Vermont Superior Court
Filed 08/31/26
Windham Unit

VERMONT SUPERIOR COURT
Windham Unit
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CIVIL DIVISION
Case No. 22-CV-02004

Mary Jane Finnegan v. Peoples Dental P.C., d/b/a/ Dental Health, et al

ENTRY REGARDING MOTION

Title:	Motion for Summary Judgment; Motion to Strike; Motion to Submit Additional Support for ADMI's Motion for Summary Judgment (Motion: 30; 32; 34)
Filer:	Andrew C. Boxer; Thomas C. Bixby; Andrew C. Boxer
Filed Date:	February 13, 2026; March 13, 2026; April 29, 2026

A hearing was held on the motions on July 28, 2026.

Motion #30, ADMI's Motion for Summary Judgment

Count I. The motion is granted as to Count I, /breach of Covenant of Good Faith and Fair Dealing, as this is a claim that requires a direct contract between the parties, and undisputed facts show no contract between the Plaintiff and ADMI.

Counts II and V.. The motion is denied as to these counts (Negligence, Respondeat Superior). The Plaintiff and ADMI rely on different facts. Review of the facts set forth by both parties shows that there are sufficient indications that despite the formal business documents, there was substantial integration of operations between ADMI and the other entities involved such that ADMI may have been engaged in some of the actions alleged by Plaintiff despite its claim of independence. While it is the court's role to identify whether or not a defendant owed a duty to a plaintiff and what that duty was, there is not a clear body of undisputed facts upon which a legal ruling can be made on this issue. Thus these counts cannot be decided on summary judgment and the motion is denied as to them.

Count III. This is a claim by Plaintiff of Assault and Battery on the part of ADMI. There is no evidence of an intentional act by ADMI against Plaintiff. Moreover, Plaintiff consented to the procedure that she underwent. Summary judgment is granted to Defendant ADMI on this count.

Therefore, summary judgment is granted to ADMI on the claims of Breach of Implied Covenant of Good Faith and Fair Dealing and Assault and Battery, and denied on the claims of Negligence and Respondeat Superior.

Motion #32. Plaintiff seeks to strike an affidavit submitted by ADMI on the grounds that it is a "sham affidavit." The court concludes that this is a situation in which different persons working within and for a complex organizational structure have made statements in affidavits that are inconsistent, but their statements are based on their individual understandings or information. Just because the content of a subsequent affidavit differs from that of a previously filed affidavit does not make it a "sham affidavit." Given the nature of the factual material in the two affidavits, ADMI's affidavit does not have the characteristics of a "sham affidavit," but merely reflects a disagreement as to facts. The motion is denied.

Motion #34. Defendant ADMI asks the court to rely on an additional statement not previously submitted as part of its summary judgment It is a statement in an email from a tax return preparer to ADMI's attorney concerning facts pertinent to the issues in the case. It is submitted outside the time limits for documents in support of summary judgment without meeting the requirements of VRCP 6 (h). It is not a notarized affidavit nor a Declaration authorized by VRCP 43 (h). The motion is denied.

In sum,

Motion #30 for summary judgment is *granted in part and denied in part*;
Motion #32 to strike is *denied*; and
Motion #34 to submit additional support is *denied.*

The Judicial Assistant shall schedule a pretrial status conference.

Mary Miles Teachout
Superior Court Judge (Ret.), Specially Assigned
August 30, 2026