

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