

**Garcia v 44-45 Broadway Realty Co., LLC**

2025 NY Slip Op 33954(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 150154/2022

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR PART 34M

Justice

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ALEXANDRA GARCIA,

Plaintiff,

INDEX NO. 150154/2022

MOTION DATE 02/20/2025

MOTION SEQ. NO. 002

- v -

44-45 BROADWAY REALTY CO., LLC, 44-45 BROADWAY REALTY CO., LLC C/O BOW TIE PARTNERS, JRM CONSTRUCTION MGMT LLC, DISCOVER NY PROJECT COMPANY, LLC., 44-45 BROADWAY LEASING CO., LLC,

Defendant.

DECISION + ORDER ON MOTION

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JRM CONSTRUCTION MGMT LLC

Plaintiff,

Third-Party
Index No. 595401/2022

-against-

L.I.C. BUILDERS, LTD.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141

were read on this motion to/for AMEND CAPTION/PLEADINGS

In this action, plaintiff Alexandra Garcia asserts claims under Labor Law §§ 200, 240 (1), and 241 (6) following an alleged accident that occurred on October 26, 2021, when she fell from an "a-frame" ladder while performing work at the property located at 1530 Broadway, New York, NY. (See generally NYSCEF doc. no. 99, third amended complaint.) Defendants 44-45 Broadway Realty Co., LLC, 44-45 Broadway Realty Co., LLC C/O Bow Tie Partners, JRM Construction Mgmt LLC, Discover NY Project Company, LLC., and 44-45 Broadway Leasing Co., LLC (collectively, "defendants") move pursuant to CPLR 3025 (b) for leave to file an amended answer to assert an additional affirmative defense and a counterclaim for fraud against plaintiff. The motion is opposed in its entirety. For the following reasons, the motion is denied.

On or about October 26, 2021, plaintiff claims that she fell from an unsupported a-frame ladder and suffered injuries to her neck, back, and right knee requiring several surgical procedures. (See NYSCEF doc. no., 120, verified bill of particulars.) Defendants now move pursuant to CPLR 3025 (b) to amend their answer to the third amended complaint to add an

additional affirmative defense and a counterclaim for fraud against plaintiff. In support of their motion, defendants argue that plaintiff's statements regarding the accident are contradicted by available accident reports and medical records (*see* NYSCEF docs. no. 112-119). Defendants argue that the surgical procedures plaintiff underwent—a double vertebral Arthrodesis/Decompression at C4-5 and C5-6 with bone graft and an L5-S1 laminectomy, both performed by Dr. Andrew Merola at Fifth Avenue Surgery Center (NYSCEF doc. no. 120)—were part of a scheme to fraudulently fabricate the accident and increase the value of plaintiff's suit. Defendants further argue that RICO suits currently pending against these medical providers, containing allegations of a pattern of performing unnecessary surgeries to increase lawsuit value, support their counterclaim for fraud against plaintiff.<sup>1</sup> Plaintiff opposes the motion and argues that the amendment sought is palpably devoid of merit. Plaintiff argues that the proposed counterclaim is not pleaded with the requisite particularity for fraud and points to First Department decisions denying similar, if not analogous, motions seeking leave to amend the answer to assert counterclaims for fraud.

Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law. (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020].) A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit. (*Greenburgh Eleven Union Free School Dist. v National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002].) Any motion to amend or supplement pleadings under CPLR 3025 (b) shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading (CPLR 3025 [b].)

Here, as a threshold matter, the defendants' motion is procedurally deficient, since the motion is not accompanied by the proposed amended answer clearly showing the changes to be made. (CPLR 3025 [b].) This notwithstanding, the Court will consider the merits of the motion. (*See Greene v Esplanade Venture Partnership*, 36 NY3d 513, 526 [2021] [rejecting the argument that a motion to amend should be denied on the independent basis that a plaintiff failed to comply with the submission requirement of CPLR 3025 (b)].)

