Manhattan Gastroenterology Assoc., P.C. v Thomas Gould Med. Assoc., PLLC

2026 NY Slip Op 31393(U)

April 6, 2026

Supreme Court, New York County

Docket Number: Index No. 153932/2021

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART 36**

Justice

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MANHATTAN GASTROENTEROLOGY ASSOCIATES, P.C., THOMAS GOULD, and MARIANNE GOULD,
Plaintiffs,
- v -
THOMAS GOULD MEDICAL ASSOCIATES, PLLC,
Defendant.

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INDEX NO. 153932/2021

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109

were read on this motion to/for **SUMMARY JUDGMENT**.

Plaintiffs Thomas Gould, M.D. ("Dr. Gould"), Marianne Gould ("Mrs. Gould") (together "the Goulds"), and Manhattan Gastroenterology Associates, P.C. ("Manhattan Gastro") commenced this action against defendant Thomas Gould Medical Associates, PLLC ("TGMA" or "defendant") relating to the alleged breach of an asset purchase agreement and related services agreement entered into on September 1, 2018, by and between TGMA and Manhattan Gastro.

Pursuant to the asset agreement, TGMA purchased Manhattan Gastro's medical practice, including the rights, title to and interest in various assets belonging to Manhattan Gastro, in exchange for, *inter alia*, $800,000.00. Plaintiffs allege that TGMA breached the asset agreement by failing to assume Manhattan Gastro's obligations under the leases of four medical offices: 4915 Broadway, New York, NY 10034; 639 West 185th Street, New York, NY 10033; 1619 Pelham Parkway North, Bronx, NY 10469; and 1865 Amsterdam Avenue, New York, NY 10031. Plaintiffs further state that TGMA failed to pay Dr. Gould and Mrs. Gould their annual salaries, as agreed in the purchase agreement, and required them to work hours in excess of what was provided under the service agreement.

Plaintiffs assert the following causes of action: breach of asset purchase agreement (first cause of action); breach of services agreement (second cause of action); unjust enrichment (third cause of action); quantum meruit (fourth cause of action); New York Labor Law/unpaid wages (fifth cause of action); New York Labor Law/excess wages, relating to Mrs. Gould only (sixth cause of action); New York Labor Law/overtime wages, relating to Mrs. Gould only (seventh cause of action); New York Labor Law § 198 (eighth cause of action); and New York Labor Law § 198-a (ninth cause of action) (NYSCEF Doc. No. 77, *complaint*).

TGMA now moves the court, pursuant to CPLR 3212, for dismissal of the complaint in its entirety. First, TGMA argues that plaintiffs cannot establish that TGMA breached the asset purchase agreement for failing to pay rent for the office lease because, since the commencement of the action, the parties surrendered the lease and TGMA settled with the landlord. Inasmuch as

plaintiffs cannot assert that they suffered any damages, a breach of contract claim does not lie. Moreover, the parties admit that they paid no part of the settlement paid by TGMA, argues defendant. It further asserts that plaintiffs are not employees of TGMA because TGMA only had a contractual relationship with Manhattan Gastro, as an independent contractor of TGMA. The services that Dr. Gould and Mrs. Gould provided pursuant to the service agreement were through Manhattan Gastro and they were paid entirely by said entity. Thus, it was Manhattan Gastro's sole obligation to pay their salaries in accordance with wage and hour laws, argues defendant. Moreover, defendant insists that it lacked any degree of control over plaintiffs' work to support a claim that an employer-employee relationship existed. As it relates to Manhattan Gasto, defendant contends that inasmuch as it is not disputed that Manhattan Gastro received the monies entitled to under the service agreement within the two-year term of same, this action does not concern payments subject to the service agreement and, thus, the claim for breach of said contract by Manhattan Gastro must also be dismissed. Defendant also states that, contrary to plaintiffs' argument that the agreement was renewed by orally, there is no proof that the service agreement was expressly renewed. Lastly, defendant maintains that plaintiffs' quasi-contract claims are barred by the existence of the service agreements which cover the same subject matter (NYSCEF Doc. No. 95).

In support of its application, TGMA submits the affidavit of its member Dr. Richard Pou ("Dr. Pou") who explains that, in September 2018, TGMA entered into a number of formal agreements. First, TGMA, Manhattan Gastro and Dr. Gould entered into an asset purchase agreement that memorialized the sale of assets from Manhattan Gastro to TGMA; second, TGMA and Manhattan Gastro entered into a "Buy-Sell Agreement" to further memorialize the rights and restrictions with respect to the assets sold; last, TGMA and Manhattan Gastro entered into a service agreement, dated September 1, 2018, which established an independent contractor relationship between TGMA and Manhattan Gastro. Dr. Pou references the service agreement which states, in relevant part of ¶ 12:

> "Independent Contractors: This Agreement does not create any relationship between PLLC [TGMA] and PC [Manhattan Gastro] other than that of independent contractors. This Agreement is not intended, and shall not be construed, to create a venture, partnership, association, trustee-beneficiary relationship, principal-agent relationship, or fiduciary relationship between PLLC and PC. PLLC and PC will continue their separate corporate existences and, except as set forth herein, their respective organizational powers shall not be enlarged, impaired or otherwise affected by this Agreement. Their respective funds and liabilities shall remain separate and be managed separately. PLLC and PC shall continue to be operated under the direction and control of their respective governing boards."

