

Salem v City Practice Group of N.Y., LLC
2026 NY Slip Op 32005(U)
May 7, 2026
Supreme Court, Kings County
Docket Number: Index No. 507124/2025
Judge: Reginald A. Boddie
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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 7th day of May 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

-----X

YASSER SALEM, et al.,

Plaintiffs,

Index No. 507124/2025

-against-

Cal. No. 11 MS 3

CITY PRACTICE GROUP OF NEW YORK, LLC, et al.,

Decision and Order

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

MS 3

3; 28-33; 38-41

The motion by defendants City Practice Group of New York, LLC and Summit Health Management, LLC to dismiss the Amended Complaint pursuant to CPLR 3211(a)(5) and (7) is decided as follows:

Background

This action arises out of defendants’ alleged misuse of plaintiffs’ confidential business information obtained during negotiations for an unsuccessful medical practice partnership.

In or about April 2017, plaintiffs BKUC Administrative Services, LLC and ASJS Medical, PLLC entered into negotiations with defendant City Practice Group of New York, LLC, doing business as CityMD (“CityMD”), to establish a medical practice at 250 Utica Avenue, Brooklyn, New York (the “Premises”). According to the Amended Complaint, the proposed partnership

involved a \$1.5 million investment by CityMD in exchange for a 50% ownership interest in the practice. During these negotiations, the parties executed a non-disclosure agreement (the "NDA") to protect confidential business information exchanged between the parties.

In November 2017, plaintiffs experienced financial difficulties and entered into a stipulation agreement with the landlord of the Premises (the "Landlord"), which allowed for eviction in the event of nonpayment. Plaintiffs allegedly secured and presented \$300,000 to the Landlord, including an additional \$60,000 as a good-faith gesture, to resolve the arrears; however, the Landlord refused the payment and proceeded with eviction. Plaintiffs allege that CityMD influenced the Landlord's decision to evict plaintiffs.

Plaintiffs further allege that, in June 2019, plaintiffs discovered that CityMD had colluded with the Landlord, obtained a lease for the Premises, and established a medical practice there using the parties' confidential information disclosed pursuant to the NDA. Plaintiffs contend that CityMD exploited plaintiffs' confidential business information to undermine the partnership negotiations, interfere with plaintiffs' business operations, and ultimately take over the Premises, resulting in the loss of plaintiffs' business and the proposed partnership, as well as plaintiff Ashraf Salem ("Salem")'s eventual bankruptcy. Summit Health Management, LLC allegedly merged with CityMD in August 2019, thereby assumed liability for CityMD's actions.

Plaintiffs commenced this action on March 1, 2025, and filed the Amended Complaint on March 16, 2025. The Amended Complaint asserts causes of action for (1) tortious interference with prospective economic advantage; (2) unfair competition; (3) fraud; (4) fraud in the inducement; (5) fraudulent misrepresentation; (6) breach of contract based on the NDA; and (7) unjust enrichment.

Defendants move to dismiss the Amended Complaint under CPLR 3211(a)(5) and (7). Defendants argue that all claims are time-barred because the alleged misconduct occurred no later than January 23, 2018, while this action was not commenced until March 2025, more than seven years later. Defendants contend that the Amended Complaint fails to state any viable causes of action, asserting that plaintiffs do not identify the specific confidential information allegedly misused, do not plausibly allege causation, and fail to establish damages with reasonable certainty. Defendants further contend that the tort and unjust enrichment claims are duplicative of the breach of contract claim.

In opposition, plaintiffs argue that their unjust enrichment claim is timely because defendants have not established that the claim accrued outside the relevant six-year period. Plaintiffs further argue that the relevant wrongful act is defendants' ongoing and repeated misuse of confidential information to secure the Premises and commence a competing medical practice rather than a one-time disclosure at the time of the eviction. Plaintiffs contend that because the NDA remained in effect for two years following its execution in or about April 2017, defendants' contractual obligations continued through at least April 2019, making the breach of contract claim timely. Alternatively, plaintiffs argue that equitable considerations compel tolling of the statute of limitations on the claims of breach of contract, fraud, and unjust enrichment because Salem suffered a sudden loss of his wife in or about January 2018. Plaintiffs further contend that the Amended Complaint sufficiently pleaded all elements of the unjust enrichment and breach of contract claims and that the unjust enrichment claim is not duplicative "because it is based on a broader course of inequitable conduct that extends beyond the mere breach of the confidentiality agreement."

In reply, defendants note that plaintiffs' opposition brief is limited to the breach of contract and unjust enrichment claims. Defendants argue that plaintiffs cannot invoke the "continuing breach" doctrine because plaintiffs are merely alleging continuing effects from an earlier breach. Defendants maintain that the three-year limitations period applies to the unjust enrichment claim because plaintiffs seek purely legal remedies, and that, even if the six-year limitations period applies, plaintiffs' claims are still time barred because the eviction occurred on January 23, 2018, and CityMD signed the lease for the Premises in July 2018. Defendants contend that equitable tolling is not warranted based on the reason provided. Defendants further contend that plaintiffs' claims are conclusory and duplicative because plaintiffs fail to plead any facts regarding the alleged misuse of confidential information and its connection to alleged damages.

Discussion

"A defendant who moves to dismiss a complaint pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations bears the initial burden of proving, prima facie, that the time in which to sue has expired. The burden then shifts to the nonmoving party to raise a question of fact as to the applicability of an exception to the statute of limitations, as to whether the statute of limitations was tolled, or as to whether the action was actually commenced within the applicable limitations period" (*Berger v Stolzenberg*, 158 AD3d 738, 739 [2d Dept 2018] [citations omitted]).

"Causes of action for ... tortious interference, and unfair competition are ... governed by a three-year statute of limitations" (*CDx Labs., Inc. v Zila, Inc.*, 162 AD3d 970, 971 [2d Dept 2018] [citations omitted]). "Actions based upon fraud ... have a six-year statute of limitations, running from the time the fraud is committed, or a two-year statute of limitations, running from the time the fraud reasonably could have been discovered" (*Matter of Neidich*, 290 AD2d 557, 558

[2d Dept 2002] [citations omitted]). “The statute of limitations for an action upon a contractual obligation or liability, express or implied, is six years. Furthermore, under New York law, there is no identified statute of limitations period within which to bring a claim for unjust enrichment, but where, as here, the unjust enrichment and breach of contract claims are based upon the same facts and pleaded in the alternative, a six-year statute of limitations applies. Generally, a breach of contract cause of action accrues at the time of the breach” (*Kefalas v Pappas*, 226 AD3d 757, 761 [2d Dept 2024] [citations and internal quotation marks omitted]).

Here, defendants met their prima facie burden of demonstrating that all causes of action are time-barred. The alleged tortious interference with plaintiffs’ lease accrued, at the latest, on January 23, 2018, when plaintiffs were evicted from the Premises. The remaining alleged misconduct accrued no later than July 2018, when defendants allegedly secured the Premises and established a competing medical practice. Plaintiffs did not commence this action until March 2025, more than six years later.

Accordingly, the first and second causes of action for tortious interference and unfair competition are untimely under the applicable three-year statute of limitations. Likewise, the third, fourth, and fifth causes of action based upon fraud are untimely because they were commenced more than six years after the alleged fraud and more than two years after plaintiffs allegedly discovered the wrongdoing in June 2019. The seventh cause of action for unjust enrichment is untimely because it is based on the same facts as the breach of contract claim and accrued, at the latest, when defendants allegedly obtained the lease for the Premises and established a competing business in 2018.

“A cause of action for damages for breach of a nondisclosure agreement accrues on the date that the protected information was disclosed, and it does not continuously accrue upon

subsequent disclosures. Confidential information can only be disclosed to a person once before it is no longer confidential with regard to that person” (*Dolgoff Holophase, Inc. v E.I. Du Pont de Nemours & Co.*, 212 AD2d 661, 662 [2d Dept 1995] [citations omitted]).

The sixth cause of action for breach of contract is also untimely. Plaintiffs principally allege that defendants misused confidential information to interfere with plaintiffs’ leasehold interest and obtain the Premises for their own competing business. Although plaintiffs characterize defendants’ conduct as “ongoing and repeated misuse” of confidential information during the operative term of the NDA, a cause of action for breach of a nondisclosure agreement does not continuously accrue upon subsequent disclosures.

Moreover, “[the] continuing wrong doctrine is usually employed where there is a series of continuing wrongs and serves to toll the running of a period of limitations to the date of the commission of the last wrongful act. The doctrine allows only tolling predicated on continuing unlawful acts and not on the continuing effects of earlier unlawful conduct. The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs” (*York v York*, 235 AD3d 1032, 1034 [2d Dept 2025] [citations and internal quotation marks omitted]).

Plaintiffs’ reliance on the continuing wrong doctrine is misplaced. The Amended Complaint does not identify any distinct subsequent disclosure, misuse, or independently accruing breach of contract occurring within six years of the commencement of this action. Rather, the Amended Complaint alleges only the continuing effects of defendants’ alleged misconduct occurring in 2018.

In addition, plaintiffs fail to offer a sufficient basis for equitable tolling. “Equitable estoppel may be invoked to defeat a statute of limitations defense when the plaintiff was induced

by fraud, misrepresentations or deception to refrain from filing a timely action” (*Vigliotti v N. Shore Univ. Hosp.*, 24 AD3d 752, 754 [2d Dept 2005] [citations and internal quotation marks omitted]). Here, plaintiffs fail to proffer any legal authority supporting the proposition that the loss of a loved one warrants tolling of the statute of limitations.

Although the Court does not reach the remaining arguments for dismissal pursuant to CPLR 3211(a)(7) in light of its determination that all causes of action are time-barred, the Court credits defendants’ argument that plaintiffs’ allegations regarding the alleged misuse of confidential information are largely conclusory.

Conclusion

Based on the foregoing, defendants’ motion to dismiss is granted in its entirety and the Amended Complaint is dismissed in its entirety. Any arguments not expressly addressed herein were considered and deemed to be without merit or unnecessary to address given the Court’s determination.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.