

Pardaev v NDM Enters., Inc.
2026 NY Slip Op 31791(U)
April 21, 2026
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 21st day of April 2026.

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

Motion Seq.: 005

Return Date: 02/05/2026

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

**NYSCEF
Papers
Numbered**

Notice of Motion with Supporting Papers	87-89
Underlying Motion Sequence 003	45-69, 74-75
Affirmation in Opposition.....	124
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Upon the foregoing papers and after oral argument, defendants' motion for an order per CPLR § 2221[d] to reargue this Court's decision dated 6/9/2025, is granted and upon reargument, the Court adheres to its initial decision denying defendants' motion to amend their answer as follows:

Procedural History

This action for personal injuries arising out of a motor vehicle on 11/30/2022 was commenced on 1/25/2023 with the filing of a summons and verified complaint. 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 previously moved this Court for an

order granting leave to amend their answer to assert affirmative defenses and counterclaims of fraud against both plaintiffs per CPLR § 3025 [b] and compel discovery relating thereto. In the initial motion, defendants posited that the new counterclaim was based on the civil RICO complaint filed against plaintiffs' doctors and healthcare providers in the United States District Court for the Eastern District of New York (NYSCEF 52).

The Court denied the motion holding that 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 proposed amendments were improper and devoid of merit because alleged fraudulent misrepresentations were made to parties other than defendants and their insurance carrier. Therefore, defendants could not prove detrimental reliance, especially since they denied all allegations in the complaint. (*Breton v Dish*, 234 AD3d 432 [1st Dept 2025]; *see also Broughton v 553 Marcy Avenue Owners LLC*, 238 AD3d 536 [1st Dept 2025]; *Anguisaca-Morales v St. Paul & St. Andrew United Methodist Church*, 238 AD3d 439 [1st Dept. 2025]; *Linares v City of New York*, 233 AD3d 479, 480 [1st Dept 2024]).

Motion to Reargue

It is well established that a motion for leave to reargue is addressed to the sound discretion of the court and affords the moving party an opportunity to show that the court overlooked or misapprehended matters of fact or law, or for some reason mistakenly arrived at its earlier decision (see CPLR § 2221 [d] [2]; *JPMorgan Chase Bank, N.A. v Novis*, 157 AD3d 776, 778 [2d Dept. 2018]; *Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 891 [2d Dept. 2015]). Such a motion "shall not include any matters of fact not offered on the prior motion" (*Williams v Abiomed, Inc.*, 173 AD3d 1115, 1116 [2d Dept. 2019] [internal citations omitted]; CPLR § 2221

[d] [2]). The motion is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*Williams v Abiomed, Inc.*, 173 AD3d 1116).

The underlying motion was filed on 1/30/2025 and fully brief by 4/8/2025. The motion to reargue was filed on 9/17/2025 and fully briefed when defendants filed their reply on 12/10/2025. In reply, defendants submitted the decision of Justice Sweeney, Supreme Court, Kings County dated 5/29/2025 that permitted an amendment to a third-party complaint to include a claim of fraud. Justice Sweeney cited *Golobe v Mielnicki*, 44 NY3d 86 [2025], a Court of Appeals case decided on 3/20/2025 – six months before the filing of this motion to reargue. In *Golobe*, the Court of Appeals held that, “[An] indirect communication can establish a fraud claim if the statement was made with the intent that it be communicated to the plaintiff and that the plaintiff rely on it” (44 NY3d 92 [internal quotations and citations omitted]). Plaintiffs were deprived of the opportunity to address *Golobe* in their opposition papers.

At the time of the underlying motion, depositions had not been conducted. Upon this motion to reargue, defendants submit plaintiff Pardeav’s deposition transcript to establish that “this minor accident” could not have caused the injuries claimed by both plaintiffs. In support of their argument, defendants rely on *Gimenez v Pepsi-Cola Bottling Co. of N.Y., Inc.*, 234 AD3d 943 [2d Dept 2025]). However, defendants’ reliance on *Gimenez* is misplaced.

In *Gimenez*, the Second Department affirmed the granting of a defendants’ motion to amend their answer to include a claim of fraud as to liability. The motion was supported by the defendant driver’s affidavit and the report of accident reconstruction expert to establish a meritorious defense that the accident was staged.¹

¹ See Index #717307/2022, NYSCEF DOC. 29 and 30.

Here, defendants have not submitted evidence in admissible form that this accident is staged or that plaintiffs underwent unnecessary treatment other than their treating doctors were included in a RICO lawsuit (*Dahroug v Trifon*, 242 AD2d 520, 521 [2d Dept 1997] [Plaintiff's motion to amend was denied due to failure to submit an expert affidavit or affidavit of merit.]).

“A court shall not examine the legal sufficiency or merits of a pleading unless [the] insufficiency or lack of merit is clear and free from doubt” (*Gimenez v Pepsi-Cola Bottling Company of New York*, 2023 WL 4305289, [N.Y.Sup., May 09, 2023], citing *Krakovski v Stavros Associates, LLC*, 173 AD3d 1146, 1147 [2d Dept. 2019]). Here, defendants' proposed amended answer is patently insufficient and lacks merit because it is not sworn under oath by an individual with personal knowledge of the facts of the accident (NYSCEF 54, p.65). Defendants submitted an attorney's verification which is insufficient to establish a meritorious defense in support of the amendment. A reasonable explanation for the two-year delay in serving the underlying motion and an affidavit of merit is necessary to support an amendment to a pleading. (*Dahroug v Trifon*, 242 AD2d 521; *Navarette v Alexiades*, 50 AD3d 869, 870 [2d Dept 2008]; and see *Pacheco v Fifteen Twenty-Seven Associates, L.P.*, 275 AD3d 282, 284 [1st Dept 2000] [The motion “must be supported by an affidavit of merit and evidentiary proof that could be considered upon a motion for summary judgment.”]). In *Gimenez*, the affidavits of the driver and expert established a meritorious defense in support of the amendment to Pepsi-Cola's answer. Absent an affidavit of merit, this Court need not reach the issue of whether plaintiffs intentionally made an indirect representation concerning their medical treatment with the knowledge that same would be communicated to defendants and their insurance carrier.

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 § 2221 to reargue this Court's decision dated 6/9/2025 is granted and upon reargument, the Court adheres to its initial determination denying defendants' underlying motion to amend its answer.

This constitutes the decision and order of the Court.

ENTER:

A handwritten signature in blue ink, appearing to be 'AS', is written over a faint circular stamp.

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

Dated: 4/21/2026