

Sohal v Pearly Whites Dental P.C.
2026 NY Slip Op 30250(U)
January 20, 2026
Supreme Court, Kings County
Docket Number: Index No. 512181/25
Judge: Steven Z. Mostofsky
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At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20 day of January, 2026.

P R E S E N T:

HON. STEVEN Z. MOSTOFSKY,
Justice.

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DR. KIRTI SOHAL,

Plaintiff,

-against-

PEARLY WHITES DENTAL P.C., d/b/a ISMILE DENTAL,
RIMMA PORTMAN, and ROBERT GUTMAN,

Defendants.
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DECISION AND ORDER

Index No. 512181/25

Mot. Seq. No. 1

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion, Affirmations, and Exhibits Annexed _____

12-22

Opposing Memoranda of Law and Exhibits Annexed _____

25-30

Parties' Letters to the Court _____

31-32

In this action to recover damages (among other things) for breach of contract, defendants Pearly Whites Dental P.C., doing business as ISmile Dental ("PWD"), Rimma Portman ("Portman"), and Robert Gutman ("Gutman" and collectively with PWD and Portman, "defendants") moved, pre-answer, for an order, pursuant to CPLR 3211 (a) (1), (5), and (7), dismissing the entirety of the verified complaint, dated March 31, 2025 (the "complaint") (NYCEF Doc No. 15), of plaintiff Kirti Sohal, D.D.S. (suing herein as "Dr. Kirti Sohal") ("plaintiff"). Plaintiff opposed defendants' motion by way of (among other submissions) her affidavit, dated July 3, 2025 ("plaintiff's affidavit") (NYSCEF Doc No. 26). On December 18, 2025, the motion was taken on submission, with the Court reserving decision.

Plaintiff, a licensed dentist, was a part-time employee of PWD initially from 2015 to 2019 (the “initial employment period”), and subsequently from January 2023 through January 31, 2025 (the “subsequent employment period”) when she resigned from PWD (complaint, ¶¶ 3-5, 10, 21, 23, 34; plaintiff’s affidavit, ¶ 2). The alleged reason for plaintiff’s resignation as of January 31, 2025 was PWD’s underpayment of her take-home earnings during the subsequent employment period (primarily for calendar years 2023 and 2024). In essence, plaintiff and PWD disagreed on the method for calculating her take-home earnings for the subsequent employment period. Whereas plaintiff asserted that she was entitled to 35% of the revenue/collections she generated for PWD as her take-home earnings during the subsequent employment period, she was actually paid approximately 14% of her revenue/collections for that period (plaintiff’s affidavit, ¶¶ 3-14). By plaintiff’s calculation, she was underpaid by at least \$95,274 for the entirety of the subsequent employment period (complaint, the “Wherefore” clause).¹ Conversely, PWD was willing to provide her “a little bit more than the previously offered \$2,799 as compensation in exchange for a settlement and release [of her claims related to the subsequent employment period]” (Gutman’s email to plaintiff, dated February 10, 2025 and timed at 11:21 a.m., page 10 of 15 at NYSCEF Doc No. 30 [bold-face type and capitalization omitted]).

Considering a large spread between the parties as to plaintiff’s alleged underpayment, she commenced this action on April 10, 2025. Her claims sound in

¹ In the pre-litigation negotiations, plaintiff estimated her underpayment at \$88,816 for the subsequent employment period (plaintiff’s email to defendant Gutman, dated January 31, 2025 and timed at 10:01 p.m., page 2, at NYSCEF Doc No. 20).

(1) breach of contract; (2) fraud; (3) negligent misrepresentation; (4) unjust enrichment; (5) constructive discharge; and (6) breach of the implied covenant of good faith and fair dealing (complaint, first through sixth causes of action, respectively). The same type and amount of damages – “monetary damages in the amount to be determined at trial, but in no event less than \$95,274.00, exclusive of attorneys’ fees, costs, interest and disbursements” – is sought on each of her six causes of action against each defendant for the subsequent employment period (complaint, “Wherefore” clause, pages 15-16).

In summary, defendants advanced multiple reasons for the dismissal of the complaint:

“a. The First [Breach of Oral Contract] & Sixth [Breach of Implied Covenant of Good Faith] cause[s] of action should fail since: (i) there was no proof of a contract provided, and the documents provided did not even suggest what was alleged; (ii) the statute of frauds renders this alleged oral agreement unenforceable; and (iii) . . . , even if there was an oral contract, the statute of limitations [has] long since expired.

b. The Second [Fraud] & Third [Negligent Misrepresentation] cause[s] of action should fail since: (i) there was no specificity pled to support the enhanced pleading requirements; (ii) there was no reliance on any statements made; and (iii) [plaintiff] happily accepted payments for years, until she was suddenly dissatisfied with her compensation. . . .

c. [T]he Third [Negligent Misrepresentation] [cause of action] must fail . . . as: (i) there was no actual misrepresentation made[,] as plaintiff was not present for any alleged statements; (ii) there was no special relationship giving rise to any duty; and (iii) this [cause of action] is duplicative of the contract-based cause[] of action.

d. The Fourth [Unjust Enrichment] cause of action must fail since: (i) unjust enrichment cannot be based on purely conclusory statements; (ii) as there was no ‘sufficiently close relationship[,]’ there was no unjust enrichment; (iii) there is no specificity as to how, or which, defendants were unjustly enriched; and (iv) this is further precluded [by] the statute of limitations. . . .

e. The Fifth [Constructive Termination] cause of action must fail since: (i) constructive termination of employment cannot be based on a party's own decision to leave after being upset with the rate of pay; and (ii) the facts clearly show that she was satisfied with her rate of pay until suddenly one day . . . she was no longer happy with her rate of pay. . . ."

(Defense Counsel's Affirmation in Support, dated June 12, 2025, ¶ 3, at NYSCEF Doc No. 13).

Although the parties submitted voluminous memoranda of law, the resolution of the underlying motion is straightforward. In the interest of brevity, a recitation of the well-established standards of review on a motion to dismiss under CPLR 3211 (a) (1), (5), and (7) is omitted, except to note that Gutman's affidavit (like any other defense affidavit submitted in support of any defendant's motion to dismiss) cannot constitute "documentary evidence" within the meaning of CPLR 3211 (a) (1) (*see Granada Condominium III Assn. v Palomino*, 78 AD3d 996, 997 [2d Dept 2010]).

(1)

Plaintiff's allegations are pleaded with sufficient specificity to state a cause of action alleging breach of contract against her former employer, defendant PWD (*see Berman v Sosman*, 243 AD3d 755, 757 [2d Dept 2025]; *Hymowitz v Nguyen*, 209 AD3d 997, 1000-1001 [2d Dept 2022]). Stated another way, dismissal of plaintiff's breach of contract claim against PWD would be inappropriate because defendants failed to show that a material fact as claimed by plaintiff to be one is not a fact at all, nor did they demonstrate that no significant dispute exists regarding it (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). Contrary to defendants' contention, plaintiff's alleged oral employment agreement with PWD for the subsequent employment period was not barred

by the statute of frauds (*see* General Obligations Law § 5-701 [a]), since the complaint alleged an oral employment agreement, which is presumed to be at-will and thus subject to termination within one year (*see Hymowitz*, 209 AD3d at 1001; *Hayden v P. Zarkadas*, P.C., 18 AD3d 500, 501 [2d Dept 2005]; *see also Bermel v Vital Tech Dental Labs, Inc.*, 186 AD3d 1064, 1064-1065 [4th Dept 2020], *rearg denied* 188 AD3d 1692 [4th Dept 2020]). Contrary to defendants' further contention, plaintiff's breach of contract claim against PWD accrued at – and the six-year statute of limitations began to run from – the time of the alleged breach in January 2023 when she returned to work for PWD (*see Board of Managers of Top of Ridge Condominiums v Uhlfelder*, 240 AD3d 471, 472 [2d Dept 2025]; *Five Star Electric Corp. v Skanska USA Bldg., Inc.*, 221 AD3d 656, 657 [2d Dept 2023]). Contrary to yet another of defendants' contentions, plaintiff's work for PWD during the *initial* employment period (2015 to 2019) is irrelevant for the limitations purposes because she is seeking to recover the alleged underpayment for her *subsequent* employment period (2023-2025).

(2)

Conversely, plaintiff's second and third causes of action, which alleged fraud and negligent misrepresentation, respectively, are subject to dismissal against PWD on the ground that they are duplicative of the first cause of action, which alleged breach of contract. Neither the fraud nor the negligent misrepresentation causes of action against PWD are sufficiently distinct from the claim that PWD breached the employment contract so as to constitute separate causes of action. Moreover, the alleged

misrepresentations did not result in any loss independent of the damages allegedly incurred for breach of contract (*see Crawford v Integrated Asset Mgt. Servs., LLC*, 236 AD3d 750, 752 [2d Dept 2025]).

(3)

“As a general rule, the existence of a valid and enforceable contract governing a particular subject matter precludes recovery in quasi-contract on a theory of unjust enrichment for events arising out of the same subject matter” (*Incorporated Vil. of Freeport v Albrecht, Viggiano, Zurich & Co., P.C.*, 226 AD3d 658, 661 [2d Dept 2024]). Here, however, the cause of action alleging unjust enrichment against PWD is not duplicative of the breach of contract cause of action against it. The complaint asserts this cause of action as an alternate theory of recovery against PWD, and where, as here, a bona-fide dispute exists as to the existence and terms of the underlying contract, plaintiff need not elect her remedies and may proceed on the theory of unjust enrichment (*see Emby Hosiery Corp. v Tawil*, 196 AD3d 462, 465 [2d Dept 2021]).

(4)

It is well established that “[a]n employee is constructively discharged when her or his employer, rather than discharging the plaintiff directly, deliberately created working conditions so intolerable that a reasonable person in the plaintiff’s position would have felt compelled to resign” (*Golston-Green v City of New York*, 184 AD3d 24, 44 [2d Dept 2020] [footnote omitted]). A dispute over compensation between a professional (here,

a dentist) and the professional practice (here, PWD) is entirely outside the orbit of the law of constructive discharge.

(5)

An implied covenant of good faith and fair dealing, which is present within each contract, “is breached when a party to a contract acts in a manner that, although not expressly forbidden by any contractual provision, would deprive the other party of the right to receive the benefits under their agreement” (*Aventine Inv. Mtg. v Canadian Imperial Bank of Commerce*, 265 AD2d 513, 514 [2d Dept 1999]). Nonetheless, “a cause of action alleging breach of the implied covenant of good faith and fair dealing must be dismissed if it is merely duplicative of a breach of contract claim” (*Refreshment Mgt. Servs. Corp. v Complete Off. Supply Warehouse Corp.*, 89 AD3d 913, 915 [2d Dept 2011]). Here, the cause of action alleging breach of the covenant of good faith and fair dealing, in essence, duplicates the cause of action alleging breach of contract (*id.*).

(6)

Lastly, it is appropriate to dismiss all causes of action insofar as they are asserted against defendants Portman and Gutman in their respective individual capacity. Generally, a plaintiff seeking to pierce the corporate veil must show that “(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury” (*Matter of Morris v New York State Dept. of Taxation & Fin.*, 82 NY2d 135, 141 [1993]). “Factors to be considered by a court in determining

whether the owner has abused the privilege of doing business in the corporate form include whether there was a failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal [purposes]" (*Millennium Const., LLC v Loupolover*, 44 AD3d 1016, 1016-1017 [2d Dept 2007]).

Here, plaintiff's allegations, when amplified by her documentary submissions, are insufficient to demonstrate that either Portman or Gutman (or both of them) engaged in any acts amounting to an abuse of the corporate form of PWD to perpetuate a wrong or injustice against plaintiff, such that Portman or Gutman (or both of them) may be subject to liability in their respective individual capacity (*see Crawford v Integrated Asset Mgt. Servs., LLC*, 236 AD3d 750, 753 [2d Dept 2025]; *Refreshment Mgt. Servs. Corp.*, 89 AD3d at 915).

Conclusion

Accordingly, it is

ORDERED that defendants' pre-answer motion to dismiss is *granted to the extent* that: (1) plaintiff's causes of action sounding in fraud, negligent misrepresentation, constructive discharge, and breach of the implied covenant of good faith and fair dealing (the second, third, fifth, and sixth causes of action, respectively) are dismissed against PWD; and (2) all of plaintiff's causes of action (the first through sixth causes of action) are dismissed against Portman and Gutman; and the remainder of their motion is denied; and it is further

ORDERED that this action is severed and continued on plaintiff's extant causes of action sounding in breach of contract and unjust enrichment (the first and fourth causes of action, respectively) against PWD only; and it is further

ORDERED that to reflect dismissal of Portman and Gutman from this action, the caption is amended to read, as follows:

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DR. KIRTI SOHAL,

Plaintiff,

-against-

Index No. 512181/25

PEARLY WHITES DENTAL P.C., d/b/a ISMILE DENTAL,

Defendant.

-----X


; and it is further

ORDERED that PWD shall answer the extant portions of the complaint within ten days after electronic service of this Decision and Order with notice of entry by plaintiff's counsel on defendants' counsel.

Plaintiff's counsel shall electronically serve a copy of this Decision and Order with notice of entry on defendants' counsel and shall electronically file an affidavit thereof with the Kings County Clerk.

The above is the court's Decision and Order.

ENTER:



Hon. Steven Z. Mostofsky
Justice, Supreme Court