

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

Mullins v. Sharma

Mullins, 2026 NY Slip Op 00253 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2024-02195 · Decided January 21, 2026

SUMMARY

The New York Appellate Division, Second Department dismissed the plaintiff's appeal from an order that sua sponte directed dismissal of a conversion cause of action and made certain findings of fact. The court held that no appeal as of right lay from the sua sponte dismissal because it did not decide a motion made on notice, and the remaining findings and conclusions were not independently appealable.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Per Curiam; Francesca E. Connolly, J.P.; Linda Christopher, J.; Helen Voutsinas, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	January 21, 2026
DOCKET	2024-02195
DISPOSITION	dismissed
PROCEDURAL POSTURE	The plaintiff appealed from an order of the Supreme Court, Suffolk County, that, among other things, sua sponte dismissed a conversion cause of action and made findings of fact.
STANDARD OF REVIEW	The court applied New York rules governing appealability of interlocutory orders and whether findings or reasoning that do not grant or deny relief are independently appealable.
PRECEDENTIAL VALUE	Published
PARTIES	Kevin J. Mullins v. Amit Sharma, et al.

TOPICS

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interlocutory appeal

civil procedure

breach of contract

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QUESTIONS PRESENTED

1. Whether an appeal as of right lies from an order provision that sua sponte dismisses a cause of action without deciding a motion made on notice.
2. Whether a party may appeal language or factual findings in an order that do not independently grant or deny relief.

HOLDINGS

1. No appeal lies as of right from the portion of the order that sua sponte dismissed the conversion cause of action because that portion did not decide a motion made on notice. Because the court declined to grant leave to appeal, the plaintiff's contentions concerning that dismissal were not properly before the court.
2. Language or reasoning in an order that a party deems adverse does not establish standing to appeal, and findings of fact or conclusions of law that do not grant or deny relief are not independently appealable.

KEY QUOTATIONS

*"The mere fact that an order "contains language or reasoning that a party deems adverse to its interests does not furnish a basis for standing to take an appeal"" (at *1)*

FACTUAL BACKGROUND

Mullins brought an action individually and derivatively on behalf of Nassau-Suffolk Medical Services, P.C., including a conversion claim against Sharma. In connection with Mullins's motion for leave to serve a third amended complaint, the Supreme Court sua sponte dismissed the conversion cause of action and made factual findings that Mullins considered adverse.

PROCEDURAL HISTORY

Mullins commenced an action, individually and derivatively on behalf of Nassau-Suffolk Medical Services, P.C., asserting claims including conversion against Amit Sharma. After Mullins moved for leave to serve a third amended complaint, the Supreme Court sua sponte directed dismissal of the conversion cause of action and made certain factual findings. The Appellate Division dismissed the appeal with costs because the challenged portions of the order were not appealable as of right and the remaining contentions were not properly before the court.

DISPOSITION

dismissed

CASES CITED

- Sholes v. Meagher, 100 N.Y.2d 333, 335
- Duberry v. CNM Analytics, Inc., 180 A.D.3d 648, 651
- Taub v. Schon, 148 A.D.3d 1200, 1202
- Lugo v. Torres, 174 A.D.3d 592, 594
- Castaldi v. 39 Winfield Assoc., LLC, 22 A.D.3d 780, 781
- Glassman v. ProHealth Ambulatory Surgery Ctr., Inc., 96 A.D.3d 801, 801

OPINION

PER CURIAM.

Mullins v Sharma (2026 NY Slip Op 00253) Mullins v Sharma 2026 NY Slip Op 00253 Decided on January 21, 2026 Appellate Division, Second 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 on January 21, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P.

LINDA CHRISTOPHER HELEN VOUTSINAS PHILLIP HOM, JJ. 2024-02195 (Index No. 623013/21) [*1]Kevin J. Mullins, etc., appellant, v Amit Sharma, et al., respondents, et al., defendants, et al., nominal defendant. Ruskin Moscou Faltischeck, P.C., Uniondale, NY (Thomas A. Telesca of counsel), for appellant. Harter Secrest & Emery LLP, Buffalo, NY (Lauren R. Mendolera and Katherine E. Rahmlow of counsel), for respondents.

DECISION & ORDER In an action, inter alia, to recover damages for breach of contract and breach of fiduciary duty, the plaintiff appeals from an order of the Supreme Court, Suffolk County (James Hudson, J.), dated January 29, 2024.

The order, insofar as appealed from, sua sponte, directed dismissal of the cause of action alleging conversion and made certain findings of fact. ORDERED that the appeal is dismissed, with costs. The plaintiff, individually and on behalf of the nominal defendant, Nassau-Suffolk Medical Services, P.C., commenced this action asserting, inter alia, a derivative cause of action alleging conversion against the defendant Amit Sharma.

In October 2023, the plaintiff moved for leave to serve a third amended complaint. In an order dated January 29, 2024, the Supreme Court, among other things, sua sponte, directed dismissal of the cause of action alleging conversion against Sharma and made certain findings of fact.

The plaintiff appeals from so much of the order as, sua sponte, directed dismissal of the cause of action alleging conversion and made certain findings of fact that he deems adverse to his interests. No appeal lies as of right from so much of the order as, sua sponte, directed dismissal of the cause

of action alleging conversion since that portion of the order did not decide a motion made on notice (see CPLR 5701[a][2]; *Sholes v Meagher*, 100 NY2d 333, 335; *Duberry v CNM Analytics, Inc.*, 180 AD3d 648, 651; *Taub v Schon*, 148 AD3d 1200, 1202).

Since we decline to grant leave to appeal from that portion of the order (see CPLR 5701[c]), the plaintiff's contentions regarding the dismissal of the cause of action alleging conversion are not properly before this Court.

The plaintiff's remaining contentions also are not properly before this Court. The mere fact that an order "contains language or reasoning that a party deems adverse to its interests does not furnish a basis for standing to take an appeal" (*Lugo v Torres*, 174 AD3d 592, 594 [internal quotation marks omitted]; see *Castaldi v 39 Winfield Assoc., LLC*, 22 AD3d 780, 781).

Further, findings of fact and conclusions of law that do not grant or deny relief are not independently appealable (see *Glassman v ProHealth Ambulatory Surgery Ctr., Inc.*, 96 AD3d 801, 801). Accordingly, we dismiss the appeal. CONNOLLY, J.P., CHRISTOPHER, VOUTSINAS and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court