

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

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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)