Dr. Pou further claims that, although the service agreement indicated that Manhattan Gastro would "provide the professional services of Dr. Gould" and would provide the "Administrative Services of Marianne Gould" (NYSCEF Doc. No. 82 at § 2.1), the agreement made clear that a contractual relationship existed solely as between TGMA and Manhattan Gastro and that Dr. Gould and Mrs. Gould were not parties to the agreement. This is made evident, avers Dr. Pou, by section 3.1 of the service agreement, which expressly provides that TGMA "shall not pay Dr. Gould or [Mrs.] Gould compensation directly". In fact, Dr. Pou asserts that TGMA has paid Manhattan Gastro directly and has issued tax form 1099 to Manhattan Gastro. TGMA employees were paid as W-2 employees and were afforded fringe benefits: Dr. Gould and Mrs. Gould had no such

relationship with TGMA. Dr. Pou acknowledges that the service agreement provides an agreed upon schedule (§ 2.1[c]); however, he insists that neither TGMA nor any other member of TGMA had control over the days Dr. Gould or Mrs. Gould worked or their vacation schedules, and that any change to said schedule was permissible only "by mutual agreement of the parties . . ." (§ 2.1[c]). He further states that the service agreement called for a two-year term, during which time TGMA was not permitted to fire the Goulds. TGMA could only terminate the agreement during its initial two-year term if there was a material breach (§ 6.1). After that, either party could terminate the service agreement only by 90-day notice (§ 6.3). The Goulds were also permitted to work outside of the service agreement (§ 3.1 [d]).

As an initial matter, in opposition to the motion, plaintiffs consent to dismissal of the causes of action premised on the breach of the asset purchase agreement (first cause of action), as well as those premised on the Labor Law (fifth through ninth causes of action). The opposition is solely as to the balance of plaintiffs' claims.

Plaintiffs argue that the parties' conduct following the expiration of the service agreement's initial two-year term establishes that they intended to continue the service agreement terms and, thus, an implied contract was formed. Therefore, plaintiffs contend that defendant has failed to establish that the service agreement was terminated as a matter of law after March 1, 2019, and that defendant's motion for summary judgment in this regard must be denied. According to plaintiffs, it is undisputed that Dr. Gould and Mrs. Gould continued to provide services for TGMA after the formal March 19, 2019, expiration of the service agreement. Thus, assuming, *arguendo*, the service agreement did not extend after March 1, 2019, plaintiffs contend that their quasi-contract claims for unjust enrichment and quantum meruit survive as a matter of law.

In support of the opposition, plaintiffs submit, *inter alia*, the affidavit of Dr. Gould, wherein he states, in pertinent part, that pursuant to the service agreement, Manhattan Gastro was supposed to be paid $465,000.00 on September 1, 2018, relating to fees owed to Manhattan Gastro for both professional and administrative services for the eighteen-month period from the effective date through the signing date. However, he avers that TGMA did not pay said sum; instead, he was paid $393,334.00 on September 14, 2018. Dr. Gould further states that TGMA was obligated to pay Manhattan Gastro the balance of the professional and administrative fees owed on a monthly basis, but it did not pay said sums. Manhattan Gastro continued seeing patients and continued to refer patients to TGMA's doctors at West Side GI, LLC. Dr. Gould claims that, although the service agreement expired on March 1, 2019, he asserts he, his wife, and his staff continued to work for and perform services for TGMA for several years after March 1, 2019, until he retired on September 1, 2022 (NYSCEF Doc. No. 98). Mrs. Gould also submits an affidavit, wherein she iterates similar statements made by Dr. Gould in his affidavit (NYSCEF Doc. No. 99).

In reply, defendant argues, *inter alia*, that the second cause of action premised on a breach of the service agreement must be dismissed because it is uncontested that the Goulds are not parties to said agreement and, therefore, that they lack standing to assert a breach of contract with respect to this agreement. Manhattan Gastro does not have a valid breach of contract claim against TGMA relating to the service agreement, argues TGMA, because Manhattan Gastro conceded that the service agreement expired by its very terms on March 1, 2019, and the service agreement expressly provided that it would be renewed only upon the mutual written agreement of the parties.

According to TGMA, plaintiffs have failed to proffer any authority establishing that there may be a viable implied contract claim when the written contract expired between the parties and express renewal was required by both parties. Addressing the quantum meruit or unjust enrichment claim, TGMA argues that, where there is a valid contract that governs the dispute between the parties, a plaintiff cannot maintain such a cause of action based on quantum meruit or unjust enrichment.

In a motion for summary judgment, the movant bears the initial burden of presenting affirmative evidence of its *prima facie* entitlement to summary judgment, producing sufficient evidence to demonstrate the absence of any material issue of fact (see *Sandoval v Leake & Watts Servs., Inc.*, 192 AD3d 91, 101 [1st Dept 2020]; *Reif v Nagy*, 175 AD3d 107, 124-125 [1st Dept 2019]; *Cole v Homes for the Homeless Inst., Inc.*, 93 AD3d 593, 594 [1st Dept 2012].) "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution." (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003].)

Inasmuch as plaintiffs have conceded the dismissal of the first, fifth, sixth, seventh, eighth, and ninth causes of action, they are hereby dismissed.

As it relates to the second cause of action, premised on breach of the service agreement, it is undisputed that the service agreement was executed solely as between Manhattan Gastro and TGMA; therefore, the Goulds have no basis to assert a breach of said agreement (see *Veneto Hotel & Casino, S.A. v German Am. Capital Corp.*, 160 AD3d 451, 452 [1st Dept 2018]; *Adams v Boston Props. Ltd. Partnership*, 41 AD3d 112, 112 [1st Dept 2007]). Therefore, that branch of the motion seeking dismissal of the second cause of action against Dr. Gould and Mrs. Gould is granted.

Here, defendant has also established entitlement to dismissal of the second cause of action against it because the service agreement expired on February 28, 2019, and it is conceded that said agreement was not renewed in writing as required by the express terms of the agreement. The service agreement provided, in relevant part:

> "The Term of this Agreement shall have commenced as of the Effective Date [March 1, 2017]3 and shall continue in full force an effect for a period of two (2) years thereafter (the "Initial Term") unless earlier terminated pursuant to the provisions of this Article VI. Thereafter, *this agreement shall only be renewed upon the mutual written agreement of the parties if any, each, a "Renewal Terms")*. The Initial Term together with the Renewal Terms collectively referred herein as the "Term" (emphasis added).

In opposition, plaintiffs fail to raise an issue of fact sufficient to defeat defendant's motion to dismiss the second cause of action against TGMA because plaintiff's sole argument in opposition to the argument regarding the expiration of the service agreement is that an implied contract was formed between the parties following the expiration of said agreement. However, they fail to rebut the contention that the service agreement expired and that it was not renewed in writing as agreed to by the parties. Since, it is well-settled law that, "'a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms," without reference to extrinsic materials outside the four corners of the document (*Greenfield v Philles*

Records, 98 NY2d 562, 569 [2002]), this court finds that defendant has established entitlement to dismissal of the second cause of action against TGMA for breach of the service agreement.

This court also rejects plaintiff's assertion that the parties' conduct and/or oral agreement created an implied contract because "the implied contractual arrangement after expiration of the two-year term [is] inconsistent with the express language of the original [service] agreement" (*Goldman v White Plains Center*, 11 NY3d 173, 176 [2008]). The language of the service agreement memorialized the parties' mutual understanding that the service agreement would terminate upon its expiration, and this court rejects the argument that the parties intended for the contract to renew automatically. Therefore, the claim is dismissed.

This court, however, denies that branch of the motion seeking summary judgment on the quasi-contract claims (unjust enrichment and quantum meruit). The sole argument raised as to the dismissal of this claim is that there was a valid service agreement covering the subject matter of the dispute. However, the argument fails in light of this court's determination that the service agreement does not extend beyond its expiration. Moreover, plaintiffs allege to have continued to provide services to defendant beyond the expiration of the agreement and to have engaged in oral negotiations regarding their continued employment relationship; thus, the existence of the service agreement does not foreclose recovery under quasi-contract theories of liability (see *Kramer v Greene*, 142 AD3d 438, 442 [1st Dept 2016]; *Aquino v Douglas Elliman Realty, LLC*, 155 AD3d 472, 473 [1st Dept 2017]). All other arguments have been considered and are either without merit or need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that the motion by THOMAS GOULD MEDICAL ASSOCIATES, PLLC, pursuant to CPLR 3212, is granted to the extent that the first, second, fifth, sixth, seventh, eighth, and ninth causes of action are dismissed, and the motion is otherwise denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for defendant THOMAS GOULD MEDICAL ASSOCIATES, PLLC shall serve a copy of this decision and order, with notice of entry, upon all parties, as well as the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that 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 the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this court.

April 6, 2026

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:							
		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER