

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

NURUN NESSA BEGUM,)	
M.D., Ph.D.,)	
Plaintiff,)	
)	
v.)	C.A. N11C-10-220 PRW
)	
RAMNIK SINGH, M.D.,)	
I.P. SINGH, AND)	
WILMINGTON PSYCHIATRIC)	
SERVICES, LLC,)	
)	
Defendants.)	

Submitted: September 4, 2013
Decided: September 18, 2013

OPINION

Upon Defendants' Motion to Dismiss,
GRANTED.

Upon Defendants' Motion for Summary Judgment,
DENIED.

Upon Plaintiff's Motion for Summary Judgment,
DENIED.

G. Kevin Fasic, Esquire, Bonnie E. Copeland, Esquire, Cooch and Taylor, P.A., Wilmington, Delaware, Attorneys for Plaintiff.

Robert D. Goldberg, Esquire, Biggs and Battaglia, Wilmington, Delaware, Attorney for Defendants.

WALLACE, J.

I. INTRODUCTION

Plaintiff, Dr. Nurun Nessa Begum, filed this action in Superior Court alleging (1) breach of an employment contract; (2) violation of Delaware’s Wage Payment and Collection Act (the “WPCA”); and (3) breach of the covenant of good faith and fair dealing. She seeks contract damages as well as unpaid wages, back-pay, liquidated damages, attorney’s fees, and costs as permitted by the WPCA.¹ Defendants Dr. Ramnik Singh, M.D., her husband and business manager I.P. Singh, and her medical practice, Wilmington Psychiatric Services, LLC (“WPS”) (collectively, “the Defendants”), dispute Dr. Begum’s claims and filed counter-claims for breach of contract and unjust enrichment. The essential disagreement between the parties stems from an employment contract (the “Employment Contract”) which WPS prepared, and which Dr. Begum signed in 2009 prior to completing her medical residency. Dr. Begum claims WPS breached the Employment Contract by refusing to pay her salaried wage immediately upon her anticipated July 1, 2010 start date. In turn, she seeks payment of alleged unpaid wages for the period between July 1, 2010 and September 30, 2010.²

¹ See DEL. CODE ANN. tit. 19, § 1113.

² Plt’f’s Amended Complaint for Breach of Contract, Apr. 30, 2013, at ¶¶ 50-54 [hereinafter “Amended Complaint”].

Defendants counter that Dr. Begum materially breached the Employment Contract by leaving their employ on September 30, 2010,³ and that Dr. Begum must repay the funds WPS expended during the hiring process, including fees paid to an immigration attorney and moving expenses.⁴ Defendants also claim that the WPCA claim is not actionable against Dr. Singh or Mr. Singh individually.⁵ This is the Court's decision on Defendants' Motion to Dismiss and the Parties' cross-motions for summary judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND:

The Court accepts the following undisputed facts as true. Dr. Begum is a trained psychiatrist, fully licensed by the State of Delaware to practice medicine.⁶ She completed a residency in psychiatric medicine at the State University of New York's Downstate Medical Center.⁷ In September 2009 she met Dr. Singh, and the two discussed the possibility of Dr. Begum joining WPS as a staff psychiatrist following her residency.⁸ On September 17, 2009, WPS presented Dr. Begum

³ Defts' Counterclaim, Dec. 23, 2011, at ¶ 16.

⁴ *Id.* at ¶ 19. Defendants claim Dr. Begum is liable for \$25,016 in moving expenses, physician-search expenses, credentialing expenses, and immigration expenses. *Id.*

⁵ Defts' Answers and Affirmative Defenses to Plaintiff's Amended Complaint, May 23, 2013, at ¶ 53 [hereinafter "Amended Answer"].

⁶ Amended Complaint at ¶ 2.

⁷ *Id.* at ¶ 7.

⁸ *Id.*

with a letter of intent outlining the “duties, responsibilities, and base salary,” of the staff psychiatrist position.⁹

One month later, WPS presented Dr. Begum with the Employment Agreement, which stated WPS would pay Dr. Begum \$185,000 per year for a forty-hour work week beginning July 1, 2010.¹⁰ The Employment Agreement also specified four conditions precedent to Dr. Begum’s employment: Dr. Begum (1) securing staff privileges at the Rockford Center; (2) receiving her J-1 license to practice medicine in Delaware; (3) receiving her State License to practice medicine in Delaware; and (4) becoming credentialed¹¹ with all health insurance carriers selected by WPS.¹² Because Dr. Begum is a citizen of Bangladesh, under the Employment Agreement, WPS agreed to cover any costs of Dr. Begum attaining the required immigration status.¹³ Thus, the Employment Agreement stated Dr.

⁹ Ex. 3 to Pltf’s Op. Brf. in Support of Mot. for Summary Judgment, Aug. 2, 2013 [hereinafter “Pltf’s Mot.”].

¹⁰ See Ex. 2 to Pltf’s Mot. at ¶ B.1; ¶ B.9(a); Ex. A to Ex. 2 to Pltf’s Mot.

¹¹ The term “credentialed” is used by the parties and the Court to describe the process by which a practicing physician is screened and approved by medical insurance companies.

¹² Ex. 2 to Pltf’s Mot. at ¶ B.1.

¹³ *Id.* at ¶ B.16. In addition, WPS filed a Labor Condition Application for Nonimmigrant Workers (the “LCA”) on Apr. 16, 2010. Ex. 10 to Pltf’s Mot.

Begum was obliged to repay any immigration expenses, on a pro rata basis,¹⁴ if she left WPS prior to the stated three-year commitment.¹⁵

As of July 1, 2010, Dr. Begum was not credentialed with each of the insurance companies selected by WPS, and she did not begin her work at WPS until around August 1, 2010.¹⁶ During the months of August and September 2010, Dr. Begum worked part-time, and WPS paid her an hourly rate calculated from her anticipated annual salary of \$185,000.¹⁷ On August 22, 2010, Dr. Begum signed a letter of intent with Dover Behavioral Health System (“DBHS”), which stated she would be employed by DBHS as a staff psychiatrist at a rate of \$180,000 per year beginning October 1, 2010.¹⁸ The parties do not dispute that Dr. Begum left WPS on September 30, 2010 without providing notice.¹⁹

On July 21, 2011, WPS filed a breach of contract claim in the New Castle County Justice of the Peace Court (the “JP Action”).²⁰ WPS claimed that Dr.

¹⁴ Ex. 2 to Pltf’s Mot. at ¶ B.16.

¹⁵ *Id.* at ¶ B.13.

¹⁶ *See* Ex. 27 to Pltf’s Mot.

¹⁷ Amended Complaint at ¶ 28-29.

¹⁸ *See* Appx. to Defts’ Op. Brf. in Support of Their Mot. to Dismiss or for Summary Judgment, Aug. 2, 2013, at 23 [hereinafter “Defts’ Appx.”].

¹⁹ Amended Complaint at ¶ 34.

²⁰ *Id.* at ¶ 37. The case was titled *Ramnik Singh D/B/A Wilmington Psychiatric Services v. Nurun Begum*, C.A. No. JP13-11-010703 (Del. J.P.). *Id.*; *see* Ex. 1 to Pltf’s Mot.

Begum breached the Employment Agreement and demanded \$24,014 in contract damages.²¹ Dr. Begum filed a Motion to Dismiss the JP Action, which was denied. The parties later dismissed the case by agreement.²² On October 26, 2011, Dr. Begum filed a Complaint in the instant case.

III. PARTIES' CONTENTIONS

In her motion for summary judgment, Dr. Begum claims WPS breached the Employment Agreement by paying her at an hourly rate for the approximately eight weeks she worked, rather than her full salary.²³ As damages for breach of contract, Dr. Begum claims she is entitled to recover wages, liquidated damages, and attorney's fees under the WPCA from both WPS and Dr. and Mr. Singh individually.²⁴ Finally, Dr. Begum argues WPS breached the covenant of good faith and fair dealing by allegedly attempting to exploit Dr. Begum's bargaining position and coercing her to, among other things, accept an hourly wage, take on work outside the scope of the Employment Agreement, and work fewer than the anticipated forty hours per work week.²⁵

²¹ Amended Complaint at ¶ 37.

²² *Id.* at ¶ 40; Amended Answer at ¶ 40.

²³ *See* Ex. 2 to Pltf's Mot. at ¶ B.9(a) ("During each Employment Year, Employee shall receive a base salary at \$185,000 per annum, payable in biweekly installments of \$_____").

²⁴ *See* DEL. CODE. ANN. tit. 19, § 1102; Pltf's Mot. at 16.

²⁵ *See* Pltf's Mot. at 19.

Defendants have themselves moved to dismiss the Amended Complaint for Dr. Begum's failure to meet the applicable statute of limitations.²⁶ Defendants alternatively seek summary judgment on their theory that no breach of contract occurred because the condition precedent that Dr. Begum become credentialed with each of the insurance companies identified by WPS was never satisfied. Finally, Defendants argue that Dr. Singh cannot be held personally liable to Dr. Begum under the WPCA because she did not manage WPS, nor did she "knowingly permit the corporation to violate" the WPCA.²⁷

IV. STANDARD OF REVIEW

A motion to dismiss will be granted where the Plaintiff cannot recover "under any reasonably conceivable set of circumstances susceptible of proof."²⁸ It is also, as in this case, a proper vehicle to raise the defense of limitations.²⁹

²⁶ See DEL. CODE. ANN. tit. 10, § 8111 (No action for recovery upon a claim of wages . . . shall be brought after the expiration of 1 year from the accruing of the cause of action on which such action is based."); *Martinez v. Gastroenterology Assocs.*, 2005 WL 1953091, at *1-2 (Del. Super. Ct. July 5, 2005) (finding 10 *Del. C.* § 8111 applies to an action for wages under the WPCA); Defts' Op. Brf. in Support of Their Mot. to Dismiss or for Summary Judgment, Aug. 2, 2013, at 7 [hereinafter "Defts' Mot.].

²⁷ See DEL. CODE. ANN. tit. 19, § 1102; Defts' Mot. at 14.

²⁸ *Kennedy v. Encompass Indem. Co.*, 2012 WL 4754162, at *4 (Del. Super. Ct. Sept. 28, 2012).

²⁹ See *Gadow v. Parker*, 865 A.2d 515, 516 (Del. 2005) (the Superior Court Civil Rules require a defendant to raise a statute-of-limitations defense either in a motion to dismiss or as an affirmative defense in a responsive pleading).

Summary judgment is warranted where “there is no genuine issue as to any material fact and [] the moving party is entitled to a judgment as a matter of law.”³⁰ Initially, the moving party bears the burden of demonstrating no material issues of fact exist.³¹ If the moving party so demonstrates, the burden to prove a material issue of fact then shifts to the non-moving party.³² Where the Court determines a more thorough inquiry into the facts is warranted, summary judgment is inappropriate.³³ On cross-motions for summary judgment, as the parties have presented here, the Court should evaluate each motion independently.³⁴

V. DISCUSSION

A. Defendants’ did not waive an affirmative defense based on the applicable statute of limitations.

Because resolution of the statute of limitations issue is determinative of the other claims in these particular motions, the Court addresses it first. In their Amended Answer, Defendants for the first time argue Dr. Begum’s claims are

³⁰ Del. Super. Ct. Civ. R. 56(c).

³¹ *Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979).

³² *Id.*

³³ *Pathmark Stores, Inc. v. 3821 Associates, L.P.*, 663 A.2d 1189, 1191 (Del. Ch. 1995) (“[S]ummary judgment may not be granted when the record indicates a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.”).

³⁴ *Fasciana v. Elec. Data Sys. Corp.*, 829 A.2d 160, 167 (Del. Ch. 2003).

barred by the applicable statute of limitations, 10 *Del. C.* ¶ 8111.³⁵ Plaintiff argues that Defendants waived their right to claim statute of limitations as an affirmative defense by failing to raise the claim earlier in the litigation and before both parties conducted substantial discovery. The Court does not find Defendants waived their right to assert a defense based on the statute of limitations for wage claims.

