

Estrada v Kaufman Group Inc.

2025 NY Slip Op 33877(U)

September 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 529094/2022

Judge: Devin P. Cohen

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Supreme Court of the State of New York
County of Kings

Index Number 529094/2022
Seqs. 001, 002

Part LL1M

DECISION/ORDER

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

EDUARDO PALACIOS ESTRADA,

Plaintiff,

against

KAUFMAN GROUP INC. AND 727 DEKALB LLC,

Defendants.

Papers Numbered

| | |
|---|---------------|
| Notice of Motion and Affidavits Annexed | <u>1-2</u> |
| Order to Show Cause and Affidavits Annexed. | <u> </u> |
| Answering Affidavits | <u>2-3</u> |
| Replying Affidavits | <u>4</u> |
| Exhibits | <u>Var.</u> |
| Other | <u> </u> |

KAUFMAN GROUP INC.,

Third-Party Plaintiff,

against

CRYSTAL BREEZE INC.,

Third-Party Defendants.

Upon the foregoing papers, defendants' motion to amend (Seq. 001) and plaintiff's cross-motion requesting judicial signature of a set of subpoenas (Seq. 002) are decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on August 22, 2022, when he fell from a ladder that collapsed. Defendants move to amend their answer to assert an affirmative defense predicated upon fraud pursuant to CPLR 3025 (b).

Analysis

Amendment

Generally, leave to amend pleadings pursuant to CPLR 3025 (b) is liberally granted. However, that general rule is limited by certain circumstances, and permission to amend is “committed to the broad discretion of the trial court” (*Vorobichik v Greenpoint Goldman SM, LLC*, 164 AD3d 866, 866 [2d Dept 2018]). Allegations of fraud must be pled “in detail,” or “with particularity,” whether as a cause of action or as a defense (CPLR 3016 [b]; *Matter of Clarke v Wallace Oil Co., Inc.*, 284 AD2d 492, 492–493 [2d Dept 2001]). “The elements of a cause of action sounding in fraud are a material misrepresentation of an existing fact, made with knowledge of the falsity, an intent to induce reliance thereon, justifiable reliance upon the misrepresentation . . . and damages” (*Eva Chen Fine Jewelry, Inc. v Recovery Racing IX, LLC*, 222 AD3d 840, 842 [2d Dept 2023]).

Here, defendants have failed to plead the elements of fraud with particularity. Although defendants identify statements from the plaintiff individually that they claim are false or misleading, defendants do not claim to have justifiably relied on any such misstatements. Indeed, the fact that defendants are actively litigating this matter “actually illustrates a lack of reliance on Plaintiffs’ allegedly false assertions” (*Seaz v Excellent Bus Serv. Inc.*, 21-CV-6967 (TAM), 2025 WL 990247, at *8 [EDNY Apr. 2, 2025] [emphasis original]).

Mere allegations that a party or claim is what some might colloquially call a “fraud” does not equate to meeting the standard for pleading a legal cause of action. The Appellate Division, First Department has recently held that precisely this type of amendment is “patently devoid of merit” (*Breton v Dishy*, 234 AD3d 432 [1st Dept 2025]; see also *Linares v City of New York*, 223 NYS 3d 62 [1st Dept 2024]). Although there may now be a disagreement between the Appellate

Departments about amendment when there is concrete evidence indicating that an accident was staged, that is not the claim here (*Gimenez v Pepsi-Cola Bottling Company of New York, Inc.*, 234 AD3d 943 [2d Dept 2025]; *contra Anguisaca-Morales v St. Paul and St. Andrew United Methodist Church*, 238 AD3d 439 [1st Dept 2025]). Defendants' arguments in this case are based solely on speculation about plaintiff's associations and medical treatment, neither of which are adequate to support legal allegations of fraud.

Finally, the costs of investigation and defense are incidents of litigation, not equivalent to damages arising from detrimental reliance (*see Cerciello v Admiral Ins. Brokerage Corp.*, 90 AD3d 967 [2d Dept 2011]; *see also Hollander v Flash Dancers Topless Club*, 173 Fed Appx 15, 18 [2d Cir 2006]). Under the American Rule, cost shifting is not the ordinary practice in personal injury litigation, and defendants cannot seek to engage in impermissible fee shifting through inadequately pled claims of fraud (*see 214 Wall Street Associates, LLC v Medical Arts-Huntington Realty*, 99 AD3d 988 [2d Dept 2012]).

This decision is made based on the motions, papers, and arguments before the court, and does not reflect the court's assessment of any matters not currently at bar, including the merits of any pending action or any duly commenced outside claim for fraud. This decision also does not provide an opinion on the merits of future dispositive motions.

Subpoenas

Plaintiff cross-moves for judicial signature of a series of subpoenas for a North Carolina based cellular service provider. The motion is purportedly under CPLR 3120; however, that statute does not contemplate out-of-state subpoenas. Counsel does not seek a commission or letters rogatory under CPLR 3108 or other relevant law. Therefore, plaintiff's cross-motion is

denied with prejudice to appropriately made new discovery motions directed to the appropriate part.


Conclusion

Defendants' motion to amend (Seq. 001) is denied.

Plaintiff's cross-motion for so-ordered subpoenas (Seq. 002) is denied.

This constitutes the decision of the court.

September 18, 2025
DATE


DEVIN P. COHEN
Justice of the Supreme Court