

<b>Beaute Aesthetics NYC LLC v Jacobs</b>
2026 NY Slip Op 31356(U)
April 2, 2026
Supreme Court, New York County
Docket Number: Index No. 650898/2024
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LYLE E. FRANK PART 11M**

*Justice*

-----X

BEAUTE AESTHETICS NYC LLC,  
Plaintiff,

- v -

JORDAN JACOBS,  
Defendant.

-----X

INDEX NO. 650898/2024

MOTION DATE 04/07/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 49, 50, 51, 52, 53, 54, 57

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, defendant’s motion to amend her answer is denied as moot, as the Court has previously ruled on plaintiff’s second application seeking identical relief, motion sequence 006; however, plaintiff’s cross-motion seeking dismissal of counterclaims is granted in part.

Defendant asserts counterclaims in her answer, which liberally construed, sound in medical malpractice or negligence, hostile work environment, defamation and breach of contract. Plaintiff seeks dismissal of the counterclaims pursuant to CPLR § 3211(a)(7).

When considering a motion to dismiss based upon CPLR § 3211(a)(7), the court must accept the alleged facts as true, accord the plaintiff the benefit of every possible favorable inference, and determine whether the facts alleged fit into any cognizable legal theory. *See Leon v Martinez*, 84 NY2d 83 [1994].

*Medical Malpractice/Negligence*

Defendant alleges that a laser technician at plaintiff’s facility, used the wrong setting when performing a laser procedure on defendant, and caused defendant to suffer with permanent

scarring. Plaintiff seeks dismissal of this cause of action based, *inter alia*, on defendant's failure to plead that a physician-patient relationship exists. While the Court agrees that the counterclaim fails to properly state a claim for medical malpractice, though inartfully drafted, the counterclaim sufficiently alleges negligence. Defendant does not assert in her counterclaim that the cause of action is for medical malpractice, rather the counterclaim alleges facts sufficient to state a claim of ordinary negligence, accordingly that counterclaim survives the instant cross-motion.

#### *Defamation*

The elements of a defamation claim "are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se." (*Frechtman v Gutterman*, 115 AD3d 102, 104 [1st Dept 2014] quoting *Dillon v City of New York*, 261 AD2d 34, 38 [1st Dept 1999]). Claims sounding in defamation must be pled with particularity, (*see* CPLR § 3016; *Kelly v CBS, Inc.*, 59 AD2d 686, 686 [1st Dept 1977]).

Here, the counterclaims allege that plaintiff "spread false information, slander and defamation of character" without providing any specific words spoken by the plaintiff. Accordingly, the counterclaim sounding in defamation requires dismissal.

#### *Hostile Work Environment*

To establish a hostile work environment claim under the New York City Human Rights Law, "the primary issue for a trier of fact in harassment cases, as in other terms and conditions cases, is whether the plaintiff has proven by a preponderance of the evidence that she has been treated less well than other employees because of her [protected status]." *Williams v New York City Hous. Auth.*, 61 AD3d 62, 78 [1st Dept 2009]. Despite the broader application of the NYCHRL, conduct that consists of "petty slights or trivial inconveniences . . . do[es] not suffice

to support a hostile work environment claim.” *Buchwald v Silverman Shin & Byrne PLLC*, 149 AD3d 560, 560 [1st Dept 2017] (internal quotation marks and citation omitted).

Defendant alleges that she was subject to repeated inappropriate advances by plaintiff’s principal. The counterclaim alleges that she was subjected to unwanted phone calls and texts but does not allege how she was treated differently than any other employee. The Court finds that the complaint is insufficient to state a claim for hostile work environment.

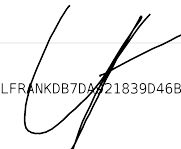
*Breach of Contract/Quasi Contract*

The counterclaim alleges that defendant was required to incur expenses that were not reimbursed by the plaintiff and that she was prevented from accessing patient information which resulted in unpaid commission to defendant. In support of its motion to dismiss the counterclaims, plaintiff cites to defendant’s “Poor Person Order” which only contains the term “unpaid wages” however, defendant’s answer contains factual allegations in support of a breach of contract claim. *See* NYSCEF Doc. 4. Specifically, the counterclaim alleges that defendant was an independent contractor and plaintiff withheld information preventing payment to defendant. Further in reply, defendant contends that she was not compensated for the services she provided.

At this juncture, the Court finds that the counterclaim alleges sufficient factual allegations to support either a breach of contract or quasi contractual claims. Accordingly, this counterclaim survives the instant cross-motion. It is hereby

ORDERED that defendant’s motion to amend the complaint is denied as moot; and it is further

ORDERED that plaintiff's cross-motion to dismiss defendant's counterclaims is granted in part in that the counterclaims for defamation and hostile work environment are dismissed and the counterclaims sounding in negligence and breach of contract/quasi contract survive.

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