

Sorto v SCI Funeral Servs. of N.Y., Inc.

2025 NY Slip Op 32832(U)

July 16, 2025

Supreme Court, New York County

Docket Number: Index No. 160601/2021

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

SAUDY ADONAY ALBERTO SORTO,
Plaintiff,

- v -

SCI FUNERAL SERVICES OF NEW YORK, INC, SERVICE
CORPORATION INTERNATIONAL, NEW YORK FUNERAL
CHAPELS, LLC D/B/A RIVERSIDE MEMORIAL CHAPEL,

Defendant.

-----X

NEW YORK FUNERAL CHAPELS, LLC D/B/A RIVERSIDE
MEMORIAL CHAPEL

Plaintiff,

-against-

SKYLINE RESTORATION INC.

Defendant.

-----X

NEW YORK FUNERAL CHAPELS, LLC D/B/A RIVERSIDE
MEMORIAL CHAPEL

Plaintiff,

-against-

Defendant.

-----X

INDEX NO. 160601/2021
MOTION DATE 04/24/2025
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595072/2022

Second Third-Party
Index No. 595771/2022

The following e-filed documents, listed by NYSCEF document number (Motion 003) 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, 119, 120, 121, 122

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion to dismiss is granted in part.¹

Background

The Accident

In July of 2021, according to Saudy Adonay Alberto Sorto (“Plaintiff”), while acting within the scope of his employment for defendant Skyline Restoration Inc. (“Skyline”) at the construction site on 180 West 76th Street, New York, NY, he was caused to trip and/or slip and fall and was caused to sustain serious and permanent injuries. Plaintiff is alleging these injuries are due to negligence, carelessness and recklessness. Prior to July 6, 2021, Plaintiff had been working on the site for approximately three months and believed he was working for Skyline because he was instructed to wear clothes with “Skyline” on them and was paid \$700 a week in cash by a supervisor he believed to work for Skyline.

On the date of the accident, Plaintiff was injured performing construction work while on a high platform in a demolished area after he tripped on rubble and fell on his side, hitting a motor. Plaintiff injured his left shoulder, left ankle, back, and neck. Plaintiff did not go to a hospital but allegedly signed an incident report that was filled out by the area manager. There is a note on the incident report in English (a language in which Plaintiff is not fluent) stating “last week he told me that his shoulder hurt because he went to play soccer in Long Island.” Plaintiff later testified denying that he ever played soccer or that he wrote this note. Approximately a year later, Plaintiff underwent lumbar fusion surgery on his back.

Worker’s Compensation Proceedings

Plaintiff filed a claim for Worker’s Compensation against the entity he believed to be his employer, Skyline, in August of 2021. In December of 2022, a hearing was held to determine the

¹ The Court would like to thank Dina Aldad and Stephen Wolf for their assistance on this matter.

employer/employee relationship, accident history and notice. Counsel for Skyline was present, and questioned Plaintiff who testified that he had been told that he was working for Skyline and that he had never heard of the entity claimed to be his actual employer, defendant Magella Construction Corp. (“Magella”). The Worker’s Compensation Law Judge determined that Plaintiff’s testimony regarding the accident history and sustained injuries was found credible, and found sufficient evidence that Plaintiff was working for Skyline. The incident report’s statements, particularly those suggesting a soccer injury, were deemed of “dubious providence” because Plaintiff credibly testified that he only signed the document and did not fill it out. Skyline appealed the findings, which were affirmed.

This Proceeding

Plaintiff commenced this action in November of 2021, originally pleading claims against SCI Funeral Services of New York, Inc. (“SCI”), Service Corporation International (“Service”), and New York Funeral Chapels, LLC, d/b/a Riverside Memorial Chapel (“Riverside”). Riverside shortly thereafter commenced a third-party action against Skyline, which was discontinued with prejudice in May of 2022. Then in September of 2022, Riverside commenced a second third-party action against OneTeam Restoration, Inc. (“OneTeam”). For their part, OneTeam then commenced a third third-party action against Magella, who has yet to appear in this action.

Upon learning that Skyline allegedly intended to challenge their status as Plaintiff’s employer, Plaintiff sought and was granted leave to amend in order to add Skyline, OneTeam, and Magella as direct defendants. OneTeam filed an answer in April of 2025 which asserted an affirmative defense that the accident was fraudulent. Skyline and Riverside also filed an answer which alleged counterclaims for fraud and statutory damages as well as a fraud affirmative defense. Plaintiff now files a motion to dismiss these counterclaims and both affirmative

defenses of fraud. Plaintiff also seeks sanctions and an award of costs and attorneys' fees for frivolous conduct.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, “the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference.” *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 [1994].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Plaintiff argues that they are entitled to this dismissal as a matter of law because the element of reliance has not been established by the defendant, Defendant failed to plead these

claims of fraud with specificity, and the findings of the Worker's Compensation Board precludes counterclaims and affirmative defenses of these kind. The motion is opposed by Skyline and Riverside (collectively, the "Skyline Defendants") and OneTeam. For the reasons that follow, the motion is granted as to the dismissals and denied as to the request for sanctions.

Skyline Defendants Fail to Allege Justifiable Reliance

For a counterclaim or affirmative defense that sounds in fraud, a party must allege "a material misrepresentation of fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages." *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 559 [2009]. Plaintiff argues that the counterclaims and affirmative defenses at issue here must be dismissed as they all fail to allege justifiable reliance. In their fraud counterclaim, the Skyline Defendants allege that they justifiably relied on Plaintiff's allegedly false statements regarding the source of his injuries and the identify of his employer in defending the Workers' Compensation suit and making the required payments.

But the record shows that the Skyline Defendants challenged the source of the injuries and the identity of Plaintiff's employer from the beginning of the Workers' Compensation proceeding, as well as in this proceeding. Based on the facts as alleged, if anyone relied on alleged misrepresentations that led to damages in the form of Workers' Compensation payments it was the original judge at the Workers' Compensation hearing (as well as the three-member appeals panel that affirmed that decision), not the Skyline Defendants.

In *Breton*, the First Department denied a motion to amend in order to assert a counterclaim for fraud in part because "the record makes clear that the defendant has not, in fact, relied on plaintiff's alleged misrepresentations, but instead has denied them in his answer and throughout the litigation." *Breton v. Dishy*, 234 A.D.3d 432, 432 [1st Dept. 2025]. While the

Skyline Defendants are correct that procedurally, *Breton* concerned a motion to amend and not a motion to dismiss as is the case here, that does not alter the analysis. Fundamentally, the Skyline Defendants have not pled a valid claim for fraud because they have not adequately pled justifiable reliance. The First Department's finding that a required element was not pled when a party did not rely on alleged misrepresentations (but instead consistently opposed them in the course of litigation) is equally applicable here. Dismissal of the fraud counterclaim for failure to plead justifiable reliance is proper. *See also Anguisaca-Morales v. St. Paul & St. Andrew United Methodist Church*, 2025 N.Y. App. Div. LEXIS 2753, *2, [1st Dept. 2025]; *Republic of Kazakhstan v. Chapman*, 217 A.D.3d 515, 517 [1st Dept. 2023] (dismissal of fraud claims for failure to state a cause of action is proper when the plaintiff did not rely on the statements but instead disputed them). Because affirmative defenses also require that justifiable reliance be adequately pled, dismissal of the Skyline Defendants' twenty-third defense is likewise proper. *See, e.g., First Nationwide Bank v. 965 Amsterdam, Inc.*, 212 A.D.2d 469, 470 – 71 [1st Dept. 1995].

OneTeam Has Not Pled Justifiable Reliance.

OneTeam, who was not a party in the Workers' Compensation proceeding, has brought an affirmative defense sounding in fraud for the same reasons as the Skyline Defendants. While they were not involved in the Workers' Compensation proceeding, their defense suffers from the same fatal flaw as the Skyline Defendants' defense. As addressed above, both claims and affirmative defenses sounding in fraud must plead justifiable reliance on the alleged misrepresentations or falsehoods. OneTeam has not pled any reliance, justifiable or otherwise, by them on any of the statements made by Plaintiff that are alleged to be false. Instead, they simply dispute the Plaintiff's alleged source of his injuries. Because an essential element of an

affirmative defense sounding in fraud has not been pled or alleged by OneTeam, the motion to dismiss their twenty-seventh affirmative defense is granted.

Sanctions Will Not Be Awarded

Plaintiff also requests sanctions against the Skyline Defendants, OneTeam, and counsel for the Skyline Defendants for bringing the fraud claims. Plaintiff argues that these claims are frivolous, given the findings in the Workers' Compensation proceeding and that the meritless claims are brought to harass Plaintiff. The Court at this time declines to award sanctions in this matter. Accordingly, it is hereby

ADJUDGED that the motion is granted in part; and it is further

ORDERED that the twenty-third affirmative defense and the common law fraud counterclaim against plaintiff in the Answer of defendants New York Funeral Chapels, LLC d/b/a Riverside Memorial Chapel and Skyline Restoration s/h/b Skyline Restoration, Inc. is hereby stricken; and it is further

ORDERED that the twenty-seventh affirmative defense in the Answer of defendant OneTeam Restoration, Inc. is hereby stricken.


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7/16/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

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<input type="checkbox"/>	SETTLE ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE