

Davis v Federal Express Corp.

2025 NY Slip Op 34587(U)

November 14, 2025

Supreme Court, Kings County

Docket Number: Index No. 503396/2020

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 14th day of November 2025.

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

RONALD DAVIS and JASMIN R. CARR

Plaintiff(s),

-against-

FEDERAL EXPRESS CORPORATION
and GEORGE MEDRANO,

Defendant(s).

DECISION & ORDER

Index No.: 503396/2020

Calendar No.: 11

Motion Seq.: 002

Return Date: 10/16/2025

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

**NYSCEF
Papers Numbered**

Notice of Motion and Supporting Documents	55-63
Affirmation in Opposition and Supporting Documents	92-94
Reply Affirmation and Supporting Documents	97-102

Upon the foregoing papers, the decision and order of the Court is as follows:

Defendants’ motion for an order granting leave to amend its answer to assert affirmative defenses and counterclaims for fraud against plaintiffs Jasmin R. Carr and Ronald Davis is denied.

Background and Arguments of Counsel

Davis was a passenger in Carr’s vehicle at the time of the accident with FEDERAL EXPRESS CORPORATION’s (FEDEX) vehicle operated by defendant Medrano. Carr’s insurance company, Liberty Mutual Insurance Company (Liberty Mutual), denied both plaintiffs’ no-fault benefits based upon alleged fraud committed by Carr in the procurement of the insurance policy. In support of the motion, defendants submit a copy of the no-fault denial. The denial reads as follows:

Liberty's investigation has revealed misrepresentations of material facts regarding events leading up to the motor vehicle accident, as well as the accident itself. We will not provide coverage for any insured who has made fraudulent statements in connection with any accident or loss for which coverage is sought. In accordance with Insurance Law, Regulation 95, Section 86.4, any person who knowingly and with intent to defraud any insurance company makes a false report commits a fraudulent insurance act, which is a crime.

Pursuant to the above there is no coverage for the above claim and no reimbursement can be made. Liberty fully reserves all rights under applicable law and the terms of the policy, including the right to rely upon additional provisions, terms, exclusions and conditions not expressly referred to here. This denial in no way should be construed as a waiver or estoppel of any other possible coverage defenses afforded by the applicable law and the policy. (NYSCEF 61, p.2).

Defendants also submitted copies of all parties' deposition. Specifically, it is argued that Liberty Mutual's denial based on plaintiffs' "material misrepresentations" as to the accident itself when measured against Medrano's testimony that there was no contact between the vehicles provides a good faith basis for the amendment. Further, defendants argue that Carr secured litigation funding from a company named in a RICO complaint filed in Federal Court. It is defendants' argument that there is no prejudice to plaintiffs as were aware of the denial of benefits. In opposition, plaintiffs argues, *inter alia*, that defendants did not submit to the Court what, if any, investigation formed the basis of this denial. Moreover, the conflicting deposition testimony is an issue of credibility. In reply, defendants attach for the first time copies of the pre-litigation examinations under oath of Carr and Davis, photographs and a copy of the RICO complaint.

Law & Analysis

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]), such as with the litigation funding company named in the RICO complaint.

Defendants and their insurance carrier cannot establish affirmative defenses or independent counterclaims for fraud under New York common law (*Breton v Dishy*, 234 AD3d 432 [1st Dept 2025]; *see also Broughton v 553 Marcy Avenue Owners LLC*, 238 AD3d 536, 537 [1st Dept 2025], *Anguisaca-Morales v St. Paul & St. Andrew United Methodist Church*, 238 AD3d 439, 440 [1st Dept. 2025], and *Linares v City of New York*, 233 AD3d 479, 480 [1st Dept 2024]. Neither defendants nor their insurance carrier have detrimentally relied on material representations by plaintiffs. Any alleged and unproven material misrepresentations were to the no-fault carrier. Thus, only Liberty Mutual has a potential action claim for fraud or RICO violations, rendering the proposed amendments palpably improper and devoid of merit (*Breton v Dishy*, 234 AD3d 432 and *Linares v City of New York*, 233 AD3d 480).

Moreover, “there is no necessary logical correspondence between the allegations contained in a RICO complaint...and the actual facts of [plaintiffs’] accident” because defendants do not state in their initial papers that plaintiffs were named or mentioned in the RICO action pending in the United States District Court. If plaintiffs’ claims are proven to be

fraudulent, defendants' remedy is to seek sanctions under CPLR § 8303-a (*Breton v Dishy*, 234 AD3d 433).

Accordingly, defendants cannot establish all the elements constituting a New York common law claim for fraud (*Alexander & Alexander, Inc. v Fritzen*, 68 NY2d 969 and *Carlson v American International Group, Inc.*, 30 NY3d 310).

Defendants' exhibits that formed the basis of its investigation, together with the 20-page factual and legal arguments submitted for the first in reply, were not considered by the Court.

Accordingly, it is hereby

ORDERED that defendants' motion for an order pursuant to CPLR § 3025 [b] granting leave to amend its answer to assert affirmative defenses and counterclaims for fraud against plaintiffs Jasmin R. Carr and Ronald Davis is denied.

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.

Dated: 11/14/2025

For Clerks use only:
MG _____
MD _____
Motion seq. # _____