| **Morelli Law Firm, PLLC v Perez** |
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| 2026 NY Slip Op 31724(U) |
| April 20, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 150661/2022 |
| Judge: Kathleen Waterman-Marshall |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31M**

***Justice***

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MORELLI LAW FIRM, PLLC,

Plaintiff,

- v -

MARK PEREZ,

Defendant.

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**INDEX NO.** 150661/2022

**MOTION DATE** 02/03/2026

**MOTION SEQ. NO.** 007

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248

were read on this motion to/for STRIKE PLEADINGS.

Upon the foregoing documents, the motion by plaintiff Morelli Law Firm P.L.L.C. ("MLF") for an order, pursuant to CPLR 3024(b) and 3216, striking certain scandalous, prejudicial and irrelevant matter from defendant Mark Perez' ("Mr. Perez") "Verified Answer to Amended Complaint and Counterclaim" ("the Verified Answer") and for Rule 130 sanctions, is granted in part. Upon the same record, Mr. Perez' cross-motion for an order, pursuant to CPLR 3124, directing MLF to comply with deposition notices, is granted.

**Background**

This is the most recent of a series of pleadings motions filed by the parties in this matter. Briefly, MLF sued for a declaration that it is entitled to an enhanced 10% contingency fee on the $55 million settlement of Mr. Perez' underlying Labor Law action, for MLF's post-trial and appellate work (NYSCEF Doc. No. 1). MLF did not pay Mr. Perez the $5.5 million but deposited it into an escrow account.

Mr. Perez filed a "Verified Answer with Counterclaims and Third Party Claims" against Benedict Morelli, Esq. ("Mr. Morelli") ("the Original Answer"; NYSCEF Doc. No. 3) in which he sought damages for breach of contract for MLF's alleged failure to pay the $5.5 million held in escrow, and for breach of fiduciary duty against Mr. Morelli for alleged failure to disclose settlement offers (NYSCEF Doc. No. 3). The prior jurist denied the motion by MLF and Mr. Morelli to dismiss the counterclaim and third-party claim. On appeal, the Appellate Division, First Department disagreed with the trial court, at least in part, and dismissed Mr. Perez' breach of fiduciary duty claim based upon alleged failure to reveal settlement offers:

> However, defendant has failed to adequately to plead his breach of fiduciary claims. The basis for this claim is that plaintiff and third-party defendant failed to reveal to defendant certain settlement offers made in the underlying personal injury action. However, the only offers defendant identifies in the pleadings are all lower than the amount for which he

> settled. As such, he cannot show damages or causation as a result of the alleged concealment (*see Besen v Farhadian*, 195 AD3d 548, 550 [1st Dept 2021]).
>
> Defendant does allege that his attorney failed "to communicate multiple settlement offers" to him. Defendant contends that this allegation includes prior offers that may ultimately have netted him more. In light of this allegation, and defendant's representation, the claim is dismissed with leave to replead such additional concealed offers.

(NYSCEF Doc. No. 225).

Mr. Perez did not replead in accordance with the Appellate Division's direction. After additional motion practice, his amended complaint and proposed second amended complaint failed (*see* October 16, 2024 Decision and Order; NYSCEF Doc. Nos. 146, 230). Consequently, as of October 16, 2024 the only viable claims were MLF's claim for an enhanced 10% contingency fee and Mr. Perez' breach of contract claim for failure to pay amounts due under the original retainer agreement.

Following conferencing and yet more motion practice, as of November 19, 2025 (*see* Decision and Order dated November 19, 2025; NYSCEF Doc. No. 197, 231), MLF filed and served an Amended Complaint that now asserts two causes of action in support of its claim that it is entitled to attorney's fees for post-trial and appellate work, to wit: first cause of action, for a declaratory judgment that it is entitled to an enhanced 10% contingency fee; and second cause of action, for *quantum meruit* (NYSCEF Doc. No. 171, 232).

In his Verified Answer (NYSCEF Doc. No. 201), Mr. Perez denies the material allegations of the Amended Complaint, asserts ten affirmative defenses, and a single counterclaim for breach of contract. Mr. Perez does not bring another third party action against Mr. Morelli for breach of fiduciary duty or for breach of contract.

MLF now moves to strike certain scandalous and prejudicial allegations, and unnecessary and irrelevant material – specifically: (1) paragraphs 90 – 93, which allege, *inter alia,* "wrongful withholding of $5.5 million in settlement funds" and form the basis of Mr. Perez' breach of contract cause of action; (2) paragraphs 169 – 180, which allege that Mr. Morelli rejected settlement offers without notifying Mr. Perez; and (3) paragraph 196, which alleges, *inter alia*, that MLF and Morelli violated their fiduciary duties and ethical obligations. Notably, Mr. Perez' Verified Answer is a straight-forward cut and paste of his Original Answer. Indeed, paragraphs 90 – 93 in the Verified Answer are identical to paragraphs 80 – 83 in the Original Answer (including the heading and subheading); paragraphs 169 – 180 in the Verified Answer are identical to paragraphs 159 – 170 in the Original Answer (including subheading); and paragraph 196 in the Verified Answer is identical to paragraph 186 in the Original Answer.

The parties engaged in discovery as directed by this Court's Final Discovery Order and November 19, 2025 Decision and Order, as briefly extended by the Court on December 16, 2025. Mr. Perez served deposition notices, calling for the depositions of Mr. Morelli and David Sirotkin, Esq. ("Mr. Sirotkin"). MLF refused to appear for deposition until determination of the instant motion to strike. Mr. Perez now cross-moves to compel Morelli to comply with deposition notices.

**The Motion to Strike is Granted in Part**

Pursuant to CPLR 3024(b), "a party may move to strike any scandalous or prejudicial matters unnecessarily asserted in a pleading." Matter that is irrelevant to any cause of action will be stricken (*see Soumayah v Minnelli*, 41 AD3d 390 [1st Dept 2007] ["reviewing a motion pursuant to CPLR 3024 (b) the

inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action"]).

A motion to strike must be made within twenty days of service of the subject pleading (*see* CPLR 3024[c]). However, an untimely motion may be excused and the merits reached upon a showing of "good cause" under CPLR § 2004 (*see generally Tewari v Tsoutsouras*, 75 NY2d 1, 11-12 [1989] [statute "vests the trial court with discretion to extend the time to perform any act"]).

Mr. Perez filed his Verified Answer on December 16, 2025, making any motion to strike due to be filed by January 5, 2026. MLF's motion to strike, filed on February 3, 2026, is thus untimely. However, the Court finds good cause to address the merits of the motion as Mr. Perez' allegations regarding breach of fiduciary duties have already been definitely dismissed, and there is no prejudice by MLF's brief delay in moving to strike as MLF promptly notified Mr. Perez of his objections to the Verified Answer.

Consequently, the motion to strike is granted, in part, and all allegations that MLF and/or Morelli failed to communicate settlement offers, breached fiduciary duties and ethical obligations, are stricken from the Verified Answer, as follows: (1) the last 3 sentences of paragraph 92 (leaving only the first sentence of that paragraph); (2) paragraph 93, in its entirety; (3) paragraphs 169 – 180, in their entirety; and (4) the second sentence of paragraph 196. All other paragraphs, or portions of paragraphs, are appropriate and remain.

Mr. Perez' breach of fiduciary duty claim has been dismissed *on the exact same allegations* now asserted in the Verified Answer, and his time to replead has long since expired. Thus, this claim and the allegations upon which it is based are barred by the doctrine of law of the case (*see Garcia v Horan,* 239 AD3d 602, 603 [2d Dept 2025] ["The law of the case doctrine 'forecloses reexamination of [an issue already determined in a court of co-ordinate jurisdiction] absent a showing of newly discovered evidence or a change in the law'"]). It follows, therefore, that the Verified Answer should not include the same allegations, contained in his Original Answer, that Mr. Morelli failed to notify Mr. Perez of settlement offers and breached his fiduciary duties, as these allegations have already been considered and dismissed, are wholly irrelevant to Mr. Perez' breach of contract counterclaim and will serve only to prejudice the jury against MLF. As aptly explained by the Appellate Division, Second Department in addressing what may be properly stricken from a pleading under CPLR 3024(b):

> What qualifies as scandalous or prejudicial matter in a given complaint is sui generis. An allegation that a defendant has abused a spouse has no apparent relevance in an action brought solely for damages arising out of an arms-length breach of contract, but such an allegation has central relevance in a complaint seeking a divorce on the ground of cruel and inhuman treatment."] (*see* Domestic Relations Law § 170[1]). . . . The relevance and propriety of allegations must therefore be viewed in the context of the general facts necessary for giving the court and the parties notice of the transactions or occurrences at issue, for addressing the material elements of the asserted causes of action or defenses (*see* CPLR 3013), and for meeting any particularity requirements that might be additionally required under CPLR 3015 or 3016 or other authority [ellipsis inserted].

(*Pisula v Roman Cath. Archdiocese of New York*, 201 AD2d 88, 96-97 [2d Dept 2021]; *Ganieva v Black*, 216 AD3d 424, 425 [1st Dept 2023] ["The allegations at issue, which employed rhetoric or detailed

defendant's misconduct toward other women and his relationships with notorious third parties, were scandalous and prejudicial, and not necessary to establish any element of plaintiff's causes of action."]).

Mr. Perez may not resurrect allegations underpinning his breach of fiduciary duty claim simply because MLF has asserted a *quantum meruit* cause of action in the Amended Complaint. As explained, the Appellate Division passed upon the very same allegations of wrongdoing now re-asserted, verbatim, by Mr. Perez in his Verified Answer, and found them to be wanting. Indeed, this Court, in granting MLF leave to serve an Amended Complaint, noted that while ethical violations may be relevant to a *quantum meruit* claim this record did not contain any findings of ethical violations by Mr. Morelli, nor could it "as the claims supporting such conclusion have been dismissed" (*see* Decision and Order November 19, 2025 at page 4). Mr. Perez may not achieve an end-run around the Appellate Division's Order or this Court's Order and be afforded another opportunity to assert claims and allegations that have already been disposed (*see Garcia*, 239 AD3d 602).

The remaining allegations in paragraphs 90 – 93 of the Verified Answer, however, are indeed relevant to Mr. Perez' breach of contract claim based upon MLF's failure to pay the $5.5 million being held in escrow, and remain. While some of the allegations are unkind or even harsh – i.e., that MLF "help[ed]" itself to an additional $5.5 million of Mr. Perez' settlement funds – that alone does not provide a basis to strike them (Patrick M. Connors, Practice Commentaries, NY CPLR 3024 [McKinney] ["From one point of view, everything a party puts into its pleading is intended to prejudice the other side. And in many a case the most pertinent and even indispensable allegations can qualify as scandalous. . . . Litigation is replete with the prejudicial and the scandalous, and those words in the CPLR 3024(b) criteria must thus be played down."]). Nor do the sharp allegations constitute defamation *per se*, as they are statements made in the course of judicial proceedings (*see Front, Inc. v Khalil*, 24 NY3d 713, 718 [2015] ["we have held that absolute immunity from liability for defamation exists for oral or written statements made by attorneys in connection with a proceeding before a court "when such words and writings are material and pertinent to the questions involved"]).

Notwithstanding that the Court has granted, in part, MLF's motion to strike, the Court declines to award sanctions. The Court is afforded discretion to impose sanctions and costs for frivolous conduct (22 NYCRR 130-1.1[a]). "Conduct is frivolous if it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law" (*Newman v Berkowitz*, 50 AD3d 479 [1st Dept 2008] [internal quotations omitted]; 22 NYCRR § 130-1.1[c]). Given the merit to Mr. Perez' allegations regarding MLF's breach of contract, his entire Verified Answer is not frivolous within the meaning of 22 NYCRR 130-1.1.

**The Motion to Compel is Granted**

Mr. Perez is entitled to an order, pursuant to CPLR 3124, compelling the depositions of Mr. Morelli and Mr. Sirotkin, as they seek matter that is material and necessary to the prosecution of Mr. Perez' defenses to MLF's claims and prosecution of his counterclaim for breach of contract (*see* CPLR § 3101[a]; *Forman v Henkin*, 30 NY3d 656, 661 [2018]). Mr. Perez demonstrated that MLF has failed to respond to his proper deposition notices, warranting an order directing it to do so (*see* CPLR 3124; *O'Halloran v Metro. Transportation Auth.*, 169 AD3d 556, 557 [1st Dept 2019] [court providently exercised discretion in granting motion to compel discovery and directing defendants to produce documents responsive to plaintiffs' requests]).

Consequently, Mr. Morelli and Mr. Sirotkin shall appear for deposition on or before May 1, 2026, all discovery is to be completed by May 28, 2026, and MLF shall file a Note of Issue by May 29, 2026. No further adjournments or extensions of discovery will be granted.

Accordingly, it is hereby

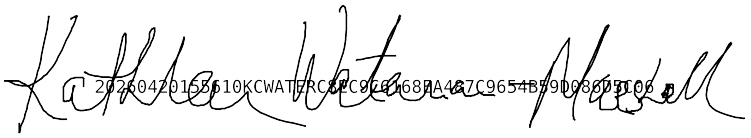
**ORDERED** that the motion by Morelli Law Firm PLLC to strike from Mark Perez' Amended Answer certain scandalous, prejudicial, and irrelevant matter is granted in part; and it is further

**ORDERED** that the following matter is stricken from the Verified Answer: (1) the last 3 sentences of paragraph 92 (leaving only the first sentence of that paragraph); (2) paragraph 93, in its entirety; (3) paragraphs 169 – 180, in their entirety; and (4) the second sentence of paragraph 196. All other paragraphs, or portions of paragraphs, are appropriate and remain; and it is further

**ORDERED** that the motion by Morelli Law Firm PLLC for Rule 130 sanctions is denied; and it is further

**ORDERED** that Mr. Perez' motion to compel the depositions of Benedict Morelli, Esq. and David Sirotkin, Esq. is granted, and said attorneys shall appear for their depositions on or before May 1, 2026; and it is further

**ORDERED** that all discovery in this matter is to be completed by May 28, 2026, and MLF shall file a Note of Issue by May 29, 2026; no further adjournments or extensions of discovery will be granted, and the Status Conference scheduled for April 21, 2026 is vacated (no appearance necessary).



**4/20/2026**
**DATE**

**KATHLEEN WATERMAN-MARSHALL, J.S.C.**

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| **CHECK ONE:** | | **CASE DISPOSED** | | | [X] | **NON-FINAL DISPOSITION** | |
| | | **GRANTED** | [ ] | **DENIED** | [X] | **GRANTED IN PART** | [ ] **OTHER** |
| **APPLICATION:** | | **SETTLE ORDER** | | | | **SUBMIT ORDER** | |
| **CHECK IF APPROPRIATE:** | | **INCLUDES TRANSFER/REASSIGN** | | | | **FIDUCIARY APPOINTMENT** | [ ] **REFERENCE** |