

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Fattorusso v Burton

2026 NY Slip Op 00045 (N.Y. Ct. App. 2026) · No. CV-25-0420 · Decided January 8, 2026

SUMMARY

The Appellate Division, Third Department affirmed the denial of Anne Marie Fattorusso's motion for leave to renew her summary judgment motion in a fraudulent-transfer action. The court held that plaintiff's failure to submit evidence addressing fair consideration and insolvency under the former Debtor and Creditor Law constituted a lack of due diligence, and that reliance on the subsequently enacted Uniform Voidable Transactions Act did not provide reasonable justification. The court concluded that Supreme Court providently exercised its discretion in denying renewal.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Aarons, J.; Garry, P.J.; Clark, J.; McShan, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	January 8, 2026
DOCKET	CV-25-0420
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, Columbia County, denying her motion for leave to renew her prior motion for summary judgment in a fraudulent-transfer action.
STANDARD OF REVIEW	A denial of leave to renew is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published
PARTIES	Anne Marie Fattorusso v. Raymond Burton, also known as Raymond B. Burton, Delores Burton, et al.

TOPICS

- motion for reconsideration
- summary judgment
- asset protection
- real estate
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff satisfied CPLR 2221(e) requirements for renewal by presenting newly obtained evidence and a reasonable justification for not submitting it on the original summary-judgment motion.
2. Whether plaintiff's reliance on the Uniform Voidable Transactions Act excused her failure to present evidence addressing fair consideration and insolvency under the law applicable to the February 2019 conveyance.
3. Whether Supreme Court abused its discretion in denying leave to renew.

HOLDINGS

1. Leave to renew was properly denied because plaintiff failed to provide a reasonable justification for omitting evidence addressing all dispositive elements on the original motion. A renewal motion cannot be used as a second chance to cure a lack of due diligence.
2. The February 2019 conveyance was governed by former Debtor and Creditor Law article 10 rather than the UVTA enacted in April 2020.

KEY QUOTATIONS

*"A renewal motion is not a second chance to remedy inadequacies that occurred in failing to exercise due diligence in the first instance" (*2)*

FACTUAL BACKGROUND

While plaintiff's workplace-sexual-harassment action was pending, Raymond Burton conveyed his marital residence by quitclaim deed to his former spouse, Delores Burton. Plaintiff later obtained a \$460,775 judgment against Burton and commenced a fraudulent-transfer action challenging the conveyance. Supreme Court found certain badges of fraud established but left triable issues concerning fair consideration and insolvency because the conveyance preceded the April 2020 enactment of the Uniform Voidable Transactions Act. After discovery produced additional admissions and financial information, plaintiff sought renewal, asserting that she had previously relied on the UVTA and therefore had not submitted evidence directed to the elements under former Debtor and Creditor Law article 10.

PROCEDURAL HISTORY

Plaintiff obtained a \$460,775 judgment against Raymond Burton after commencing an underlying workplace-sexual-harassment action. She then brought this action challenging Burton's conveyance of his marital residence to his former spouse as a fraudulent transfer and moved for summary judgment. Supreme Court granted partial summary judgment on certain badges of fraud but denied the remainder of the motion because factual issues remained regarding fair consideration and insolvency under the law applicable to the pre-UVTA conveyance. After discovery, plaintiff moved to renew based on additional financial evidence; Supreme Court denied renewal, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Schiffman v Affordable Shoes, Ltd., 238 AD3d 770, 772 (2d Dept 2025)
- Iannotti v Two Plus Four Mgt. Co., 209 AD3d 1248, 1249 (3d Dept 2022)
- Holtz v Blackstone Bldrs. Holding Co., LLC, 235 AD3d 1207, 1208 (3d Dept 2025)
- Premo v Rosa, 93 AD3d 919, 920 (3d Dept 2012)
- Sutton v Sylva, 223 AD3d 764, 766 (2d Dept 2024)
- Wilcox v Winter, 282 AD2d 862, 863-864 (3d Dept 2001)
- Kaiser v J & S Realty, 194 AD2d 1034, 1034 (3d Dept 1993)
- Perretta v New York City Tr. Auth., 230 AD3d 428, 431 (1st Dept 2024)

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