

**Guggenheim Sec., LLC v  
Falcon's Beyond Global, LLC**

2025 NY Slip Op 33769(U)

October 3, 2025

Supreme Court, New York County

Docket Number: Index No. 651585/2024

Judge: Melissa A. Crane

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

-----X

GUGGENHEIM SECURITIES, LLC,
Plaintiff,

- v -

FALCON'S BEYOND GLOBAL, LLC, FALCON'S BEYOND
GLOBAL, INC.

Defendant.

INDEX NO. 651585/2024

MOTION DATE 07/02/2025,
07/21/2025

MOTION SEQ. NO. 003 004

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 80, 81, 82, 83, 84,
85, 86, 87, 88, 89, 94, 95, 96, 97, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121

were read on this motion to/for SANCTIONS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 91, 92, 93, 98, 99,
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 122, 123, 124

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY
DEMAND/FROM TRIAL CALENDAR

In MS #003, defendants move for sanctions based on plaintiff's counsel's purported
misconduct at five fact depositions. Plaintiff's counsel cross-moves, in MS #003, for sanctions.
In MS #004, defendants move to strike the note of issue on the basis that the parties did not
complete "all discovery, including document discovery and depositions" (Doc 91 [notice of
motion]). Also in MS #004, defendants ask the court to direct plaintiff to produce certain
documents, make Mr. Finkel, a witness for plaintiff, available "for the completion of his
deposition," and to re-produce five other witnesses for "limited re-examinations" (id.). Plaintiff
opposes MS #004.

MS #003 – Defendants’ motion for discovery sanctions

In this motion, defendants contend that plaintiff’s counsel misbehaved during five depositions. Plaintiff’s counsel was defending those depositions. The court has reviewed defendants’ submissions and finds that plaintiff’s counsel improperly and repeatedly: interrupted questions and witness answers; made impermissible “speaking” objections; and coached the witnesses (Docs 81-88). On 5/22/25, defendants’ counsel emailed the court and stated:

“we are at the deposition of Mr. Ortner. Counsel for Plaintiff has made constant speaking objections. He declines to stop[.]

Mr. Paduano:: [*sic*]

Will you stop making speaking objections yes or no?

Mr. Tretter: No.

(rough 172, line 8)

I have constantly asked that speaking objections stop. We need the Court's assistance. . .”

(Doc 82).

The court responded to all counsel “that [it] will treat it as if the deponent did not show up and he will not be testifying at trial,” if plaintiff’s attorney continues to make speaking objections (*id.*). Mr. Tretter responded, “[w]e disagree that there have been ‘speaking objections’ ” (*id.*). The court replied, “[t]he only word I should hear is objection otherwise the court will shift the costs” (*id.*).

The court’s instructions were abundantly clear. Nevertheless, plaintiff’s counsel continued this disruptive behavior over the next four EBTs (see e.g. Doc 84 [Leonard tr excerpts, 5/27/25] at 4-5 [responding “Asked and answered” to a question, prompting the witness to answer “Yeah, asked and answered”]; *id.* at 10-11 [after his objection is noted by defense counsel, stating “Objection to the form. Assumes facts not in evidence”]; *id.* at 14 [objecting to

form, prompting the witness to state “Yeah. Objection to form and –”]; *id.* at 17 [stating “What’s the question? Maybe we have you . . . read it back,” prompting the witness to say “You need to be more specific”]; *id.* at 17-18 [objecting to form]; *id.* at 18 [stating, in response to a question to the witness, “Post closing?,” prompting the witness to ask “Post closing?,” and prompting defense counsel to admonish “Mr. Tretter, you are now actually telling the witness what to say and the witness has now adopted your words . . .”]; *id.* at 21-22 [disrupting the EBT and possibly coaching the witness]; *id.* at 24 [stating “Objection. Mischaracterized his testimony”]; Doc 85 [Sawyer tr excerpts, 6/5/25] at 3 [stating “As a result of the filing itself,” prompting the witness to answer “Yes. How do you mean as a result of the filing?”]; *id.* at 5 [asking “Are you talking out of pocket expenses or fees?,” prompting defense counsel to ask Mr. Tretter to “stop trying to coach the witness”]; *id.* at 6 [stating “I object to the word expenses,” then “As opposed to fees”]; *id.* at 9 [“Objection lacks foundation. Mischaracterizes the record.”]; *id.* at 10 [Mr. Tretter states, “Objection calls for speculation,” prompting the witness to say, “I can’t speak to what spearheard told their investors”]; *id.* at 11 [Mr. Tretter says, “I would refer you to the definition of transaction”]; *id.* [“Objection. Lacks foundation, mischaracterizes his testimony.”]; *id.* at 13 [“Objection. Mischaracterizes the document.”]; *id.* at 14 [“Objection. Misstates the record.”]; *id.* [telling the witness, “Don’t speculate. I don’t know.”]; *id.* at 15 [“Objection. Lack of foundation.”]; *id.* at 16 [same]; *id.* at 18 [“Asked and answered.”]; *id.* at 22 [Mr. Tretter tells the witness “Don’t answer yet,” and defense counsel says “you are interfering with the examination. The record should reflect before he answered the question Mr. Tretter was on the verge of touching his client again”]; *id.* [“I object to everything before who –”]; *id.* at 25 [objecting to form and stating “Again not within his personal knowledge”]; *id.* at 29 [“Objection. It has nothing to do with the document.”]; *id.* [Mr. Tretter states, “I object to the characterization

of those documents,” prompting the witness to state, “. . . I disagree with the characterization of the vetting memo . . .”]; *id.* at 31 [“I object to form of the question because it mischaracterizes the documents.”]; *id.* at 32-34 [seemingly coaching witness with speaking objections and questions/comments]; *id.* at 35 [interrupting question by stating, “That says what?,” prompting witness to say “Do I have a document that says what?”]; Doc 86 [Schwartz EBT rough tr, 6/10/25] at 3 [instructing witness not to answer, stating “Don’t answer that questions. It calls for expert testimony”]; *id.* at 6 [“That is not correct. That is misrepresenting (the prior witness’s) testimony . . .”]; *id.* at 9 [“Objection, lacks personal knowledge.”]; *id.* at 11 [“Objection, calls for expert testimony.”]; *id.* at 12 [“My suggestion is to testify on what you know and not assume.”]; *id.* at 14 [objecting and stating, “calls for speculation”]; *id.* at 15 [before witness answers a pending question, states [“I just note for the witness there are footnotes that describe what there is that define the term”]; Doc 87 [Finkel EBT rough tr, 6/12/25] at 3-4 [“Well, objection. Lack of foundation, assumes facts not in evidence.”]; *id.* at 5-6 [while question is pending, says “Objection. . . I’m not sure what this is relevant to with this case. I’m going to – let me confer with the witness because this is involving a non-party.” Defense counsel responds “It’s completely inappropriate . . . The witness is now conferring during the pendency of a question”]; *id.* at 8 [before witness answers, says “You’re saying for Falcon’s Creative –,” prompting the witness to answer “Falcon’s Creative is like one subset of a broader entity”]; *id.* at 10-11 [“Objection. Calls for a legal conclusion and assumes that there’s consideration necessary.”]; *id.* at 134 [objecting to form and stating “No, the engagement letter’s 2023, the amended engagement letter”]; *id.* at 14 [answering counsel’s question before the witness can answer it, stating “No, that is a misrepresentation of this document”]).

As a result, defendants seek sanctions pursuant to 22 NYCRR § 130-1.1. Under that section, the court may award costs and reasonably incurred and reasonable attorneys' fees "resulting from frivolous conduct" (22 NYCRR § 130-1.1 [a]). Among other things, conduct is frivolous if "(1) it is completely without merit in law . . . [or] (2) It is undertaken primarily to delay or prolong the resolution of the litigation, or to harass" (*id.*, § 130-1.1 [c] [1]-[2]).

Plaintiff responds that "Every instance" of purported misbehavior is permissible under 22 NYCRR 221.1, 221.2, 221.3, and CPLR 3115. Plaintiff points to certain cherry-picked permissible objections and interruptions from the EBTs to argue that sanctions are not warranted. For instance, plaintiff's counsel did not act inappropriately when he instructed one witness not to answer where it would compromise attorney-client privilege.

The court has reviewed plaintiff's counsel's overall conduct at the five EBTs and finds that it repeatedly exceeded the permitted boundaries in sections 221.1, 221.2, 221.3, and CPLR 3115 (b), (c), and (d). Plaintiff's arguments in opposition to the motion are unavailing. Thus, the court finds that plaintiff's counsel's conduct was intended to at least harass defendants' attorneys, if not to also prevent defendants to obtain discovery through these depositions.

Pursuant to 22 NYCRR 130-1.1 (a), "the court may impose financial sanctions upon a party or an attorney who engages in frivolous conduct" (*Jones v Camar Realty Corp.*, 167 AD2d 285, 286 [1st Dept 1990]). The court's authority to impose sanctions and costs is discretionary (22 NYCRR 130-1.1). This power "serves the dual purpose of vindicating judicial authority and making the prevailing party whole for expenses caused by his opponent's obstinacy" (*Sakow v Columbia Bagel, Inc.*, 6 Misc 3d 939, 943 [Sup Ct, NY County 2004]). Here, the court exercises its discretion and awards sanctions in favor of defendants and against plaintiff's attorneys as follows: plaintiff's counsel shall bear half defendants' reasonable attorneys' fees and expenses

for the four EBTs [Mssrs. Leonard, Sawyer, Schwartz, and Finkel] conducted after the court directed plaintiff's counsel to cease making speaking objections. Plaintiff's counsel shall also bear half defendants' reasonable attorneys' fees for making this motion [MS #03] (*cf e.g. Phillips Auctioneers LLC v Grosso*, 2023 N.Y. Slip Op. 31051[U], 13-14 [NY Sup Ct, New York County 2023]).

Despite plaintiff's counsel's repeated frivolous conduct, defendants were able to complete these EBTs. Moreover, defendants do not adequately identify missing answers or areas for further questioning. Thus, the court denies the part of defendants' motion that seeks to take continued/supplemental depositions.

Plaintiff's cross motion for sanctions is denied. This cross motion is clearly a tit-for-tat exercise that should not have been filed. This in itself is sanctionable, as well.

MS #004 – Defendants' motion to vacate the NOI

In MS #004, defendants move to strike the note of issue. Defendants contend that discovery is not completed yet because: (1) plaintiff did not produce certain documents by 6/26/25; (2) Mr. Finkel's EBT needs to be completed; (3) defendants would like to continue deposing five witnesses for plaintiff; and (4) expert discovery was not done when the motion was filed.

In the preliminary conference order, the court directed the parties to complete fact EBTs by 4/28/25 (Doc 23). On 1/16/25, the court directed the parties to set firm EBT dates by 1/31/25 (Doc 45). In May 2025, the court permitted limited supplemental discovery after defendants filed a second amended answer and plaintiff responded to the counterclaims (Doc 75).

In short, the parties were given ample time to engage in discovery in this case. The court held numerous Rule 14 conferences to keep the parties on track to file the NOI by 6/30/25, and

the parties were repeatedly cautioned that the NOI deadline would not be extended (see e.g. Doc 75, 76, 77). Indeed, the parties agreed that they would finish expert disclosure after filing the NOI (see Doc 90). This expert discovery is now complete. Further, defendants' moving papers do not establish that there is material and necessary discovery that remains outstanding. If there are documents that plaintiff failed to produce by the court's deadlines, those documents are waived and precluded.

The court will permit the parties to conclude Mr. Finkel's EBT to the limited extent that plaintiff apparently agreed to produce Mr. Finkel for a 15-minute EBT continuation (see Doc 122 [def reply mem, MS 04] [stating that the parties agreed to continue this EBT for 15 minutes on 8/22/25]). If this continuation was not already completed, the parties shall finish this 15-minute continuation by 10/10/25, otherwise waived.

Thus, the court denies defendants' motion to vacate the NOI. Defendants have not demonstrated that there is a "material" issue concerning the note of issue/certificate of readiness (*Espinoza v A S K Std. Tr. Corp.*, 226 AD3d 564, 566 [1st Dept 2024]). Here, any "post-note of issue discovery that defendant seeks is neither relevant nor necessary" (*id.*). The court also denies plaintiff's request for sanctions, that it raised in its opposition papers.

The court has considered the parties' remaining contentions and finds them unavailing.


Accordingly, it is

ORDERED that defendants' motion for sanctions [MS #03] is granted in part, as set forth in this decision and order; and it is further

ORDERED that defendants' counsel shall e-file and email to the court their affidavits and other supporting documentation concerning their reasonable attorneys' fees and costs relating to the four EBTs identified in this decision [Mssrs. Leonard, Sawyer, Schwartz, and Finkel], and

for filing MS #03, by 10/10/25, otherwise waived. Plaintiff’s counsel, WOLLMUTH MAHER & DEUTSCH LLP, shall bear 50% of those costs and expenses, including reasonable attorneys’ fees, as set forth in this decision and order; and it is further

ORDERED that defendants’ motion to strike the note of issue [MS 004] is denied except to the limited extent that the parties agreed to continue Mr. Finkel’s EBT.

<u>10/3/2025</u>		
DATE		MELISSA A. CRANE, 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