

Pardaev v NDM Enters., Inc.

2025 NY Slip Op 32189(U)

June 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 502564/2023

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 9th day of June 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

SHAMSHER PARDAEV, MARZIYA
REJEPOVA and ERKIN HUSENOV,

Plaintiffs,

-against-

NDM ENTERPRISES, INC., FEDEX GROUND
PACKAGE SYSTEM, INC. and JOHN DOE (first
and last name being fictitious and unknown;

Defendants.

DECISION & ORDER

Index No.: 502564/2023

Calendar No.: 31

Motion Seq.: 003

Recitation of the following papers as required by CPLR 2219(a):

| | Papers Numbered |
|---|----------------------------|
| Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 45-55)..... | 1, 2 |
| Affirmations in Opposition (NYSCEF 57-58)..... | 3, 4 |
| Reply Affirmation and Exhibits (NYSCEF 60-69)..... | 5 |

Upon the foregoing papers and after oral argument, the decision and order of this Court is as follows:

This is an action for personal injuries arising out of a motor vehicle on 11/30/2022. The police responded to the scene and completed a report (NYSCEF 61). According to the report, defendants' vehicle left the scene of the accident.

Defendants have now moved this Court for an order granting leave to amend their answer to assert affirmative defenses and counterclaims pursuant to CPLR § 3025 [b] and compel discovery relating to the newly added defenses and counterclaims.

The amendments seek to add affirmative defenses and counterclaims sounding in fraud because plaintiffs' have treated with several doctors and healthcare providers who are named defendants in a civil RICO complaint filed in the United States District Court for the Eastern District of New York (NYSCEF 52).

The motion is denied.

A party must establish all the elements of New York common law fraud cause of action by detailing the misconduct that constitutes the wrong (CPLR § 3016; *Scifo v Taibi*, 126 AD3d 777, 778 [2d Dept 2015]). The elements of fraud are 1) a representation of material fact, 2) the falsity of that representation, 3) knowledge by the party who made the representation that it was false when made, 4) justifiable reliance by the claimant, and 5) a resulting injury (*id.*). However, allegations of "a mere conspiracy to commit a tort is never of itself a cause of action" (*Alexander & Alexander, Inc. v Fritzen*, 68 NY2d 968, 969 [1986]). Unlike a federal RICO cause of action that is a creature of statute (*see* The United States Racketeer Influenced and Corrupt Organizations Act ["RICO"], 18 U.S.C. §§ 1961, 1962 [c], and 1964 [c]), allegations of a fraudulent conspiracy merely provide the predicate basis for an otherwise actionable tort or contract claim but do not constitute a "freestanding claim for conspiracy" under New York common law (*Carlson v American International Group, Inc.*, 30 NY3d 288, 310 [2017]),

Defendants and their insurance carriers cannot establish affirmative defenses or independent counterclaims for fraud under New York common law (*Bréton v Dishi*, 234 AD3d 432 [1st Dept 2025]; *see also Broughton v 553 Marcy Avenue Owners LLC*, __ AD3d __, 2025 NY Slip Op 02992, *3-4 [1st Dept 2025] [The Court rejected defendants' proposed amendment based on unproven allegations of fraud in two federal civil RICO actions, that plaintiff may have conspired with his counsel and medical providers "to fabricate his accident and file false

insurance and personal injury claims.”]; *Anguisaca-Moralès v St. Paul & St. Andrew United Methodist Church*, __ AD3d __, 2025 NY Slip Op 02712, *2 [1st Dept. 2025] [“The unproven allegations of fraud against plaintiff’s counsel are insufficient to support a claim for fraud against plaintiff.”]; *Linares v City of New York*, 233 AD3d 479, 480 [1st Dept 2024] [“The unproven allegations of fraud against plaintiff’s attorney and medical providers in the RICO complaint do not, without more, warrant a counterclaim for fraud against plaintiff himself.”)].

Here, defendants’ proposed affirmative defenses and counterclaims set forth in substance as follows:

Plaintiffs [allegedly having] intentionally and knowingly made false and fraudulent statements of material fact *to others* by submitting or causing to be submitted bills and supporting documentation that contained false representations of material fact concerning their treatment, which he claims is causally related to the within accident... Plaintiffs made the above-described misrepresentations and engaged in such conduct to induce Defendants and/or their insurance carriers into relying on the misrepresentations and, thereafter, to obtain a windfall tort recovery...(NYSCEF 54, pp.23-24 [*italics added*]...)...

Plaintiffs made these above-referenced false statements and material misrepresentations with the intent to induce Answering Defendants’ reliance, and to recover damages on their fraudulent personal injury claim against the Answering Defendants (NYSCEF 54, p.29).

The First Department has rejected this theory on almost identical facts (*Breton v. Dish*, *supra*), holding that

...the proposed counterclaim is based on allegations that the complaint, which seeks to recover damages for personal injuries, is based on misrepresentations and that plaintiff intended to induce defendant to rely on those misrepresentations so that the parties would settle the action. However, the counterclaim fails to plead the essential element of justifiable reliance with sufficient particularity... In any event, the record makes clear that defendant has not, in fact relied on plaintiff’s alleged misrepresentations, but instead has denied them in [the] answer and throughout the litigation” (*Breton v. Dish*, 234 AD3d 432 [internal citations omitted]).

Defendants' counsel concedes in the proposed answer that the alleged misrepresentations were not made to either the named defendants or their insurance carriers. Therefore, they have not alleged and cannot prove that defendants and their insurance carriers justifiably relied on the alleged misrepresentations and incurred damages (*id.*; *Anguisaca-Morales v St. Paul & St. Andrew United Methodist Church*, 2025 NY Slip Op 02712, *2). Any potential claim of fraud belongs to the no-fault carrier who rendered payments to plaintiffs' doctors named in the RICO litigation. If plaintiffs' claims are proven to be fraudulent, defendants' remedy is to seek sanctions under CPLR § 8303-a (*Breton v Dishy*, 234 AD3d 433).

Finally, "there is no necessary logical correspondence between the allegations contained in a RICO complaint...and the actual facts of [plaintiffs'] accident" because neither plaintiffs nor their counsel are named or mentioned in the RICO action pending in the United States Federal Court for the Eastern District of New York. Thus, defendants' purported "good faith basis" for believing plaintiffs' accident or injuries are fraudulent does not logically follow." (*Luna v Carthage 124 L.P.*, 2025 NY Slip Op 30561[U] [Cohen, J., Kings County]).

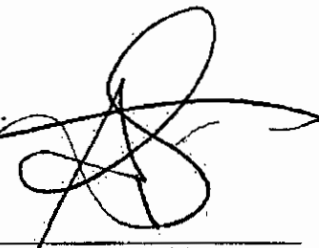
Accordingly, defendants cannot establish all the elements constituting a New York claim for fraud (*Alexander & Alexander, Inc. v Fritzen*, 68 NY2d 969 and *Carlson v American International Group, Inc.*, 30 NY3d 310). The proposed amendments are palpably improper and devoid of merit (*Breton v Dishy*, 234 AD3d 432 and *Linares v City of New York*, 233 AD3d 480).

The Court has considered the parties' remaining arguments and finds same to be without merit.

Based on the foregoing, it is hereby

ORDERED that defendants' motion for an order pursuant to CPLR § 3025 [b] and thereafter compel discovery on the proposed affirmative defenses and counterclaims is denied in its entirety.

This constitutes the decision and order of the Court.

ENTER: 

Hon. Anne J. Swern, J.S.C.
Dated: 6/9/2025

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| For Clerks use only: | |
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| Motion seq. # | <u>3</u> |

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