

Barrera-Romero v Wythe Holdings LLC

2026 NY Slip Op 30212(U)

January 16, 2026

Supreme Court, Kings County

Docket Number: Index No. 501879/2020

Judge: Carolyn Walker-Diallo

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP4, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 320 Jay Street, Brooklyn, New York, on the 16th day of January 2026.

PRESENT:

HON. CAROLYN WALKER-DIALLO, J.S.C.

SIDNEY BARRERA-ROMERO, X

Index No. 501879/2020

Plaintiff,

-against-

**AMENDED
DECISION AND ORDER**

WYTHE HOLDINGS LLC., PH 296 WHYTHE
I LLC. and Y.N.H. CONSTRUCTION INC.,

Defendants.

WYTHE HOLDINGS LLC., PH 296 WHYTHE
I LLC. and Y.N.H. CONSTRUCTION INC., X

Third-Party Plaintiffs,

-against-

CORE SCAFFOLD SYSTEMS, INC.,

Third-Party Defendant.

CORE SCAFFOLD SYSTEMS, INC., X

Second Third-Party Plaintiff,

-against-

K&V GARCIA CORP.,

Second Third-Party Defendant.

X

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

Motion:

Papers

Motion in Limine, and Exhibits
Opposition, and Exhibits
Reply, and Exhibit

Numbered

NYSCEF Doc. Nos. 267-269
NYSCEF Doc. Nos. 273-279
NYSCEF Doc. Nos. 281-282

Motion Sequence #10¹

INTRODUCTION

Third-Party Defendant Core Scaffold Systems, Inc. (“Defendant Core”) filed a motion in limine requesting that the Court preclude Plaintiff’s loss earning claims. Specifically, Defendant Core requests that the Court preclude the testimony of Professor Reiber, an economist, on the basis that: (1) Professor Reiber’s opinions are speculative and lack the required factual foundation; and (2) Plaintiff has not provided competent proof of actual earnings and work capacity to support its loss-of-earnings-claims. Plaintiff opposes the motion, asserting that the Workers’ Compensation Board’s decision (“WCB Decision”) is a proper basis on which Professor Reiber can rely. *See* WCB Decision, NYSCEF Doc. No. 274. Plaintiff further asserts that the WCB Decision establishes his wage claim and is indisputably documentary evidence. Lastly, Plaintiff contends that Defendant Core was provided the opportunity to obtain the Board’s records and failed to do so. In reply, Defendant argues that Plaintiff has not established with reasonable certainty the amount of loss of earnings and has failed to identify any proof that Professor Reiber reviewed the WCB Decision or any Workers’ Compensation documents. For the reasons set forth below, Defendant Core’s motion is GRANTED.

¹ The motion in limine and the responsive documents are filed as “Trial Documents.” The motion has no motion sequence number assigned on eCourts and NYSCEF, but this is the tenth motion sequence filed under this index number.

DISCUSSION

It is “the plaintiff’s burden to establish damages for past and future lost earnings with reasonable certainty.” *Fortune v. New York City Hous. Auth.*, 201 A.D.3d 705, 707-08 (2d Dep’t 2022). Moreover, a plaintiff’s “own testimony and the submission of his W-2 forms” are sufficient to establish lost earnings. *Gore v. Cardany*, 167 A.D.3d 851, 852 (2d Dep’t 2018). Furthermore, lost earning capacity may be established by the testimony of an economist who examines the plaintiff’s employment records, pay stubs, W-2s, and tax returns to establish past earnings and projecting future losses. *See Nayberg v. Nassau County*, 149 A.D.3d 761, 762 (2d Dep’t 2017).

There is no dispute that these documents are not part of the record in this case. In fact, Plaintiff admits that Professor Reiber reasonably relied on the WCB Decision, which established Plaintiff’s weekly average wage prior to the injury, to make his calculations. *See* Plaintiff’s Opposition to Defendant’s Pre-Trial Motion in Limine, NYSCEF Doc. No. 273 at 2, 5. However, Professor Reiber’s sole reliance on the WCB Decision is insufficient. *See Lodato v. Greyhawk N. Am., LLC*, 39 A.D.3d 494, 496 (2d Dep’t 2007) (finding that plaintiff failed to establish lost earnings where he offered “no tax returns, W-2 forms, or pay stubs into evidence,” but only “[u]nsubstantiated testimony, without documentation.”) Thus, while the WCB Decision could help establish a basis for Professor Reiber’s evaluation of lost earnings and earnings capacity, the Court finds that the WCB Decision cannot be the sole document on which to make his determinations.

In addition, the Court notes that the WCB Decision is not a binding legal conclusion on this Court. The Justice for Injured Workers Act, passed in 2022, effectively ended collateral estoppel for WCB decisions in civil courts. Workers’ Compensation Law § 11 (2) (“Determination by the board shall not be given collateral estoppel effect in any other action or proceeding arising

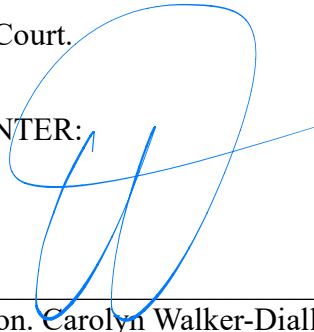
out of the same occurrence, other than the determination of the existence of an employer employee relationship”); see *Velazquez-Guadalupe v. Ideal Bldrs. and Constr. Servs., Inc.*, 216 A.D.3d 63, 72 n 1 (2d Dep’t 2023). As such, the case law cited by Plaintiff to support the assertion that consideration should be given to a WCB determination was decided in 2008, well before the passage of the Justice for Injured Workers’ Act. Therefore, Professor Reiber’s evaluation, which is based solely on the WCB Decision, is insufficient to establish plaintiff’s lost earnings and earnings capacity with reasonable certainty thereby precluding his testimony at trial.

CONCLUSION

Accordingly, Defendant Core’s motion is GRANTED.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Carolyn Walker-Diallo, J.S.C.