

O'Connor v Society Pass Inc.

2026 NY Slip Op 31419(U)

April 7, 2026

Supreme Court, New York County

Docket Number: Index No. 656938/2019

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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THOMAS O'CONNOR, CVO ADVISORS PTE. LTD.

Plaintiffs,

- v -

SOCIETY PASS INCORPORATED,

Defendant.

INDEX NO. 656938/2019

MOTION DATE 02/20/2026

MOTION SEQ. NO. 020

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 020) 694, 695, 696, 697, 704, 705, 713

were read on this motion to VACATE TRIAL DECISION.

Society Pass Incorporated (“SPI”) moves pursuant to CPLR 4404 to set aside the Court’s February 5, 2026 Decision After Non-Jury Trial (“Trial Decision”) (NYSCEF 673) and to reopen the trial for the limited purpose of permitting discovery and the presentation of additional evidence concerning the impact of Plaintiff Thomas O’Connor’s misrepresentation regarding his ownership of CVO Advisors Pte. Ltd. (“CVO”) on SPI’s decision to enter into an Employment Agreement and Common Stock Purchase Warrant (“Warrant”) with O’Connor. Plaintiffs oppose the motion.

For the reasons set forth below, the motion is denied.

BACKGROUND

This action arises out of a series of commercial agreements entered into between O'Connor, CVO, and SPI and its founder Dennis Nguyen ("Nguyen") beginning in 2018.

On February 5, 2026, the Court issued its Trial Decision finding, among other things, that O'Connor fraudulently induced SPI into entering two agreements with CVO—the Subscription Agreement and the Software Development Agreement (together, the "CVO Agreements")—by misrepresenting that he owned CVO at the time he executed those agreements. The Court ordered rescission of the CVO Agreements (NYSCEF 673 at 18-20). However, the Court declined to rescind two other agreements (an Employment Agreement and a Warrant), which O'Connor personally entered into with SPI subsequent to the CVO agreements, finding that SPI had not established that O'Connor's fraudulent misrepresentations regarding his CVO ownership extended to, or induced SPI's to enter into, those agreements (*id.* at 19-20).

SPI now seeks to reopen the trial, arguing that O'Connor's admission at trial that he did not own CVO until May 2019 constituted an unfair surprise that deprived it of a fair opportunity to develop the record with respect to the scope of its fraudulent inducement claim. SPI relies primarily on trial testimony from Nguyen that the agreements were "connected and interlinked" and that he would not have entered into any of them had he known the truth about O'Connor's ownership of CVO.

In opposition, O'Connor contends that SPI had constructive notice of his CVO-ownership timeline well before trial, made a tactical decision to proceed without seeking a continuance, and fully litigated the fraudulent inducement issue on the existing record.

DISCUSSION

CPLR 4404(b) authorizes the Court, after a nonjury trial, to "set aside its decision or any judgment entered thereon" and, if appropriate, to take additional testimony, make new findings, or order a new trial. "[C]ourts have always had the inherent power, which, although not plenary, authorized them to relieve a party from a judgment obtained as a result of fraud, mistake,

inadvertence, surprise or excusable neglect. CPLR 4404 and 5015 are codifications of this inherent power” (*Prote Contr. Co. v. Board of Educ.*, 230 AD2d 32, 39 [1st Dept 1997]).

I. SPI Has Not Demonstrated Cognizable “Surprise” Warranting the Relief Sought

SPI’s motion rests on the premise that it was unfairly surprised at trial by O’Connor’s testimony with respect to his ownership of CVO. However, the evidence concerning the timing of O’Connor’s CVO ownership—including the Singapore affidavit identified as JX 48—was not newly discovered. The affidavit, submitted by O’Connor in connection with proceedings to reinstate CVO, expressly set forth that he did not acquire ownership of CVO until May 2019—after certain of the agreements at issue had already been executed.

That document was included in the parties’ joint exhibit list and thus available to both sides prior to the commencement of trial. SPI therefore cannot plausibly claim that this information contained in the affidavit was unavailable to it through the exercise of due diligence (*Coastal Sheet Metal Corp. v RJR Mech. Inc.*, 85 AD3d 420, 421 [1st Dept 2011] [“Evidence only qualifies as ‘newly-discovered’ if it was in existence at the time of the original order or judgment, but was undiscoverable with due diligence”]).

SPI’s contention that it reasonably believed the affidavit contained a “typographical error” does not alter that conclusion. Any inconsistency between the affidavit and O’Connor’s prior representations was a reason to investigate it, not disregard it. Where, as here, the evidence was available and not pursued, the relief SPI seeks is not warranted (*Weinstock v Handler*, 251 AD2d 184 [1st Dept 1998]).

In addition, SPI did not seek a continuance, adjournment, or mistrial. It elected to proceed with the trial and fully litigated and argued the very fraudulent inducement issue it now

seeks to relitigate. A party may not proceed with trial in the face of purported surprise, and then seek post-trial relief after an adverse outcome (*Boyd v Manhattan & Bronx Surface Tr.*

Operating Auth., 79 AD3d 412, 413 [1st Dept 2010]).

II. The Court's Credibility Determinations Are Not Subject to Reconsideration

SPI's motion also asks the Court to reconsider its factual and credibility determinations following the bench trial. At trial, SPI cross-examined O'Connor on his ownership of CVO and elicited testimony from Nguyen that he would not have entered into various agreements had he known of O'Connor's misrepresentations.

The Court considered that testimony and credited portions of Nguyen's testimony while rejecting his broader assertion that the misrepresentations invalidated the Employment Agreement and the Warrant. As factfinder, the Court was entitled to credit portions of Nguyen's testimony while rejecting others (*Nightingale Rest. Corp. v Shak Food Corp.*, 155 AD2d 297, 297-98 [1st Dept 1989] ["On a bench trial, the decision of the fact-finding court should not be disturbed on appeal unless it is obvious that the court's conclusions could not be reached under any fair interpretation of the evidence, especially when the findings of fact rest in large measure on considerations relating to the credibility of witnesses"]; *see also Noryb Ventures, Inc. v Mankovsky*, 47 Misc 3d 1220(A), 2015 NY Slip Op 50743(U), *7 [Sup Ct, NY County 2015]; *DiPalma v State*, 90 AD3d 1659, 1660 [4th Dept 2011]).

SPI's disagreement with the Court's credibility findings is a matter for appellate review, not a basis for reopening the trial.

III. Additional Discovery Would Not Likely Change the Result

Moreover, even if additional discovery were permitted, SPI has not demonstrated that it would likely change the outcome. The Court's Trial Decision was not based on an absence of

evidence. It was based on the contractual language of the Employment Agreement and Warrant, the absence of any express connection between those agreements and O'Connor's ownership of CVO, and credibility findings concerning Nguyen's trial testimony.

SPI has not identified any specific non-speculative evidence that would overcome the Court's prior conclusions. The request for discovery is effectively an attempt to develop additional support for a theory that the Court has already considered and rejected.

CONCLUSION

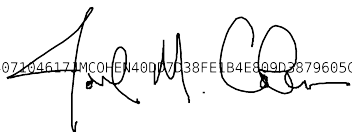
SPI has failed to demonstrate that it was deprived of a fair opportunity to litigate the fraudulent inducement issue or that any newly discovered evidence warrants setting aside the Court's Trial Decision. If anything, the record shows that SPI had access to the relevant evidence, elected to proceed with trial, and fully litigated the issue that it now asks the Court to reconsider. The Court was entitled to credit portions of Nguyen's testimony while rejecting others.

Accordingly, it is

ORDERED that SPI's motion to set aside the Trial Decision and reopen the trial record is **DENIED**.

This constitutes the Decision and Order of the Court.

4/7/2026
DATE

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JOEL M. COHEN, J.S.C.

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