

Astudillo v Unity Constr. Group, LLC

2025 NY Slip Op 30555(U)

February 18, 2025

Supreme Court, New York County

Docket Number: Index No. 150144/2022

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

JAIME TRELLES ASTUDILLO,
Plaintiff,

- v -

UNITY CONSTRUCTION GROUP, LLC, DTA FEE OWNER
LLC,

Defendant.

-----X

UNITY CONSTRUCTION GROUP, LLC
Plaintiff,

-against-

ARSENAL SCAFFOLD INC.

Defendant.

-----X

DTA FEE OWNER LLC

Plaintiff,

-against-

ARSENAL SCAFFOLD INC.

Defendant.

-----X

INDEX NO. 150144/2022
MOTION DATE 10/17/2024
MOTION SEQ. NO. 002

DECISION + ORDER ON
MOTION

Third-Party
Index No. 595503/2022

Second Third-Party
Index No. 595140/2023

The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for STAY

Upon the foregoing documents, and after a final submission date of December 3, 2024, Third-Party Defendant/Second Third-Party Defendant Arsenal Scaffold Inc.’s (“Arsenal”) motion seeking a stay of this case and a Court “investigation” is denied.

Subin & Associates, LLP previously sought to withdraw as Plaintiff's counsel in Motion Sequence 001. That motion was unopposed. Subsequently, Plaintiff retained new counsel, Greenberg & Stein, P.C., and a consent to change attorney was uploaded to NYSCEF on July 10, 2024 (NYSCEF Doc. 57). Therefore, on July 16, 2024, the Court ruled that Subin & Associates, LLP's request to be relieved as counsel was moot (*see* NYSCEF Doc. 58).

Months later, on October 17, 2024, Arsenal moved for a stay of this action and asked the Court to "investigate" whether this case is fraudulent. In support of Arsenal's motion, they offer no particularized or concrete allegations of fraudulent behavior related to the specifics of this case. Rather, they attempt to impute fraud on this case merely because Subin & Associates, LLP, who is a defendant in a federal Racketeer Influenced and Corrupt Organizations Act ("RICO") Action, previously represented the Plaintiff.

Plaintiff opposes the action and argues that Arsenal waived the right to seek a stay when it failed to oppose Subin & Associates, LLP's prior motion seeking to withdraw as counsel. Plaintiff argues on this basis, Arsenal is impermissibly seeking to reargue or modify this Court's Decision and Order pertaining to Subin & Associates, LLP's prior motion, despite failing to oppose the underlying motion. Plaintiff also argues Arsenal fails to provide any evidence of fraud that has taken place in this case.

As a preliminary matter, the Court finds Arsenal waived the relief it seeks by failing to oppose Subin & Associates LLP's prior motion seeking to withdraw as counsel. Arsenal is essentially seeking to reargue the prior motion despite having proffered no prior opposition (*Setters v AI Properties and Developments (USA) Corp.*, 139 AD3d 492 [1st Dept 2016] Moreover, the Court takes issue with the untimely request for relief, as the instant motion was made months after Subin & Associates LLP withdrew as counsel.

More importantly, the Court finds Arsenal has failed to make the requisite showing of fraud to justify the drastic relief it seeks (*see, e.g. Devore v Pfizer Inc.*, 58 AD3d 138 [1st Dept 2008] [allegations which amount to, at best, mere suspicions insufficient to assert fraud claim and use pretrial discovery as a “fishing expedition”]; *see also Bank Leumi Trust Co. of New York v D’Evoli Intern., Inc.*, 163 [1st Dept 1990]. The mere association of Subin & Associates, LLP with Plaintiff’s case is insufficient to grant Arsenal the relief it seeks. This is especially true where a Workers’ Compensation Board Judge has heard Plaintiff’s testimony and determined it to be credible, and found his injuries are causally related to the accident giving rise to this lawsuit (NYSCEF Doc. 115).

Further, this Court is not the appropriate forum to investigate the allegedly fraudulent nature Subin & Associates LLP’s filings where there is an ongoing RICO action in Federal Court. Any efforts by this Court would be duplicative of the ongoing litigation in Federal Court and be a waste of precious judicial resources. Moreover, any fraud or wrongdoing by Subin & Associates LLP should be investigated by the attorney grievance committee, to the extent they find there exists cause to investigate. This Court does not have jurisdiction over attorney disciplinary matters. Therefore, Arsenal’s motion is denied in its entirety.

Accordingly, it is hereby,

ORDERED that Arsenal’s motion seeking a stay of this case and a judicial inquiry into whether this action is fraudulent is denied in its entirety; and it is further

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ORDERED within ten days of entry, counsel for Plaintiff 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.

2/18/2025			<i>Mary V Rosado JSC</i>			
DATE			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 checked="" type="checkbox"/>	DENIED	<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