

<b>Calderon v SNL XVII, LLC</b>
2026 NY Slip Op 31004(U)
February 24, 2026
Supreme Court, Kings County
Docket Number: Index No. 529714/2021
Judge: Devin P. Cohen
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Supreme Court of the State of New York  
County of Kings

Index Number 529714/2021  
Seqs. 005, 006

Part LL1M

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MANUEL SEGARRA CALDERON,

Plaintiff,

against

SNL XVII, LLC AND SNL CONSTRUCTION, LLC,

Defendants.

**DECISION/ORDER**

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SNL CONSTRUCTION, LLC I/S/H/A SNL XVII, LLC AND  
SNL CONSTRUCTION, LLC,

Third-Party Plaintiff,

against

D-BEST INDUSTRIES CORP.,

Third-Party Defendant.

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Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion, by reference to the New York State Courts Electronic Filing System docket numbers: 85-124.

Upon the foregoing papers, third-party defendant D-Best Industries Corp. (D Best)'s motion to, *inter alia*, amend its pleadings (Seq. 005) and defendant SNL Construction LLC i/s/h/a SNL XVVII LLC and SNL Construction LLC (SNL)'s motion to, *inter alia*, amend its pleadings are decided as follows:

### **Procedural Posture and Factual Background**

Plaintiff commenced this action to recover for damages he claims to have sustained on August 4, 2021, when he was struck by a falling beam. Defendant and third-party defendant now move to amend their answers to assert affirmative defenses and counter-claims predicated upon fraud pursuant to CPLR 3025 (b).

### **Analysis**

#### **Amendment**

Generally, leave to amend pleadings pursuant to CPLR 3025 (b) is liberally granted. However, that general rule is limited by certain circumstances, and permission to amend is “committed to the broad discretion of the trial court” (*Vorobichik v Greenpoint Goldman SM, LLC*, 164 AD3d 866, 866 [2d Dept 2018]). Allegations of fraud must be pled “in detail,” or “with particularity,” whether as a cause of action or as a defense (CPLR 3016 [b]; *Matter of Clarke v Wallace Oil Co., Inc.*, 284 AD2d 492, 492–493 [2d Dept 2001]). “The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation . . . and damages” (*Eva Chen Fine Jewelry, Inc. v Recovery Racing IX, LLC*, 222 AD3d 840, 842 [2d Dept 2023]).

As an initial matter, insofar as third-party defendant seeks to assert a counter-claim against plaintiff, the motion is procedurally defective. D Best is not a defendant in plaintiff’s action, and plaintiff does not have any claims against D Best; D Best cannot, therefore, assert counter-claims against plaintiff (CPLR 3019).

On the merits, both movants failed to plead the elements of fraud with particularity. Although movants identify statements from the plaintiff individually that they claim are false or

misleading, defendants do not claim to have justifiably relied on any such misstatements.

Indeed, the fact that movants are actively litigating this matter “actually illustrates a lack of reliance on Plaintiffs’ allegedly false assertions” (*Seaz v Excellent Bus Serv. Inc.*, 21-CV-6967 (TAM), 2025 WL 990247, at \*8 [EDNY Apr. 2, 2025] [emphasis original]).

Mere allegations that a party or claim is what some might colloquially call a “fraud” does not equate to meeting the standard for pleading a legal cause of action. The Appellate Division, First Department has recently held that precisely this type of amendment is “patently devoid of merit” (*Santacruz v 58 Gerry St LLC*, 2026 NY Slip Op 00997 [1st Dept Feb. 19, 2026]; see also *Breton v Dish*, 234 AD3d 432 [1st Dept 2025], *Linares v City of New York*, 223 NYS 3d 62 [1st Dept 2024]). Although there may now be a disagreement between the Appellate Departments about amendment when there is concrete evidence indicating that an accident was staged, that is not the case here (see *Gimenez v Pepsi-Cola Bottling Company of New York, Inc.*, 234 AD3d 943 [2d Dept 2025]; contra *Anguisaca-Morales v St. Paul and St. Andrew United Methodist Church*, 238 AD3d 439 [1st Dept 2025]). Movants’ arguments in this case are based solely on speculation about plaintiff’s associations, subsequent medical treatment, and allegedly inconsistent statements ostensibly attributable to plaintiff in his medical records. None of these are adequate to support movants’ legal allegations of fraud.

Finally, the costs of investigation and defense are incidents of litigation, not equivalent to damages arising from detrimental reliance (see *Cerciello v Admiral Ins. Brokerage Corp.*, 90 AD3d 967 [2d Dept 2011]; see also *Hollander v Flash Dancers Topless Club*, 173 Fed Appx 15, 18 [2d Cir 2006]). Under the American Rule, cost shifting is not the ordinary practice in personal injury litigation, and defendants cannot seek to engage in impermissible fee shifting

through inadequately pled claims of fraud (*see 214 Wall Street Associates, LLC v Medical Arts-Huntington Realty*, 99 AD3d 988 [2d Dept 2012]).

This decision is made based on the motions, papers, and arguments before the court, and does not reflect the court's assessment of any matters not currently at bar, including the merits of any pending action or any duly commenced outside claim for fraud. This decision also does not provide an opinion on the merits of future dispositive motions.

#### **Compel Compliance with Discovery**

To the extent movants seek to compel plaintiff's compliance with certain outstanding discovery, the motions are denied without prejudice to new motions directed to the proper Part.

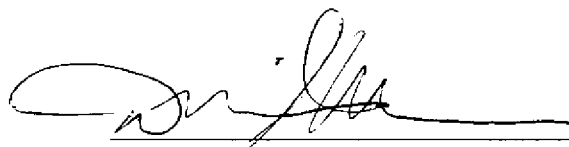
#### **Conclusion**

D Best's motion to amend (Seq. 005) and SNL's motion to amend (Seq. 006) are denied.

This constitutes the decision of the court.

February 24, 2026

DATE



DEVIN P. COHEN

Justice of the Supreme Court