

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

Arita v. FDS Assoc., LLC

2026 N.Y. Slip Op. 01152 (N.Y. Ct. App. 2026) · No. Case No. 2025-05704; Appeal No. 5975; Index No. 22999/19 · Decided March 3, 2026

SUMMARY

The Appellate Division, First Department modified an order denying the City of New York's motion to amend its answer, obtain further discovery, and stay pending summary judgment motions. The court permitted limited discovery consisting of a deposition of the plaintiff concerning his knowledge of allegations in a related federal RICO action and discovery of documents identified during that deposition, while otherwise affirming the order.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Shulman, J.; Higgitt, J.; Rosado, J.; Hagler, J.
JURISDICTION	Appellate Division, First Department, New York
DECIDED	March 3, 2026
DOCKET	Case No. 2025-05704; Appeal No. 5975; Index No. 22999/19
DISPOSITION	other
PROCEDURAL POSTURE	The City of New York appealed from an order of Supreme Court, Bronx County, denying its motion for leave to amend its answer, to strike the note of issue for purposes of further discovery, and to stay pending summary judgment motions.
STANDARD OF REVIEW	Review of the motion court's order for errors of law; the order was modified on the law.
PRECEDENTIAL VALUE	published
PARTIES	The City of New York, Third-Party Defendant-Appellant v. Arturo Arita, Plaintiff-Respondent, FDS Associates, LLC, Third-Party Plaintiff-Respondent

TOPICS

discovery dispute

motion to amend

affirmative defenses

summary judgment

appellate procedure

PRACTICE AREAS

civil procedure

appellate procedure

municipal law

QUESTIONS PRESENTED

1. Whether the City should be permitted to amend its answer to add affirmative defenses of fraud and fraud on the court based on the federal RICO complaint.
2. Whether the City was entitled to further limited discovery from plaintiff concerning his knowledge of the facts underlying the RICO action.
3. Whether the City's request to stay plaintiff's summary judgment motion remained justiciable after a decision had been rendered on that motion.

HOLDINGS

1. The motion court properly denied the City leave to amend its answer to add affirmative defenses of fraud and fraud on the court based solely on the federal RICO complaint naming plaintiff's attorneys and medical providers.
2. The City was entitled to further limited discovery consisting of a deposition of plaintiff, restricted to his knowledge, if any, of the facts underlying the RICO allegations, together with discovery of documents identified during that deposition.
3. The City's request for a stay was moot because a decision had already been rendered on plaintiff's summary judgment motion.
4. The limited discovery could be conducted while the case remained on the trial calendar.

FACTUAL BACKGROUND

The City sought to amend its answer to add fraud and fraud-on-the-court defenses based on a federal RICO complaint naming plaintiff's attorneys and some of his medical providers as defendants. It also sought additional discovery from plaintiff, including a deposition concerning his knowledge of the facts underlying the RICO allegations, and a stay of plaintiff's summary judgment motion.

PROCEDURAL HISTORY

Supreme Court denied the City's motion in its entirety. The Appellate Division unanimously modified the order to permit limited additional discovery from plaintiff and otherwise affirmed, without costs.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified to permit the City to conduct a deposition of plaintiff limited to plaintiff's knowledge, if any, of the facts underlying the RICO action against his attorneys and medical providers, followed by discovery of documents identified during that deposition. The limited discovery may proceed while the case remains on the trial calendar.

CASES CITED

- Linares v. City of New York, 233 A.D.3d 479, 480 (1st Dep't 2024)
- Franco v. 800 E 173 LLC, 240 A.D.3d 446 (1st Dep't 2025)
- Lituma v. Liberty Coca-Cola Beverages LLC, 243 A.D.3d 504, 505 (1st Dep't 2025)

OPINION

Arita v. FDS Assoc., LLC 2026 NY Slip Op 01152

PER CURIAM.

Arita v FDS Assoc., LLC (2026 NY Slip Op 01152) Arita v FDS Assoc., LLC 2026 NY Slip Op 01152 Decided on March 03, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: March 03, 2026 Before: Webber, J.P., Shulman, Higgitt, Rosado, Hagler, JJ. Index No. 22999/19|Appeal No. 5975|Case No. 2025-05704| [*1]Arturo Arita, Plaintiff-Respondent, v FDS Associates, LLC, Defendant-Respondent. FDS Associates, LLC, Third-Party Plaintiff-Respondent, v The City of New York, Third-Party Defendant-Appellant. Resnick & Louis, P.C., Tarrytown (Kelly C. Griffin-Fromm of counsel), for appellant. Gorayeb & Associates, P.C., New York (Jonathan D. Moran of counsel), for Arturo Arita, respondent Order, Supreme Court, Bronx County (Myrna Socorro, J.), entered on or about August 12, 2025, which denied third-party defendant The City of New York's motion for leave to amend its answer, strike the note of issue for the purposes of conducting further discovery, and to stay the then pending summary judgment motions, unanimously modified, on the law, to grant the motion to the extent of permitting further limited discovery in accordance with this order, and otherwise affirmed, without costs. The motion court properly denied the City leave to amend its answer to add the affirmative defenses of fraud and fraud on the court based on a RICO complaint filed in federal court naming plaintiff's attorneys and some of his medical providers as defendants (see Linares v City of New York , 233 AD3d 479 , 480 [1st Dept 2024]). However, the court should have granted the City's motion to the extent it sought further discovery from plaintiff (see Franco v 800 E 173 LLC , 240 AD3d 446 [1st Dept 2025]; Lituma v Liberty Coca-Cola Beverages LLC , 243 AD3d 504 , 505 [1st Dept 2025]). The City should be permitted to conduct further limited discovery in the form of a deposition of plaintiff, constrained to what knowledge he had, if any, of the facts underlying allegations in the RICO action brought against his attorneys and medical providers, and discovery of any documents the City may learn about during that deposition. This limited discovery, however, can be conducted while the case remains on the calendar trial (see 22 NYCRR 202.21[d]). The City's

request for a stay of plaintiff's summary judgment motion is moot, as a decision has been rendered on that motion. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 3, 2026

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