

**Rodriguez v Langston Condominium**

2024 NY Slip Op 33433(U)

September 27, 2024

Supreme Court, New York County

Docket Number: Index No. 153678/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO

PART

33M

*Justice*

-----X

INDEX NO. 153678/2023

WALTER RODRIGUEZ,

MOTION DATE 09/10/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

THE LANGSTON CONDOMINIUM, GMNY  
CONSTRUCTION SERVICE INC., CORE SCAFFOLD  
SYSTEMS INC.,

**DECISION + ORDER ON  
MOTION AND CROSS MOTION**

Defendant.

-----X

THE LANGSTON CONDOMINIUM

Third-Party  
Index No. 595043/2024

Plaintiff,

-against-

BHA CONSULTANTS LLC

Defendant.

-----X

GMNY CONSTRUCTION SERVICE INC.

Second Third-Party  
Index No. 595243/2024

Plaintiff,

-against-

M.D. SCAFFOLDING, INC.

Defendant.

-----X

CORE SCAFFOLD SYSTEMS INC.

Third Third-Party  
Index No. 595262/2024

Plaintiff,

-against-

M.D. SCAFFOLDING, INC.

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112

were read on this motion to/for

AMEND CAPTION/PLEADINGS

Upon the foregoing documents, Defendant/Third-Party Plaintiff Langston Condominium's ("Langston") motion seeking leave to amend its Answer, for an order compelling certain discovery, and requesting Plaintiff post security, is granted in part and denied in part. Defendant/Third-Party Plaintiff Core Scaffold Systems Inc.'s ("Core") cross-motion seeking the same relief is granted in part and denied in part.

### **I. Background**

This is an action for alleged personal injuries sustained by Plaintiff as a result of violations of the New York Labor Law (NYSCEF Doc. 1). Langston now seeks leave to amend its Answer to assert a counterclaim and an affirmative defense of fraud against Plaintiff. Langston also seeks to compel responses to their discovery demands. Langston alleges they should be granted leave to assert these claims because Plaintiff has two prior lawsuits with similar mechanisms of injury. Langston claims Plaintiff's alleged injuries in those prior lawsuits overlap with the alleged injuries in this lawsuit. Langston also claims that Plaintiff is treating with several "suspect medical providers" (NYSCEF Doc. 74 at ¶ 12). Core seeks leave to amend the same counterclaim and affirmative defense in its crossclaim. They also seek a bond in the amount of \$10,000 to cover potential costs should this case be dismissed as frivolous.

Plaintiff opposes. Plaintiff argues the application is premature as discovery remains ongoing and depositions have not yet occurred. Plaintiff further argues that discrepancies in medical narratives do not give rise to a colorable fraud claim and therefore Langston and Core have failed to state a claim for fraud. Plaintiff does not dispute that a bond must be posted, but he

asks that it be in the statutory amount of \$500. Plaintiff also argues that Defendants failed to support their motions with CPLR compliant affirmations, however Defendants have since corrected this technical default.

## **II. Discussion**

### **A. Motion and Cross-Motion to Compel**

The motion and cross-motion to compel have been resolved at the preliminary conference held with the Court on July 24, 2024 (*see* NYSCEF Doc. 113). To the extent the motions to compel have not been resolved pursuant to the preliminary conference order, they are denied, without prejudice, as they were made in violation of Part 33's rules. As the parties were directed at the preliminary conference, should discovery issues arise they shall e-mail the Court to request a conference to resolve those issues.

### **B. Leave to Amend**

Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. v National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]).

For purposes of a motion seeking leave to amend, Defendants have sufficiently alleged sufficient facts to make out a colorable fraud counterclaim and affirmative defense against Plaintiff. Plaintiff's numerous accidents which occurred in the same manner, contradictory medical records, and his involvement with several medical providers who are implicated in a Federal RICO action.

**C. CPLR § 8501(a)**

Defendants' motion requesting Plaintiff post a bond for security of costs in the amount of CPLR § 8501(a) is granted in part. CPLR § 8501(a) mandates that except where a plaintiff has been granted permission to proceed as a poor person or is the petitioner in a habeas corpus proceeding, the Court shall order security for costs if the plaintiff is not a resident of New York (*see also Yarwood v County of Suffolk*, 174 AD3d 954 [2d Dept 2019]; *Clement v Durban*, 147 AD3d 39 [2d Dept 2016]). CPLR § 8503 states that security for costs shall be made in an amount of five hundred dollars in counties within the City of New York, or such greater amount as shall be fixed by the Court. It is undisputed that Plaintiff is a resident of New Jersey, and therefore he is required to post security. However, although Defendants seek the posting of a bond in the amount of \$10,000.00, the Court finds this to be excessive given the lack of any supporting evidence of these costs. Thus, the Court elects to adopt the statutory requirement of a \$500.00 bond.

Accordingly, it is hereby,

ORDERED that Langston's motion and Core's cross-motion seeking leave to amend their pleadings is granted, and the proposed pleadings annexed to the motion papers (NYSCEF Docs. 75 and 92) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Langston's motion and Core's cross-motion seeking Plaintiff to post security for costs is granted; and it is further

ORDERED that pursuant to CPLR 8501(a) and 8503, plaintiff shall, within thirty (30) days of service of this Decision and Order, post security for costs in the amount of \$500.00, and the matter is stayed pursuant to CPLR 8502 until plaintiff posts said security; and it is further

ORDERED that the stay pursuant to CPLR 8502 shall be automatically lifted upon Plaintiff posting his bond; and it is further

ORDERED that Langston's motion and Core's cross-motion seeking to compel certain discovery is denied to the extent it has not become moot; and it is further,

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>9/27/2024</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE