

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

DiMiceli v. Credit Shelter Trust

DiMiceli, 2026 NY Slip Op 02391 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2023-09829, 2024-03731 · Decided April 22, 2026

SUMMARY

The Appellate Division, Second Department, affirmed orders denying the plaintiff leave to amend the complaint to add Skanska Civil Northeast, Inc., and denying renewal of that request. The court held that the plaintiff failed to establish that Skanska Civil Northeast and Skanska USA were united in interest for purposes of the relation-back doctrine. The court also affirmed denial of Skanska USA's renewed summary judgment cross-motion because the plaintiff demonstrated that further discovery might lead to relevant evidence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; Lillian Wan, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 22, 2026
DOCKET	2023-09829, 2024-03731
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from orders denying leave to amend the complaint to add Skanska Civil Northeast, Inc., denying leave to renew the amendment request, and denying Skanska USA, Inc.'s renewed cross-motion for summary judgment. Skanska USA cross-appealed from the denial of its renewed summary-judgment cross-motion.
STANDARD OF REVIEW	Leave to amend and leave to renew were reviewed for whether the Supreme Court properly applied the governing New York procedural standards. The denial of summary judgment as premature was upheld where the plaintiff demonstrated that discovery might lead to relevant evidence.

PRECEDENTIAL VALUE	Published
PARTIES	John DiMiceli v. Credit Shelter Trust, Skanska USA, Inc.

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QUESTIONS PRESENTED

1. Whether the plaintiff established the relation-back doctrine's requirements for adding Skanska Civil Northeast, Inc. as a defendant after the limitations period.
2. Whether the plaintiff was entitled to renew his motion for leave to amend the complaint based on purportedly new facts.
3. Whether Skanska USA, Inc.'s renewed cross-motion for summary judgment was premature because discovery might lead to relevant evidence.

HOLDINGS

1. The plaintiff failed to establish that Skanska Northeast and Skanska USA were united in interest because they were separate corporations with different defenses; therefore, leave to amend the complaint to add Skanska Northeast was properly denied.
2. The plaintiff was not entitled to renewal because he failed to demonstrate that the purported new facts would change the prior determination denying leave to amend.
3. The denial of Skanska USA's renewed cross-motion for summary judgment was properly affirmed because the plaintiff demonstrated that discovery might lead to relevant evidence necessary to oppose the motion.

KEY QUOTATIONS

"Second, if a new party is to be added, it must be united in interest with one or more of the original defendants, and by reason of that relationship can be charged with such notice of the institution of the action that he or she will not be prejudiced in defending the action on the merits" (at 2)

"A party who contends that a summary judgment motion is premature is required to demonstrate that discovery might lead to relevant evidence or the facts essential to justify opposition to the motion were exclusively within the knowledge and control of the movant" (at 3)

FACTUAL BACKGROUND

The plaintiff allegedly sustained personal injuries while working at a construction project in August 2015. He sued, among others, Skanska USA, Inc., and later sought to add Skanska Civil Northeast, Inc. as a defendant

under the relation-back doctrine. The record showed that Skanska USA and Skanska Northeast were separate corporations with different defenses, while materials disseminated by Skanska USA suggested that further discovery might produce evidence relevant to opposing Skanska USA's summary-judgment motion.

PROCEDURAL HISTORY

The plaintiff commenced a personal-injury action in 2018 after allegedly being injured at a construction project in August 2015. In 2022, he moved for leave to amend the complaint to add Skanska Civil Northeast, Inc.; Skanska USA opposed and renewed its cross-motion for summary judgment. The Supreme Court, Kings County, denied both requests in an order dated July 14, 2023. The plaintiff thereafter sought renewal of the amendment request, which the Supreme Court denied on December 21, 2023. The Appellate Division affirmed both orders insofar as challenged.

DISPOSITION

affirmed

CASES CITED

- *Bisono v. Mist Enters., Inc.*, 231 AD3d 134, 141
- *Buran v. Coupal*, 87 NY2d 173, 178
- *Ragusa v. Drazie's Farm II, LLC*, 226 AD3d 836, 837-838
- *Cajas-Romero v. Ward*, 106 AD3d 850, 852
- *Tarasiuk v. Levoritz*, 216 AD3d 1031, 1035
- *Haidhaqi v. Metropolitan Transp. Auth.*, 153 AD3d 1328, 1329
- *Cenlar FSB v. Tenenbaum*, 172 AD3d 806, 807
- *Sarceno v. Manhattan View, LLC*, 230 AD3d 1176, 1177