Williams v Gamba
2026 NY Slip Op 31186(U)
March 25, 2026
Supreme Court, Kings County
Docket Number: Index No. 524560/19
Judge: Kenneth P. Sherman
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At an IAS Term, JCP Motions Part of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 25 day of March, 2026.

PRESENT:

HON. KENNETH P. SHERMAN ,
Justice.

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JA-QUAN WILLIAMS and JUSTIN TOBIAS,

Plaintiffs,

-against-

RUNARD GAMBA, MICKEWA ROBOTHAM, SINAN CAGIRICI, and FEDERAL EXPRESS CORPORATION,

Defendants.

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DECISION AND ORDER

Index No. 524560/19

Mot. Seq. Nos. 11-12

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion and Affidavits (Affirmations) Annexed	220-234; 236-243
Opposing Affidavits (Affirmations)	246-251; 253-254; 269
Affirmations in Reply	255-257; 259-261; 264-266
Letters to the Court	263; 268

In this action to recover damages for personal injuries, defendants Sinan Cagirici (Cagirici) and Federal Express Corporation (FedEx, collectively with Cagirici, the FedEx defendants) move, by order to show cause, dated July 30, 2025, under motion sequence number eleven, for: (1) an order, pursuant to 22 NYCRR § 202.21 (e), vacating the note of issue "on the grounds that discovery is incomplete due to evidence of fraud"[1]; and (2) for leave, pursuant to CPLR 3025 (b), to serve their proposed "Amended Answer with

[1] Order to Show Cause, dated July 30, 2025 (Fisher, J.), page 1 of 2, ¶ (a) (NYSCEF Doc No. 234).

Counterclaims and Cross-Claims, dated July __, 2025" (the PAA).[2] Plaintiffs Ja-Quan Williams and Justin Tobias (collectively, plaintiffs) cross-move, under motion sequence number twelve, for an order, pursuant to 22 NYCRR § 130-1.1, awarding them sanctions, costs, and attorney's fees, as well as setting a hearing on the amount thereof. For the reasons stated below, both motions are denied in their entirety.

Summary

On November 11, 2019, plaintiffs commenced this action against the FedEx defendants (among others) for personal injuries they allegedly sustained in a motor vehicle accident on Linden Boulevard near Hinsdale Street in Brooklyn, New York, on August 6, 2019 at 8:30 p.m. (the accident).[3] At the time and place of the accident, plaintiffs were passengers in a 2003 Honda SUV which collided with a 2010 Ford van which was operated by Cagirici and owned by FedEx.[4] On April 3, 2020, the FedEx defendants answered the complaint, asserting (as relevant herein) an affirmative defense that neither plaintiff suffered a "serious injury" as defined in Insurance Law § 5102 (d).[5] No defense of (or a counterclaim for) fraud or a staged accident was interposed in the FedEx defendants' answer.

On December 15, 2021, while discovery was ongoing, plaintiffs moved, under motion sequence two, for (as relevant herein) partial summary judgment on the issue of

[2] Redlined and clean copies of the PAA are e-filed under NYSCEF Doc Nos. 229 and 230, respectively.
[3] Complaint, dated November 11, 2019 (NYSCEF Doc No. 1).
[4] Certified Copy of the Police Accident Report, page 1 of 1 (NYSCEF Doc No. 47).
[5] The FedEx defendants' Answer, dated April 3, 2020, First Affirmative Defense (NYSCEF Doc No. 19).

liability against the FedEx defendants.[6] On March 9, 2022, the FedEx defendants cross-moved, under motion sequence four, for summary judgment dismissing (among other claims) plaintiffs' claims against them, on the grounds "that the evidence establish[ed] that FedEx was entirely non-negligent" in the happening of the accident.[7] On December 7, 2022, plaintiffs' motion for partial summary judgment on the issue of liability was granted, whereas the FedEx defendants' cross-motion for summary judgment was denied.[8]

On July 17, 2024, plaintiffs filed the extant NOI.[9] On August 2, 2024, the FedEx defendants timely moved, under motion sequence ten, to vacate the extant NOI on the grounds that plaintiffs failed to respond to the FedEx defendants' Demand for Litigation Funding Information, dated November 10, 2022.[10] On October 9, 2024, plaintiffs were directed to respond to such demand by a date certain, with the NOI remaining in effect and not vacated.[11]

On July 9, 2025, the FedEx defendants moved, under motion sequence eleven, by the aforementioned order to show cause to vacate the extant NOI and for leave to serve

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[6] Plaintiffs' Notice of Motion, dated December 15, 2021 (NYSCEF Doc No. 26).

[7] FedEx Defendants' Notice of Cross-Motion and Supporting Affirmation, each dated March 9, 2022 (NYSCEF Doc Nos. 42 and 43, respectively).

[8] Short-Form Order, dated December 7, 2022, Velasquez, J. (NYSCEF Doc No. 124). Justice Velasquez's order erroneously indicated that it determined motions under sequence numbers two and *three*, whereas, in fact, his order determined motion sequence numbers two and *four*. The WebCivil Supreme Court – Appearance Detail in this action correctly reflects that plaintiffs' motion under sequence number two was granted, whereas the FedEx defendants' cross-motion under sequence number *four* was denied.

[9] Note of Issue, dated July 17, 2024 (NYSCEF Doc No. 199). Plaintiffs' prior NOI, dated November 17, 2023, was vacated and further discovery was directed by order, dated February 15, 2024 (NYSCEF Doc Nos. 156 and 194, respectively).

[10] FedEx Defendants' Notice of Motion and Supporting Affirmation, each dated August 2, 2024 (NYSCEF Doc Nos. 200 and 201, respectively).

[11] Short-Form Order, dated October 9, 2024, Ruchelsman, J. (NYSCEF Doc No. 214).

their PAA. On September 24, 2025, plaintiffs cross-moved, under motion sequence twelve, for an award of the aforementioned sanctions, attorney's fees, and costs. On November 20, 2025, the court heard oral argument on the aforementioned motions and reserved decision.

Discussion

FedEx Defendants' Request to Vacate the NOI

Pursuant to 22 NYCRR 202.21 (e), within 20 days after service of a note of issue and certificate of readiness, any party to the action may move to vacate the note of issue, upon an affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect. Where, as here, "a motion to vacate the note of issue is made after the 20-day time limit, the movant is required to demonstrate that unusual or unanticipated circumstances developed subsequent to the filing of the note of issue and certificate of readiness requiring additional pretrial proceedings to prevent substantial prejudice" (*Paulino v Staten Is. Univ. Hosp.*, 234 AD3d 787, 789 [2d Dept 2025] [internal quotation marks omitted]).

Here, the FedEx defendants failed to demonstrate the existence of unusual or unanticipated circumstances since the filing of the extant NOI warranting its vacatur. As stated, the FedEx defendants allege that the extant NOI should be vacated "on the grounds that discovery is incomplete due to evidence of fraud." Their only supporting evidence in that regard is the affirmation of Adrianna N. Lewis, a claims administrator for Progressive Insurance Company (Progressive), dated June 9, 2025 (the June 2025 SIU Affirmation),

which Progressive filed in the declaratory judgment action which it commenced against non-moving defendant Michewa Robotham (Robotham) on August 21, 2023, in connection with a different (and subsequent) motor-vehicle accident which happened on December 19, 2021 (the subsequent accident) and involved a different vehicle (a Porsche Cayenne) and different passengers, in Supreme Court, Nassau County (*see Progressive Ins. Co. v Robotham, et al.*, index No. 613413/23) (the Progressive Lawsuit). The FedEx defendants' PAA (in ¶ 154 thereof) interprets the June 2025 SIU Affirmation[12] as "reveal[ing] that [non-moving defendant driver Runard Gamba] and/or [plaintiff] Williams and/or [plaintiff] Tobias made statements . . . to an investigator from Progressive that place[d] Robotham at the scene of the [*underlying*] accident" (unnecessary capitalization omitted; emphasis added). The June 2025 SIU Affirmation, which is attached as an exhibit to the FedEx defendants' PAA, says nothing of that sort, however. As relevant to the *underlying* accident (which preceded the subsequent accident by approximately two years), the June 2025 SIU Affirmation merely flagged the *underlying* accident as "suspicious" because: (1) Robotham "may have been associated with Runners and/or Unauthorized Broker activity"; (2) the *underlying* accident "occurred close to the location of the [subsequent accident], and involved similar facts of loss"; (3) the Honda which was involved in the *underlying* accident was garaged upstate (likewise, on paper) as was the Porsche which was involved in the subsequent accident; and (4) Robotham used an email

[12] The June 2025 SIU Affirmation is filed under NYSCEF Doc No. 81 in the Progressive Lawsuit. In addition, the June 2025 SIU Affirmation is filed as an exhibit to (and as part of) a single (document-merged) PAA in this action at NYSCEF Doc Nos. 229 and 230 (redlined and clean copies, respectively).

address littledemus@gmail.com, whereas the word "Demus" was typed on the back of the business cards that were handed out by an unknown individual at both the *underlying* accident site and at the subsequent accident site to the purported victims (June 2025 SIU Affirmation, ¶¶ 18-20). What makes the June 2025 SIU Affirmation even more irrelevant to the *underlying* accident is that it was used in the Progressive Lawsuit to support the latter's renewed motion for declaratory judgment as to the *subsequent* accident.[13] The electronic docket of the Progressive Lawsuit indicates that Progressive withdrew its renewed motion for declaratory judgment on August 14, 2025.[14]

Insofar as the *underlying* accident is concerned, Progressive was merely "suspicious" since at least August 21, 2023 when it filed the Progressive Lawsuit, or approximately 11 months before plaintiffs filed the extant NOI on July 17, 2024. Progressive's suspicions were not brought to the court's notice on August 2, 2024 when the FedEx defendants initially moved to vacate the extant NOI, on the basis of their outstanding Demand for Litigation Funding (rather than, as is now the case, on the basis of

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[13] Progressive's *initial* motion for declaratory judgment in the Progressive Lawsuit which was supported by the SIU affirmation, dated April 23, 2024 (the April 2024 SIU Affirmation) (NYSCEF Doc No. 53 in Progressive Lawsuit), was denied by decision and order, dated October 17, 2024 (Prager, J.) (NYSCEF Doc No. 64 in Progressive Lawsuit). Justice Prager's decision and order held, in relevant part (at page 4), that the April 2024 SIU Affirmation "relies primarily upon innuendo and speculation. The facts alleged and the inferences drawn therefrom are based almost entirely on unsubstantiated hearsay, 'information and belief,' purported similarities to other circumstances deemed to be suspicious, and remote links to other persons involved in other losses at other locations. In the view of this Court, while this might be sufficient to raise suspicion warranting further investigation, it is not sufficient to establish a 'founded belief' that the alleged collision was intentional or did not occur at all, particularly in view of evidence in the record which, upon close examination, supports the contrary inference" (*Progressive Ins. Co. v Robotham, et al.*, Sup Ct, Nassau County, October 17, 2024, Prager, J., index No. 613413/23). Of note, the relevant paragraphs mentioning the underlying accident are substantially similar in both the April 2024 and the June 2025 SIU Affirmations.

[14] The WebCivil Supreme Court – Appearance Detail in the Progressive Lawsuit, Motion Sequence Number 2.

fraud). To paraphrase one court: "the information on which [the FedEx] defendants relied in support of their request to vacate the note of issue was information that already existed [and] which could have been discovered with reasonable diligence, and thus was not an unusual or unanticipated circumstance that developed post-note of issue to justify [its] vacatur" (*Santacruz v 58 Gerry St LLC*, ___ AD3d ___, 2026 NY Slip Op 00997 [1st Dept 2026]).[15]

FedEx Defendants' Request for Leave to Serve the PAA

"In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit" (*Gimenez v Pepsi-Cola Bottling Co. of New York, Inc.*, 234 AD3d 943, 944-945 [2d Dept 2025] [internal quotation marks omitted]). Under the circumstances of this case, the crucial factor of whether to permit an amendment is *its timing*. For example, in *Gimenez*, the plaintiffs/vehicle passengers moved for partial summary judgment on the issue of liability arising out of a rear-end collision, whereas the defendants/owners-operators of the other vehicle opposed and, separately, cross-moved for leave to amend their answer to interpose a counterclaim to recover damages for fraud. The defendants' opposition and cross-motion were supported by an expert engineer's affidavit, which (together with other submissions) raised a triable issue of fact as to the existence of

[15] *Compare Lituma v Liberty Coca-Cola Beverages LLC*, 243 AD3d 504, 505 (1st Dept 2025) ("The affidavit from defendants' insurance agent provided a chronology of the events and detailed the links among plaintiffs, medical providers, and other individuals involved in other suspicious accidents. *As the suspected fraud began to surface only one month before plaintiffs filed the note of issue, and additional evidence continued to emerge, defendants' delay in filing the motion was not unreasonable.*") (emphasis added).

a non-negligent explanation for the collision, warranting denial of the plaintiffs' motion.[16] Further, as the record on appeal in *Gimenez* reflects, the plaintiffs' motion and the defendants' cross-motion had been served *before* any pretrial depositions were held,[17] thereby obviating any "prejudice or surprise . . . result[ing] from granting [the defendants] leave to amend the[ir] answer."[18] In light of those facts – the apparent merit of the proposed counterclaim and the early, pre-EBT stage of the *Gimenez* action – the Second Judicial Department had no trouble concurring with the lower court's discretionary ruling in granting the defendants leave to amend their answer.

In contrast to the defendants in *Gimenez*, the FedEx defendants here seek leave to assert counterclaims/cross-claims sounding in fraud approximately one year after this action has been placed on the trial calendar since the filing of the extant NOI on July 17, 2024. Where, as here, "an action has long been certified as ready for trial, judicial discretion in allowing such amendments should be discrete, circumspect, prudent, and cautious" (*Boyd v Trent*, 297 AD2d 301, 303 [2d Dept 2002] [internal quotation marks omitted]). "In exercising its discretion, the Court should consider how long the amending party was

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[16] *See Gimenez*, 234 AD3d at 945 ("Contrary to the plaintiffs' contention, the defendants' proposed counterclaim alleging fraud was pleaded with sufficient particularity pursuant to CPLR 3016 (b), *especially when considered along with their other submissions* [, including their expert affidavit].") (emphasis added).

[17] The record on appeal reflects that the *Gimenez* action was commenced on August 18, 2022; the defendants' answer was interposed on November 15, 2022; the plaintiffs moved for partial summary judgment on the issue of liability on February 6, 2023; the plaintiffs' motion was adjourned on consent to April 21, 2023; the defendants timely objected on April 13, 2023 and timely cross-moved for leave to amend their answer to interpose a counterclaim to recover damages for fraud on April 14, 2023; both the motion and cross-motion were fully submitted on April 26, 2023; and the motion court rendered its written decision on May 9, 2023 (Docket No. 2023-04973, NYSCEF Doc No. 27).

[18] *See Gimenez*, 234 AD3d at 945.

aware of the facts upon which the motion was predicated, whether the amendment is meritorious, and whether a reasonable excuse for the delay was offered" (*Romeo v Arrigo*, 254 AD3d 270 [2d Dept 1998]). As noted, the FedEx defendants, although aware of the underlying facts since at least August 21, 2023, "offered no excuse for the[ir] delay in seeking the amendment" (*Guaman v 240 W. 44th St. Two LLC*, 244 AD3d 621, 622 [1st Dept 2025]); *accord Cumberbatch v Townsend*, 240 AD3d 664, 665 [2d Dept 2025]; *Trataros Const., Inc. v New York City School Const. Auth.*, 46 AD3d 874, 875 [2d Dept 2007]).[19] All things considered, it is appropriate, and within the court's discretion, to deny the FedEx defendants leave to serve their PAA.[20]

Plaintiffs' Request for Sanctions, etc.

Plaintiffs' cross-motion for an award of sanctions, attorney's fees, and costs (as well as for ancillary relief) is denied. The FedEx defendants' arguments in support of their order

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[19] *Compare Taveras v Tuck-It-Away Assoc., L.P.*, 243 AD3d 427, 428 (1st Dept 2025) ("Plaintiff's claim that she would be prejudiced because [defendant] excessively delayed in seeking leave to amend the answer is unpersuasive. Plaintiff was deposed about six months before Columbia moved to amend, and the ... *New York Post* article, which reported that plaintiff's spinal surgeon was accused of performing unnecessary fusion operations on patients for profit, was published about a month before [defendant] sought leave. This delay did not hinder plaintiff's case preparation nor prevent plaintiff from acting in support of her position *given that the note of issue had not been filed*."); *Allen v Kukin*, 241 AD3d 1142, 1143 (1st Dept 2025) ("Plaintiff identifies no prejudice from the 15-month delay in this action, *which is still in the early stages of discovery*."); *Sheets v Liberty Alls., LLC*, 37 AD3d 170, 171 (1st Dept 2007) ("*While we agree with plaintiffs that pleading amendments alleging new facts should not be freely granted after the close of disclosure as scheduled in a preliminary conference order, and should be subject to even closer scrutiny after the filing of a facially correct note of issue, we disagree that defendant failed to reasonably explain the timing of its motion to amend*. Defendant persuasively explains, consistent with its principals' deposition testimony, that it hesitated to move until *plaintiffs' supplemental expert disclosure transformed what had been only a suspicion of fraud into a demonstrable claim in large part provable on the opinion of plaintiffs' own expert*.") (emphasis added in each instance).

[20] In light of the foregoing, it is academic whether or not the FedEx defendants properly pleaded the elements of justifiable reliance and resulting damages (*see Anguisaca-Morales v St. Paul & St. Andrew United Methodist Church*, 238 AD3d 439, 440 [1st Dept 2025]; *Breton v Dishi*, 234 AD3d 432, 433 [1st Dept 2025]).

to show cause do not rise to the level necessary to constitute "frivolous conduct" within the meaning of 22 NYCRR 130-1.1 (*see e.g. GLD3, LLC v Albra*, 241 AD3d 1288, 1292 [2d Dept 2025]).

Conclusion

Accordingly, the FedEx defendants' order to show cause, under motion sequence number eleven, and plaintiffs' cross-motion, under motion sequence number twelve, are both denied in their entirety.

Any issue raised and not addressed in this decision and order is denied.

This constitutes the decision and order of the court.

E N T E R,

HON. KENNETH P. SHERMAN, J. S. C.

HON. KENNETH P SHERMAN