

Brito v City of New York
2026 NY Slip Op 30449(U)
February 6, 2026
Supreme Court, New York County
Docket Number: Index No. 162008/2018
Judge: Adam Silvera
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ADAM SILVERA PART 40

Justice

-----X

RAFAEL BRITO,

Plaintiff,

- v -

CITY OF NEW YORK, CITY OF NEW YORK
DEPARTMENT OF SMALL BUSINESS SERVICES, SOUTH
STREET SEAPORT LIMITED PARTNERSHIP, SEAPORT
MANAGEMENT DEVELOPMENT COMPANY, LLC, THE
HOWARD HUGHES CORPORATION, GTL
CONSTRUCTION, LLC,

Defendant.

-----X

GTL CONSTRUCTION, LLC

Plaintiff,

-against-

JLM DECORATING, INC.,

Defendant.

-----X

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595572/2019

The following e-filed documents, listed by NYSCEF document number (Motion 006) 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 260, 261, 287, 288, 289, 290, 291, 292, 293, 294, 295¹

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 286, 301, 304, 205, 306, 307, 308, 309, 310

were read on this motion to/for STAY.

This action arises from a workplace accident that occurred on July 31, 2018, at a construction site located at 89 South Street, Pier 17, New York, New York. The alleged incident

¹ The Court does not consider NYSCEF doc. nos. 296-297. The Court did not give prior permission to file reply papers to this order to show cause and will not entertain same. See 22 NYCRR 202.8-d. The Court notes that even if it were to entertain the reply papers submitted, the result would be unchanged.

occurred when plaintiff Rafael Brito (Plaintiff) fell from an unsecured A-frame ladder. The matter is scheduled to proceed to trial on February 11, 2026. Plaintiff and defendants, the City of New York; City of New York Department of Small Business Services; South Steet Seaport Limited Partnership; Seaport Management Development Company, LLC; the Howard Huges Corporation; and GTL Construction, LLC (collectively, Defendants) each bring eve-of-trial discovery motions, which are addressed in turn below.

By order to show cause (MS 006), plaintiff Rafael Brito (Plaintiff) moves pursuant to CPLR 3126 to strike Defendants' answer for failure to provide the raw data related to their neuropsychology expert's examination of Plaintiff. In the alternative, Plaintiff moves to preclude the testimony of the subject expert, Richard P. DeBenedetto, Ph.D. Plaintiff also seeks to compel Dr. DeBenedetto's "...testing manuals, answer sheets, scoring sheets, scoring protocols notes, reports and raw data related to the examination of the plaintiff..." NYSCEF doc. no. 260.

CPLR 3126 authorizes the Court to sanction a party who "...refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed." However, "[t]he striking of a party's pleadings should not...be imposed except in instances where the party seeking disclosure demonstrates conclusively that the failure to disclose was willful, contumacious or due to bad faith." *Gonzalez v 431 E. 115 St. LLC*, 68 Misc 3d 1207(A) (Sup Ct, NY County 2020), quoting *Hassan v Manhattan and Bronx Surface Tr. Operating Auth.*, 286 AD2d 303, 304 (1st Dept 2001).

Plaintiff argues that the raw data is necessary to verify Dr. DeBenedetto's expert opinion. In opposition, Defendants argue that they previously provided all raw data to Plaintiff that is not otherwise readily available, such as scoring details and testing booklets, and that they have provided all discovery required pursuant to CPLR 3101 (d). The Court agrees. Defendants have

not willfully or contumaciously failed to respond to Plaintiff's discovery demands so as to warrant sanctions nor has Plaintiff demonstrated his entitlement to the documents other than the raw data that has already been provided. Notably, in support of his position, Plaintiff cites to non-binding 4th Department, Appellate Division and trial-level cases.² Therefore, Plaintiff's motion to strike and/or preclude is denied.

By order to show cause (MS 007), filed on January 30, 2026, Defendants seek to preclude Plaintiff from producing any treatment providers and/or experts due to failure to provide *Arons* authorizations. Defendants also seek to vacate the note of issue and certificate of readiness and/or to stay the trial based upon the requested trial authorizations. In opposition, Plaintiff asserts that Defendants already moved for the identical relief in November 2025, which was previously denied as moot by this Court, as Plaintiff agreed to provide the outstanding authorizations. *See* NYSCEF doc. no. 219, Decision and Order dated November 17, 2025. Plaintiff counters that the motion is made solely as a delay tactic, because this matter has already been twice scheduled for trial and adjourned.

Defendants concede that Plaintiff provided trial authorizations for the remaining providers as of January 27 and 29, 2026 in addition to e-mailing authorizations for *Citimed* and *Stand-Up MRI* that were directed to the Court's subpoenaed records room. As such, Defendants fail to demonstrate that Plaintiff willfully and contumaciously failed to provide trial authorizations that rise to the level of requiring sanctions. Additionally, Defendants' eve-of-trial motion for the discovery, which had previously been a subject of motion practice months prior, is untimely. *See Mercado v Trabman*, 164 Misc 2d 339, 340 (App Term, 1st Dept 1995) ("In the circumstances of

² The one First Department, Appellate Division case, defendants *M.A. by Osei v Spring*, 221 AD3d 433 (1st Dept 2023), is distinguishable, as it dealt with reciprocal exchange of the plaintiff and defendant's expert's raw data.

this long-pending dental malpractice action which has been noticed for trial on three separate occasions...[party's] eve-of-trial oral motion for leave to conduct further disclosure should have been denied.”). Other than Citimed and Stand-Up MRI of the Bronx, it is unclear from the papers which authorizations remain outstanding. Nevertheless, Defendants have not timely sought the requested authorizations following the withdrawal of their earlier, withdrawn motion seeking the identical relief. Similarly, no unusual or unanticipated circumstances have arisen that require vacatur of the note of issue, as Defendants were aware of the purportedly missing authorizations months earlier, at the time of the making of their previous motion. *See Mercado v Trabman*, 164 Misc 2d at 340. Therefore, Defendants’ motion to preclude and vacate the note of issue is denied.

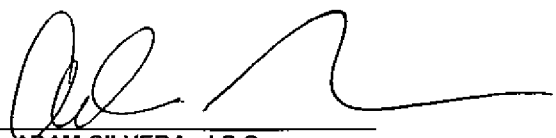
Separately, by oral application in open court, incoming counsel for third-party defendant JLM Decorating, Inc. (Third-Party Defendant) requested a brief stay of the trial so that it may have time to obtain and review the case file. In the Court’s discretion, to avoid prejudice to incoming counsel, the application for a short adjournment is granted. *See CPLR 2201* (“Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just”).

Accordingly, it is ORDERED that the trial is adjourned to March 10, 2026 at 9:30 a.m. in Room 252, 60 Centre Street, New York, NY; and it is further

ORDERED that motion sequenc numbers 006 and 007 are denied.

The foregoing constitutes the decision and order of the Court.

2/6/2026
DATE


ADAM SILVERA, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE