

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Mosca v. Lalezarian Props., LLC

2026 NY Slip Op 02642 · No. 2021-04965 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order that granted Con-Kel Landscaping, Inc. leave to reargue its summary judgment motion and, upon reargument, dismissed the claims against it. The court held that Con-Kel improperly raised for the first time on reargument an argument concerning the plaintiff's preclusion from testifying at trial.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Lillian Wan, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 29, 2026
DOCKET	2021-04965
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiff appealed from an order that granted Con-Kel Landscaping, Inc. leave to reargue its prior summary judgment motion and, upon reargument, granted summary judgment dismissing the amended complaint against Con-Kel.
PRECEDENTIAL VALUE	Published intermediate appellate decision
PARTIES	Carmen Mosca v. Con-Kel Landscaping, Inc.

TOPICS

- motion for reconsideration
- summary judgment
- discovery dispute
- personal injury
- appellate procedure

PRACTICE AREAS

- civil procedure
- personal injury
- appellate procedure

QUESTIONS PRESENTED

1. Whether Con-Kel could obtain leave to reargue its prior summary judgment motion by relying on the plaintiff's alleged preclusion from testifying when that argument was not raised in the original motion.
2. Whether the Supreme Court properly granted reargument and summary judgment based on an argument first presented in the motion for leave to reargue.

HOLDINGS

1. A motion for leave to reargue may not be used to present a new theory or an argument different from those originally asserted. Because Con-Kel did not raise the plaintiff's alleged preclusion from testifying in its original summary judgment motion, it improperly raised that argument for the first time on reargument.

KEY QUOTATIONS

"It is well settled that a motion to reargue is not available to advance a new theory or liability, or to present arguments different from those originally asserted" ([*2])

FACTUAL BACKGROUND

In January 2016, Carmen Mosca, a security guard, allegedly slipped on black ice in an underground parking garage where she was working. She sued, among others, Con-Kel Landscaping, Inc., the building's snow-removal contractor. The action involved outstanding discovery and a prior order warning that Mosca could be precluded from testifying if she failed to comply.

PROCEDURAL HISTORY

The Supreme Court directed the plaintiff to provide outstanding discovery and warned that noncompliance could preclude her from testifying at trial. Con-Kel later moved for summary judgment, which the Supreme Court denied without prejudice to renewal after discovery. Rather than seek renewal, Con-Kel moved for leave to reargue based in part on the plaintiff's alleged preclusion from testifying; the Supreme Court granted reargument and summary judgment, and the plaintiff appealed.

DISPOSITION

reversed

CASES CITED

- Garcia v Cali CW Realty Assoc., L.P., 230 AD3d 1231, 1232
- Blair v Allstate Indem. Co., 124 AD3d 1224, 1224-1225
- Angel v Strulovich, 240 AD3d 647, 650

OPINION

PER CURIAM.

<div>Mosca v Lalezarian Props., LLC - 2026 NY Slip Op 02642 <div> skip to main content
</div> <div> <p>It appears you are using Adblock. Please disable Adblock to best experience our website.</p> </div> <div> <header> <div> </div> <div> Law Reporting

Bureau Thomas J.K.

Smith, State Reporter <nav> Court Decisions Resources About </nav> </div> <div> </div> </header> </div> <nav> Home All Court Decisions Decisions </nav> <div> <div> <h1>Mosca v Lalezarian Props., LLC</h1> <p>2026 NY Slip Op 02642</p> <p>April 29, 2026</p> <p>Appellate Division, Second Department</p> <p>Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</p> <p>This decision is uncorrected and subject to revision before publication in the Official Reports.</p> </div> <div> <p>Carmen Mosca, appellant,</p> <p>v</p> <p>Lalezarian Properties, LLC, defendant, Con-Kel Landscaping, Inc., respondent.</p> </div> <p>Supreme Court of the State of New York, Appellate Division, Second Judicial Department</p> <p>Decided on April 29, 2026</p> <p>2021-04965, (Index No. 715001/16)</p> <p>Valerie Brathwaite Nelson, J.P.</p> <p>William G. Ford</p> <p>Lillian Wan</p> <p>Laurence L. Love, JJ.</p> <div> <p>Sacco & Fillas, LLP, Bayside, NY (Richard Schirmer of counsel), for appellant.</p> <p>Gallagher, Walker, Bianco & Plastaras, LLP, Mineola, NY (Michael R. Walker of counsel), for respondent.</p> </div> [*1] <p>DECISION & ORDER</p> <p>In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Carmen R. Velasquez, J.), dated June 29, 2021.

The order, insofar as appealed from, granted that branch of the motion of the defendant Con-Kel Landscaping, Inc., which was for leave to reargue that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it, which had been denied in an order of the same court dated March 13, 2020, and, upon reargument, in effect, vacated so much of the order dated March 13, 2020, as denied that branch of that defendant's prior motion, and thereupon, granted that branch of that defendant's prior motion.</p> <p>ORDERED that the order dated June 29, 2021, is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of the defendant Con-Kel Landscaping, Inc., which was for leave to reargue that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it is denied.</p> <p>In January 2016, the plaintiff, who was employed as a security guard, allegedly was injured when she slipped on "black ice" in an underground parking garage where she was working.

The plaintiff commenced this personal injury action in December 2016 against, among others, the defendant Con-Kel Landscaping, Inc. (hereinafter Con-Kel), the snow removal contractor at the building where the incident occurred.</p> <p>In an order dated March 25, 2019 (hereinafter the

March 2019 order), after the plaintiff failed to comply with multiple previous discovery orders and stipulations, the Supreme Court directed the plaintiff to disclose outstanding discovery.

The March 2019 order further stated that if the plaintiff failed to comply, she would be precluded from offering testimony at trial.

In August 2019, Con-Kel moved, among other things, for summary judgment dismissing the amended complaint insofar as asserted against it, arguing that it did not have notice of the hazardous condition and that it did not owe the plaintiff a duty of care.

The plaintiff opposed the motion. In an order dated March 13, 2020, the Supreme Court, inter alia, denied that branch of Con-Kel's motion without prejudice to renew upon the completion of discovery.

In November 2020, instead of moving for leave to renew, Con-Kel moved, among other things, for leave to reargue that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it.

Con-Kel argued, inter alia, that the Supreme Court overlooked a material issue of fact and misapprehended the law with respect to the plaintiff's preclusion from testifying at trial, arguing that the March 2019 order prevented the plaintiff from making her prima facie case.

In an order dated June 29, 2021, the Supreme Court, among other things, granted Con-Kel leave to reargue and, upon reargument, in effect, vacated so much of the order dated March 13, 2020, as denied that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it, and thereupon, granted that branch of the prior motion.

The court determined that the plaintiff would be unable to make out a prima facie case as to liability if she was unable to testify at trial. The plaintiff appeals.

"A motion for leave to reargue 'shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion'" (*Garcia v Cali CW Realty Assoc., L.P.*, 230 AD3d 1231, 1232, quoting CPLR 2221[d][2]).

"It is well settled that a motion to reargue is not available to advance a new theory or liability, or to present arguments different from those originally asserted" (*Blair v Allstate Indem. Co.*, 124 AD3d 1224, 1224-1225 [citations omitted]; *see* *Angel v Strulovich*, 240 AD3d 647, 650).

Here, Con-Kel did not raise any argument with respect to the plaintiff's preclusion from testifying at trial in its original motion for summary judgment, and thus, improperly raised this argument for the first time in support of its motion for leave to reargue (*see* *Angel v Strulovich*, 240 AD3d at 650).

Accordingly, the Supreme Court should have denied that branch of Con-Kel's motion which was for leave to reargue that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it based upon the argument that the plaintiff was precluded from testifying at trial.

BRATHWAITE NELSON, J.P., FORD, WAN and LOVE, JJ., concur.

ENTER:

Darrell M. Joseph

Clerk of the Court

<footer> <div> <p>Court Decisions</p> All Court Decisions Official Reports Service Bound Volumes Decision Search </div> <div> <p>Resources</p> RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index </div> <div> <p>About</p> About the Law Reporting Bureau About our Operations Contact Us Twitter </div> <div> <p>Quick Contact Info</p> <p>17 Lodge Street</p> <p>Albany, NY 12207</p> <p>Phone: (518) 453-6900</p> </div> </footer> </div> <div> <p>Links to or from other sites do not signify endorsement or relationship with them.</p> </div> </div>

PER CURIAM.

Mosca v Lalezarian Props., LLC - 2026 NY Slip Op 02642 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Mosca v Lalezarian Props., LLC 2026 NY Slip Op 02642 April 29, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports. Carmen Mosca, appellant, v Lalezarian Properties, LLC, defendant, Con-Kel Landscaping, Inc., respondent. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on April 29, 2026 2021-04965, (Index No. 715001/16) Valerie Brathwaite Nelson, J.P.

William G. Ford Lillian Wan Laurence L. Love, JJ. Sacco & Fillas, LLP, Bayside, NY (Richard Schirmer of counsel), for appellant. Gallagher, Walker, Bianco & Plastaras, LLP, Mineola, NY (Michael R. Walker of counsel), for respondent. [*1] DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Carmen R. Velasquez, J.), dated June 29, 2021.

The order, insofar as appealed from, granted that branch of the motion of the defendant Con-Kel Landscaping, Inc., which was for leave to reargue that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it, which had been denied in an order of the same court dated March 13, 2020, and, upon reargument, in effect, vacated so much of the order dated March 13, 2020, as denied that branch of that defendant's prior motion, and thereupon, granted that branch of that defendant's prior motion.

ORDERED that the order dated June 29, 2021, is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of the defendant Con-Kel Landscaping, Inc., which was for leave to reargue that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it is denied.

In January 2016, the plaintiff, who was employed as a security guard, allegedly was injured when she slipped on "black ice" in an underground parking garage where she was working. The plaintiff commenced this personal injury action in December 2016 against, among others, the defendant Con-Kel Landscaping, Inc. (hereinafter Con-Kel), the snow removal contractor at the building where the incident occurred.

In an order dated March 25, 2019 (hereinafter the March 2019 order), after the plaintiff failed to comply with multiple previous discovery orders and stipulations, the Supreme Court directed the plaintiff to disclose outstanding discovery.

The March 2019 order further stated that if the plaintiff failed to comply, she would be precluded from offering testimony at trial. In August 2019, Con-Kel moved, among other things, for summary judgment dismissing the amended complaint insofar as asserted against it, arguing that it did not have notice of the hazardous condition and that it did not owe the plaintiff a duty of care.

The plaintiff opposed [*2] the motion. In an order dated March 13, 2020, the Supreme Court, *inter alia*, denied that branch of Con-Kel's motion without prejudice to renew upon the completion of discovery. In November 2020, instead of moving for leave to renew, Con-Kel moved, among other things, for leave to reargue that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it.

Con-Kel argued, *inter alia*, that the Supreme Court overlooked a material issue of fact and misapprehended the law with respect to the plaintiff's preclusion from testifying at trial, arguing that the March 2019 order prevented the plaintiff from making her *prima facie* case.

In an order dated June 29, 2021, the Supreme Court, among other things, granted Con-Kel leave to reargue and, upon reargument, in effect, vacated so much of the order dated March 13, 2020, as denied that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it, and thereupon, granted that branch of the prior motion.

The court determined that the plaintiff would be unable to make out a *prima facie* case as to liability if she was unable to testify at trial. The plaintiff appeals. "A motion for leave to reargue 'shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion'" (*Garcia v Cali CW Realty Assoc., L.P.*, 230 AD3d 1231, 1232, quoting CPLR 2221[d] [2]).

"It is well settled that a motion to reargue is not available to advance a new theory or liability, or to present arguments different from those originally asserted" (*Blair v Allstate Indem. Co.*, 124 AD3d 1224, 1224-1225 [citations omitted]; see *Angel v Strulovich*, 240 AD3d 647, 650).

Here, Con-Kel did not raise any argument with respect to the plaintiff's preclusion from testifying at trial in its original motion for summary judgment, and thus, improperly raised this argument for the first time in support of its motion for leave to reargue (see *Angel v Strulovich*, 240 AD3d at 650).

Accordingly, the Supreme Court should have denied that branch of Con-Kel's motion which was for leave to reargue that branch of its prior motion which was for summary judgment dismissing the amended complaint insofar as asserted against it based upon the argument that the plaintiff was precluded from testifying at trial. BRATHWAITE NELSON, J.P., FORD, WAN and LOVE, JJ., concur.

ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.