As to the sufficiency of the proposed amended pleading, pursuant to CPLR 3016 (b), fraud must be pleaded with particularity, and the elements of a claim for fraud are: (1) a material misrepresentation of a fact, (2) knowledge of its falsity, (3) an intent to induce reliance, (3) justifiable reliance, and (4) damages. (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009].) Here, the allegations in the proposed counterclaim are boilerplate, conclusory assertions, bereft of the factual particularity required to support a fraud claim. (*See* NYSCEF doc. no. 121, proposed amended answer.) The First Department's decision in *Linares v City of New York* (233 Ad3d 479, 480 [1st Dept 2024]) is on point. There, in denying the defendants' motion to amend to add a similar fraud counterclaim, the Court found that the proposed answer failed to allege any facts that the plaintiff knowingly made material misrepresentations to support a fraud claim. (*Id.*)

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<sup>1</sup> The actions referred to by defendants are *Tradesman Program Managers, LLC v Hajjar et al*, 1:24-cv-1549 (ED NY 2024); *Roosevelt Road Re, Ltd. v Subin et al*, 1:24-cv-5033 (ED NY 2024); *Roosevelt Road Re, Ltd. v Wingate Russotti et al*, 1:24-cv-6259 (ED NY 2024); *Ionian Re, LLC, v Gorayeb & Associates et al*, 1:24-ev-7098 (ED NY 2024).

Here, beyond the assertion that plaintiff “did purposely and with knowledge and understanding, make numerous false statements and misrepresentations of facts to further a scheme of fraud,” no facts have been pleaded as to her knowledge. (NYSCEF doc. no. 121.) Moreover, the Court in *Linares* noted that, much like here, “unproven allegations of fraud against plaintiff’s attorney and medical providers in the RICO complaint d[id] not, without more warrant a counterclaim for fraud against plaintiff himself.” (*Linares* at 480.) Though defendants attempt to distinguish *Linares* from the case at bar by emphasizing that, in *Linares*, the motion to amend was filed after the close of discovery and the determination of a summary judgment motion, and here the parties are in the early stages of discovery, this is unpersuasive. The statute allows for leave to amend by leave of Court at any stage of the proceedings. (CPLR 3015 [b].) Therefore, the stage of the proceedings at which a CPLR 3025 (b) motion is made has no bearing on a pleading sufficiency analysis, but rather it is ordinarily considered as to potential prejudice. (See *Lettieri v Allen*, 59 AD3d 202 [1st Dept 2009] *contra Licht v Trans Care N.Y., Inc.*, 3 Ad3d 325 [1st Dept 2004].)

*Breton v Dishy* (234 AD3d 432 [1st Dept 2025]) provides further insight. In *Breton*, the First Department found that a defendant’s allegations as to damages in support of a proposed fraud counterclaim lacked sufficient particularity when defendant alleged “only that he ha[d] incurred significant sums in defending the action.” (*Id.* at 433.) Defendants maintain that *Breton* is not applicable to the present motion because, there, the alleged fraud pertained to an agreement that would have settled the action, whereas, here, defendants seek to interpose a counterclaim based on plaintiff’s alleged participation in a scheme to incur medical expenses to enlarge the amount of damages sought to be recovered. Yet the allegations in defendants’ proposed amended answer amount to nearly identical language to those in *Breton*—that is, that defendants “were compelled to expend significant sums to defend the suit.” Accordingly, in the same way that the allegations in *Breton* lacked factual specificity required to meet the damages prong of a claim for fraud, the Court finds defendants’ allegations to be similarly deficient. Moreover, defendants’ allegations that they and this Court were forced to justifiably rely on plaintiff’s alleged misrepresentations by engaging in and defending against this action also lack merit, as allegations of misrepresentations of fact or omissions, when controverted by evidence and undertaken in the course of adversarial proceedings do not support justifiable reliance. (See *Republic of Kazakhstan v Chapman*, 217 AD3d 515, 517 [1st Dept 2023].) The Court has considered the remaining arguments and finds them to be unavailing. Thus, for the foregoing reasons, defendants’ motion for leave to file an amended answer is denied.

Accordingly, it is hereby,

ORDERED that defendants’ motion for leave to serve an amended answer to the third amended complaint pursuant to CPLR 3025 (b) is denied; and it is further

ORDERED that within twenty (20) days of entry, counsel for plaintiff shall serve a copy of this Decision and Order, with notice of entry, upon all parties to this action via NYSCEF.

This constitutes the Decision and Order of the Court.



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DAKOTA D. RAMSEUR, J.S.C.

10/10/2025

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DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE