SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Smartmatic USA Corp. v. Fox Corp.

2026 NY Slip Op 02891 (N.Y. Ct. App. 2026) · No. Index No. 151136/21; Appeal No. 6565; Case No. 2025-08190 · Decided May 7, 2026

SUMMARY

The Appellate Division, First Department, modified an order concerning discovery and a requested stay in Smartmatic's defamation action against Fox-related defendants. The court declined to stay the action pending separate federal criminal proceedings but vacated the note of issue for limited discovery concerning the superseding indictment's impact on plaintiffs' business. It also permitted discovery regarding allegations involving Los Angeles County, to the same extent as discovery concerning allegations involving Venezuela.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Gesmer, J.; Higgitt, J.; Michael, J.; Chan, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	May 7, 2026
DOCKET	Index No. 151136/21; Appeal No. 6565; Case No. 2025-08190
DISPOSITION	other
PROCEDURAL POSTURE	Defendants appealed from an order of Supreme Court, New York County, denying in part their motion to vacate a Judicial Hearing Officer's report and denying their separate motion to stay the action and vacate the note of issue.
STANDARD OF REVIEW	The denial of a stay was reviewed for abuse of discretion; the appellate court also reviewed the discovery and note-of-issue rulings under the applicable New York procedural rules and law.
PRECEDENTIAL VALUE	published

PARTIES	Fox Corporation, Fox News Network, LLC, Debi Dobbs, as Administrator of the Estate of Lou Dobbs, deceased, Maria Bartiromo, Jeanine Pirro v. Smartmatic USA Corp., SGO Corporation Limited

TOPICS

discovery dispute · civil procedure · appellate procedure · defamation · commercial litigation

PRACTICE AREAS

civil procedure · appellate procedure · commercial litigation · defamation

QUESTIONS PRESENTED

1. Whether the action should be stayed pending resolution of separate federal criminal proceedings against Smartmatic and its executives.
2. Whether the note of issue should be vacated for the limited purpose of permitting discovery concerning the impact of the superseding indictment on plaintiffs' business.
3. Whether defendants were entitled to discovery concerning the impact on Smartmatic's business of allegations involving Los Angeles County to the same extent as allegations involving Venezuela.

HOLDINGS

1. A stay was properly denied because the separate federal criminal proceedings involved unrelated allegations and the traditional factors supporting a stay, including inconsistent adjudications, duplication of proof, and waste of judicial resources, were not present; the executives' Fifth Amendment invocations did not warrant a stay under the circumstances.
2. The note of issue should be vacated for the limited purpose of allowing discovery regarding the impact of the superseding indictment on plaintiffs' business because the indictment constituted unusual and unanticipated circumstances and defendants would suffer substantial prejudice if the discovery were disallowed.
3. Defendants were entitled to discovery concerning the impact on Smartmatic's business of the new substantive allegations involving both Venezuela and Los Angeles County; the lower courts improperly distinguished between those jurisdictions for discovery purposes.

KEY QUOTATIONS

> *"Vacatur is warranted upon a showing of good cause, which "is established when the movant demonstrates unusual or unanticipated circumstances and substantial prejudice""* ([*2])

> *"plainly relevant to [plaintiffs'] current and future lost profits"* ([*2])

FACTUAL BACKGROUND

Plaintiffs brought a defamation action alleging that defendants reported Smartmatic engaged in vote-rigging during the 2020 United States presidential election. During the action, Smartmatic and its executives became subject to separate federal criminal proceedings involving alleged Foreign Corrupt Practices Act violations and bribery and money laundering conduct connected to a 2016 Philippine election; a superseding indictment added Smartmatic as a defendant. Defendants sought a stay and discovery concerning the criminal allegations' impact on Smartmatic's business, including allegations involving Venezuela and Los Angeles County, while plaintiffs' executives had repeatedly invoked the Fifth Amendment during depositions.

PROCEDURAL HISTORY

Supreme Court denied defendants' requests to vacate portions of the Judicial Hearing Officer's October 14, 2025 report, stay the action pending separate federal criminal proceedings, and vacate the note of issue. The Appellate Division unanimously modified the order by permitting additional discovery concerning allegations involving Los Angeles County and by vacating the note of issue for the limited purpose of allowing discovery concerning the superseding indictment's impact on plaintiffs' business; it otherwise affirmed.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified to vacate the portion of the Judicial Hearing Officer's report denying discovery concerning the Los Angeles County allegations and to permit discovery to the same extent as discovery concerning the Venezuela allegations. The note of issue was vacated solely to allow discovery regarding the impact of the superseding indictment on plaintiffs' business; the order was otherwise affirmed.

CASES CITED

- Britt v. International Bus Servs., 255 A.D.2d 143, 144 (1st Dep't 1998)
- Mook v. Homesafe Am., Inc., 144 A.D.3d 1116, 1117 (2d Dep't 2016)
- Lituma v. Liberty Coca-Cola Beverages LLC, 243 A.D.3d 504, 504 (1st Dep't 2025)
- Smartmatic USA Corp. v. Fox Corp., 238 A.D.3d 526, 527-528 (1st Dep't 2025)
- Crane v. New York World Tel. Corp., 308 N.Y. 470, 478 (1955)
- Fraser v. Park Newspapers of St. Lawrence, 257 A.D.2d 961, 962 (3d Dep't 1999)
- Manzo v. Westchester Rockland Newspapers, 106 A.D.2d 492, 492 (2d Dep't 1984)

OPINION

PER CURIAM.

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The federal criminal action concerns unrelated allegations that Smartmatic and its executives violated the Foreign Corrupt Practices Act by bribing government officials in connection with a

2016 election in the Philippines, which will not be decisive of the issues in the instant case, in which plaintiffs allege that defendants defamed them by reporting that Smartmatic engaged in vote-rigging in connection with the 2020 United States Presidential election.

Although plaintiffs' executives repeatedly invoked the Fifth Amendment in their deposition testimony in this action, this is not sufficient under the circumstances to warrant a stay.</p> [*2] <p>The note of issue should, however, be vacated for the limited purpose of allowing discovery regarding the impact of the superseding indictment on plaintiffs' business (<i>see </i>Uniform Rules for Trial Courts [22 NYCRR] § 202.21 [e]).

Vacatur is warranted upon a showing of good cause, which "is established when the movant demonstrates unusual or unanticipated circumstances and substantial prejudice" (<i>Lituma v Liberty Coca-Cola Beverages LLC</i>, 243 AD3d 504, 504 [1st Dept 2025] [internal quotation marks and brackets omitted]). This Court previously held that information related to the impact of the federal criminal action on plaintiffs' business is "plainly relevant to [plaintiffs'] current and future lost profits" and discoverable regardless of ultimate admissibility (<i>Smartmatic USA Corp. v Fox Corp.</i>, 238 AD3d 526, 527-528 [1st Dept 2025] [hereinafter <i>Smartmatic I</i>]).

The filing of the superseding indictment, which added Smartmatic as a defendant, was both an unusual and unanticipated circumstance, and defendants would be substantially prejudiced by the disallowance of discovery with respect to the impact of the superseding indictment.</p> <p>The JHO report struck an appropriate balance, consistent with the logic of this Court's prior ruling, by allowing discovery "regarding the effect on Smartmatic's business of the facts described in" the federal government's August 1, 2025 Notice of Intent to Use Evidence Supporting the Charged Bribery and Money Laundering Conduct (the Evidentiary Notice) but not regarding the truthfulness of the allegations therein (<i>see Smartmatic I</i>, 238 AD3d at 527-528; <i>see also</i> <i>Crane v New York World Tel.

Corp.</i>, 308 NY 470, 478 [1955]; <i>Fraser v Park Newspapers of St. Lawrence</i>, 257 AD2d 961, 962 [3d Dept 1999]; <i>Manzo v Westchester Rockland Newspapers</i>, 106 AD2d 492, 492 [2d Dept 1984]). The JHO and the motion court, however, should not have distinguished between the allegations regarding activity in Venezuela and Los Angeles County for purposes of discovery into the Evidentiary Notice.

The notice added new substantive allegations about conduct that occurred in both of those jurisdictions, and thus defendants would be substantially prejudiced by preventing discovery into the impact of those allegations on Smartmatic (<i>see </i>Uniform Rules for Trial Courts [22 NYCRR] § 202.21 [d]). </p> <p>THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p> <p>ENTERED: May 7, 2026</p> </div> <div> <footer> <div> <p>Court Decisions</p> All Court Decisions

PER CURIAM.

 Smartmatic USA Corp. et al., Plaintiffs-Respondents, v Fox Corporation et al., Defendants-Appellants, Sidney Powell, Defendant. Decided and Entered: May 07, 2026 Index No. 151136/21|Appeal No. 6565|Case No. 2025-08190| Before: Moulton, J.P., Gesmer, Higgitt, Michael, Chan, JJ. Kirkland & Ellis LLP, New York (Kenneth Winn Allen of the bar of the District of Columbia and State of Georgia, admitted pro hac vice, of counsel), for appellants.

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The court providently exercised its discretion in denying a stay of this action pending resolution of the separate, federal criminal proceedings against Smartmatic and its executives, since none of the factors traditionally considered, such as risk of inconsistent adjudications, duplication of proof, or waste of judicial resources, applies (see Britt v International Bus Servs., 255 AD2d 143, 144 [1st Dept 1998]; Mook v Homesafe Am., Inc., 144 AD3d 1116, 1117 [2d Dept 2016]).

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ENTERED: May 7, 2026

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