

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

civil procedure

appellate procedure

sanctions

motions to dismiss

breach of contract

PRACTICE AREAS

civil procedure

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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)

OPINION

Lowman v. Consolidated Edison Co. of N.Y., Inc. 2026 NY Slip Op 01310

PER CURIAM.

Lowman v Consolidated Edison Co. of N.Y., Inc. (2026 NY Slip Op 01310) Lowman v Consolidated Edison Co. of N.Y., Inc. 2026 NY Slip Op 01310 Decided on March 10, 2026 Appellate Division, First 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: March 10, 2026 Before: Renwick, P.J., Kennedy, Friedman, Mendez, Hagler, JJ. Index No. 158715/17, 595442/18|Appeal No. 6021, M-519|Case No. 2025-05210| [*1]Joanne Lowman, Plaintiff-Respondent, v Consolidated Edison Company of New York, Inc., et al., Defendants-Respondents. Consolidated Edison Company of New York, Inc., Third-Party Plaintiff-Respondent, v Nelson Services Systems, Inc., Third-Party Defendant-Appellant. Strikowsky Drachman & Shapiro PLLC, New York (Sim R. Shapiro of counsel), for appellant. McMahon, Martine & Gallagher, LLP, Brooklyn (Patrick W. Brophy of counsel), for Consolidated Edison Company of New York, Inc., respondent. Order, Supreme Court, New York County (Sabrina Kraus, J.), entered on or about August 13, 2025, which, to the extent appealed from as limited by the briefs, denied the motion of third-party defendant Nelson Services Systems, Inc. (Nelson), to strike or dismiss the third-party complaint pursuant to CPLR 3103 and 3017, for sanctions pursuant to CPLR 8303-a, or for a declaration voiding a confidential letter agreement between defendant/third-party plaintiff Consolidated Edison Company of New York, Inc. (ConEd) and Nelson, unanimously affirmed, without costs. Supreme Court providently denied Nelson's application to strike or dismiss the third-party complaint. The parties' confidential letter agreement, which Nelson asserts was discussed and signed without counsel in violation of rule 4.2(a) and (b) of the Rules of Professional Conduct (22 NYRR 1200.0), does not contain any

privileged information to justify dismissal of the third-party complaint pursuant to CPLR 3103(c) (see *Lipin v Bender* , 84 NY2d 562 [1994]; *Shawe v Elting* , 169 AD3d 601 , 602 [1st Dept 2019], appeal dismissed and lv denied 33 NY3d 1048 [2019]). While the agreement references the direct action and plaintiff's personal injury claim and preserves Con Ed's indemnification claim against Nelson, that information is not privileged (see *Coast to Coast Energy, Inc. v Gasarch* , 77 AD3d 589, 589 [1st Dept 2010]). 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" (see *Scheckter v Ryan* , 161 AD2d 344, 345 [1st Dept 1990]). To the extent Nelson seeks sanctions pursuant to CPLR 8303-a(a), Con Ed's indemnification claim against Nelson cannot be deemed frivolous at this juncture where this court has already found that Nelson failed to procure the necessary insurance in breach of contract (see *Lowman v Consolidated Edison Co. of N.Y., Inc.* , 220 AD3d 510 [1st Dept 2023]). We have considered the Nelson's remaining arguments and find them unavailing. M-0519 — *Lowman v Consolidated Edison Co. of New York, LLC, et al.*, Motion to transfer all documents submitted in camera as part of the Order to Show Cause to the motion court and/or for leave to supplement the record on appeal, granted to the extent of granting leave to supplement the record. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 10, 2026