

<b>Rosado v Cape Church Assoc., LLC</b>
2026 NY Slip Op 30512(U)
February 9, 2026
Supreme Court, New York County
Docket Number: Index No. 154527/2021
Judge: Lynn R. Kotler
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LYNN R. KOTLER PART 08**

*Justice*

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BENNY ROSADO,

Plaintiff,

- v -

CAPE CHURCH ASSOCIATES, LLC, T.G. NICKEL &  
ASSOCIATES, LLC D/B/A CONSIGLI & ASSOCIATES,  
LLC, INTER CONNECTION ELECTRIC INC. A/K/A ICE  
ELECTRIC., SKYLINE SCAFFOLDING GROUP, INC.,

Defendants.

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INDEX NO. 154527/2021  
MOTION DATE 12/17/2025  
MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for STRIKE PLEADINGS.

Defendants move to strike the complaint or preclude plaintiff from introducing any evidence in support of his claims for plaintiff's failure to provide court-ordered discovery or, in the alternative, to compel plaintiff to provide all outstanding discovery. Plaintiff opposes the motion. The motion is granted in part.

Plaintiff commenced this action by the filing of his summons and complaint in May 2021, but did not serve defendants until August 2021. Defendant filed their answer and accompanying initial discovery demands in September 2021. The court entered a preliminary conference order in July 2022, which required, *inter alia*, that plaintiff provide responses to defendants' document demands and demand for a bill of particulars, both of which remained outstanding, by mid-August 2022. Thereafter, in September 2022, defendants sent plaintiff a good faith letter that acknowledged receipt of plaintiff's bill of particulars and discovery responses but demanding additional discovery to address deficiencies in plaintiff's responses. Specifically, defendants demanded a supplemental bill of particulars providing complete information in connection with plaintiff's lost wage claim, as well as authorizations to obtain medical, workers compensation, and employment records in connection with a prior injury-

producing accident and, if a lawsuit was commenced for the prior accident, an authorization for non-privileged attorney records.

Despite repeated emails from defendants seeking this discovery, plaintiff did not respond to these demands except to provide a few authorizations that were incomplete and/or deficient. Accordingly, in March 2025, defendants moved to strike the complaint or preclude plaintiff from introducing any evidence in support of his claims or, in the alternative, to compel plaintiff to provide all outstanding discovery (MOT SEQ 001). Defendants' prior motion was resolved by so-ordered stipulation dated May 21, 2025, following a conference with the court, pursuant to which plaintiff was directed to provide defendants a supplemental bill of particulars as to lost wages and authorizations for all medical and diagnostic treatment records, collateral source/No Fault records, and non-privileged attorney records for his prior accident. Plaintiff did not timely comply with these directives nor respond to multiple subsequent communications from defendants' counsel seeking the outstanding court-ordered discovery, prompting defendants, in August 2025, to file the instant motion (MOT SEQ 002) seeking the same relief as their prior motion.

Thereafter, on September 23, 2025, the day before he filed his opposition to the present motion, plaintiff served a supplemental bill of particulars as to lost wages and a supplemental response to defendants' combined demands. The court scheduled a conference for December 17, 2025, to discuss defendants' pending motion and determine what, if any, of the discovery sought by the motion remained outstanding following service of plaintiff's eleventh-hour supplemental discovery responses. Plaintiff failed to appear at the conference, but counsel for defendants appeared and detailed several deficiencies that remain in plaintiff's discovery responses. Specifically, plaintiff has not provided authorizations for employment and workers compensation board records pertaining to the prior accident; the authorizations provided for workers compensation carrier records and medical records pertaining to the prior accident are incomplete and/or deficient in that they do not contain the date of the prior accident or a date range for the records to be produced; and plaintiff's response does not confirm whether plaintiff commenced a lawsuit in connection with the prior accident nor attach an authorization for non-privileged attorney records pertaining to such a lawsuit.

Therefore, defendants' motion is granted to the extent that it seeks to compel plaintiff to provide all outstanding discovery. Plaintiff is hereby directed to provide defendants, within thirty (30) days of the date of this order, with the following:

- 1) Fresh authorizations, with the date range information indicated under item 9(a) on the authorization forms properly completed, for records pertaining to the prior accident, including workers compensation carrier records from Gallagher Bassett and medical and diagnostic treatment records from Mount Sinai Downtown Hospital and Dr. Robert Ziets;
- 2) Authorizations for employment and workers compensation board records pertaining to the prior accident;
- 3) Confirmation of whether plaintiff commenced a lawsuit in connection with the prior accident and, if so, an authorization for non-privileged attorney records pertaining to the lawsuit.

The parties are further directed to appear for a discovery conference before the court, to be conducted **via Microsoft Teams**, on March 5, 2026, at 11:00 am, to set a schedule for the completion of all other outstanding discovery. There are no in-person appearances in the Part. Counsel should have both audio and video available for the Microsoft Teams meeting.

22 NYCRR § 202.27 provides that “[a]t any scheduled call of a calendar or at any conference, if all parties do not appear and proceed or announce their readiness to proceed immediately or subject to the engagement of counsel, the judge may note the default on the record and enter an order . . . dismiss[ing] the action . . . [or] may make such order as appears just.” Plaintiff is cautioned that a further failure to appear for a court-ordered conference will constitute a default and may result in the striking of the complaint.


Accordingly, it is

ORDERED that defendants' motion (MOT SEQ 002) is granted to the extent that plaintiff shall, within thirty (30) days of the date of this order, provide defendants with the outstanding discovery detailed herein, and the motion is otherwise denied; and it is further

ORDERED that this action is hereby calendared for a conference before the court on March 5, 2026, at 11:00 am, to be conducted via Microsoft Teams; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

<u>2/9/2026</u> DATE					 LYNN R. KOTLER, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE