

**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.

OPINION

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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