, LLP*, 170 AD3d 461 [1st Dept 2019]).

As to defendant's claims of breach of fiduciary duty, breach of contract, unjust enrichment, fraud, and Judiciary Law § 487, those claims are duplicative of his legal malpractice claim. Where a legal malpractice claim is predicated upon the same facts and seeks the same relief as a breach of fiduciary duty or fraud claim, the fraud-based claims are duplicative and should be dismissed (*see Ulico Cas. Co. v. Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 AD3d 1 [1st Dept 2008]; *Weil*,

Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc., 10 AD3d 267 [2004]; *Sun Graphics Corp. v. Levy, Davis & Maher, LLP* (94 AD3d 669 [1st Dept 2012]).

(NYSCEF Doc No. 371, June 30, 2021 decision and order).

On appeal, this decision was modified to reinstate those counterclaims other than the legal malpractice claim. Specifically, the Appellate Division, First Department concluded that:

Dismissal of the legal malpractice counterclaim was warranted because defendant failed to adequately plead proximate causation (*see Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 442 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The answer did not specifically allege, and the allegations therein, read in the light most favorable to defendant, did not give rise to an inference, that but for plaintiff's negligence, defendant would have proceeded to a hearing and prevailed in the underlying OPMC matter, or he would have achieved a more favorable settlement. Since the court's motion to dismiss was directed only at the legal malpractice counterclaim, the court should not have dismissed the remaining counterclaims.

(*Belair & Evans LLP v Rizzo*, 211 AD3d 454, 455 [1st Dept 2022]).

Plaintiff now moves, pursuant to CPLR 3211, to dismiss the remaining counterclaims as duplicative of the legal malpractice claim. Plaintiff also moves, pursuant to CPLR 3212, to dismiss these counterclaims on the grounds that defendant is collaterally estopped from relitigating certain issues already resolved in the action *Peter Folley Rizzo, M.D. v New York-Presbyterian Lawrence Hospital, et al*, in the New York State Supreme Court, Westchester County under Index No. 57108/2020, and that these counterclaims are barred by his acceptance of the benefits of the consent agreement.

Defendant opposes the motion, arguing, as relevant here, that the remaining counterclaims are distinct from his dismissed malpractice claim and that as the First Department reinstated these counterclaims "despite having the authority and opportunity to otherwise dispose of them, thus there can be no duplication of his present causes of action with a malpractice claim that no longer exists" (NYSCEF Doc No. 442, memo of law at 6).

DISCUSSION

Plaintiff's motion pursuant to CPLR 3211 is granted. On a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading is afforded a liberal construction, and the court must accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83 [1994]).

The motion is granted because the extant counterclaims are all, fundamentally, duplicative of the dismissed legal malpractice claim.

The causes of action for breach of contract, breach of fiduciary duty, and negligent misrepresentation arise from the same allegations concerning plaintiffs' representation of defendant in the OPMC investigation and seek the same damages for the loss of defendant's employment, alleged reputational harm, increased malpractice premiums, and legal fees (*see Sun Graphics Corp. v Levy, Davis & Maher, LLP*, 94 AD3d 669 [1st Dept 2012]). The cases on which defendant relies support this conclusion, as they involve breach of contract claims involving actions beyond the attorneys alleged negligent performance (*see Brenner v Reiss Eisenpress, LLP*, 155 AD3d 437, 438 [1st Dept 2017] [breach of contract claim reinstated where it was "based on billing issues and ... not duplicative of the claims regarding the alleged mishandling of the trial"]; *I.M.P. Plumbing & Heating Corp. v Munzer & Saunders, LLP*, 199 AD3d 569 [1st Dept 2021] [breach of contract claim based on attorney overbilling for, inter alia, commencing unnecessary actions that were subsequently abandoned and the improper retention of escrow funds not duplicative of malpractice claim]).

The claims for fraud and unjust enrichment are also based on plaintiff's alleged negligent representation and are therefore duplicative of the legal malpractice claims (*Boesky v Levine*, 193

AD3d 403 [1st Dept 2021]; *cf. Johnson v Proskauer Rose LLP*, 129 AD3d 59, 70 [1st Dept 2015] [unjust enrichment claims sufficiently alleged that fee bore no rational relationship to work product where plaintiffs “asserted that defendants collected a \$425,000 fee for “cookie cutter” legal opinion]). Finally, defendant’s Judiciary Law §487 claim is dismissed as duplicative of the malpractice claim (*Knox v Aronson, Mayefsky & Sloan, LLP*, 168 AD3d 70, 76 [1st Dept 2018]) and as insufficiently pled (*see Gopstein v Bellinson Law, LLC*, 227 AD3d 465, 467 [1st Dept 2024]). Contrary to defendant’s position, the fact that plaintiff’s motion to dismiss was bifurcated, at the Court’s direction, does not preclude the dismissal of these claims on this basis.

Accordingly, plaintiff’s motion to dismiss pursuant to CPLR 3211(a)(7) is granted and the counterclaims are dismissed. Given the fundamental deficiency of the pleadings noted above, the Court does not reach that branch of plaintiff’s motion pursuant to CPLR 3212.

Defendant’s Motion to Renew

In light of the foregoing, defendants’ motion, pursuant to CPLR 2221(e), to renew the Court’s order of August 23, 2019 denying defendant’s request to compel New York Presbyterian to produce certain medical records and the Court’s order of January 31, 2020 (as amended on February 13, 2020), denying defendant’s motions to reargue and renew that August 23, 2019 order, is denied, as moot, in light of the dismissal of defendant’s counterclaims.

Accordingly, it is

ORDERED that plaintiff’s motion is granted and defendant’s counterclaims are hereby dismissed; and it is further

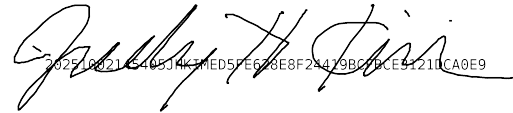
ORDERED that defendant’s motion to renew is denied; and it is further

ORDERED that plaintiff shall file a note of issue forthwith but no later than October 10, 2025; and it is further

ORDERED that plaintiff shall serve a copy of this decision and order, with notice of entry, upon defendant as well as the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E filing” page on this court’s website).

This constitutes the decision and order of the Court.



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10/2/2025

DATE

HON. JUDY H. KIM, 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