

Rubin v Morrison & Foerster
2026 NY Slip Op 31582(U)
April 14, 2026
Supreme Court, New York County
Docket Number: Index No. 155986/2024
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

DANIEL RUBIN,

Plaintiff,

- v -

MORRISON & FOERSTER, BETHANY HILLS, MIKE
WARD, STACY AMIN,

Defendants.

-----X

INDEX NO. 155986/2024

MOTION DATE 04/02/2026

MOTION SEQ. NO. 004 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 84, 86

were read on this motion to/for DISMISS.

Motion Sequence Numbers 004 and 005 are consolidated for disposition. Plaintiff's motion to dismiss defendants' counterclaims (the subject of both motion sequence numbers) is decided as described below.

Background

In this employment discrimination case, plaintiff contends that he worked as an attorney for defendant Morrison & Foerster (the "firm") starting on October 11, 2021. He contends that he suffers from several chronic medical conditions including cervical stenosis and carpal tunnel syndrome. Plaintiff alleges that he told defendants about his need for reasonable accommodations on September 28, 2021, prior to his first day, and that he struggled over the next few months to get the equipment necessary for him to effectively perform his job functions.

He contends that in late December, he was given a performance improvement plan (“PIP”) despite the fact that he had only been working at the firm for 11 weeks and that the issues with his work were entirely caused by defendants’ inability to provide him with the necessary accommodations so he could perform his work. Plaintiff argues that he was entitled to receive certain bonuses at the end of 2021 but was denied these payments based on the PIP, which plaintiff says was issued in violation of defendants’ own policies. Plaintiff then recounts that on February 1, 2022 while trying to use a monitor riser, it malfunctioned and he fell backwards and had to be taken to the emergency room. He details that he went out on full-time leave until December 2022, when defendants terminated his employment.

Defendants offer a different account of what occurred. They contend that his work performance was lacking from the beginning of his employment and that they gave him feedback describing these issues prior to their issuance of PIP to plaintiff. Defendants argue that plaintiff asked for copies of insurance policies and potential benefits in the event that he had to file a claim right before the February 1, 2022 incident. They contend that plaintiff began declining work assignments around this same time period.

Defendants assert counterclaims for fraud, unjust enrichment, faithless servant and conversion. Their central theory is that plaintiff fabricated the fall, the extent of his injuries and claimed inability to work in order to procure leave benefits and payments for 10 months.

Plaintiff moves to dismiss these counterclaims. He contends that a settlement agreement he entered into regarding his worker’s compensation claim has definitively established that he suffered a traumatic brain injury. Plaintiff maintains that defendants’ fraud claim is not pled with the requisite particularity. He contends that the unjust enrichment claim must be dismissed

because multiple doctors agree that he suffered severe injuries and that defendants conceded this point in a worker's compensation forum.

In opposition, defendants argue that they do not seek to recover any of the benefits plaintiff may have received under the Workers' Compensation Law. Rather, they seek to recover benefits such as vision coverage and life insurance premiums paid by defendants during the time plaintiff was on leave. Defendants insist that they did not waive or release anything in the workers' compensation settlement because that only dealt with claims raised there. They contend that the settlement agreement has no preclusive effect.

In reply, plaintiff emphasizes that the agreement in question specifically stated that he suffered a traumatic brain injury as a result of the February 1, 2022 accident and that defendants' carrier (acting on defendants' behalf) formally conceded this injury.

Discussion

The key issue in this motion is the effect of the workers' compensation settlement agreement on defendants' counterclaims. All sides agree that settlement agreements can have preclusive effect—the issue here is that defendants contend that the workers' compensation agreement does not have any impact on their counterclaims.

“Collateral estoppel is applicable to quasi-judicial determinations of administrative agencies, including the WCB [Workers' Compensation Board]” (*Vitello v Amboy Bus Co.*, 83 AD3d 932, 933, 921 NYS2d 159 [2d Dept 2011] [noting that collateral estoppel applies only where a disputed issue was adjudicated before the WCB]).

Here, the subject agreement states had plaintiff suffered “cognitive deficits and closed head trauma with consequent TBI” (NYSCEF Doc. No. 64 at 1). As a result of those injuries, plaintiff received a payout and agreed to waive any and all rights under the Workers'

Compensation Law against the firm (*id.* at 2-3). In this Court's view, the question of whether plaintiff suffered a significant injury was already resolved in this WCB settlement in which the law firm defendant was a party. The time to question whether there was an injury at all or the extent of that injury was during this dispute. If defendants are correct that plaintiff committed some sort of fraud and made up the entire accident, then it would raise serious concerns about this entire settlement and why they agreed to execute this settlement agreement.

But defendants don't seek to invalidate or tear up the settlement based on this alleged fraud. Instead, they specifically attempt to carve out benefits plaintiff received outside of workers' compensation. Unfortunately, defendants do not cite any binding caselaw for the proposition that they can assert that a workplace accident was completely made up despite the fact that they previously entered into an agreement before the Workers' Compensation Board premised on the happening of that accident. The general citations to settlement agreements and their preclusive effect do not sufficiently explain how defendants can now contest the veracity of plaintiff's accident at this late date.

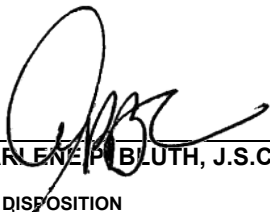
Of course, nothing prevents defendants from pursuing the rest of their account—specifically that plaintiff was not a good employee who did not perform his job adequately. The Court simply finds that defendants cannot assert counterclaims on the basis that plaintiff made up the entire accident where they (by their insurance carrier) already agreed that plaintiff was hurt and suffered a TBI.

Accordingly, it is hereby

ORDERED that plaintiff's motion to dismiss the counterclaims (MS005) is granted and the counterclaims are severed and dismissed; and it is further

ORDERED that plaintiff’s first motion to dismiss the counterclaims (MS004) is moot given that a subsequent operative answer with counterclaims was uploaded after this motion was filed.

Conference: June 17, 2026 at 10 a.m. Next key date: June 10, 2026—by this date, please upload a proposed discovery order to NYSCEF. If the parties cannot agree on discovery, then please upload letters describing the nature of any discovery disputes. Depending on what is uploaded, the Court will assess whether or not a conference is necessary. If nothing is uploaded by June 10, 2026, the Court may order that a note of issue be filed or adjourn the conference.

4/14/2026					
DATE			ARLENE P. BLUTH, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" 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