

**Fox v Bremen House, Inc.**

2025 NY Slip Op 34123(U)

October 23, 2025

Supreme Court, New York County

Docket Number: Index No. 153972/2020

Judge: Ariel D. Chesler

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

**PRESENT: HON. ARIEL D. CHESLER PART 62M**

*Justice*

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DRUCILLA FOX,

Plaintiff,

- v -

BREMEN HOUSE, INC., GREEN ACRES CLEANERS, J.A.P  
EURO REMODELING, CITY OF NEW YORK, NEW YORK  
CITY DEPARTMENT OF TRANSPORTATION, NEW YORK  
CITY DEPARTMENT OF PARKS AND RECREATION,  
CONSOLIDATED EDISON, INC., CONSOLIDATED EDISON  
COMPANY OF NEW YORK, INC., DANELLA  
CONSTRUCTION OF NY, INC., SUB-TECH SERVICES,  
INC.

Defendant.

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**INDEX NO. 153972/2020**

04/30/2025,  
07/28/2025,  
08/12/2025,  
08/18/2025,  
09/05/2025

**MOTION DATE**

**MOTION SEQ. NO. 012 013 014  
015 016**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 012) 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 237, 238, 239, 240, 241, 242, 243, 244, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 259, 260, 317, 330

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 271, 272, 273, 274, 275, 276, 277, 278, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 014) 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 309, 310, 311

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 015) 305, 306, 307, 308, 344, 346, 347, 348

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 016) 318, 319, 320, 321, 322, 323, 332, 333, 334, 335, 336

were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, it is

This action grounded in personal injuries was commenced on September 5, 2024. Presently before the Court are motions 012, 013, 014, 015, and 016. Oral argument on motion sequences 013, 014, 015, 016 and the cross motions on 012 and 014 was held on October 9, 2025. Based on the decision placed on the record, motions 013, 014, 015 and 016 were denied. What remains before the Court is the issue of sanctions requested in the cross motions on motion sequence 012<sup>1</sup> and 014.

### MS 012 CROSS MOTION

In the cross motion on motion sequence (“MS”) 012, defendant Bremen House Inc. (“Bremen”) requests sanctions pursuant to 22 N.Y.C.R.R. 130-1.1 on plaintiff’s counsel, Krentsel Guzman Herbert, LLP (“KGH”), for frivolous conduct. Plaintiff opposes the cross motion and instead additionally<sup>2</sup> requests sanctions be imposed on defendant Bremen’s counsel, Eustace, Prezioso, Yapchanyk & Yang.

Defendant Breman argues that plaintiff’s counsel does not care to determine whether motion practice is the best approach to resolve outstanding issues. Rather than working with counsel in good faith, plaintiff’s counsel resorts to motion practice. Specifically, plaintiff had subpoenaed Mr. Eduardo Santos, a former employee of Bremen House, and after receiving a request<sup>3</sup> to adjourn the April 25, 2025, deposition for 30-days, plaintiff ignored the request and

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<sup>1</sup> Motion sequence 012 was previously withdrawn but for the defendant Bremen’s cross motion for sanctions. The Court has vacated the Decision and Order withdrawing motion sequence 012 for the purpose of determining the cross motion.

<sup>2</sup> In MS 012 plaintiff initially requested sanctions be imposed on Bremen’s general counsel, Pryor Cashman LLP, not Bremen’s counsel on this instant action, Eustance Prezioso Yapchanyk & Yang. As an aside, this too may be considered frivolous as Pryor Cashman LLP is not even Counsel to a party in this action, and seeking relief from this Court in the form of sanctions against them is inappropriate.

<sup>3</sup> The request for the adjournment of the deposition was to allow counsel for Bremen in the instant action and general counsel for Bremen to figure out proper representation, if any, for Mr. Santos.

proceeded with the April date. On April 28, 2025, plaintiff then filed an ex parte application to hold Mr. Santos in contempt. (MS 010, NYSCEF Doc. No. 204). Then, just two days later on April 30, 2025, defendant Bremen's counsel provided a deposition date of May 6, 2025, for Mr. Santos, and KGH filed yet another motion seeking to strike defendant Bremen's answer later that same day. (MS 012, NYSCEF Doc. No. 209).

Plaintiff argues that Mr. Santos was a non-party witness and they were working with him directly to schedule the deposition date of April 25, 2025 after defendant Bremen stated that Mr. Santos was no longer their employee. Plaintiff further argues that defendant Bremen created an obscene obstruction and interference with the deposition by telling plaintiff they represent Mr. Santos as of April 24, 2025, when he is no longer their employee. However, Bremen explains that it reasonably sought a brief adjournment of the deposition to confirm representation for Mr. Santos. Plaintiff gives no response as to why this was not reasonable or why a deposition of Mr. Santos on May 6, 2025, could not have been held. Nor does plaintiff explain how it was appropriate to seek discovery sanctions when Bremen in fact produced the witness on May 6, 2025. Instead, plaintiff vaguely asserts that it would be more appropriate to sanction defendant Bremen's counsel for their frivolous conduct in delaying the action.

#### **MS 014 CROSS MOTION**

Similarly, in MS 014 defendant Danella Construction of NY Inc, ("Danella") moves for sanctions on KGH by cross motion. Plaintiff opposes the cross motion.

Defendant Danella claims that KGH has a history of filing frivolous motions without making a good faith effort to resolve discovery issues by other means. In MS 014 defendant Danella relies not only on KGH's unwillingness to accommodate an adjournment of another deposition but also plaintiff's misrepresentation as to the reason for the adjournment request.

Danella's counsel explains that the adjournment request was made due to their child being sick and not because their client was unavailable as plaintiff presented to the Court. Yet, instead of simply agreeing to an adjournment, KGH filed this motion seeking to strike defendant Danella's answer and to sanction counsel. (MS 014, NYSCEF Doc. No.291). Moreover, Danella's counsel specifically asked plaintiff's counsel not to make his discovery sanctions motion and instead of working with her to reschedule the deposition, filed this motion.

Plaintiff argues that defendant Danella's failure to appear for a scheduled deposition is a direct violation of Court directives, regardless of the reason. Plaintiff further explains that this failure causes delays in the case which in turn shows plaintiff's motions are reasonable.

### DISCUSSION

Sanctions are governed by Part 130 Rules, specifically, 22 NYCRR 130-1.1. Therein, the Rule's subsection (a) provides,

[t]he court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130.3 of this Part. (*Id.*)

Even before the adoption of Part 130 Rules, Courts were already cognizant of the strain on the judiciary caused by frivolous conduct and supported sanctions for same. (See *Wells Fargo Bank, N.A. v. Hunte*, 910 N.Y.S.2d 409, 409 [Sup Ct, Kings Cnty 2010][Shack, J.]) As explained in *Hunte*, the Court of Appeals observed, "frivolous litigation is so serious a problem affecting the proper administration of justice, the courts may proscribe such conduct and impose sanctions in this exercise of their rule making powers." (*A.G. Ship Maintenance Corp v Lezak*, 69 N.Y.2d 1, 6 [1986] citing NY Const, art VI, § 30, Judiciary Law § 211[1][b]).

This principle is likewise well-established in the First Department.

Sanctions are retributive, in that they punish past conduct. They also are goal oriented, in that they are useful in deterring future frivolous conduct not only by the particular parties, but also by the Bar at large. The goals include preventing the waste of judicial resources, and deterring vexatious litigation and dilatory or malicious litigation tactics. (*Levy v. Carol Mgmt. Corp.*, 260 A.D.2d 27, 34 [1st Dept 1999]).

22 NYCRR 130-1.1 provides three definitions for frivolous conduct. Specifically, “conduct is frivolous if: (1) it is completely without merit in law or fact and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false.” (*Id.*) In determining whether conduct is frivolous the Rule directs,

the court shall consider, among other issues, (1) the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party. (*Id.*).

Sanctions under § 130-1.1 can specifically be awarded for frivolous motion practice and for the adversary’s time and costs in opposing such motions. (*Weissman v Weissman*, 8 A.D.3d 263, 264 [2<sup>nd</sup> Dept 2004]).

Here KGH’s conduct established in both MS 012 and 014 are undeniably frivolous. The frivolous conduct herein was undertaken without any merit in law or any reasonable extension thereof and further was brought to delay resolution. (See 22 NYCRR 130-1.1[c][1], [2]). At issue herein was Plaintiff’s decision to file multiple consecutive and duplicative motions<sup>4</sup> rather than

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<sup>4</sup> At oral argument plaintiff’s counsel contended that it was firm policy to file these types of motions when deadlines are not met.

reasonably work with counsel to adjourn respective deposition dates. At no point does the Court find that defendant Bremen or defendant Danella unreasonably delayed this action because of their requests for adjournments. In fact, the Court finds that plaintiff's actions, specifically filing *multiple* motions instead of trying to work out an adjourn date with counsel, to be frivolous. Most egregiously, plaintiff's seeking sanctions on respective defendant's firm's as they sought adjournments, some being for the first time, and some for very human reasons such as childcare needs, is without question frivolous. If there is any delay on this matter it is most certainly from KGH's actions in filing nonstop frivolous motions which then required Court attention.

At oral argument the Court heard from many defendants regarding plaintiff's counsel's conduct throughout this matter. Specifically, Jason Herbert, Esq.'s unreasonable approach to motion practice. This is even evidenced by actions the Court has witnessed. For example, not only were the motions scheduled for oral argument filed by Mr. Herbert, but he also filed a letter on NYSCEF specifically requesting to appear before The Honorable Ariel D. Chesler and then did not show up on the date of oral argument and instead had a colleague cover the matter. In addition, Plaintiff withdrew a number of motions, after inquiry by the Court, and claimed to only need oral argument on MS 013 and 014. After the Court set a date certain to have oral argument on MS 013 and 014, Mr. Herbert filed two more motions before even attempting to wait for their appearance before this Part to discuss the potential discovery issues.

Arguably worse, as the Court previously noted on the record, Mr. Herbert's most recent filing, MS 017, is contradictory<sup>5</sup> to the additional motion (MS 016) filed after oral argument was

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<sup>5</sup> MS 017 while not yet processed on NYSCEF seeks to strike defendant City of New York's answer and for sanctions against their counsel. MS 016 seeks permission to file a Note of Issue deeming all discovery is complete. This is in direct contradiction to the discovery motions that are before the Court and for which all parties needed to appear for oral argument.

scheduled on MS 013 and 014 and reveals a blatant misrepresentation to the Court. Plaintiff's counsel in its filings may either affirm to this Court that discovery is outstanding or discovery is complete. Counsel cannot do both simultaneously without engaging in clearly frivolous conduct. Furthermore, MS 017 is seeking the same exact relief that was requested in MS 007 which plaintiff's counsel recently withdrew on September 5, 2025. The Court can point to multiple other instances where plaintiff has filed motions<sup>6</sup> seeking similar relief and lacking good faith however it is unnecessary to further exhaust time and Court resources to do so.

While the Court does not consider any arguments regarding sanctions that rely on actions outside of the record on MS 012 and 014, the Court will use this opportunity to give KGH and more specifically Mr. Herbert a warning about future sanctions. In the event Mr. Herbert continues to file frivolous and or contradictory motions instead of reasonably working with his colleagues, the Court will entertain future requests for sanctions or consider issuing sanctions sua sponte.

After having the opportunity to be heard as to why the Court should not impose sanctions and given the above the Court finds it appropriate to grant defendant Bremen's and defendant Danella's cross motions for sanctions regarding MS 012 and 014 as for the costs associated with their work and filings spent on these motions. The Court also finds it appropriate to grant costs associated with the appearance for oral argument on MS 012 and 014. While there is no definitive way to calculate how much time counsel spent arguing the cross motions specifically on MS 012 and 014 an appropriate sanction instead would be to have KGH additionally pay \$5,000 to the Lawyers' Fund for Client Protection.

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<sup>6</sup> Notably MS's 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016 and 017 are all motions made by Mr. Herbert to compel discovery, strike pleadings, or seek sanctions. While Mr. Herbert did not file all these motions on NYSCEF, he has affirmed every one of the motion papers.

Accordingly, it is hereby;

**ORDERED**, plaintiff's motions (motion sequence 013, 014, 015, 016) are denied for the reasons stated on the record; and it is further

**ORDERED**, motion sequence 012 is marked as resolved in accordance with this Decision and Counsels letter of withdrawal; and it is further

**ORDERED**, the cross motions for sanctions against plaintiff's counsel, Krentsel Guzman Herbert, LLP, on motion sequence 012 and 014 are granted; and it is further

**ORDERED**, the firm Krentsel Guzman Herbert, LLP must pay to Eustace, Prezioso, Yapchanyk & Yang the total cost equal to defendant Bremen's attorney's fees associated with MS 010 and 012; and it is further

**ORDERED**, the firm Eustace, Prezioso, Yapchanyk & Yang shall submit bills in connection with their associated attorneys' fees related to MS 010 and MS 012 to Krentsel Guzman Herbert, LLP withing 14 days of this Order. Upon receipt Krentsel Guzman Herbert, LLP shall pay the total amount billed to Eustace, Prezioso, Yapchanyk & Yang by no later than 45 days of this Order; and it is further

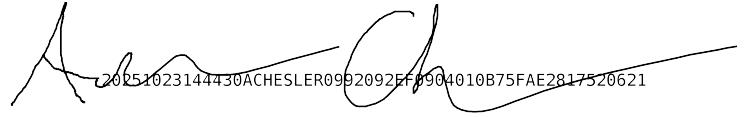
**ORDERED**, the firm Krentsel Guzman Herbert, LLP must pay to Marshall Dennehey, P.C. the total cost equal to defendant Danella's attorney's fees associated with MS 014; and it is further

**ORDERED**, the firm Marshall Dennehey, P.C. shall submit bills in connection with their associated attorney's fees related to MS 014 to Krentsel Guzman Herbert, LLP withing 14 days of this Order. Upon receipt Krentsel Guzman Herbert, LLP shall pay the total amount billed to Marshall Dennehey, P.C. by no later than 45 days of this Order; and it is further

**ORDERED**, within 30 days of this Order the firm Krentsel Guzman Herbert, LLP shall pay a total of \$5,000 to the Lawyers' Fund for Client Protection.

All other relief requested and not granted herein is denied.

This constitutes the Decision of the Court.



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10/23/2025  
DATE

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ARIEL D. CHESLER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: