

**Braganca-Ferreira v SREP 10th Ave. Venture LLC**

2025 NY Slip Op 34420(U)

November 19, 2025

Supreme Court, New York County

Docket Number: Index No. 156045/2020

Judge: Denis Reo

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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. DENIS REO PART 65

Acting Justice

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FELIPE BRAGANCA-FERREIRA,

Plaintiff,

- v -

SREP 10TH AVENUE VENTURE LLC, SREP 10TH AVENUE PARTNERS LLC, SOUNDVIEW REAL ESTATE PARTNERS LLC, BRANTWOOD MANAGEMENT LLC, KENTON & CO., LLC, FOUNDATIONS GROUP I, INC.,

Defendant.

INDEX NO. 156045/2020
MOTION DATE 10/14/2025
MOTION SEQ. NO. 012

DECISION + ORDER ON MOTION

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SREP 10TH AVENUE VENTURE LLC, SREP 10TH AVENUE PARTNERS LLC, SOUNDVIEW REAL ESTATE PARTNERS LLC, BRANTWOOD MANAGEMENT LLC, KENTON & CO., LLC, FOUNDATIONS GROUP I, INC.

Plaintiff,

Third-Party
Index No. 595082/2021

-against-

FITZCON CONSTRUCTION/REN CORP.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 377, 393, 394, 395, 396

were read on this motion to/for

AMEND CAPTION/PLEADINGS

In this Labor Law action, defendants SREP 10<sup>th</sup> Avenue Venture LLC and Foundations Group I, Inc. (moving defendants) move by order to show cause dated October 16, 2025 for an order (1) granting them leave to amend their answer pursuant to CPLR § 3025 to assert affirmative defenses and counterclaims sounding in fraud and fraud on the court; (2) vacating the note of issue to permit moving defendants to fully investigate the circumstances of the treatment protocols and records in this action with those in two pending federal Civil Racketeer Influenced and Corrupt Organizations (RICO) actions against some of plaintiff's medical providers and plaintiff's formal counsel; (3) compelling depositions of plaintiff's medical providers; (4) compelling a further deposition of plaintiff; (5) staying this action until discovery on the proposed affirmative defenses is complete<sup>1</sup>. For the reasons set forth below, the order to show cause is DENIED.

#### Leave to Amend

During oral argument, counsel for moving defendants withdrew the portion of the order to show cause seeking leave to amend the answer to assert the affirmative defenses and counterclaims of fraud and fraud on the court. However, because the overwhelming majority of moving defendants' arguments in support of the order to show revolves around the RICO actions, the court will address the branch of moving defendants' order to show cause seeking leave to amend. CPLR § 3025 [b] states that leave to amend pleadings shall be given "upon such terms as may be just". Generally, "leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit" (*Garcia v Monadnock Constr.*, 235 AD3d 96, 226 N.Y.S.3d 190 [1st Dept 2025]). The decision to permit

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<sup>1</sup> The October 16, 2025 order to show cause stayed the trial of this matter which had been scheduled for November 6, 2025.

an amendment to a pleading, especially on the eve of trial, is committed to the sound discretion of the trial court (*Reuling v Consolidated Edison Co. of NY*, 138 AD3d 439 1<sup>st</sup> Dept 2016)]. While there is “no requirement of unassailable proof at the pleading stage, the [pleading] must allege the basic facts to establish the elements of the cause of action [or defense]” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009] [internal quotations and citations omitted]). A claim or defense of fraud must be pled with particularity. The elements of fraud are 1) material misrepresentation of an existing fact, 2) knowledge of its falsity, 3) an intent to induce reliance, 4) justifiable reliance by the party, and 5) damages (*see Ross v Louise Wise Services, Inc.* 8 NY3d 478, 486 [2008]). To state a claim for fraud upon the court, there must be allegations “that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense” (*CDR Creances S.A.S. v Cohen*, 23 NY3d 307, 321 [2014]). Here, the allegations in support of the proposed affirmative defense and counterclaim advanced by the moving defendants are palpably insufficient (*Breton v Dish*, 234 AD3d 432 [1<sup>st</sup> Dept 2025]). General and conclusory allegations like the ones in moving defendants' proposed amended answer lack the requisite particularity to establish a claim or defense of fraud (*Barlow v. Skroupa*, 221 AD3d 482 [1<sup>st</sup> Dept. 2023]). Allegations made “upon information and belief” are similarly insufficient to establish fraud in accordance with CPLR § 3016 (*Rosenberg v OSG, LLC*, 224 AD3d 466 [1<sup>st</sup> Dept 2024]) and the fact that defendants are actively litigating this case actually illustrates a lack of reliance on plaintiff's allegedly false statements (*Estrada v Kaufman Grp, Inc.*, 2025 NY Slip Op 333877[U] [Sup Ct, Kings County, 2025]; *Breton*, 234 AD3d at 432).

Moreover, the Appellate Division, First Department has repeatedly held that the unproven allegations of fraud in two federal civil RICO actions against plaintiff's former counsel and/or medical providers are insufficient, without more, to support a claim or defense for fraud (*Linares v City of NY*, 233 AD3d 479 [1<sup>st</sup> Dept 2024]; *Broughton v 553 Marcy Ave Owners Corp.*, 238 AD3d 536 [1<sup>st</sup> Dept 2025]; *Anguisaca-Morales v St. Paul & St. Andrew United Methodist Church*, 238 AD3d 439 [1<sup>st</sup> Dept 2025]). Therefore, the motion to amend is denied. However, it is for the trial court to determine to what extent, if any, defendants can explore the RICO allegations against plaintiff's former counsel and treatment providers at trial (*Linares*, 233 AD3d at 480).

Vacate the Note of Issue and Compel Further Discovery

Note of issue was filed in this case on November 30, 2023 and in order to vacate the note of issue, moving defendants are required to show that unusual or anticipated circumstances developed after the filing of the note of issue which require additional pretrial proceedings so as to avoid substantial prejudice (*Audiovox Corp. v Benyamini*, 265 AD2d 135, 138, 707 NYS2d 137 [2d Dept 2000]). At oral argument, counsel for moving defendants argues that it is the fact that plaintiff was referred for MRIs and physical therapy by Dr. Okubadejo before plaintiff had actually been seen by Dr. Okubadejo that warrant further discovery, and not necessarily the unproven allegations of fraud in the RICO actions. However, moving defendants' papers, both their affirmation in support and their memorandum of law, make no showing that the details regarding Dr. Okubadejo's referrals of plaintiff were unknown to moving defendants until after the note of issue was filed. Defendants reliance on *Franco v 800 E 173 LLC*, 240 AD3d 446 [1<sup>st</sup> Dept 2025] for support of their motion to compel additional depositions based plaintiff's allegedly illegitimate medical treatments is also unavailing. *Franco* involved pre-note of issue discovery and, therefore, the required showing was not unusual or unanticipated circumstances but rather whether the

evidence sought was material and necessary (*id.* at 447). The Appellate Division makes no mention of unusual or unanticipated circumstances in *Franco* and it did not hold that the federal civil RICO actions constitute unusual or unanticipated circumstances. To the extent that moving defendants contend that they did not become aware until after the note of issue was filed that plaintiff's former counsel was allegedly obtaining MRI prescriptions for its clients prior to the clients actually being seen by Dr. Okubadejo when it was alleged in *Oliveira v 5462 125<sup>th</sup> Realty LLC*, Index No. 150949/2020, the court in *Oliviera* expressly rejected this allegation serving as a basis to vacate the note of issue or to permit the assertion of a fraud claim (*id.* at NYSCEF Doc. No. 143). While moving defendants contend that the note of issue should not be used by plaintiff as a shield to impede a search for the truth, the fact remains that because more than 20 days have elapsed since the note of issue was filed the law requires a showing by moving defendants of unusual or unanticipated circumstances. Since moving defendants have not met this burden, they are not entitled to vacatur of the note of issue or to post note of issue discovery from plaintiff or plaintiff's treating doctors.

In light of the foregoing, the branch of the order to show cause seeking to stay this action is denied as moot and the stay of the trial of this matter is hereby lifted.

Accordingly, it is hereby

ORDERED that the order to show cause is DENIED; and it is further

ORDERED that the temporary restraining order staying the trial in this matter is vacated;  
and it is further

ORDERED that the parties are to appear in Part 40 on December 1, 2025.

*Denis Reo*

11/19/2025  
DATE

DENIS REO, A.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: