

**A Plus Med. Care, P.C. v All Seasons Med. Care, P.C.**

2025 NY Slip Op 34789(U)

December 11, 2025

Supreme Court, Kings County

Docket Number: Index No. 532557/2023

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 11th day of December 2025.

**P R E S E N T:**

Honorable Reginald A. Boddie  
Justice, Supreme Court

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A PLUS MEDICAL CARE, P.C.,

Plaintiff,

Index No. 532557/2023

-against-

Cal. No. 3 MS 7

ALL SEASONS MEDICAL CARE, P.C. and  
HONGYIN WANG,

Defendant,

**Decision and Order**

-and-

LIN GONG,

Defendant on the Counterclaim.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 7

25-34; 48-53

Plaintiff’s motion seeking an order pursuant to CPLR 3212 granting it partial summary judgment on liability against defendants, among other things, is decided as follows:

This action arises from plaintiff’s claim that, while still employed as a primary care physician by plaintiff, A Plus Medical Care, P.C. (“plaintiff” or “A Plus Medical”), defendant Hongyin Wang, M.D. (“Wang”) began to divert A Plus Medical’s legacy patients to defendant All

Seasons Medical Care, P.C. (“All Seasons”), a competing primary care medical practice formed by Wang in 2022 in Long Island, which expanded to include an office one block away from plaintiff’s Brooklyn office.

It is undisputed that Wang began working with plaintiff in January 2015, until he tendered his resignation in November 2022. It is also undisputed that, during his employment with A Plus Medical, Wang executed a number of employment agreements containing a two-year post-employment restrictive covenant barring him from soliciting or treating any of plaintiff’s patients, or from opening a competing medical practice within two miles of plaintiff’s Brooklyn office. However, defendants dispute the inclusion of a restrictive covenant in Wang’s final 2021 employment agreement, which was executed on July 22, 2021 (“2021 Employment Agreement”). While plaintiff alleges that the parties’ 2021 Employment Agreement consists of 14 pages and included non-compete provisions, defendants allege the parties’ agreement consisted of only four pages and was assembled by counterclaim defendant, Dr. Lin Gong (“Gong”), plaintiff’s principal, upon Wang’s insistence that he would not sign a new employment agreement with restrictive covenants since Gong reneged on prior promises to make Wang a partner in plaintiff’s practice.

Based on defendants’ position that the 14-page agreement proffered by plaintiff is a fabrication, defendants assert a counterclaim for fraud (Fourth Counterclaim) against Gong. Defendants also assert counterclaims for tortious interference with contract (First Counterclaim) and tortious interference with prospective business relationships (Second Counterclaim) based on their allegation that Gong interfered with All Season’s credentialing with nonparty, Coalition of Asian American Independent Physician Association (“CAIPA”), which purportedly cost defendants lost revenues due to the delay in credentialing. Specifically, defendants allege that they submitted their credentialing request to CAIPA on November 14, 2022. On December 2, 2022,

defendants allege that Sue Gong (“Sue”), Gong’s wife and secretary for plaintiff, sent an email to Derek Lam (“Lam”), Vice President of CAIPA, claiming Wang had breached the parties’ agreement by intending to open a Brooklyn office. Further, that Sue sent a second email to Lam stating: “Hi Derek, this is the cease and desist letter our lawyers sent to Dr. Wang and we also reported to our lawyer about CAIPA receiving a request from Dr. Wang to add an additional office address one block from us.” Defendants further allege that CAIPA paused defendants’ credentialing request and that such credentialing was not completed until July 2023, nine months after the request was submitted to CAIPA.

By way of the instant motion, plaintiff moves for summary judgment dismissing defendants’ tortious interference counterclaims. In support, plaintiff proffers the testimony of CAIPA’s witness, Lam, stating that neither Gong nor Sue has any influence regarding CAIPA’s choice to enroll or not enroll a physician. In addition, plaintiff submits that Gong’s purported interference did not proximately cause the delay in credentialing since defendants’ own emails with CAIPA indicate that their Brooklyn office was not operational during the alleged “delay” period, and therefore, could not be added to CAIPA’s insurance plans at that time.

Plaintiff also seeks summary judgment dismissing defendants’ fraud counterclaim. In support, plaintiff relies on Sue’s testimony stating that the 2021 Employment Agreement was 14 pages and that this was confirmed by her computer’s Google Docs metadata showing that the version of the employment agreement as of July 2021 had 14 pages and included the restrictive covenants at issue.

Plaintiff also seeks summary judgment with respect to its breach of fiduciary claim based on Wang’s concession that he treated plaintiff’s patients under All Seasons’ banner starting on July 2, 2022, while still employed by plaintiff. Under the faithless servant doctrine, plaintiff

submits that it is entitled to recover the \$84,223.40 in salary paid by plaintiff to Wang during his period of disloyalty as well as a further judgment on the amount of ill-gotten profits which would be determined at trial.

In the event the court declines to grant plaintiff summary judgment as to the foregoing, plaintiff seeks leave to amend its complaint to add a claim for unfair competition. Plaintiff contends that the addition of the claim should be permissible since its addition serves “to conform to the proof adduced in the record.” Upon amendment, plaintiff seeks summary judgment on such claim based on what plaintiff claims is defendants’ wrongful misappropriation and diversion of its patient roster.

In opposition to plaintiff’s motion, defendants argue the issue of whether the 2021 Employment Agreement consists of the 14-page document proffered by plaintiff is a genuine issue of fact which can only be determined by a jury. Defendants emphasize that Wang has consistently stated from the inception of the controversy that he told Gong he would not sign a new employment agreement with any restrictive covenants after Gong had reneged on prior promises to make him a partner and that Gong agreed the 2021 Employment Agreement would exclude the restrictive covenants. In support, defendants point to Wang’s email response to plaintiff’s December 15, 2022 cease-and-desist letter wherein Wang states “the original agreement that I signed and executed on July 22, 2021 has only four pages.” In addition, based on their expert report by Grace Warmbier, defendants posit that the original four-page agreement was integrated, ultimately, into the 14-page agreement by plaintiff since the paper stock for the four-page agreement purportedly does not match the paper stock in plaintiff’s 14-page agreement.

Regarding their counterclaims for tortious interference, defendants argue that plaintiff’s assertion that a medical office must be open for business to be credentialed is incorrect insofar as

there was no such precondition when Wang opened his Hillside office and CAIPA processed the requested credentials within four weeks while the office was still being renovated. In addition, defendants proffer the opinion of their medical insurance expert, Rebecca Busch, concluding that CAIPA's claim that an office must be completed and open for operation before credentialing is contrary to industry practice. It is defendants' position that, starting on December 2, 2022, plaintiff and Gong conspired with CAIPA to ensure that Wang did not open his Brooklyn office, as evidenced by (1) CAIPA informing Gong that Wang had submitted an application for credentialing his Brooklyn office; (2) CAIPA withdrawing Wang's credentialing application on December 2, 2022, less than two hours after speaking with Sue and receiving her email complaining of Wang's alleged breach of the restrictive covenants; (3) CAIPA failing to notify Wang for over six months that it had withdrawn his credentialing application; and (4) CAIPA's alleged stonewalling in response to defendants' witness subpoenas and document demands. Due to the delay in credentialing with CAIPA, defendants contend Wang had to inform at least a dozen prospective patients, who requested appointments at the Brooklyn office, that he could not accept them as patients since his office's opening was delayed.

Regarding plaintiff's breach of fiduciary claim, defendants contend that such a claim is not plead in the Amended Complaint. In any event, defendants represent that Wang treated a total of 11 so-called "legacy patients" of plaintiff at his Long Island, Hillside office. However, defendants assert that Wang did not solicit any of these patients but, rather, such patients contacted Wang on their own accord. Of the 11 patients, defendants contend that three were on Gong's inactive list, four are members of one family who relocated to Long Island, two patients learned of Wang's office through their radiologist, one patient lives on the same street as Wang on Long Island, and another patient owns a restaurant near the Hillside office.

Finally, regarding that portion of plaintiff's motion seeking to amend, defendants submit relief should be denied since more than three months have passed from the filing of the note of issue. Further, that the proposed amendment alleges a new theory of liability and seeks to add new factual allegations to the existing Amended Complaint. In the event leave to amend to assert the proposed unfair competition claim is granted, defendants argue summary judgment cannot be granted since issue will not have been joined.

### Discussion

It is well established that summary judgment is granted when “the proponent makes 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, and the opponent fails to rebut that showing” (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010] [*quoting Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Morejon v New York City Tr. Auth.*, 216 AD3d 134, 136 [2d Dept 2023] [citations omitted]).

Here, the record indicates the existence of triable issues regarding whether the 2021 Employment Agreement is the 14-page document proffered by plaintiff or the four-page document proffered by defendants and whether Gong's communications with CAIPA proximately caused a delay in defendants' credentialing process. In addition, plaintiff fails to establish its entitlement to summary judgment on its claim for breach of fiduciary duty/faithless servant since plaintiff fails to demonstrate that Wang solicited the patients to come to his Hillside office while he was

employed with plaintiff (*see Feiger v Iral Jewelry*, 41 NY2d 928, 929 [1977]; *see also Jeremias v Toms Capital LLC*, 204 AD3d 498, 499 [1st Dept 2022]). Thus, plaintiff's application for partial summary judgment is denied.

As for that portion of plaintiff's motion seeking to add a claim for unfair competition, leave to amend is granted. Although defendants contend that the lateness of the amendment would be prejudicial, defendants fail to explain how they are prejudiced. Moreover, the facts underlying plaintiff's proposed unfair competition claim are identical to its other claims. However, as argued by defendants, plaintiff would not be entitled to summary judgment on the new claim since, among other things, issue will not have been joined (*see CPLR 3212[a]*).

#### **Conclusion**

Based on the foregoing, plaintiff's motion is granted to the extent that plaintiff is granted leave to amend its complaint to add a claim for unfair competition. The motion is otherwise denied. Plaintiff shall file its second amended complaint within 20 days. Defendants shall be deemed served upon filing. Any argument not explicitly addressed herein was considered and deemed to be without merit or unnecessary to address given the court's decision.

ENTER:



Honorable Reginald A. Boddie  
Justice, Supreme Court  
HON. REGINALD A. BODDIE  
J.S.C.