Here, Dr. Begum sought leave from the Court to amend her original complaint. Defendants, “without waiving any of the defenses that they . . . could raise,” did not object to Dr. Begum’s Motion to Amend.³⁶ The Court granted Dr. Begum leave to amend her complaint, after which Defendants filed a timely Amended Answer, which included the statute-of-limitations defense.³⁷ Although Superior Court Civil Rule 8(c) requires a defendant to set forth all affirmative defenses in the responsive pleading, the Delaware Supreme Court has liberally construed the standard for amendments under Superior Court Civil Rule 15.³⁸ The

³⁵ See n.26, *supra*.

³⁶ Defts’ Resp. to Pltf’s Motion to Amend Complaint, Apr. 23, 2013, at 2. Defendants also requested that the Court issue an amended case scheduling order to allow time for Defendants to file and Answer to the Amended Complaint. *Id.*

³⁷ Amended Answer, May 23, 2013, at II.

³⁸ See *Abdi v. NVR*, 2008 WL 787564, at *2 (Del. Mar. 25, 2008) (“We have held that Superior Court Rule 15 ‘directs the liberal granting of amendments when justice so requires’ and that ‘[i]n the absence of prejudice to another party, the trial court is required to exercise its discretion *in favor or granting leave to amend.*’” (quoting *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 263 (Del. 1993) (emphasis added))). Dr. Begum argues that *Abdi* and *Knutkowski v. Cross*, 2011 WL 6820335 (Del. Ch. Dec. 22, 2011) are distinguishable from the instant case because in those cited cases, each defendant sought and was granted leave from the

Court, having granted Dr. Begum the benefit of filing an Amended Complaint, will not deny Defendants the benefit of timely and completely answering the same. Although discovery was ongoing, Defendants filed their Amended Answer more than two months before the amended deadline for dispositive motions. In addition, trial in this matter is not scheduled until October 21, 2013. Because Defendants did not raise the affirmative defense on the “eve of trial or in the midst of case dispositive motions,”³⁹ the Court finds no prejudice to Dr. Begum, and will consider whether the applicable statute of limitations bars her claims.

B. Dr. Begum filed her Complaint after the applicable statute of limitations had run.

Dr. Begum filed her Complaint in this Court on October 26, 2011. Ten *Del. C.* § 8111 establishes a one-year statute of limitations for non-payment of wages or salary. Under Delaware law, “[t]he one-year statute of limitations applies to all claims based on the recovery of payment for services rendered.”⁴⁰ “Therefore, even claims based entirely on contractual agreements and not on the

Court to amend its Answer, which, Dr. Begum claims, Defendants did not do here. Not so. *See* n.36, *supra*.

³⁹ *Knutkowski*, 2011 WL 6820335, at *2 (citation omitted).

⁴⁰ *Martinez v. Gastroenterology Assocs.*, 2005 WL 1953091, at *1-2 (Del. Super. Ct. July 5, 2005).

provisions of the [WPCA] are subject to the shorter statute of limitations.”⁴¹ Thus, any claim to recover unpaid wages, whether grounded in contract or the WPCA, will be held to a one-year statute of limitations. Because each of Dr. Begum’s claims is predicated on WPS’ alleged failure to pay her the \$185,000 annual salary described in the Employment Agreement,⁴² each of her claims is subject to a one-year limitation beginning the day the cause of action began to accrue. Consequently, if the cause of action for any claim in the Amended Complaint accrued prior to October 26, 2010, that claim is time-barred.

Dr. Begum posits several different scenarios to try to convince the Court that her Complaint was timely filed.⁴³ “The law is well settled,” however, that in any

⁴¹ *Id.* (finding where a contract claim seeks payment of wages the three-year statute of limitations for contract claims does not apply). *Cf. Compass v. Am. Mirrex Corp.*, 72 F. Supp. 2d 462, 466-67 (D. Del. 1999) (“On the other hand, if plaintiff alleges that his employer breached a different duty arising out of the employment agreement, then the three year statute of limitations period in [10 *Del. C.* §] 8106 applies.”). *See Rich v. Zeneca, Inc.*, 845 F. Supp. 162, 166 (D. Del. 1994) (“10 *Del. C.* § 8111 and its one year statute of limitation for wage, salary and benefit claims should not be read as being so comprehensive as to bar all claims arising out of the employer-employee relationship. Rather 10 *Del. C.* § 8111 is directed to claims alleging a breach of a duty to pay wages, salary or overtime for work performed.”); *see also* DEL. CODE ANN. tit. 19, § 1101(5) (“‘Wages’ means compensation for labor or services rendered by an employee, whether the amount is fixed or determined on a time, task, piece, commission or other basis of calculation.”).

⁴² *See* Amended Complaint.

⁴³ For example, Dr. Begum argues the cause of action did not accrue until November 1, 2010, sixty days after her termination date because ¶ B.17 of the Employment Agreement permits WPS to pay Dr. Begum her final paycheck sixty days after her termination date. *See* Pltf’s Ans. Brf. Opposing Defendants’ Motion for Summary Judgment, Aug. 16, 2013, at 8 [hereinafter “Pltf’s Ans. Brf.”]. But as explained below, Dr. Begum’s cause of action accrued as soon as she received her last paycheck on the next regularly-scheduling payday following her last work day. Alternatively, Dr. Begum argues she was constructively terminated on September

action for wages, “the cause of action accrues when an employee received his [or her] compensation, in whatever form, and through the exercise of reasonable diligence, discovers that he or she has not been paid the agreed-upon amount.”⁴⁴

Under the WPCA, Dr. Begum was due the balance of her wages, the sum she now claims, on the next regularly-scheduled payday following her last working day.⁴⁵ According to the record developed in relation to these motions, WPS paid Dr. Begum bi-weekly.⁴⁶ In turn, the next regularly-scheduled payday following Dr. Begum’s last work day on September 30, 2010, occurred before October 26,

1, 2010, and, after adding the ninety-day required notice period contained in ¶ B.15 of the Employment Agreement and the sixty-day payment period of ¶ B.17, she concludes the cause of action accrued on February 1, 2011. *Id.* at 9. Based on Dr. Begum’s proffer of the September 1, 2010 letter from Mr. Singh, the Court cannot find Dr. Begum was constructively terminated. “Under the constructive discharge doctrine [t]he inquiry is objective: Did working conditions become so intolerable that a reasonable person in the employee’s position would have felt compelled to resign?” *Pennsylvania State Police v. Suders*, 542 U.S. 129, 141 (2004); see *Rizzitiello v. McDonald’s Corp.*, 868 A.2d 825, 832 (Del. 2005) (“To establish a constructive discharge, the plaintiff was required to show working conditions so intolerable that a reasonable person would have felt compelled to resign.” (quotation marks omitted)); *Lipson v. Anesthesia Services, P.A.*, 790 A.2d 1261, 1280 (Del. Super. Ct. 2001) (same). As of September 1, 2010, Dr. Begum was working part-time and WPS was paying her hourly. By then Dr. Begum had already signed a letter of intent with a new employer, although she withheld that information from WPS. Mr. Singh’s request to know whether Dr. Begum would remain a member of WPS’ practice in no way created an “intolerable” environment that left Dr. Begum no choice by to resign. As previously stated, Dr. Begum already intended to leave WPS for another employer.

⁴⁴ *Hassler v. Valk Mfg. Co.*, 1983 WL 413299, at *2 (Del. Super. Ct. Nov. 17, 1983).

⁴⁵ DEL. CODE ANN. tit. 19, § 1103 (“Whenever an employee quits, resigns, is discharged, suspended or laid off, the wages earned by the employee shall become due and payable by the employer on the next regularly scheduled payday(s)”). The WPCA also provides, *inter alia*, “no provision of this chapter may in any way be contravened or set aside by private agreement.” DEL. CODE ANN. tit. 10, § 1110.

⁴⁶ See Ex. 2 to Plt’s Mot. at ¶ B.9(a).

2010. And each of Dr. Begum’s claims predicated upon WPS’ alleged failure to pay her wages, therefore, began to accrue more than one year before she filed the Complaint. Consequently, each is time-barred.⁴⁷ Dr. Begum cannot rely upon the WPCA in all instances where it benefits her, while discounting those sections which do not aid her claim.

C. The “Savings Statute” does not apply where Dr. Begum failed to file *any* action within the one-year statute of limitations.

Even though Dr. Begum never filed suit before the instant case, she argues that the Court should liberally construe 10 *Del. C.* § 8118(a) (the “Savings Statute”) to extend the statute of limitations for her claims one year from the date of WPS’ JP Action.⁴⁸ She contends that suit, which was dismissed by agreement of the parties,⁴⁹ in some way vested her with a counter claim which, although she did not pursue it in Court, is substantially the same cause of action comprising the instant case.

The Savings Statute is a “renewal statute,” where “time is extended because the new action is considered as a continuation or renewal of the former

⁴⁷ See DEL. CODE ANN. tit. 10, § 8111. At oral argument, Defendants’ Counsel suggested that each pay cycle constitutes a separate WPCA unpaid-wage claim. Regardless, if the cause of action based on the last such pay cycle is time-barred, any cause of action based on any preceding pay cycle is also time-barred.

⁴⁸ See C.A. No. JP13-11-010703; see Ex. 1 to Pltf’s Mot.

⁴⁹ See Pltf’s Ans. Brf. at 12.

action”⁵⁰ “The general design of the legislature in enacting the [Savings Statute] was to protect the rights of all those who had prosecuted their actions within the time limited for bringing such actions, and upon a reversal of a judgment in any action, to give the party a right to renew it within a year from such reversal.”⁵¹ “While liberality of approach in the construction of [savings] statutes is recommended, an exception should not be read into a statute which does not, in fact, exist expressly or by inference.”⁵²

The Court does not agree that the Delaware Savings Statute operates to extend the statute of limitations of Dr. Begum’s claims. Despite Dr. Begum’s contentions, Delaware’s Savings statute is concerned not only with the parties to the case, but also with the cause of action.⁵³ Regardless, the “savings language is applicable only when there has been a suit filed within the statutory period.”⁵⁴ Because Dr. Begum never filed a claim within the applicable one-year statute of limitations, there simply is nothing to “save” under the Savings Statute.

⁵⁰ *Vari v. Food Fair Stores, New Castle, Inc.*, 199 A.2d 116, 119 (Del. Super. Ct. 1964)

⁵¹ *Bishop v. Wilds’ Adm’r*, 3 Del. Cas. 159, 1832 WL 137 (Del. Super. Ct. 1832); *see O’Lear v. Strucker*, 209 A.2d 755, 760 (Del. Super. Ct. 1965).

⁵² *O’Lear*, 209 A.2d at 760 (quoting *Vari*, 199 A.2d at 119).

⁵³ Compare *Vari*, 199 A.2d at 119 (denying to “renew” the statute of limitations where the same claim was brought against a different party), with Dr. Begum’s contention that Delaware Savings Statute allows her to bring a new claim she had wholly foregone before merely because she was involved in litigation with the same party earlier.

⁵⁴ *O’Lear*, 209 A.2d at 758.

D. The statute of limitations cannot be tolled.

The fraudulent concealment doctrine is an “independent ground for tolling a statute of limitations.”⁵⁵ “If any matter is to toll the statute of limitations it must be material to the underlying cause of action.”⁵⁶ The doctrine functions to suspend the statute “only until [the plaintiff’s] rights are discovered or until they could have been discovered by the exercise of reasonable diligence.”⁵⁷ Damages for a claim of fraudulent misrepresentation are “generally limited to those which are the direct and proximate result of the false representation.”⁵⁸ Importantly, averments of fraud must be pled with particularity.⁵⁹

Dr. Begum has not pled fraudulent concealment with sufficient particularity.⁶⁰ The Amended Complaint does not set out a specific claim of fraud, but relies only on two brief references to a potential, alleged fraudulent action.⁶¹

⁵⁵ *Halpern v. Barran*, 313 A.2d 139, 143 (Del. Ch. 1973).

⁵⁶ *Russum v. Russum*, 2011 WL 4731120, at *2 (Del. Super. Ct. Sept. 28, 2011).

⁵⁷ *Halpern*, 313 A.2d at 143.

⁵⁸ *Harman v. Masoneilan Intern., Inc.*, 442 A.2d 487, 499 (Del. 1982).

⁵⁹ Del. Super. Ct. Civ. R. 9(b); *see* Del. Ct. Ch. R. 9(b); *Halpern*, 313 A.2d at 143.

⁶⁰ *Halpern*, 313 A.2d at 143 (“Those allegations must have particularity sufficient to advise the charged defendant of the basis of the claim, and mere use of the work ‘fraud’ or its equivalent is not a sufficiently particular statement of the circumstances relied upon.” (quotation marks omitted)).

⁶¹ Amended Complaint at ¶ 6 (claiming jurisdiction under Delaware’s Workplace Fraud Act); ¶ 44 (“Defendants[’] fraudulent employment practices, including attesting to statements on the LCA that were materially false or misleading, provided a reasonable bases to hold Dr. Singh,

The two passing references were not sufficient to put Defendants on notice of Plaintiff's fraudulent concealment claim; they "may be fairly characterized as mere generalizations, anchored to no specific acts of concealment by [D]efendants."⁶² And more importantly, the fraudulent concealment allegations are unmoored from a proper tolling argument – the misrepresentation in no way prevented Dr. Begum from discovering her alleged cause of action in sufficient time to file before the limitations period had run.

To the extent the Court understands Dr. Begum's allegation of fraud, she argues Defendants misrepresented the number of hours she could work. This alleged misrepresentation, however, in no way affected Dr. Begum's knowledge of her right to assert the salary claims she has made here. Dr. Begum was on notice, from the date she received her first paycheck in an amount less than her anticipated salary, that WPS was not paying her what she believed she was due under the Employment Agreement. No allegedly fraudulent action by on behalf of the Defendants operated to conceal this fact from her.⁶³

Finally, Dr. Begum argues she was constructively discharged as a matter of law when, on September 1, 2010, Mr. Singh sent her a letter, which, *inter alia*,

the owner and manager of WPS, personally liable for the actions of WPS and the injuries caused to Dr. Begum.").

⁶² *Halpern*, 313 A.2d 139 at 143-44.

⁶³ *See Russum v. Russum*, 2011 WL 4731120, at *2 (Del. Super. Ct. Sept. 28, 2011).

requested a written confirmation of Dr. Begum's intent to remain employed at WPS.⁶⁴ Even viewing the facts of September 1st in the light most favorable to Dr. Begum, those facts hardly amount to a constructive discharge. Dr. Begum had, ten days prior, and without notifying WPS, accepted a position with DBHS.⁶⁵ While attempting to clarify Dr. Begum's intent so as to meet its obligation to its patients at various facilities and to meet its reporting requirements under the LCA,⁶⁶ WPS made proper inquiry of her. It did not improperly create conditions so intolerable that one would have felt compelled to resign.⁶⁷ Thus, neither Dr. Begum's fraudulent concealment claim, nor her constructive discharge claim functions to toll the statute.

VI. CONCLUSION

For the reasons stated above, Dr. Begum's claims against WPS, Dr. Singh, and Mr. Singh are **DISMISSED**. Because Dr. Begum's claims are time-barred, the Court does not reach the multitude of other claims raised in the parties' cross-motions for summary judgment. Defendants' motion for summary judgment is **DENIED** as moot, as is Dr. Begum's.

⁶⁴ Ex. 32 to Pltf's Mot.

⁶⁵ Defts' Appx. at 23.

⁶⁶ See n.13, *supra*.

⁶⁷ *Rizzitiello v. McDonald's Corp.*, 868 A.2d 825, 832 (Del. 2005).

IT IS SO ORDERED.

/s/ Paul R. Wallace

Paul R. Wallace, Judge

Original to Prothonotary

cc: Counsel via File & Serve