

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

Almodovar v. City of New York

2026 NY Slip Op 02053 · No. Index No. 150953/23; Appeal No. 6282; Case No. 2024-05602 · Decided April 7, 2026

SUMMARY

The Appellate Division, First Department affirmed an order that, upon reargument, dismissed the plaintiff's complaint with prejudice and denied vacatur or leave to amend. The court held that the different Justice's consideration of a motion presenting purely legal questions did not require vacatur, that the plaintiff's amended complaint was a nullity after dismissal, and that review was limited because no appeal had been taken from the original dismissal order.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Webber, J.P.; Kennedy, J.; Kapnick, J.; González, J.; O'Neill Levy, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 7, 2026
DOCKET	Index No. 150953/23; Appeal No. 6282; Case No. 2024-05602
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, New York County, that granted in part his motion to reargue, amended a prior order to clarify that dismissal was with prejudice, adhered to the prior determinations, and denied his requests to vacate the prior orders or obtain leave to amend the complaint.
STANDARD OF REVIEW	The court reviewed whether Supreme Court providently granted plaintiff's motion for leave to reargue and made the appropriate disposition; because plaintiff did not appeal the April 25, 2024 dismissal order, review of the merits of the dismissal was not available.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Jason Almodovar v. The City of New York, Tanya Meisenholder et al.

TOPICS

appellate procedure

motions to dismiss

motion for reconsideration

motion to amend

civil procedure

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether the order granting defendants' motion to dismiss had to be vacated because oral argument occurred before a different Justice than the Justice who decided the motion.
2. Whether Supreme Court could resolve defendants' letter application and deem plaintiff's amended complaint a nullity despite the application having been made by letter rather than by motion on notice.
3. Whether plaintiff could amend the complaint as of right after Supreme Court had dismissed the original complaint in its entirety with prejudice.
4. Whether the Appellate Division could review the merits of the April 25, 2024 dismissal order when plaintiff had not appealed from that order.

HOLDINGS

1. A dismissal order presenting purely legal questions need not be vacated merely because oral argument occurred before a different Justice than the Justice who decided the motion.
2. The fact that defendants' application was made by letter rather than by motion on notice did not require a different outcome because plaintiff used the proper practical procedure of moving to vacate the resulting order and appealing from the denial of that motion.
3. An amended complaint filed as of right after the original complaint had been dismissed in its entirety with prejudice was a nullity.
4. The Appellate Division's review was limited to whether Supreme Court properly granted reargument and made the appropriate disposition; it would not reach the merits of the underlying dismissal.

KEY QUOTATIONS

“Litigation by letter is not contemplated by the CPLR and, thus, disfavored” (at *1)

“there was no complaint left before the court” (at *2)

FACTUAL BACKGROUND

Defendants moved to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(7), and the motion was argued before a Justice other than the Justice who ultimately decided it. Supreme Court dismissed the complaint in its entirety, after which plaintiff filed an amended complaint and defendants made a letter application seeking to have that pleading disregarded. Supreme Court deemed the amended complaint a nullity, later clarified that the dismissal was with prejudice, and denied plaintiff's efforts to vacate the orders or obtain leave to amend.

PROCEDURAL HISTORY

Defendants moved to dismiss under CPLR 3211(a)(7), and Supreme Court granted the motion in its entirety on April 25, 2024. After plaintiff filed an amended complaint and defendants submitted a letter application, Supreme Court deemed the amended complaint a nullity in a May 15, 2024 order. On reargument, the court clarified that dismissal was with prejudice and otherwise adhered to its prior orders. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- People v Hampton, 21 NY3d 277, 285, 287 [2013]
- Marti v Rana, 173 AD3d 576, 577 [1st Dept 2019], lv denied 34 NY3d 906 [2019]
- Matter of Davin v Felberman, 75 Misc 3d 1034, 1046 n 5 [Sup Ct, Rockland County 2022], affd 205 AD3d 855 [2d Dept 2022]
- Lederman v New York City Dept. of Parks & Recreation, 61 Misc 3d 1202[A], 2018 NY Slip Op 51329[U], *6 [Sup Ct, NY County 2018]
- Perrotte v Bloomberg, L.P., 2026 NY Slip Op 00632, *1 [1st Dept 2026]
- Georgievski v Robins, 235 AD3d 493, 493 [1st Dept 2025]
- Tanner v Stack, 176 AD3d 429, 429 [1st Dept 2019]
- Panagouloupoulos v Carlos Ortiz Jr. MD, P.C., 194 AD3d 728, 729 [2d Dept 2021], lv dismissed in part, denied in part 37 NY3d 1022 [2021]
- Tyagi v Gadella, 202 AD3d 561, 562 [1st Dept 2022]

OPINION

Almodovar v. City of New York 2026 NY Slip Op 02053

PER CURIAM.

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of New York, et al., Respondents, Tanya Meisenholder et al., Defendants.

Decided and Entered: April 07, 2026

Index No. 150953/23|Appeal No. 6282|Case No. 2024-05602|

Before: Webber, J.P., Kennedy, Kapnick, González, O'Neill Levy, JJ.

Law Office of Jimmy Wagner, Brooklyn (Jimmy Wagner of counsel), for appellant.

Muriel Goode-Trufant, Corporation Counsel, New York (Amanda Abata of counsel), for respondents.

[*1] Order, Supreme Court, New York County (Hase A. Kingo, J.), entered on or about August 9, 2024, which, in effect, granted the branches of plaintiff's motion to reargue and, upon reargument, amended the order dated April 25, 2024 to reflect that the complaint is dismissed with prejudice, and otherwise adhered to the original determinations in the April 25 and May 15, 2024 orders, and denied the branches of plaintiff's motion to vacate the April 25 and May 15, 2024 orders or, alternatively, for leave to amend the complaint, unanimously affirmed, without costs.

The fact that oral argument on defendants' motion to dismiss was held before a different Justice than the Justice who ultimately decided the motion does not require vacatur of the April 25, 2024 order granting defendants' motion. Although Judiciary Law § 21 provides that a Supreme Court Justice "shall not decide or take part in the decision of a question, which was argued orally in the court, when he was not present and sitting therein as a" Justice, reversal is not warranted on this ground because defendants' motion to dismiss pursuant to CPLR 3211(a)(7) presented purely legal questions (*see People v Hampton*, 21 NY3d 277, 285, 287 [2013]; *Marti v Rana*, 173 AD3d 576, 577 [1st Dept 2019], *lv denied* 34 NY3d 906 [2019]).

Litigation by letter is not contemplated by the CPLR and, thus, disfavored (*see e.g. Matter of Davin v Felberman*, 75 Misc 3d 1034, 1046 n 5 [Sup Ct, Rockland County 2022], *affd* 205 AD3d 855 [2d Dept 2022]; *Lederman v New York City Dept. of Parks & Recreation*, 61 Misc 3d 1202[A], 2018 NY Slip Op 51329[U], *6 [Sup Ct, NY County 2018]), because an order deciding a letter application ordinarily is not appealable as of right (*see* CPLR 5701[a][2]; *contra Perrotte v Bloomberg, L.P.*, — AD3d —, —, 2026 NY Slip Op 00632, *1 [1st Dept 2026]). Rather, the proper procedure is for the aggrieved party to move to vacate the order, then appeal from the denial of that motion (*see e.g. Georgievski v Robins*, 235 AD3d 493, 493 [1st Dept 2025]). That, in sum and substance, is what plaintiff has done here, and defendants do not dispute that the court's August 9, 2024 order is appealable, or that this Court can permissibly review the May 15, 2024 order. Accordingly, the fact that the May 15, 2024 order was entered on a letter application, as opposed to a motion made on notice, does not require a different outcome in this case.

[*2] Upon considering defendants' letter application, Supreme Court correctly deemed plaintiff's amended complaint to be a nullity. The court's April 25, 2024 order granted defendants' motion to dismiss the complaint in its entirety on the merits and — as clarified by the order on appeal — with prejudice. Thus, plaintiff could not file an amended complaint as of right on April 29, 2024, because "there was no complaint left before the court" (*Tanner v Stack*, 176 AD3d 429, 429 [1st Dept 2019]; *see Panagouloupoulos v*

Carlos Ortiz Jr. MD, P.C., 194 AD3d 728, 729 [2d Dept 2021], lv dismissed in part, denied in part 37 NY3d 1022 [2021]).

Finally, plaintiff never noticed an appeal from the court's April 25, 2024 order granting defendants' motion to dismiss. Accordingly, our review is limited to whether the court providently granted plaintiff's motion for leave to reargue and, upon reargument, made the appropriate disposition (see *Tyagi v Gadella*, 202 AD3d 561, 562 [1st Dept 2022]). In his motion for leave to reargue, plaintiff did not seek to reargue the merits of defendants' motion, but rather the alleged procedural impropriety in the court first deciding the motion, then effectively granting defendants' letter application and deeming his amended complaint a nullity. We therefore do not reach the merits of plaintiff's arguments as to whether the court, in its April 25, 2024 order, properly granted defendants' motion to dismiss.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 7, 2026,

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