

Candor v QB Dev. Owner LLC

2025 NY Slip Op 34457(U)

October 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 534915/2022

Judge: Devin P. Cohen

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**Supreme Court of the State of New York
County of Kings**

Index Number 534915/2022
Seq. 002, 003, 004

Part LL1M

DECISION/ORDER

FREDDY DANIEL MOYANO CANDOR,

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

Plaintiff,

Papers Numbered

against

| | |
|---|---------------|
| Notice of Motion and Affidavits Annexed | <u>1-3</u> |
| Order to Show Cause and Affidavits Annexed. | <u>3-5</u> |
| Answering Affidavits | <u>6-7</u> |
| Replying Affidavits | <u>6-7</u> |
| Exhibits | <u> </u> |
| Other | <u> </u> |

QB DEVELOPMENT OWNER LLC, OMNIBUILD
CONSTRUCTION INC., AND MADISON REALTY CAPITAL,
L.P.,

Defendants.

QB DEVELOPMENT OWNER LLC AND OMNIBUILD
CONSTRUCTION INC.,

Third-Party Plaintiff,

against

PRIME STRUCTURE INC.,

Third-Party Defendants.

QB DEVELOPMENT OWNER LLC AND OMNIBUILD
CONSTRUCTION INC.,

Second Third-Party Plaintiff,

against

GUN HILL RD. ASSOCIATES INC. AND ATLANTIC
CASUALTY INSURANCE COMPANY,

Second Third-Party Defendants.

Upon the foregoing papers, defendants QB Development Owner LLC (QB) and Omnibuild Construction Inc. (Omnibuild)'s motion to dismiss and to amend (Seq. 002), second third-party defendant Atlantic Casualty Insurance Company (ACIC)'s motion to sever (Seq.

003), and plaintiff's cross-motion to amend the caption (Seq. 004) are decided as follows:

Introduction and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on July 21, 2022, while performing work at 46-09 69th Street, Queens, NY 11377. The complaint identified plaintiff as "Freddy Daniel Moyano Candor." Plaintiff signed authorizations "Freddy Moyano C.," and the printed name on the authorizations was "Freddy Moyano Candor." Plaintiff's Workers' Compensation claim is filed under the name "Freddy Moyano." At plaintiff's deposition, he testified that his second surname is "Condor," which is also the name on his driver's license (Condor EBT at 91). Plaintiff's complaint alleged that he was employed by non-party Marathon Builders; plaintiff subsequently testified that he was employed by second third-party defendant Gun Hill Rd. Associates Inc. (Gun Hill) (*id.* at 22–24). The Workers' Compensation Board determined that Gun Hill was plaintiff's employer in its February 17, 2023 decision. Defendants also contend that plaintiff testified about witnesses to his accident despite serving discovery responses stating that he was "unaware of any witnesses" and that plaintiff's accounts of how the accident occurred are inconsistent both within his own testimony and with the testimony of his co-workers in their own Labor Law actions from the same site.

Analysis

Dismissal

Defendants do not cite a statutory or precedential authority to support the branch of their motion seeking dismissal. That portion of the motion is therefore dismissed. Defendants' motion does not seek costs.

Defendants' motion to amend

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]). Furthermore, “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 specific 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]). Additionally, although defendants claim a “founded belief” that plaintiff individually and intentionally misrepresented his name, there is no evidence that the plaintiff individually did so. The pleadings and discovery responses before the court are attorney verified, not client verified. Moreover, plaintiff’s abbreviation of his surname does not provide a basis to allege that he committed fraud. “In most Latin American countries” it is a common naming convention to form a surname by “listing first the father’s name [and] then the mother’s name” (*Corona Fruits*

& Veggies, Inc. v Frozsun Foods, Inc., 143 Cal App 4th 319, 324 [Cal Ct App 2006]). The decision to use one, or both, of these names when signing documents is not on its own tantamount to fraudulent misrepresentation. Therefore, although there is evidence in the record that may demonstrate that plaintiff's counsel failed to verify the spelling of their client's name, when plaintiff was asked unequivocally about his name at his deposition, he provided his full surname and the proper spelling.

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 Dish*, 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, there is no evidence of a staged accident presented 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]). There is a remedy for the concerns defendants raise—cross-examination. Defendants will have an opportunity to question plaintiff and the purported witnesses about the details of plaintiff's accident. However, defendants' speculation about plaintiff's associations, national origin, the quality or reliability of co-worker witnesses, and plaintiff's description of how the accident happened are inadequate to meet the pleading standard for 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 yet to be made.

Plaintiff's motion to amend

The plaintiff contends the misspelling of his last name in the complaint was a scrivener's error by the law firm and that the plaintiff individually did not intentionally provide a false last name. Plaintiff further claims that the mistakenly identified employer was based on information and belief and that, based on the collateral estoppel effect of the Workers' Compensation Board decision under the Justice for Injured Workers action, he must be permitted to amend the complaint to correctly identify his employer. As noted above, the first time that plaintiff individually was asked to confirm his name, he provided the correct spelling; prior authorizations and verifications of the incorrect name were done by plaintiff's counsel. This action is not on the trial calendar and sufficient time remains to allow discovery to be completed with the updated information. Therefore, plaintiff's motion to amend to correct the spelling of his name and his correct employer is granted.

The caption in the primary action shall hereby read:

FREDDY DANIEL MOYANO CONDOR,

Plaintiff,

against

QB DEVELOPMENT OWNER LLC, OMNIBUILD
CONSTRUCTION INC., AND MADISON REALTY CAPITAL,
L.P.,

Defendants.

The caption in the third-party action remains unchanged. Since all parties have appeared, plaintiff shall serve the amended summons and complaint upon all parties via NYSCEF within 20 days of the notice of entry.

Severance

ACIC seeks severance of the third-party action against it which, in essence, seeks a declaration or remedy concerning ACIC's alleged obligation to provide insurance coverage to the prime defendants based on the policy purchased by Gun Hill. Typically, claims involving insurance coverage should not be jointly tried with claims involving insurance coverage in order to avoid prejudicing or unduly influencing the jury (*see Poalacin v Mall Properties, Inc.*, 155 AD3d 900 [2d Dept 2017]). The court sees no reason to depart from the general rule here; therefore, the second third-party action is hereby severed. The action shall be assigned a new index number, and a compliance conference is scheduled for November 10, 2025.

Conclusion

Defendants' motion to dismiss and to amend (Seq. 002) is denied.

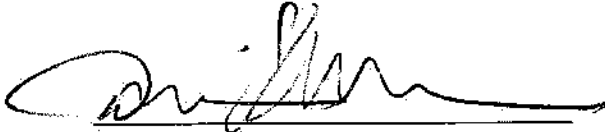
Second third-party defendant ACIC's motion to sever (Seq. 003) is granted.

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Plaintiff's cross-motion to amend (Seq. 004) is granted as indicated above.

This constitutes the decision and order of the court.

October 16, 2025
DATE


DEVIN P. COHEN
Justice of the Supreme Court