

Bachrach v Morris

2025 NY Slip Op 33353(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 157070/2024

Judge: David B. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X **INDEX NO. 157070/2024**

JONATHAN D. BACHRACH, JUDITH B. TURNER,
Plaintiffs,
- v -
MOTION DATE 11/04/2024,
12/28/2024,
01/23/2025,
02/11/2025,
06/11/2025

KRISTIN MORRIS, RIVERSPRING HEALTH SENIOR
LIVING, INC., DAVID POMERANZ, and JANE DOE
Defendants.
MOTION SEQ. NO. 002 003 005
006 009

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 45, 47, 48, 49, 69, 133, 142, 148, 157

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 75, 76, 134, 143, 149, 156, 158

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 127, 128, 129, 130, 131, 135, 145, 151, 160

were read on this motion to/for SANCTIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 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, 123, 124, 125, 126, 136, 137, 138, 139, 140, 141, 146, 147, 152, 153, 161

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

were read on this motion to/for SANCTIONS.

This action concerns the alleged mishandling of plaintiff Turner’s care and an alleged incident involving plaintiff Bachrach while Turner was a resident at defendant RiverSpring Health Senior Living (RiverSpring), a senior care facility in the Bronx. Turner, an elderly

individual, was admitted to RiverSpring in March 2024 for care and supervision. Plaintiff Bachrach, her brother, acted on her behalf pursuant to a durable power of attorney and health care proxy. Plaintiffs assert claims for intentional infliction of emotional distress, negligence, breach of contract, defamation, false imprisonment, fraud, loss of enjoyment of life, and punitive damages against Pomeranz, RiverSpring's Executive Vice President and Chief Operating Officer, Morris, the facility's Administrator, and RiverSpring. Defendants oppose.

I. BACKGROUND AND PROCEDURAL FACTS

In March 2024, Bachrach met with defendant Morris to obtain treatment for his sister at RiverSpring and on March 27, 2024, the parties entered into a contract for Turner's admission, residence, and care (NYSCEF Doc. 13). Plaintiff frequently visited his sister for social visits and to help supervise her care (*id.*).

Plaintiffs allege that in July 2024, Morris and an unidentified individual, defendant Doe, conspired to have Doe enter RiverSpring at the same time as Bachrach during a visit to Turner, and orchestrated a plan to "accost" and "jostle" him, followed by a false accusation of inappropriate physical contact, in an effort to manufacture liability against the facility (NYSCEF Doc. 13). They contend that Doe subsequently filed a false report with the NYPD, which plaintiffs believe was part of a scheme to support a fabricated sexual assault claim and pursue an insurance recovery against RiverSpring (NYSCEF Docs. 13, 15). Based on the alleged incident, defendants barred Bachrach from visiting Turner as of July 24, 2024. Plaintiffs assert that this visitation ban caused significant emotional distress to both Bachrach and Turner, who is allegedly unable to cope without contact with her brother during a difficult period in her life (NYSCEF Doc. 13). On August 7, 2024, the parties entered into a stipulation permitting

Bachrach to visit Turner in two-hour increments pursuant to a mutually-agreed schedule (NYSCEF Doc. 20).

Plaintiffs commenced this action by filing a summons and complaint on August 24, 2024, followed by an amended complaint on October 27, 2024, and a second amended complaint on January 20, 2025.

By notice of motion (mot. seq. 002), defendants move pursuant to CPLR 3211(a)(1), (3), (7), and (8) to dismiss the amended complaint based on documentary evidence, lack of capacity, failure to state a cause of action, and lack of personal jurisdiction over defendant Pomeranz. Plaintiffs oppose.

By notice of motion (mot. seq. 003), defendant Pomeranz separately moves pursuant to CPLR 3211(a)(1), (3), and (7) to dismiss the amended complaint, to strike portions of the pleading pursuant to CPLR 3024(b), and for costs and sanctions.

By notice of motion (mot. seq. 005), plaintiffs move pursuant to CPLR 3102(c) to compel discovery and for sanctions under 22 NYCRR 130-1.1, alleging that defense counsel made false representations in communications with the court. Defendants oppose.

By notice of motion (mot. seq. 006), defendants move pursuant to CPLR 3211(a)(7), 3024(b), and 22 NYCRR 130-1.1 to dismiss the second amended complaint in its entirety for failure to state a cause of action, to strike certain allegations as scandalous or prejudicial, and for sanctions. Defendants also argue that the second amended complaint was improperly filed without leave of court in violation of CPLR 3025. Plaintiffs oppose and cross-move for leave to amend the complaint, nunc pro tunc, pursuant to CPLR 3025(b).

By notice of motion (mot. seq. 009), plaintiffs move again for sanctions under 22 NYCRR 130-1.1, alleging that defendants' counsel made materially false factual representations to the court during oral argument. Defendants oppose.

A. MOTION SEQ. 006

Defendants argue that plaintiffs' second amended complaint was improperly filed, and in any event, does not cure the deficiencies of the prior complaints, that its allegations remain conclusory, duplicative, or legally insufficient to state any claim, and that its insertion of inflammatory material underscores the frivolous nature of plaintiffs' filings.

Plaintiffs oppose and seek permission to file the proposed second amended complaint, nunc pro tunc, alleging that they have stated sufficient claims.

In reply, defendants withdraw their procedural objection based on CPLR 3025(a) but argue that leave to amend should be denied on the grounds that the proposed amendments are palpably insufficient and devoid of merit, and that plaintiffs' cross-motion is an improper attempt to cure prior defective filings while continuing to engage in sanctionable conduct.

The second amended complaint asserts causes of action for (1) intentional infliction of emotional distress (IIED), (2) negligence, (3) breach of contract, (4) defamation, (5) false imprisonment (as to Turner), (6) loss of enjoyment of life, (7) fraud, and (8) punitive damages.

Where a plaintiff files an amended complaint, the "moving party has the option to decide whether its motion should be applied to the new pleadings" (*Sage Realty Corp. v Proskauer Rose*, 251 AD2d 35, 38 [1st Dept 1998] [citations omitted]). An amended pleading does not automatically render an earlier motion moot (*French v NYS Dept. of Labor*, 231 AD3d 620 [1st Dept 2024]; *Fownes Bros. & Co., Inc. v JPMorgan Chase & Co.*, 92 AD3d 582, 582 [1st Dept 2012]). If the defendant elects to submit a new motion directed to the amended

pleading, the motion is properly before the court so long as the plaintiff is allowed adequate time to respond (*Sage Realty*, 251 AD2d at 38).

Here, although plaintiffs filed the second amended complaint without prior leave of court or stipulation, defendants filed a CPLR 3211(a)(7) motion directed to that pleading. Plaintiffs then cross-moved, in the same opposition papers, for leave to amend nunc pro tunc pursuant to CPLR 3025(b). Accordingly, the sufficiency of the proposed second amended complaint is considered solely for the purposes of determining whether leave to amend should be granted.

While leave to amend should be freely granted under CPLR 3025(b), plaintiffs must still demonstrate that the proposed amendment is appropriate, which requires showing that it is not palpably insufficient or patently devoid of merit (*Badesch v Fort 710 Assoc., L.P.*, 233 AD3d 604 [1st Dept 2024]; see *Burlington Ins. Co. v NYC Tr. Auth.*, 153 AD3d 438, 439 [1st Dept 2017]).

As an initial matter, plaintiffs failed to submit a redlined or marked version of the amended complaint identifying the changes made, as required under CPLR 3025(b). Nonetheless, in the interest of judicial economy, the court will consider the merits of the second amended complaint as framed in plaintiffs' proposed pleading and accompanying papers.

First Cause of Action: IIED

In the second amended complaint, plaintiffs argue that defendants falsely accused Bachrach of sexual assault and barred him from contact with his sister, causing them both severe emotional distress. They further assert the accusations were knowingly false and part of a broader scheme to defraud their insurer.

To state a claim for IIED, a plaintiff must plead: (1) extreme and outrageous conduct; (2) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (3)

a causal connection between the conduct and the injury; and (4) resulting severe emotional distress (*Chanko v American Broadcasting Cos., Inc.*, 27 NY3d 46, 56 [2016]). Specifically, as to the first element, the plaintiff must plead conduct by the defendant that is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society” (*id.*). “[M]ere threats, annoyance or other petty oppressions, no matter how upsetting,” are legally insufficient (*Owen v Leventritt*, 174 AD2d 471, 472 [1st Dept 1991]).

Here, the conduct at issue is the temporary suspension of Bachrach’s visitation rights at RiverSpring for a two-week period, from July 24 to August 7, 2024, during an internal investigation following Doe’s allegations. Plaintiffs allege that Pomeranz allowed or oversaw the visitation ban and Doe’s alleged insurance scam, and that Morris participated in facilitating Doe’s claim. It is undisputed that Bachrach’s visitation rights were reinstated by stipulation on August 7, 2024, permitting six hours of visitation per week, and were eventually fully restored in October. The record reflects that RiverSpring’s stated basis for the restriction was the pendency of a misconduct investigation. Accepting plaintiffs’ allegations as true, the conduct alleged does not rise to the level of “utterly intolerable in a civilized community” (*see Howell v New York Post Co.*, 81 NY2d 115, 122 [1993] [temporary publication of nonconsensual photograph of psychiatric patient by newspaper did not support IIED claim where conduct, though distressing, was not sufficiently outrageous to meet the high threshold for liability]).

Even crediting plaintiffs’ assertion that defendants “falsely accused” Bachrach of sexual assault, such allegations do not transform the conduct into the type of “extreme and outrageous” behavior necessary to sustain an IIED claim. New York courts reject IIED claims premised on allegedly false accusations or reports to authorities, concluding that such allegations, if

actionable, sound in defamation rather than IIED (*see Matthaus v Hadjedj*, 148 AD3d 425, 425–426 [1st Dept 2017] [false police report insufficient]). Moreover, where, as here, the alleged statements amount to reporting an accusation for investigation, courts treat them as nonactionable in this context (*Slatkin v Lancer Litho Packaging Corp.*, 33 AD3d 421, 422 [1st Dept 2006] [threats, calls, and instigation of arrest not sufficiently outrageous]; *Brown v Sears, Roebuck & Co.*, 297 AD2d 205, 212 [1st Dept 2002] [false shoplifting accusation insufficient]), and in any event the IIED claim is duplicative of defamation (*see Akpinar v Moran*, 83 AD3d 458, 459 [1st Dept 2011]).

Accordingly, the “false accusation” theory does not save the IIED cause of action, which is duplicative of other pleaded torts and remains palpably insufficient. Leave to amend is therefore denied as to this claim.

Second Cause of Action: Negligence

Plaintiffs pleaded that defendants contracted to provide residence, care, and supervision for Turner, and by restricting Bachrach’s visitation rights, they breached their duty to competently and effectively care for Turner.

To state a negligence claim, a plaintiff must allege “(1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom” (*Ferreira v City of Binghamton*, 38 NY3d 298, 308 [2022], quoting *Solomon v City of New York*, 66 NY2d 1026, 1027 [1985]). However, “simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated” (*Dormitory Auth. v Samson Constr. Co.*, 30 NY3d 704, 711 [2018]). Thus, a negligence claim is not cognizable where it arises from the same facts as a breach of contract claim, seeks the same damages, and fails to allege a duty independent of the contract (*Clark-Fitzpatrick, Inc. v Long Is. R. Co.*, 70 NY2d

382, 389–390 [1987]; *Dormitory Auth. of the State of N.Y. v Samson Constr. Co.*, 30 NY3d 704, 711–713 [2018]).

Here, the negligence claim is based entirely on defendants’ alleged failure to provide proper care to Turner—a duty that arises, if at all, from the parties’ contractual relationship. Plaintiffs do not identify any statutory, regulatory, or common-law duty owed by RiverSpring apart from its contractual obligations. Nor do they plead any facts showing that Morris or Pomeranz, acting in their individual capacities, undertook a personal duty of care toward Turner or breached any legal obligation independent of their roles as employees of RiverSpring.

Moreover, plaintiffs fail to identify any specific provision of the contract that imposes a standard of care, or any affirmative act by the individual defendants that would give rise to tort liability. Because the negligence claim arises from the same facts as the contract claim, seeks the same damages, and is unsupported by an independent legal duty, it is duplicative (*Clark-Fitzpatrick*, 70 NY2d at 389–390; *Dormitory Auth.*, 30 NY3d at 711–713). Thus, leave to amend to assert this claim is denied.

Third Cause of Action: Breach of Contract

Plaintiffs pleaded that a contract existed between Bachrach and RiverSpring, with Turner as the beneficiary, and that plaintiffs performed all obligations of their contract, but defendants breached their obligations when denying Bachrach visitation rights, resulting in damages.

To plead a breach of contract, a plaintiff must allege: (1) “the existence of a contract”; (2) “plaintiff’s performance thereunder”; (3) “defendant’s breach thereof”; and (4) “resulting damages” (*Second Source Funding, LLC v Yellowstone Cap., LLC*, 144 AD3d 445, 445-46 [1st Dept 2016]). Where a plaintiff fails to “allege the breach of any particular contractual provision,” it fails to plead a cause of action for breach of contract (*Feld v Apple Bank for Sav.*,

116 AD3d 549, 550 [1st Dept 2014]; *Kraus v Visa Intl. Serv. Assn.*, 304 AD2d 408, 408 [1st Dept 2003]).

Here, plaintiffs fail to identify any specific provision of the contract that was allegedly breached. No contract is annexed or cited, and no concrete terms are pleaded. Although plaintiffs allege that Bachrach paid a deposit for Turner's care at RiverSpring, this alone does not establish the existence of a contract conferring visitation rights, nor does it identify any definite terms governing such rights. The allegations are vague and fail to specify the nature of the agreement, the parties' respective obligations, or the contractual basis for the claimed right of visitation. Without pleading the substance of a specific contractual provision that was breached, the complaint does not state a cause of action for breach of contract (*Fowler v Am. Lawyer Media, Inc.*, 306 AD2d 113 [1st Dept 2003] ["Vague and conclusory allegations are insufficient to sustain a breach of contract cause of action."]).

Moreover, while plaintiffs reference verbal assurances made by Morris, they do not allege that either Morris or Pomeranz was a party to the contract, nor do they assert facts sufficient to pierce the corporate veil or otherwise impose contractual liability on those individuals. Accordingly, the proposed breach of contract claim is palpably insufficient and leave to amend is denied.

Fourth Cause of Action: Defamation

Plaintiffs pleaded that defendants falsely accused Bachrach of sexually assaulting a RiverSpring employee, published the accusation to third parties without privilege and with actual malice, and used the defamatory statement to interfere with his visitation rights, causing reputational harm.

Pursuant to CPLR 3016(a), a defamation cause of action must be pleaded with particularity. To state a viable claim, a plaintiff must allege: (1) a false statement; (2) published to a third party without privilege or authorization; (3) with the requisite degree of fault, at least negligence; and (4) either special harm or a statement that is defamatory per se (*Frechtman v Gutterman*, 115 AD3d 102, 104 [1st Dept 2014]). Where “a reasonable reader would understand the statements a defendant made about a plaintiff as mere allegations to be investigated rather than as facts,” the statements are not defamatory (*Akpinar*, 83 AD3d at 459; see *Brian v Richardson*, 87 NY2d 46, 53 [1995]).

Here, although plaintiffs broadly allege that defamatory statements were communicated to “third parties” and “sundry persons,” the complaint does not identify any specific recipient or allege how, when, or by which defendant the statements were made. The only named recipients are vague references to “supervisors,” “providers,” or “the NYPD,” none of which are alleged with the particularity required by CPLR 3016(a), and plaintiffs do not plead any facts showing that the statements, if made, were published without privilege.

Furthermore, the complaint does not allege that any defendant directly stated that Bachrach committed sexual assault. Rather, it alleges that defendants reported that an allegation was made by Doe. Such statements, even if distressing, are not actionable where a reasonable reader would understand them as reporting an accusation or an ongoing investigation (*Akpinar*, 83 AD3d at 459).

Assuming arguendo the statements were defamatory in nature, plaintiffs fail to adequately allege either defamation *per se* or special damages. While accusations of serious crime such as assault may qualify as defamation per se (see *Thomas H. v Paul B.*, 18 NY3d 580, 584 [2012]), the complaint lacks factual allegations supporting a plausible inference of actual

malice. Conclusory assertions that defendants acted “with actual malice” are insufficient without supporting facts (*see Sandals Resorts Intl. Ltd. v Google, Inc.*, 86 AD3d 32, 39-40 [1st Dept 2011] [petitioner failed to demonstrate meritorious defamation claim where it did not identify specific false statements or provide factual support for allegations of malice]).

Because the proposed defamation claim fails to sufficiently plead a false and defamatory statement and publication thereof, it is palpably insufficient and patently devoid of merit. Accordingly, the motion for leave to amend to assert the cause of action for defamation is denied.

Fifth Cause of Action: False Imprisonment

Plaintiffs pleaded that “defendants are willfully detaining and imprisoning” Turner and are “barring her from visiting and interacting” with Bachrach, and that such “detention” of Turner is without her consent.

In order to plead a cognizable claim for false imprisonment, a plaintiff must plead that “the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement and did not consent to it, and that the confinement was not otherwise privileged” (*Roberts v City of New York*, 171 AD3d 139, 145-146 [1st Dept 2019], *quoting Hernandez v City of New York*, 100 AD3d 433, 434 [1st Dept 2012]).

Here, the complaint fails to allege any facts suggesting that Turner sought to leave the RiverSpring facility, that such a request was made on her behalf, or that defendants refused to allow her to leave. The gravamen of the claim is not that Turner was confined against her will, but rather that Bachrach was denied visitation—an allegation that does not support a claim for false imprisonment. Furthermore, there are no specific allegations that Pomeranz or Morris personally directed or participated in any unlawful confinement. Absent any facts showing that

defendants intended to confine Turner, or that she objected to remaining in the facility and was prevented from leaving, the proposed amendment is palpably insufficient and leave to assert this cause of action is denied.

Sixth Cause of Action: Loss of Enjoyment of Life

Plaintiffs pleaded that Turner is “confined and imprisoned in defendants ‘memory care’ and old age home,” she knows no one there, and “her only joy in life comes from visits with her brother.” They allege that the denial of visitation has socially isolated Turner, diminished her quality of life, and, upon information and belief, caused adverse health effects such as depression and anxiety.

However, loss of enjoyment of life is not a cognizable standalone cause of action under New York law, but rather a component of damages that may be considered by a jury in assessing conscious pain and suffering (*Golden v Manhasset Condominium*, 2 AD3d 345, 346 [1st Dept 2003]), but it cannot serve as the basis for an independent claim.

Accordingly, the sixth cause of action is not legally cognizable, and leave to amend to assert this claim is denied as palpably insufficient.

Seventh Cause of Action: Fraud

Plaintiffs pleaded that defendants, “particularly Kristin Morris,” made false and material representations to Bachrach, including that Turner would receive the best possible care and that defendants were a world-class organization providing compassionate, expert care for individuals with dementia, with the intent to induce Bachrach to place his sister in their facility. Plaintiffs allege they relied on these representations, which were knowingly false when made, and suffered monetary and emotional harm as a result.

To state a claim for fraud in the inducement, a plaintiff must allege “a knowing misrepresentation of a material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury” (*301 E. 60th St. LLC v Competitive Sols. LLC*, 217 AD3d 79, 87 [1st Dept 2023]). A mere recitation of the elements of fraud is insufficient (*id.*), and “mere puffery, opinions of value, or future expectations” do not constitute actionable misrepresentations (*Northern Group Inc. v Merrill Lynch, Pierce, Fenner & Smith Inc.*, 135 AD3d 414 [1st Dept 2016]).

Here, plaintiffs fail to identify any specific factual misrepresentation that was false when made and known by defendants to be false. The alleged statements, that defendants would provide “the best possible care” or are a “world-class organization” offering “compassionate, expert care”, are nonactionable expressions of opinion, future expectations, or promotional puffery (*see Northern Group Inc.*, 135 AD3d at 414 [alleged misrepresentations were nonactionable puffery, opinion, or future expectations rather than false statements of value, and thus insufficient to support fraud claim]). Plaintiffs also fail to plead facts supporting a plausible inference that any defendant made a knowingly false statement of material fact with intent to defraud. No misrepresentations are attributed to Pomeranz or RiverSpring specifically, and the general promotional statements attributed to Morris are insufficient to support a fraud claim under CPLR 3016(b).

As such, the proposed fraud claim consists of conclusory allegations and vague marketing language that do not satisfy the heightened pleading requirements for fraud. Accordingly, the seventh cause of action is palpably insufficient and leave to amend to assert it is denied.

Eighth Cause of Action: Punitive Damages

Plaintiffs pleaded that defendants acted willfully, wantonly, and with reckless disregard for their obligations, citing not only the denial of visitation but also prior alleged misconduct by defendant Pomeranz. They contend that defendants falsely portray themselves as caretakers of the elderly while engaging in morally culpable or fraudulent behavior and argue that this pattern of conduct warrants punitive damages.

Punitive damages are not an independent cause of action but a remedy that may be awarded only where attached to a viable substantive claim (*see Rocanova v Equitable Life Assur. Socy. of U.S.*, 83 NY2d 603, 616 [1994]; *Hubbell v Trans World Life Ins. Co.*, 50 NY2d 899, 901 [1980]). Because plaintiffs fail to state any underlying cause of action, their demand for punitive damages cannot stand.

In any event, the allegations are insufficient to warrant punitive damages, which require conduct evincing a high degree of moral culpability and a “conscious and deliberate disregard of the interests of others that the conduct may be called willful or wanton” (*Dupree v Giugliano*, 20 NY3d 921, 924 [2012]; *164 Mulberry St. Corp. v Columbia Univ.*, 4 AD3d 49, 60 [1st Dept 2004]). Here, the punitive damages claim simply repeats the factual assertions underlying plaintiffs’ contract and tort theories. Plaintiffs do not plead concrete facts showing conduct so outrageous or egregious as to meet the strict standard for punitive damages, and conclusory references to past alleged misconduct by Pomeranz are unrelated to the events at issue.

Accordingly, the eighth cause of action is palpably insufficient, and leave to amend to assert it is denied.

In sum, plaintiffs have not demonstrated that the proposed second amended complaint is legally sufficient or that any of the newly asserted claims are not patently devoid of merit. Thus, plaintiffs' cross-motion for leave to amend pursuant to CPLR 3025(b) is denied in its entirety.

Because plaintiffs' proposed amendments are palpably insufficient and devoid of merit, it follows that the amended complaint, which rests on the same allegations, also fails to state any cognizable claim and the operative pleading remains the amended complaint. Therefore, defendants' motions to dismiss the earlier amended complaint (mot. seq. 002 and 003) are rendered moot.

Accordingly, defendants' motion to dismiss the amended complaint is granted.

B. MOTION SEQ. 005

In motion sequence 005, plaintiffs move pursuant to 22 NYCRR 130-1.1 for sanctions against defense counsel, alleging false representations in correspondence and filings, and further seek disclosure under CPLR 3102(c) of evidence defendants allegedly claimed to possess. Plaintiffs also request an order requiring that all motions be made under CPLR 2214.

Defendants oppose the motion, arguing that counsel's filings were proper, that plaintiffs misstate the standard for sanctions under 22 NYCRR 130-1.1, and that CPLR 3102(c) applies only before an action is commenced and therefore cannot support discovery in this case.

Under 22 NYCRR 130-1.1, a court may, in its discretion, impose financial sanctions or award costs against a party or attorney who engages in frivolous conduct. Conduct is deemed frivolous where it: (1) is completely without merit in law and cannot be supported by a reasonable argument for the extension, modification, or reversal of existing law; (2) is undertaken primarily to delay or prolong the litigation, or to harass or maliciously injure another; or (3) asserts material factual statements that are false (22 NYCRR 130-1.1).

The motion is denied. First, plaintiffs identify no conduct by defense counsel that rises to the level of frivolous conduct within the meaning of 130-1.1(c). Counsel's filings and correspondence were within the bounds of advocacy and do not demonstrate conduct that is completely without merit, intended to delay, or knowingly false.

Second, plaintiffs' reliance on CPLR 3102(c) is misplaced, as that provision authorizes disclosure only "before an action is commenced." This case has already been commenced, and thus, CPLR 3102(c) does not apply (*see Matter of Johnson v Union Bank of Switzerland, AG*, 150 AD3d 436 [1st Dept 2017]).

Finally, plaintiffs' request that the Court order motions to be made in compliance with CPLR 2214 is unnecessary, as CPLR 2214 already governs motion practice. Accordingly, plaintiffs' motion (mot. seq. 005) is denied.

C. MOTION SEQ. 009

In motion sequence number 009, plaintiffs move for sanctions against defense counsel pursuant to 22 NYCRR 130-1.1, asserting that defendants' counsel knowingly made a materially false statement of fact during oral argument. Specifically, plaintiffs contend that during the May 20, 2025 proceeding, defense counsel falsely represented to the court that the duration of Bachrach's exclusion from defendants' facility was "two weeks," when in fact, plaintiffs assert the lockout lasted 26 days, from July 12 to August 7, 2024.

Defendants oppose the motion, arguing that plaintiffs have mischaracterized both the factual timeline and the legal standard. Defendants contend that the "two-week" statement made by counsel during oral argument was based on plaintiffs' own pleadings, which consistently alleged that Bachrach continued visiting his sister through July 24, 2024. Defendants maintain that even if the "lockout" began on July 12, the duration difference is not material for purposes

of sanctions and that counsel's comment was made in the context of oral argument, not as sworn testimony.

In reply, plaintiffs reiterate that defense counsel's "two-week" statement was false and misleading, and emphasize that defendants have not disputed the July 12 to August 7 timeframe in their opposition. Plaintiffs assert that the discrepancy is material because the duration of the lockout bears on the harm alleged and undermines the credibility of defendants' litigation conduct. Plaintiffs further argue that defendants' opposition does not address the core factual issue and instead relies on ad hominem attacks against plaintiff Bachrach.

Even assuming *arguendo* that defense counsel misstated the duration of plaintiff's exclusion from the facility during oral argument, such conduct does not rise to the meaning of frivolous within the meaning of 22 NYCRR 130-1.1(c). Counsel's statement was not made under oath, was based on dates reflected in plaintiffs' own pleadings, and does not appear to have been made in bad faith or for an improper purpose. A factual misstatement, even if inaccurate, is not sanctionable absent a showing that it was both knowingly false and materially misleading in a way that impacts the fairness of the proceeding (*see Talos Capital DAC v 257 Church Holdings LLC*, 226 AD3d 414, 416 [1st Dept 2024] [counsel's incorrect statement about documentary evidence not sanctionable where based on a reasonable interpretation and not made in bad faith]; *Gowen v Helly Nahmad Gallery, Inc.*, 226 AD3d 619, 620 [1st Dept 2024] [statements based on outdated understanding of client's health "not so egregious as to constitute frivolous conduct within the meaning of 22 NYCRR 130-1.1"]).

Accordingly, plaintiffs' motion for sanctions is denied.

Lastly, defendant Doe is named in the caption of the second amended complaint but was not served, has not appeared, and is not the subject of any motion. In light of the dismissal of all

asserted claims on the merits, no further claims remain pending. Accordingly, the action is dismissed in its entirety.

II. CONCLUSION

Accordingly, it is

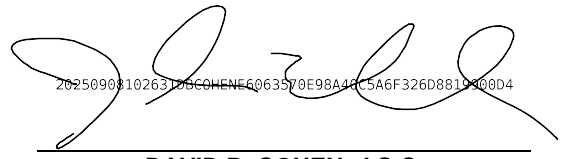
ORDERED that defendants' motion to dismiss the first amended complaint (mot. seq. 006) is granted; and it is further

ORDERED that plaintiffs' cross-motion for leave to amend, nunc pro tunc, to conform with the second amended complaint is denied; and it is further

ORDERED that plaintiffs' motions for sanctions (mot. seq. 009 and 005) are denied; and it is further

ORDERED that defendants' earlier motions to dismiss (mot. seq. 002 and 003) are denied as moot.

9/8/2025
DATE



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DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: