

Rosales v Paragon JV Prop III LLC
2026 NY Slip Op 31654(U)
March 31, 2026
Supreme Court, New York County
Docket Number: Index No. 155205/2023
Judge: Dana M. Catanzaro
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. DANA M. CATANZARO

PART 37

Justice

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SANTOS RIVAS ROSALES,

Plaintiff,

INDEX NO. 155205/2023

MOTION DATE 05/28/2025

MOTION SEQ. NO. 001

- v -

PARAGON JV PROP III LLC, LEEDING BUILDERS GROUP LLC, and TOP NOTCH FINISHES INC.,

DECISION + ORDER ON MOTION

Defendants.

-----X

PARAGON JV PROP III LLC., LEEDING BUILDERS GROUP LLC., and TOP NOTCH FINISHES INC.,

Third-Party Plaintiffs,

- v -

O.R.A. CONSTRUCTION NY CORP.,

Third-Party Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 39, 40

were read on this motion to/for DISCOVERY.

On June 9, 2023, plaintiff Santos Rivas Rosales commenced this action against defendants Paragon JV Prop III LLC, Leeding Builders Group LLC and Top Notch Finishes Inc. (“defendants”) to recover damages for personal injuries he sustained from an alleged accident on October 13, 2022 while working at a construction site (NYSCEF Doc. No. 1). Defendants now move for an order pursuant to CPLR 3101 compelling plaintiff to provide third-party litigation funding information. Plaintiff opposes the motion.

BACKGROUND

Following plaintiff's deposition, wherein plaintiff testified that he obtained a loan from a litigation funding company, defendants served a discovery demand upon plaintiff requesting third-party litigation funding information (NYSCEF Doc. No. 27). On May 14, 2025, the court ordered that plaintiff respond to the demand by June 30, 2025 (NYSCEF Doc. No. 20, p. 2). In a response dated May 19, 2025, plaintiff objected to disclosing the documents arguing that the information was irrelevant (NYSCEF Doc. No. 28).

Defendants now seek an order compelling disclosure of the litigation funding information. Defendants argue that plaintiff failed to timely respond to the demand or seek a protective order and further allege that the information is material and necessary to the defense of the action because the funder may have an interest in plaintiff's recovery. In addition, defendants argue that litigation funding may reveal whether the loan is a collateral source under CPLR 4545, and that the information can reveal whether plaintiff agreed to an enforceable valid obligation to pay back the funds or if the loan is a collateral source offset. Finally, defendants argue the disclosure is warranted because the litigation funding may hamper settlement and is necessary to determine whether plaintiff's attorney has a conflict of interest.

In opposition, plaintiff argues that the affirmation of good faith by defendants' attorney is deficient. Plaintiff further argues that defendants do not have a sound evidentiary basis to seek the information, are engaging in a fishing expedition, and are seeking information that is not relevant to a claim or defense. Plaintiff also contends that he timely responded to the demand and properly objected on the basis that it was palpably improper.

DISCUSSION

22 NYCRR 202.7 (a) (2) provides that a motion for disclosure requires “an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion.” Here, counsel for defendants affirms that he made several attempts including questioning plaintiff at his deposition as well as calling and leaving messages with plaintiff’s counsel (NYSCEF Doc. No. 22). The court finds that the affirmation of good faith is deficient because it does not “indicate the time, place and nature of the consultation and the issues discussed and any resolutions” (22 NYCRR 202.7 [a][c]; *148 Magnolia, LLC v. Merrimack Mut. Fire Ins. Co.*, 62 A.D.3d 486, 487 [1st Dept 2009]). Therefore, the court denies the motion on the basis that movant submits a deficient affirmation of good faith.

Notwithstanding the deficiency of the affirmation of good faith, the court further finds that the litigation funding information is not discoverable under these circumstances. New York case law provides that litigation funding is not discoverable unless the information is necessary and material to the parties’ claims and defenses (*Worldview Entertainment Holdings Inc. v. Woodrow*, 204 A.D.3d 629, 629 [1st Dept 2022]).

In *Lituma v. Liberty Coca-Cola Beverages LLC*, 243 A.D.3d 504, 505 (1st Dept 2025), the First Department found that the Supreme Court properly exercised its discretion in allowing discovery of the litigation funding information because the defendants established that the information could reveal a financial motive for plaintiff’s alleged fabrication of an accident. There, the defendants raised fraud as a counterclaim and defense (*Lituma*, 243 A.D.3d at 505).

Here, defendants do not assert that plaintiff fabricated the accident nor do they allege fraud as an affirmative defense or counterclaim. Thus, the motion must also be denied on the grounds that the litigation funding information is not material and necessary to a claim or defense.

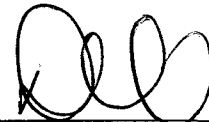
Additionally, in *Perdomo v. 361 E. Realty Assoc. LLC*, 2026 NY Slip Op 00860, *1 [1st Dept 2026], the First Department found that litigation funding is not a collateral source to which the defendant was entitled to discovery under CPLR 4545 (*id.*). The Court further found that the defendant did not show evidence that the funder may, as an interested lienholder, have held veto power over settlement that would delay a resolution (*id.*). Here, defendants' arguments are similarly unsupported and unavailing.

Accordingly, it is hereby:

ORDERED that defendants' motion to compel is denied in its entirety; and it is further

ORDERED that defendants' counsel shall serve a copy of this order with notice of entry on all parties within 10 days of entry of this order.

This constitutes the decision and order of the Court.



DANA M. CATANZARO, J.S.C.

<u>3/31/2026</u>			
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE