

**Chakrabarti v Weill Cornell Ctr.  
for Reproductive Medicine**

2026 NY Slip Op 30163(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 805217/2024

Judge: Kathy J. King

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J. KING PART 06

Justice

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RAJ CHAKRABARTI, and ANISHA GHOSH CHAKRABARTI,

Plaintiffs,

INDEX NO. 805217/2024

MOTION DATE 03/19/2025

MOTION SEQ. NO. 001

- v -

WEILL CORNELL CENTER FOR REPRODUCTIVE MEDICINE, OWEN K. DAVIS, GIANPIERO PALERMO, NIKICA ZANINOVIC, and ZEV ROSENWAKS,

Defendants.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 39, 40, 41, 42, 43, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 71, 73, 76, 77, 78

were read on this motion to/for DISMISS.

Upon the foregoing documents, and oral arguments having been heard, Defendants WEILL CORNELL CENTER FOR REPRODUCTIVE MEDICINE ("CRM"), OWEN K. DAVIS, GIANPIERO PALERMO, NIKICA ZANINOVIC, and ZEV ROSENWAKS, move for an Order, pursuant to CPLR 3211(a)(7) and 3211(e):

- 1. Dismissing Counts 1-3 and 5-8 of Plaintiffs' Complaint based on Plaintiffs' failure to state a cause of action for fraudulent inducement, concealment, intentional misrepresentation, breach of bailment of genetic material, ordinary negligence, breach of contract, restitution and unjust enrichment and punitive damages; and
2. Striking Plaintiffs' request for punitive damages.

Plaintiffs RAJ CHAKRABARTI, and ANISHA GHOSH CHAKRABARTI oppose and cross-move for an Order compelling the moving Defendants to supply Plaintiffs' medical records, and, pursuant to CPLR 3126, sanctions for the Defendants' failure to comply with

discovery requests, including the failure to provide said medical records.

### **BACKGROUND**

Plaintiffs brought this instant action against CRM and its doctors for medical malpractice and other claims after multiple unsuccessful rounds of fertility treatment from April 2021 to April 2023. Plaintiffs allege that CRM mishandled their fertility treatments, specifically in vitro fertilization (“IVF”),<sup>1</sup> which resulted in a failure to successfully carry a pregnancy to term. Specifically, Plaintiffs claim that the Defendants were negligent in:

1. Losing or failing to retrieve a significant number of their eggs during IVF cycles;
2. Irreversibly damaging their embryos in the CRM lab; and
3. Misleading them into continuing treatment by blaming the failures on the plaintiffs' own “flawed reproductive physiologies” instead of their own errors.

Plaintiffs commenced this action by the filing of a Summons and Complaint on or about August 6, 2024. In the Complaint, Plaintiffs assert ten causes of action against the Defendants: (1) fraudulent inducement, (2) concealment, (3) intentional misrepresentation, (4) medical malpractice, (5) breach of bailment of genetic material, (6) ordinary negligence, (7) breach of contract, (8) restitution and unjust enrichment, (9) negligent hiring, training and/or supervision, and (10) violation of the Deceptive Trade Practices Act during Plaintiffs’ care and treatment with Defendants.

Defendants now move for an Order pursuant to CPLR 3211(a)(7) and 3211(e), arguing that Counts 1-3 and 5-8 of Plaintiffs’ Complaint Should be Dismissed for Failure to State a Cause of Action because the allegations are merely conclusory or speculative and lack the specific facts needed to support a legal cause of action.

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<sup>1</sup> IVF is a medical procedure where an egg is fertilized by sperm outside the body in a laboratory setting to help individuals with infertility or genetic problems conceive.

## LEGAL STANDARD

Under CPLR 3211 (a)(7) a party may move to dismiss a cause of action where “the pleading fails to state a cause of action.” In this regard, the court “must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference” (see *Chanko v Am. Broadcasting Cos. Inc.*, 27 NY3d 46 [2016], citing *Goshen v Mut. Life Ins. Co.*, 98 NY2d 314 [2002]).

## DISCUSSION

### **I. THE FIRST, SECOND, AND THIRD CAUSES OF ACTION: FRAUDULENT INDUCEMENT, CONCEALMENT, AND INTENTIONAL MISREPRESENTATION, RESPECTIVELY**

Defendants argue that the Plaintiffs’ claims of fraudulent inducement, concealment, and intentional misrepresentation should be dismissed. They assert that the Plaintiffs failed to provide evidence that the Defendants knew their statements were false, and they argue that poor IVF outcomes alone do not prove fraud. Furthermore, the Defendants claim that these fraud-related claims are simply a restatement of the medical malpractice allegations and, therefore, should be dismissed based on legal precedent.

Contrary to the Defendants’ contention, Plaintiffs assert that the claims for fraudulent inducement, concealment, and intentional misrepresentation are not mere recaptulations of their medical malpractice claim. The Plaintiffs allege that the Defendants, who are experts in IVF, committed fraud by intentionally misrepresenting the cause of repeated failed IVF cycles. They claim the Defendants were aware that the low embryo development rates (75-80% destruction) were due to deficiencies in their lab, not the Plaintiffs’ biology, as they had claimed. The Plaintiffs argue that these alleged fraudulent misrepresentations were made to induce them to continue

treatment, leading to the destruction of more embryos, a loss of valuable time for other conception options, and significant emotional distress.

The Court finds that the Plaintiffs have not alleged a claim for fraud that is separate and distinct from their claims of medical malpractice (*see Abbondandolo v. Hitzig*, 282 AD2d 224 [1st Dept 2001]). The Plaintiffs' allegations center on the Defendants' professional judgments and conclusions regarding the cause of the embryo loss, which is a core issue of medical care. Specifically, the Court finds that the Plaintiffs' claim alone without evidentiary proof—that the Defendants knew the laboratory was the cause of poor outcomes but concealed this information—does not establish the element of “knowledge of falsity.” The Defendants' statements and assessments regarding the reasons for the failed IVF cycles fall within the scope of their medical judgment. Further, the Plaintiffs' reliance on general statistics about embryo development does not, by itself, demonstrate that the Defendants knowingly made a false statement with the intent to deceive (*see generally Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 NY3d 553 [2009]).

It is well settled that “conclusory allegations—claims consisting of bare legal conclusions with no factual specificity—are insufficient to survive a motion to dismiss” (*see Leon v Martinez*, 84 NY2d 83 [1994]; *see also Nomura Home Equity Loan, Inc. v Nomura Credit & Capital, Inc.*, 30 NY3d 572, 601 [2017] [holding that “[I]n assessing motions pursuant to CPLR 3211 (a) (7), any deficiencies in the complaint may be amplified by supplemental pleadings and other evidence, as the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one”] [internal quotation marks and citations omitted]; *see generally Goshen v Mut. Life Ins. Co.*, 98 NY2d 314 [2002] [ruling that where the documentary evidence submitted flatly contradicts the plaintiff's factual claims, the entitlement to the presumption of truth and the favorable inferences are both rebutted]; *Scott v Bell Atl. Corp.*, 282 AD2d 180 [1st Dept 2001]; *Ullmann v*

*Norma Kamali, Inc.*, 207 AD2d 691 [1st Dept 1994]). Further, plaintiff does not allege injury resulting from fraud separate and distinct from the injury alleged in the medical malpractice claim (see *Atton v Bier*, 12 AD3d 240, 241, 785 N.Y.S.2d 426 [1st Dept 2004]).

Accordingly, this branch of the Defendants' motion is granted, and the fraudulent inducement, concealment, and intentional misrepresentation causes of action are dismissed.

## II. THE FIFTH CAUSE OF ACTION: BAILMENT

Defendants assert that the failure of the Plaintiffs' embryos to develop was a biological outcome, not a result of any mishandling or negligence on CRM's part. Furthermore, Defendants claim that the breach of bailment claim is a "mere recapitulation" of the medical malpractice claim. According to the Defendants, there is no legal precedent in New York to support a separate cause of action for breach of bailment under these circumstances, making the claim redundant and subject to dismissal.

Contrary to Defendants' contentions, the Plaintiff argues that they entrusted their genetic material—both fresh eggs and sperm, as well as pre-existing frozen embryos—to the Defendants. Plaintiffs contend that Defendants accepted this material with the agreement to use it to create viable embryos. The claim is highlighted by the fact that the destruction of frozen embryos from other clinics occurred in the Defendants' lab upon thawing and did not involve any medical procedure or physical contact with the Plaintiffs, separating it from a typical medical malpractice claim.

The Court finds that Plaintiffs have sufficiently pled the requisite elements of a bailment claim. A cause of action for bailment may be maintained independently of a medical malpractice claim in the context of IVF treatment, particularly where the gravamen of the injury involves the loss or destruction of genetic material (see generally *Bledsoe v Ctr. for Human Reproduction*, 228

AD3d 96, 100 [1st Dept 2024]); *Herrington v Verrilli*, 151 F Supp 2d 449, 457 [SDNY 2001]); *Martin v Briggs*, 235 AD3d 192, 197 [1st Dept 1997]); *Pivar v Graduate Sch. of Figurative Art of the N.Y. Acad. of Art*, 290 AD3d 212, 213 [1st Dept 2002]); *Castellano v Key*, 2014 NY Misc. LEXIS 3885 [Sup. Ct., NY Cnty. 2014]); *Albers v Curpier*, 24 AD3d 1082, 1083 [3d Dept 2005]).

Accordingly, this branch of the Defendants' motion is denied.

### III. THE SIXTH CAUSE OF ACTION: ORDINARY NEGLIGENCE

Defendants argue that the Plaintiffs' cause of action for ordinary negligence should be dismissed as their claim constitutes and derives from their medical malpractice claims and offer no basis for a distinct claim of ordinary negligence.

Contrary to the Defendants' contentions, Plaintiffs alleges that claim of ordinary negligence against the Defendants centers on administrative and ministerial failures, arguing they are distinct from medical malpractice. Plaintiffs allege the Defendants were negligent in their duties to maintain proper administrative records of embryo development, implement and oversee quality control measures within the laboratory, supervise staff handling genetic material, and maintain and produce medical records as required by law. Further, Plaintiffs argue that these duties are not medical in nature and do not require professional judgment, thus making the alleged failures a matter of common negligence rather than medical malpractice.

The Court finds that finds that the Plaintiffs provide a basis for a distinct claim in ordinary negligence and their sixth cause of action is distinct from their medical malpractice cause of action. It is well settled, that acts such as egg retrieval, fertilization, embryo grading, and preparation for cryopreservation are considered medical acts, requiring specialized skills (*see Bledsoe v Ctr. for Human Reproduction*, 228 AD3d 96, 100 [1st Dept 2024]); *De Leon v Hospital of Albert Einstein Coll. of Medicine*, 164 AD2d 743, 747 [1st Dept 1991]; *Coursen v New York Hosp.-Cornell Med.*

*Ctr.*, 114 AD2d 254, 256–258 [1st Dept 1986]). In contrast, administrative and ministerial failures are measured by ordinary negligence standards (*see Weiner v Lenox Hill Hosp.*, 88 NY2d 784, 787 [1996]).

Accordingly, the Court denies this portion of the Defendants' motion and dismissal of the Plaintiffs' sixth cause of action is precluded.

#### **IV. SEVENTH CAUSE OF ACTION: BREACH OF CONTRACT**

Defendants contend that Plaintiffs' cause of action for breach of contract should be dismissed as legally redundant of the malpractice claim because Plaintiffs do not allege that Defendants, within the context of the treatment, expressed a specific promise to accomplish some definite result. They highlight that the Informed Consent for In Vitro Fertilization/Embryo Transfer explicitly provides, "I understand that there is no guarantee that eggs will be retrieved," and the Patient and Partner (if applicable) Informed Consent expressly provides, "I/We understand that there is no guarantee that any of the embryos transferred will result in a pregnancy."

Contrary to the Defendants' contentions, the Plaintiff states that Plaintiffs have alleged specific promises to accomplish definite results made by Defendants and specific violations, including, inter alia, Defendants promised to follow specific protocols that were mutually agreed upon, yet medical records document that different procedures were performed, including, embryos were thawed and transferred on the same day instead of one day later as agreed, embryo co-culture was not applied when consent was provided only for co-culture, and embryos were transferred on Day 3 of development instead of on Day 2 as agreed. Thus, according to Plaintiffs, Defendants did not follow the procedures agreed upon in the In Vitro Fertilization/Embryo Transfer as evidenced by the medical records.

Upon review of the records, the Court finds that the Plaintiffs fail to state and show the Defendants' express promise to affect a cure or accomplish some definite result as it pertains to their IVF treatment. Instead, the Court finds that Plaintiffs allege breaches of specific procedural agreements. The promises mentioned—such as a commitment to thaw embryos on a specific day, use a particular co-culture method, or transfer embryos on a certain day of development—are promises related to the process of the medical procedure, not its outcome. Thus, the complaint focuses on a deviation from the agreed-upon treatment plan, not a failure to affect a cure or accomplish some definite result (*see Chaff v Parkway Hosp.*, 205 AD2d 571, 613 NYS2d 237 [1994], *Nicoleau v Brookhaven Mem. Hosp.*, 201 AD2d 544, 607 NYS2d 703 [1994]; *Dodes v North Shore Univ. Hosp.*, 149 AD2d 455, 539 NYS2d 954 [1989]; *Monroe v Long Is. Coll. Hosp.*, 84 AD2d 576, 443 NYS2d 433 [1981]; *see also Robins v Finestone*, 308 NY 543, 127 NE2d 330 [1955]). A breach of contract claim in relation to the rendition of medical services by a hospital will withstand a test of legal sufficiency only when based upon an express promise to affect a cure or to accomplish some definite result (*Catapano v Winthrop Univ. Hosp.*, 19 AD3d 355 [2d Dept 2005]).

Accordingly, this portion of the Defendants' motion is granted, and the Plaintiffs' breach of contract cause of action is dismissed.

#### **V. EIGHT CAUSES OF ACTION: RESTITUTION AND UNJUST ENRICHMENT**

Defendants argue that the relationship between all parties was governed by multiple written consents which fully detailed the applicable terms and conditions of the IVF process, and that Plaintiffs cannot and do not dispute the fact that they did receive the IVF treatment/medical services for which they paid.

Contrary to the Defendants' assertion, the Plaintiff argues that they paid for specific, high-end IVF services from a clinic that marketed itself as the nation's best but received substandard care instead. Their arguments center on the Defendants' failure to provide promised procedures, like co-culture, and their improper execution of others, including oocyte retrievals and embryo transfers. Plaintiffs further assert that these advertised commitments were enforceable, as they were the basis on which they paid for the services.

The Court finds that Plaintiffs' assertions that Defendants were otherwise unjustly enriched are misplaced and must be dismissed (*Fleischer v Zhang*, 228 AD3d 484 [1st Dept 2024]). The theory of unjust enrichment is a quasi-contract claim, arising from an obligation imposed by equity to prevent injustice in the absence of an actual agreement between the parties (*id.*). Thus, it is well settled that a party cannot recover under unjust enrichment when a valid and enforceable contract governs the subject matter of the dispute (*Wilson v Dantas*, 29 NY3d 1051, 1063 [2017]; *Simkin v Blank*, 19 NY3d 46, 55 [2012] ["Where the parties executed a valid and enforceable written contract governing a particular subject matter, recovery on a theory of unjust enrichment for events arising out of that subject matter is ordinarily precluded."]).

Accordingly, the Defendants' motion is granted to the extent of dismissing the Plaintiffs' restitution and unjust enrichment causes of action.

## VI. PUNITIVE DAMAGES

Pursuant to the foregoing, Plaintiffs have not adequately pleaded a basis for punitive damages (*see Fleischer*, 228 AD3d 484). To be awarded punitive damages, a plaintiff must allege that the defendant's conduct was malicious or evil, going beyond a mere breach of professional duty, which requires "aggravation or outrage," such as spite, malice, a fraudulent motive, or a "conscious and deliberate disregard of the interests of others" (*see Id.*; *Dupree v Giugliano*, 20

NY3d 921, 924 [2012]). Plaintiffs' allegations do not demonstrate this necessary malicious conduct. Further, punitive damages are not appropriate in medical malpractice lawsuits where the Plaintiffs merely allege that the treatment was improperly performed because they did not receive the desired result (*see B.F. v Repro. Med. Assoc. NY, LLP*, 136 A.D.3d 73 [1st Dept 2015] [dismissing the cause of action for punitive damages as inadequately pleaded]).

Accordingly, the Court grants this branch of the Defendants' motion and dismisses the Plaintiffs' claims for punitive damages.

### **PLAINTIFF'S CROSS-MOTION**

As a preliminary matter, the Defendants highlight that subsequent to January 1, 2024, courts have found that a statement simply affirming the following under the penalties of perjury fails to acknowledge the laws of New York and the possibility of fines and imprisonment and as a result is not in admissible form and cannot be relied upon (*see R.F. v L.K.*, 82 Misc 3d 1221(A), 2024 NY Slip Op 50059(U) [Sup Ct, Westchester County 2024]; *Diego Beekman Mut. Hous. Assn. Hous. Dev. Fund Corp. v Hammond*, 81 Misc 3d 1233(A), 2024 NY Slip Op 50144(U) [Civ Ct, Bronx County 2024]). The Court finds that while Plaintiffs' counsel's affirmation is not in full compliance with the requirements for an attorney affirmation, it will be considered to the extent that it includes documentary evidence, deposition testimony, and raises legal arguments therein (*see Scanlon v Long Beach Public Schools*, 197 AD2d 567 [2d Dept 1993]).

In their cross-motion, Plaintiffs argue that subsequent to their treatment at CRM, Plaintiffs repeatedly provided HIPAA compliant requests for complete copies of their embryology laboratory medical reports but were not provided with the requested record. On September 25, 2024, Plaintiffs filed a Notice to Produce Documents, requesting those same records. On October 18, 2024, Defendants responded, objecting to Plaintiffs' demands. On December 5, 2024, Plaintiffs

filed a Demand for Discovery and Inspection, again requesting Plaintiffs' embryology laboratory medical reports. On April 3, 2024, Plaintiffs once again raised the issue of Defendants' failure to provide Plaintiffs' medical records. To date, Plaintiffs have not received their medical records despite multiple formal requests.

The Defendants argue that to date, Plaintiffs failed to provide such a duly executed HIPAA authorization enabling Defendants to release the requested medical records to them or their counsel. Defendants state that as soon as Plaintiffs comply with HIPAA requirements, they will receive a copy of their medical records. Further, Defendants state that some of Plaintiffs' discovery demands pertain to requests for medical records of nonparty patients and, thus, Defendants properly interposed appropriate objections to these demands pursuant to CPLR 4504(a) and HIPAA.

The Court finds that Defendants have provided a reasonable excuse for failing to comply with Plaintiffs' discovery demands, and is now ready, willing, and able to proceed with discovery. Given the facts in this case, Defendants' conduct is not willful, deliberate or contumacious and the extreme sanction of striking the Defendants' answer is not warranted (*see generally Rubin v Pan Am. World Airways, Inc.*, 128 AD2d 765 [2d Dept 1987], citing *Bassett v Bando Sangsa Co.*, 103 AD2d 728 [1st Dept 1984]); *Dauria v New York*, 127 AD2d 459 [1st Dept 1987]).

Thus, the Plaintiffs' motion is granted to the extent of compelling the Defendants to provide Plaintiffs with complete and unredacted medical records pertaining to RAJ CHAKRABARTI, and ANISHA GHOSH CHAKRABARTI, only, including IVF treatment records.

Accordingly, it is hereby

**ORDERED** that the Defendants' motion is granted to the extent of dismissing the first, second, third, seventh, and eighth causes of actions and Plaintiffs' application for punitive damages, and is denied in all other respects; and it is further

**ORDERED** that Defendants are to serve a copy of this order upon the Plaintiffs with notice of entry within twenty (20) days of entry of this order; and it is further

**ORDERED** that within twenty (20) days of the date of this Order, Defendants shall serve a copy of this Order upon the County Clerk and the Clerk of the General Clerk's Office, which shall be effectuated 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 the court's website; and it is further

**ORDERED** that the Clerk is directed to dismiss the fraudulent inducement, concealment, intentional misrepresentation, breach of contract, and restitution and unjust enrichment causes of action in Plaintiffs' complaint with prejudice against the Defendants WEILL CORNELL CENTER FOR REPRODUCTIVE MEDICINE, OWEN K. DAVIS, GIANPIERO PALERMO, NIKICA ZANINOVIC, and ZEV ROSENWAKS; and it is further

**ORDERED** that the Clerk is directed to dismiss the punitive damages in Plaintiffs' complaint with prejudice against the Defendants WEILL CORNELL CENTER FOR REPRODUCTIVE MEDICINE, OWEN K. DAVIS, GIANPIERO PALERMO, NIKICA ZANINOVIC, and ZEV ROSENWAKS; and it is further

ORDERED that the Plaintiffs' cross-motion is granted to the extent of compelling the Defendants to provide Plaintiffs with complete and unredacted medical records pertaining to RAJ CHAKRABARTI, and ANISHA GHOSH CHAKRABARTI, only, including IVF treatment records within forty (45) days of the date of this Order, and is denied in all other respects.

This constitutes the Decision and Order of the Court.

1/12/26  
DATE

*Kathy J. King*  
KATHY J. KING, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	