

**Fields v Srivisal**

2026 NY Slip Op 31618(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 157721/2019

Judge: Alexander M. Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

INDEX NO. 157721/2019
MOTION DATE 12/10/2025, 02/02/2026
MOTION SEQ. NO. 001 002 003

ROSALIE FIELDS

Plaintiff,

- v -

DANYE SRIVISAL,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8-22 were read on this motion to/for AMEND COMPLAINT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 41 were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 were read on this motion to/for DISCOVERY

Upon the foregoing documents, plaintiff Rosalie Fields moves to amend her complaint in Motion Sequence Number 001. In Motion Sequence Number 002, defendant Danye Srivisal moves to consolidate the instant action with Rosalie Fields v The City of New York, Index No. 157720/2019 (the City Action), for discovery and trial. Defendant Srivisal also moves, in Motion Sequence Number 003, for an order compelling a response to defendant's discovery demands, including the demand for a verified bill of particulars. Motions 002 and 003 are unopposed.

According to the complaint, Fields was walking her dog on December 12, 2018, when Srivisal approached her, threw her to the ground, and kicked her dog. Fields alleges Srivisal then made false statements to the New York City Police Department that Fields assaulted and/or battered Srivisal, which resulted in plaintiff's arrest on December 13, 2018. In this action, Fields

asserts claims for assault and battery; false imprisonment; malicious prosecution; intentional infliction of emotional distress; intentional infliction of emotional distress; negligent infliction of emotional distress; and negligence.

**I. Motion 001- Amend Complaint**

Plaintiff moves to amend her complaint by adding two causes of action, for private nuisance and for public nuisance, based on allegations Srivisal harassed, verbally abused, and photo or videorecorded her on the premises of 2 Columbus Avenue, the building where they both live (Proposed Amended Complaint, attached as Exhibit F to motion to amend, NYSCEF Doc. No. 16)

Leave to amend a pleading pursuant to CPLR § 3025 “shall be freely given,” in the absence of prejudice or surprise (*see e.g. Thompson v Cooper*, 24 AD3d 203, 205 [1st Dept 2005]; *Zaid Theatre Corp. v Sona Realty Co.*, 18 AD3d 352, 354 [1st Dept 2005]). Mere lateness in seeking such relief is not in itself a barrier to obtaining judicial leave to amend (*see Ciarelli v Lynch*, 46 AD3d 1039 [3d Dept 2007]). Rather, when unexcused lateness is coupled with significant prejudice to the other side, denial of the motion for leave to amend is justified (*see Edenwald Contracting Co. v City of New York*, 60 NY2d 957, 958 [1983]). Prejudice in this context is shown where the nonmoving party is “hindered in the preparation of his case or has been prevented from taking some measure in support of his position” (*Loomis v Civetta Corinno Const. Co.*, 54 NY2d 18, 23 [1981]).

In order to conserve judicial resources, examination of the underlying merit of the proposed amendment is mandated (*Thompson, supra*, 24 AD3d at 205; *Zaid, supra*, 18 AD3d at 355). Leave will be denied where the proposed pleading fails to state a cause of action or is palpably insufficient as a matter of law (*see Aerolineas Galapagos, S.A. v Sundowner Alexandria*, 74 AD3d 652 [1st Dept 2010]; *Thompson, supra*, 24 AD3d at 205).

As the party seeking the amendment, plaintiff has the burden in the first instance to demonstrate her proposed claims' merits, but defendant, as the party opposing the motion, "must overcome a presumption of validity in the moving party's favor, and demonstrate that the facts alleged in the moving papers are obviously unreliable or insufficient to support the amendment" (*Peach Parking Corp. v 346 W. 40th St. LLC*, 42 AD3d 82, 86 [1st Dept 2007]).

The elements of a private nuisance claim are: "(1) an interference substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct in acting or failure to act" (*Copart Indus. v Consolidated Edison Co. of NY*, 41 NY2d 564, 570 [1977]). Plaintiff alleges defendant repeatedly "harassed, annoyed, verbally abused, photographed, video-recorded, and/or confronted Plaintiff on the premises" (Proposed Amended Complaint, ¶74). While the allegations are somewhat vague, the cause of action is not palpably insufficient as a matter of law. Defendant complains that the allegations lack particularity, but particularity is not required for this claim. Accordingly, as far as plaintiff seeks to amend her complaint to add a claim for private nuisance, the motion is granted.

"A public nuisance [claim] exists for conduct that amounts to a substantial interference with the exercise of a common right of the public, thereby offending public morals, interfering with the use by the public of a public place or endangering or injuring the property, health, safety or comfort of a considerable number of persons. . . . A public nuisance is actionable by a private person only if it is shown that the person suffered special injury beyond that suffered by the community at large" (*532 Madison Ave. Gourmet Foods, Inc. v Finlandia Ctr., Inc.*, 96 NY2d 280, 292 [2001]). Examples of a public nuisance include setting off fireworks in a busy area of a large city (*Melker v New York*, 190 NY 481 [1908]); blocking sidewalks for hours during the

business day (*Callanan v Gilman*, 107 NY 360 [1887]); parking trucks on the sidewalk (*Graceland Corp. v Consolidated Laundries Corp.*, 7 AD2d 89 [1st Dept 1958], *aff'd*, 6 NY2d 900 [1959]); keeping pigs in a way that affects the health, well being and property rights of neighbors and the general public (*Mount Pleasant v Van Tassell*, 7 Misc2d 643 [Sup. Ct. West. Cty. 1957], *aff'd*, 6 AD2d 880 [2d Dept 1958]), and maintaining a noisy racetrack in a quiet residential community (*Hoover v Durkee*, 212 AD2d 839 [3d Dept 1995]). Plaintiff's proposed amended complaint does not allege defendant interfered with the use of a public place by the public, or engaged in conduct which endangered or injured the property, health, safety or comfort of a considerable number of people. Accordingly, as far as plaintiff seeks to amend her complaint to add a claim for public nuisance, the motion is denied.

## II. Motion 002- Consolidate

Defendant moves to consolidate this action with the City Action, in which Fields asserts claims for false imprisonment and malicious prosecution against the City of New York based on injuries sustained when the New York City Police department arrested her on December 13, 2018 (NYSCEF Doc No. 2, complaint, in *ROSALIE FIELDS v THE CITY OF NEW YORK*, Sup Ct, NY County, index No. 157720/2019).

“When actions involving a common question of law or fact are pending before a court, the court, upon motion, may order a joint trial of any or all the matters in issue” or “may order the actions consolidated” (CPLR 602 [a]). “[W]hile it is not necessary that all rules and all facts be common to both actions, there must at least be some important rules of law and some substantial issues of fact to be determined that are in common to both actions” (*Bradford v John A. Coleman Catholic High School*, 110 AD2d 965, 966 [3d Dept 1985]). “[T]here is a preference for consolidation in the interest of judicial economy where there are common questions of law

and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right” (*Kukielka v Santana*, 191 AD3d 532 [1st Dept 2021]).

Here, both actions arise out of the same alleged altercation between Fields and Srivisal on December 12, 2018, and Srivisal’s allegedly false statements to the New York City Police Department that resulted in Fields’ arrest on December 13, 2018. The series of events that occurred on December 12-13, 2018, are issues of fact common to both actions. There is no opposition to the motion to consolidate, and no one has claimed they would suffer prejudice to a substantial right resulting from the consolidation. Accordingly, the motion is granted, and this action will be consolidated into the City Action.

### **III. Motion 003- Compel Discovery**

In Motion Sequence Number 003, defendant Srivisal seeks an order compelling plaintiff’s response to defendant’s discovery demands (Combined Demands, Exhibit E to Mot. Seq. No. 003, NYSCEF Doc No. 51), including the demand for a verified bill of particulars. “If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, ... the party seeking disclosure may move to compel compliance or a response” (CPLR 3124). Plaintiff Fields did not oppose the motion but e-filed a verified bill of particulars (Bill of Particulars, NYSCEF Doc No. 57).

Accordingly, the portion of the motion seeking a verified bill of particulars is denied as moot, but the motion is otherwise granted.

### **IV. Conclusion**

For the reasons discussed above, it is hereby

ORDERED that Motion Sequence Number 001 is GRANTED IN PART and plaintiff

may amend the original complaint to make the proposed changes to add the claim for private nuisance in paragraphs 72-76 of the proposed amended complaint, and the motion is otherwise denied. Plaintiff shall e-file an Amended Complaint within 20 days of the date of this Decision and Order with only the changes permitted above; and it is further

ORDERED that Motion Sequence Number 003, the motion to compel a response to defendant's discovery demands is GRANTED IN PART, in that the motion to compel the production of a verified bill of particulars is DENIED AS MOOT, and the motion is otherwise GRANTED; and it is further

ORDERED that plaintiff Rosalie Fields shall respond to any outstanding discovery demands set forth in the motion within 30 days of the date of this Order; and it is further

ORDERED that Motion Sequence Number 002 is GRANTED and the above-captioned action is consolidated with *Rosalie Fields v The City of New York*, Index No. 157720/2019; and it is further

ORDERED that the consolidation shall take place under Index No. 157720/2019 and the consolidated action shall bear the following caption:

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

ROSALIE FIELDS

Plaintiff,

Index No. 157720/2019

-against-

THE CITY OF NEW YORK, and  
DANYE SRIVISAL a/k/a  
DAYNE ("JOHN") SRIVISAL

Defendants.

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and it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as pleadings in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the Court, who shall consolidate the documents in the actions hereby consolidated and shall mark the records to reflect the consolidation; and it is further

ORDERED that counsel for the movant shall contact the staff of the Clerk of the Court to arrange for the effectuation of the consolidation hereby directed; and it is further

ORDERED that, as applicable and insofar as is practical, the Clerk of this Court shall file the documents being consolidated in the consolidated case file under the index number of the consolidated action in the NYSCEF System or make appropriate notations of such documents in the e-filing records of the court so as to ensure access to the documents in the consolidated action; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office, who is hereby directed to reflect the consolidation by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the Court and Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases*<sup>1</sup>; and it is further

<sup>1</sup> The *Protocol* is accessible at: <https://ww2.nycourts.gov/courts/1jd/suptctmanh/E-Filing.shtml>.

ORDERED that, within 30 days from entry of this order, movant shall contact *SFC-Part5-Clerk@nycourts.gov* to schedule a discovery conference.

This constitutes the decision and order of the Court.

4/10/2026

DATE



ALEXANDER M. TISCH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE