

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

Tapia v. Van Rossum

2026 NY Slip Op 02431 · No. 2024-10982 · Decided April 22, 2026

SUMMARY

The New York Appellate Division, Second Department, affirmed an order denying the plaintiff leave to renew and, upon reargument, adhering to the denial of her motion for summary judgment on liability in a personal-injury action arising from a pedestrian-vehicle collision. The court held that the plaintiff failed to provide a reasonable justification for not presenting purportedly new evidence earlier and failed to establish prima facie entitlement to summary judgment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Cheryl E. Chambers, J.; Linda Christopher, J.; James P. McCormack, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 22, 2026
DOCKET	2024-10982
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order that denied leave to renew her motion for summary judgment on liability, granted leave to reargue, and adhered upon reargument to the prior denial of summary judgment.
STANDARD OF REVIEW	The denial of leave to renew is reviewed for abuse of discretion; the court also reviewed whether the plaintiff established prima facie entitlement to summary judgment as a matter of law.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Amparo Tapia v. Olson E. Van Rossum, Uber Technologies, Inc., Uber USA, LLC

TOPICS

- summary judgment
- motion for reconsideration
- negligence
- comparative fault
- appellate procedure

PRACTICE AREAS

civil procedure

personal injury

negligence

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the Supreme Court providently exercised its discretion in denying leave to renew where the plaintiff failed to provide a reasonable justification for not submitting the purported new evidence with her original motion.
2. Whether the Supreme Court properly adhered upon reargument to its denial of the plaintiff's motion for summary judgment on liability because the plaintiff failed to establish prima facie entitlement to judgment as a matter of law.

HOLDINGS

1. Leave to renew was properly denied because the plaintiff failed to offer a reasonable justification for not including the purported new evidence in support of her original motion.
2. The plaintiff was not entitled to summary judgment on liability because her submissions failed to establish prima facie entitlement to judgment as a matter of law.

KEY QUOTATIONS

“A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination” ([*1]-[*2])

“A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries” ([*2])

“To be entitled to summary judgment on the issue of a defendant's liability, a plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence” ([*2])

FACTUAL BACKGROUND

Tapia allegedly sustained personal injuries when she was struck by a vehicle operated by Olson E. Van Rossum while she was crossing a street. She moved for summary judgment on the issue of Van Rossum's liability. After the motion was denied, she sought leave to renew based on purported new evidence and leave to reargue.

PROCEDURAL HISTORY

Tapia commenced a personal-injury action after allegedly being struck by Van Rossum's vehicle while crossing a street. The Supreme Court, Kings County, denied her motion for summary judgment on liability on July 21, 2023. The court later denied renewal, granted reargument, and adhered to its original determination in an order dated September 5, 2024. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Groman v. Fleyshmakher, 221 AD3d 789, 790
- Ok Sun Chong v. Scheelje, 218 AD3d 691, 692
- Seegopaul v. MTA Bus Co., 210 AD3d 715, 716
- Tsyganash v. Auto Mall Fleet Mgt., Inc., 163 AD3d 1033, 1033-1034
- Rodriguez v. City of New York, 31 NY3d 312
- Valerio v. City of New York, 238 AD3d 943, 944
- Gomez v. City of New York, 186 AD3d 1494, 1495
- Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853

OPINION

PER CURIAM.

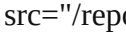
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Tapia v Van Rossum

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April 22, 2026

Appellate Division, Second Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Amparo Tapia, appellant,

v

Olson E. Van Rossum, et al., respondents, et al., defendant.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 22, 2026

2024-10982, (Index No. 509813/20)

Betsy Barros, J.P.

Cheryl E. Chambers

Linda Christopher

James P. McCormack, JJ.

Victoria Wickman (Arnold E. DiJoseph, P.C., Staten Island, NY [Arnold E. DiJoseph III], of counsel), for appellant.

Nancy L. Isserlis (The Zweig Law Firm P.C., Cedarhurst, NY [Jonah S. Zweig], of counsel), for respondent Olson E. Van Rossum.

Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, NY (Patrick J. Lawless and Julia Audibert of counsel), for respondents Uber Technologies, Inc., and Uber USA, LLC.

[*1]

DECISION & ORDER

In an action to recover damages

for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Caroline Piela Cohen, J.), dated September 5, 2024.

The order, insofar as appealed from, denied that branch of the plaintiff's motion which was for leave to renew her motion for summary judgment on the issue of liability against the defendant Olson E. Van Rossum, which had been denied in an order of the same court (Delores J. Thomas, J.) dated July 21, 2023, and, upon reargument, adhered to the original determination in the order dated July 21, 2023.

ORDERED that the order dated September 5, 2024, is affirmed insofar as appealed from, with one bill of costs to the respondents appearing separately and filing separate briefs.

The plaintiff commenced this action against, among others, the defendant Olson E. Van Rossum (hereinafter the defendant) to recover damages for personal injuries that she allegedly sustained when she was struck by the defendant's vehicle as she was crossing a street.

The plaintiff moved for summary judgment on the issue of liability against the defendant. In an order dated July 21, 2023, the Supreme Court denied the plaintiff's motion. The plaintiff subsequently moved for leave to renew and reargue her motion for summary judgment on the issue of liability against the defendant.

In an order dated September 5, 2024, the court denied that branch of the plaintiff's motion which was for leave to renew, granted that branch of the plaintiff's motion which was for leave to reargue, and, upon reargument, adhered to its original determination.

The plaintiff appeals.

A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination (*see* CPLR 2221[e] [2]) and shall contain reasonable justification for the failure to present such facts on the prior motion (*see id.* § 2221[e][3]; *Groman v Fleyshmakher*, 221 AD3d 789, 790).

"The new or additional facts either must have not been known to the party seeking renewal or may, in the Supreme Court's discretion, be based on facts known to the party seeking renewal at the time of the original motion" (*Ok Sun Chong v Scheelje*, 218 AD3d 691, 692 [internal quotation marks omitted]; *see Seegopaul v MTA Bus Co.*, 210 AD3d 715, 716).

Here, the plaintiff failed to offer a reasonable justification for not including the purported new evidence in support of her original motion, and accordingly, the Supreme Court providently exercised its discretion in denying that branch of the plaintiff's motion which was for leave to renew (*see Groman v Fleyshmakher*, 221 AD3d at 790; *Ok Sun Chong v Scheelje*, 218 AD3d at 692).

Upon reargument, the Supreme Court properly adhered to its original determination denying the plaintiff's motion for summary judgment on the issue of liability against the defendant.

"A plaintiff in a negligence action moving for summary judgment on the issue of liability must establish, prima facie, that the defendant breached a duty owed to the plaintiff and that the defendant's negligence was a proximate cause of the alleged injuries" (*Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d 1033, 1033-1034; *see* *Rodriguez v City of New York*, 31 NY3d 312).

"To be entitled to summary judgment on the issue of a defendant's liability, a plaintiff does not bear the burden of establishing the absence of his or her own comparative negligence" (*Valerio v City of New York*, 238 AD3d 943, 944 [internal quotation marks omitted]; *see* *Rodriguez v City of New York*, 31 NY3d at 312; *Tsyganash v Auto Mall Fleet Mgt., Inc.*, 163 AD3d at 1034).
Here, the evidence submitted by the plaintiff in support of her motion for summary judgment failed to establish her prima facie entitlement to judgment as a matter of law on the issue of liability against the defendant (*see* *Gomez v City of New York*, 186 AD3d 1494, 1495).

Accordingly, upon reargument, the Supreme Court properly adhered to its original determination denying the plaintiff's motion for summary judgment on the issue of liability against the defendant regardless of the sufficiency of the opposition papers (*see* *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).
The parties' remaining contentions are either without merit or not properly before this Court.
BARROS, J.P., CHAMBERS, CHRISTOPHER and MCCORMACK, JJ., concur.
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Darrell M. Joseph
Clerk of the Court

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