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

civil procedure appellate procedure summary judgment fraudulent transfers real estate

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 Syla, 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)

OPINION

PER CURIAM.

Fattorusso v Burton (2026 NY Slip Op 00045) Fattorusso v Burton 2026 NY Slip Op 00045 Decided on January 8, 2026 Appellate Division, Third Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered:January 8, 2026 CV-25-0420 [*1]Anne Marie Fattorusso, Appellant, v Raymond Burton, Also Known as Raymond B. Burton, et al., Respondents.

Calendar Date:November 17, 2025 Before:Garry, P.J., Clark, Aarons, McShan and Mackey, JJ. Sutton Sachs Meyer PLLC, New York City (Zachary G. Meyer of counsel), for appellant. Couch White, LLP, Albany (Adrianne M. Meicht of counsel), for respondents. Aarons, J. Appeal from an order of the Supreme Court (Daniel Lynch, J.), entered February 24, 2025 in Columbia County, which, among other things, denied plaintiff's motion for leave to renew.

In February 2018, plaintiff commenced an action against defendant Raymond Burton (hereinafter defendant) alleging workplace sexual harassment. While that action was pending, defendant conveyed his marital residence via quitclaim deed to defendant Delores Burton, defendant's former spouse.

In May 2023, plaintiff obtained a judgment against defendant in the amount of $460,775 and thereafter commenced this action alleging that the conveyance constituted a fraudulent transfer under the Uniform Voidable Transactions Act (see Debtor and Creditor Law art 10 [hereinafter UVTA]). Following joinder of issue, plaintiff moved for summary judgment. Supreme Court (S.

McGinty, J.) ruled that plaintiff was entitled to partial summary judgment on the badges of fraud arising from defendant's postconveyance possession of the marital residence and his knowledge of plaintiff's claim at the time of the conveyance.

The court otherwise denied plaintiff's motion, noting that the challenged conveyance predated the UVTA's April 2020 enactment and, under the law applicable in February 2019, triable issues of fact existed with respect to the elements of fair consideration and insolvency (see Debtor and Creditor Law former § 273; Matter of Schiffman v Affordable Shoes, Ltd., 238 AD3d 770, 772 [2d Dept 2025]).

Discovery ensued, and plaintiff subsequently moved for leave to renew her summary judgment motion pursuant to CPLR 2221 (e), arguing that renewal was warranted because discovery yielded additional financial evidence purportedly establishing the missing elements and because her failure to submit that evidence on the prior motion was due to her reliance on the UVTA.

Supreme Court (D. Lynch, J.) denied the motion, and plaintiff appeals. We affirm. A motion for leave to renew must "be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination... and... shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221 [e] [2], [3]; see Iannotti v Two Plus Four Mgt.

Co., 209 AD3d 1248, 1249 [3d Dept 2022]). "A renewal motion is not a second chance to remedy inadequacies that occurred in failing to exercise due diligence in the first instance, and the denial of a motion to renew will be disturbed only where it constituted an abuse of the trial court's discretion" (Holtz v Blackstone Bldrs. Holding Co., LLC, 235 AD3d 1207, 1208 [3d Dept 2025] [internal quotation marks and citations omitted]; see Premo v Rosa, 93 AD3d 919, 920 [3d Dept 2012]).

In seeking renewal, plaintiff attempted to correct deficiencies identified in the prior order by submitting admissions and financial information obtained from defendant in discovery[*2], asserting that her failure to include this proof on the prior motion should be excused because she misapprehended the applicable legal framework. Even assuming the additional proof "would change the prior determination" (CPLR 2221 [e] [2]), the applicability of Debtor and Creditor Law former article 10 to the February 2019 conveyance was a matter of law ascertainable when plaintiff filed her prior motion.

Thus, in our view, the omission of evidence directed at all dispositive elements under the correct statute constitutes a failure to exercise due diligence in making the initial factual presentation (see Sutton v Syla, 223 AD3d 764, 766 [2d Dept 2024]; compare Premo v Rosa, 93 AD3d at 921; Wilcox v Winter, 282 AD2d 862, 863-864 [3d Dept 2001]; Kaiser v J & S Realty, 194 AD2d 1034, 1034 [3d Dept 1993]).

Plaintiff points out that the additional proof of defendant's alleged insolvency and lack of fair consideration was brought out only during discovery and therefore could not have been submitted with the summary judgment motion. Yet, the timing of that prediscovery motion was a strategic choice, and "she cannot now be heard to complain that she was unable to obtain the evidence necessary to support her prior motion for summary judgment" (Perretta v New York City Tr.

Auth., 230 AD3d 428, 431 [1st Dept 2024]). Under these circumstances, Supreme Court providently exercised its discretion in denying leave to renew. Plaintiff's remaining contentions have been reviewed and deemed meritless. Garry, P.J., Clark, McShan and Mackey, JJ., concur. ORDERED that the order is affirmed, with costs.

PER CURIAM.

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