

Londono v B. Mangreen Props., LLC

2025 NY Slip Op 34531(U)

November 6, 2025

Supreme Court, Kings County

Docket Number: Index No. 524348/2022

Judge: Devin P. Cohen

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

Index Number 524348/2022
Seqs. 010, 011

Part LL1M

DECISION/ORDER

DILAN LEONARDO MORENO LONDONO,

Plaintiff,

against

B. MANGREEN PROPERTIES, LLC, B MANGREEN
DEVELOPMENT LLC, HRC GREENPOINT, LLC, TOWN
SPORTS INTERNATIONAL, LLC, TSI GREENPOINT, LLC,
PNV INDUSTRIES, LLC, AND NXGEN FITNESS, LLC,

Defendants.

HRC GREENPOINT, LLC,

Third-Party Plaintiff,

against

PNV INDUSTRIES LLC,

Third-Party Defendants.

PNV INDUSTRIES LLC,

Second Third-Party Plaintiff,

against

VZL SERVICE LLC,

Second Third-Party Defendants.

As required by CPLR 2219 (a), the following e-filed documents, listed by NYSCEF document numbers, were considered on this motion: 282-303, 347-349, 351-360, 362-363.

Upon the foregoing papers, defendants HRC Greenpoint, LLC (HRC) and B Mangreen Properties LLC (B Mangreen)'s cross-motion to compel and amend (Seq. 010) and defendant/third-party defendant PNV Industries LLC (PNV)'s cross-motion to compel and amend (Seq. 011)¹ are decided as follows:

Procedural Posture and Factual Background

Plaintiff commenced this action to recover for damages he claims to have sustained on December 30, 2021, when he fell from a ladder. The movant defendants now seek to, *inter alia*, amend their answers 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

¹ These cross-motions were originally returnable in the Central Compliance Part, but were referred by order to this part because they contained requests to amend pleadings. Since referral was by order, the cross-motions will be determined on the merits despite the absence of a primary motion currently before the court.

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, as an initial matter, PNV’s motion is fatally defective in that it does not include a copy of its proposed amended pleadings—therefore, PNV’s motion must be denied (CPLR 3025 [b]; *Mendoza v Enchante Accessories, Inc.*, 185 AD3d 675, 679 [2d Dept 2020]).

Moreover, both movants 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.

Discovery Relief and Sanctions

That portion of defendants' cross-motions which seeks sanctions for plaintiff's failure to appear for a medical examination are denied; plaintiff provided a copy of defendants' own expert report showing that plaintiff was examined and that reports have already been exchanged.

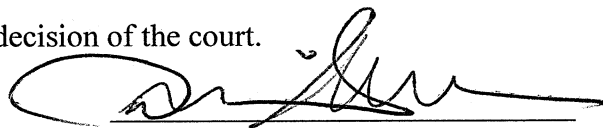
With respect to the other discovery-related relief contained in defendants cross-motions, the requests are denied without prejudice to new motions, if appropriate, made returnable to the Central Compliance Part.

Conclusion

Defendants HRC and B Mangreen's cross-motion (Seq. 010) and PNV's cross-motion (Seq. 011) are denied. This constitutes the decision of the court.

November 6, 2025

DATE



DEVIN P. COHEN

Justice of the Supreme Court