

**NYC Points Acupuncture, P.C. v Li Ting Lin**

2024 NY Slip Op 31232(U)

April 8, 2024

Supreme Court, New York County

Docket Number: Index No. 158380/2021

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LESLIE A. STROTH PART 12M**

*Justice*

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INDEX NO. 158380/2021

NYC POINTS ACUPUNCTURE, P.C.,

MOTION DATE 11/14/2023

Plaintiff,

MOTION SEQ. NO. 002

- v -

LI TING LIN, LIN'S COMPREHENSIVE ACUPUNCTURE,  
PLLC

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76

were read on this motion to/for

SANCTIONS

Plaintiff NYC Points Acupuncture, P.C. brings this action for conversion, unjust enrichment, breach of fiduciary duties, breach of the duty of loyalty, and accounting against defendants Li Ting Lin and Lin's Comprehensive Acupuncture, PLLC arising from defendant Lin's employment as an acupuncturist with plaintiff. Plaintiff alleges, inter alia, that Ms. Lin directed patients to make payments directly to her rather than plaintiff, filed fraudulent insurance claims, created fake receipts, and accessed plaintiff's computer system and manipulated data without authorization.

Plaintiff moves here, pursuant to CPLR § 3124, to strike the answer of defendants Li Ting Lin and Lin's Comprehensive Acupuncture, PLLC, and for attorney's fees; or in the alternative, pursuant to CPLR § 3126, to compel defendants to respond to plaintiff's discovery demands in electronic format, and so order a confidentiality agreement, and award attorney's

fees and costs. Defendants Li Ting Lin and Lin's Comprehensive Acupuncture, PLLC filed a cross-motion for summary judgment against plaintiff.

It is well-established that the "function of summary judgment is issue finding, not issue determination" (*Assaf v Ropog Cab Corp.*, 153 AD2d 520 (1st Dept 1989) (quoting *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957])). As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hospital*, 68 NY2d 320 (1986); *Winegrad v New York University Medical Center*, 64 NY2d 851 (1985)).

Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 (1980)). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 (1st Dept 1990)).

Defendant argues that Ms. Lin was not employed with NYC Points and had no contract to that effect, and that she developed relationships with patients who decided to use her services upon the termination of her business affiliation with plaintiff. "A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment. A party opposing summary judgment is entitled to obtain further discovery when it appears that facts supporting the opposing party's position may exist but cannot then be stated" (*Malester v. Rampil*, 118 A.D.3d 855 (2<sup>nd</sup> Dept 2014)).

Here, no discovery has been exchanged between the parties, despite repeated efforts demonstrated in the papers for the parties to engage in production. Nonetheless, according to Jonathan Simon, owner of NYC City Points Acupuncture, P.C., “In February 2016, I provided Lin with an offer letter and made her an offer to join NYCPA as a full-time acupuncturist, with an annual base salary of \$55,000, plus a scalable bonus for every five patients seen above 30 patients in a week. Lin accepted the offer and thereafter started working for NYCPA” (Simon Aff, ¶11). Such statement is contrary to Ms. Lin’s allegation that “I never had an employment or any other type of contract - oral or written - with NYC Points” (Lin Aff, ¶4). Yet, defendant later indicated that “when my business affiliation with NYC Points was terminated by Simon, many of my patients decided that they would continue to utilize my services since they had no relationship with Simon or any other of the few acupuncturists employed by or associated with NYC Points” (Id. at ¶7). The Court finds that genuine issues of fact exist, and that discovery is required to proceed with this action. Thus, defendants’ motion for summary judgment is denied.

\* \* \*

Accordingly, it is hereby

ORDERED, that the parties shall comply with discovery as follows:

\*Defendants shall respond to plaintiff’s First of Interrogatories, Requests for Production, and Demand for Experts by May 27, 2024 in electronic format or hard copy;

\*Defendants shall serve their demands upon plaintiff by May 10, 2024 and that plaintiff shall respond to such demands within 30 days upon receipt of such demands;

\*The parties shall enter into a confidentiality agreement within 14 days of the date of this order;

\*Party depositions shall be held by August 9, 2024;

and it is further

ORDERED, that plaintiff's motion for attorney's fees and costs is denied; and it is further

ORDERED, that the motion for summary judgment by defendants Li Ting Lin and Lin's

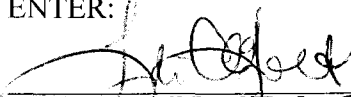
Comprehensive Acupuncture, PLLC is denied; and it is further

ORDERED, that a status conference shall be held on September 17, 2024 at 2:15 p.m. at

80 Centre Street, New York, NY, Room 328.

Dated: April 8, 2024

ENTER:

  
**HON. LESLIE A. STROTH**  
 J.S.C.

CHECK ONE:


CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED


NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: