

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

Lowman v. Consolidated Edison Co. of N.Y., Inc.

Lowman, 2026 NY Slip Op 01310 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 158715/17, 595442/18; Appeal No. 6021, M-519; Case No. 2025-05210 · Decided March 10, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed an order denying Nelson Services Systems, Inc.'s motion to strike or dismiss a third-party complaint, impose sanctions, or void a confidential letter agreement with Consolidated Edison Company of New York, Inc. The court held that the agreement did not contain privileged information warranting dismissal and that a challenge based on duress or unconscionability required a plenary action because of sharply contested factual issues. The court also found that Con Edison's indemnification claim was not frivolous at that stage, citing an earlier ruling that Nelson had breached its obligation to procure insurance.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Renwick, P.J.; Kennedy, J.; Friedman, J.; Mendez, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	March 10, 2026
DOCKET	Index No. 158715/17, 595442/18; Appeal No. 6021, M-519; Case No. 2025-05210
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nelson Services Systems, Inc., a third-party defendant, appealed from an order of Supreme Court, New York County, denying its motion to strike or dismiss the third-party complaint, impose sanctions, or obtain a declaration voiding a confidential letter agreement with Consolidated Edison Company of New York, Inc.
PRECEDENTIAL VALUE	published
PARTIES	Nelson Services Systems, Inc. v. Joanne Lowman, Consolidated Edison Company of New York, Inc.

TOPICS

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QUESTIONS PRESENTED

1. Whether the confidential letter agreement contained privileged information warranting dismissal or striking of the third-party complaint under CPLR 3103(c).
2. Whether Nelson's claims that the agreement was executed under duress and was unconscionable could be adjudicated by motion or had to be pursued in a plenary action.
3. Whether Consolidated Edison's indemnification claim was frivolous so as to warrant sanctions under CPLR 8303-a(a).

HOLDINGS

1. The agreement did not contain privileged information justifying dismissal or striking of the third-party complaint under CPLR 3103(c). References to the direct action, Lowman's personal-injury claim, and Consolidated Edison's indemnification claim were not privileged.
2. Nelson's request to void the confidential letter agreement based on duress and unconscionability had to be pursued in a plenary action rather than by motion because sharply contested issues of fact existed.
3. Consolidated Edison's indemnification claim could not be deemed frivolous at that stage, so sanctions under CPLR 8303-a(a) were unwarranted.

KEY QUOTATIONS

*"Alternatively, Nelson seeks to void the confidential letter agreement as executed under duress and unconscionable; however, this relief sought should have been pursued in a plenary action, not by motion, given the "sharply contested issues of fact"" ([*1])*

FACTUAL BACKGROUND

The confidential letter agreement between Consolidated Edison and Nelson referenced the direct action and Lowman's personal-injury claim and preserved Consolidated Edison's indemnification claim against Nelson. Nelson contended that the agreement had been discussed and signed without counsel in violation of Rule 4.2(a) and (b) of the Rules of Professional Conduct, and that it was executed under duress and was unconscionable. Consolidated Edison's indemnification claim arose from Nelson's alleged failure to procure necessary insurance, which the court had previously found constituted a breach of contract.

PROCEDURAL HISTORY

Consolidated Edison brought a third-party indemnification claim against Nelson in an action involving Joanne Lowman's personal-injury claim. Supreme Court denied Nelson's motion under CPLR 3103 and 3017, its request

for sanctions under CPLR 8303-a, and its request to void the confidential agreement. The Appellate Division unanimously affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Lipin v. Bender, 84 N.Y.2d 562 (1994)
- Shawe v. Elting, 169 A.D.3d 601, 602 (1st Dep't 2019), appeal dismissed and leave denied, 33 N.Y.3d 1048 (2019)
- Coast to Coast Energy, Inc. v. Gasarch, 77 A.D.3d 589, 589 (1st Dep't 2010)
- Scheckter v. Ryan, 161 A.D.2d 344, 345 (1st Dep't 1990)
- Lowman v. Consolidated Edison Co. of N.Y., Inc., 220 A.D.3d 510 (1st Dep't 2023)

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