

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

**Tylman v. Yanoff**

2020 NY Slip Op 04508 (App. Div. 2020) · No. 2019-03356 · Decided August 12, 2020

**SUMMARY**

The New York Appellate Division, Second Department, dismissed the plaintiffs' appeal from the denial of reargument and affirmed the denial of renewal of their opposition to the defendants' CPLR 3211(a) motion to dismiss. The court held that the plaintiffs failed to provide a reasonable justification for not presenting the alleged new evidence earlier.

**CASE DETAILS**

|                              |                                                                                                                                                                     |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                              |
| <b>WRITING FOR THE COURT</b> | Reinaldo E. Rivera, J.P.; Cheryl E. Chambers, J.; Leonard B. Austin, J.; Paul Wooten, J.                                                                            |
| <b>JURISDICTION</b>          | New York                                                                                                                                                            |
| <b>DECIDED</b>               | August 12, 2020                                                                                                                                                     |
| <b>DOCKET</b>                | 2019-03356                                                                                                                                                          |
| <b>DISPOSITION</b>           | affirmed                                                                                                                                                            |
| <b>PROCEDURAL POSTURE</b>    | Plaintiffs appealed from an order denying their motion for leave to reargue and renew their opposition to defendants' CPLR 3211(a) motion to dismiss the complaint. |
| <b>STANDARD OF REVIEW</b>    | The denial of leave to renew is reviewed for an abuse of discretion; the court determined that the Supreme Court providently exercised its discretion.              |
| <b>PRECEDENTIAL VALUE</b>    | published                                                                                                                                                           |
| <b>PARTIES</b>               | Leonid Tylman, et al. v. Andrey Yanoff, et al.                                                                                                                      |

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## QUESTIONS PRESENTED

1. Whether an appeal lies from an order denying leave to reargue.
2. Whether the Supreme Court properly denied leave to renew when plaintiffs failed to provide a reasonable justification for not presenting the alleged new evidence on the original motion.

## HOLDINGS

1. No appeal lies from an order denying leave to reargue; the appeal from that portion of the order must therefore be dismissed.
2. Leave to renew was properly denied because plaintiffs failed to provide a reasonable justification for their failure to present the alleged new evidence on the original motion.

## KEY QUOTATIONS

*“A motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation”* ([\*1])

## FACTUAL BACKGROUND

Plaintiffs brought an action to recover damages for fraud and unjust enrichment. After defendants obtained dismissal under CPLR 3211(a), plaintiffs sought leave to reargue and renew based on alleged new evidence. The Appellate Division concluded that plaintiffs lacked a reasonable justification for failing to present the alleged new evidence in opposition to the original dismissal motion.

## PROCEDURAL HISTORY

The Supreme Court, Kings County, granted defendants' motion to dismiss the complaint in an order dated August 3, 2017. It later denied plaintiffs' motion for leave to reargue and renew that determination in an order dated January 10, 2019. The Appellate Division dismissed the appeal insofar as it challenged denial of reargument and affirmed the order insofar as reviewed.

## DISPOSITION

affirmed

## CASES CITED

- MP v Davidsohn, 169 AD3d 788, 789
- Krobath v South Nassau Communities Hosp., 178 AD3d 810, 810-811
- Worrell v Parkway Estates, LLC, 43 AD3d 436, 437
- Carmike Holding I, LLC v Smith, 180 AD3d 744
- U.S. Bank N.A. v Ahmed, 174 AD3d 661, 665

OPINION

PER CURIAM.

Tylman v Yanoff (2020 NY Slip Op 04508) Tylman v Yanoff 2020 NY Slip Op 04508 Decided on August 12, 2020 Appellate Division, Second 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 on August 12, 2020 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department REINALDO E. RIVERA, J.P.

CHERYL E. CHAMBERS LEONARD B. AUSTIN PAUL WOOTEN, JJ. 2019-03356 (Index No. 502951/16) [\*1]Leonid Tylman, et al., appellants, vAndrey Yanoff, et al., respondents. Lumen Law, New York, NY (Mikhail Ratner of counsel), for appellants. Kalavesios Law Group PLLC, Brooklyn, NY (Ted Kalavesios and Susan R. Nudelman of counsel), for respondents. DECISION & ORDER In an action to recover damages for fraud and unjust enrichment, the plaintiffs appeal from an order of the Supreme Court, Kings County (Bernard J. Graham, J.), dated January 10, 2019.

The order denied the plaintiffs' motion for leave to reargue and renew their opposition to the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint, which had been granted in an order of the same court dated August 3, 2017. ORDERED that the appeal from so much of the order dated January 10, 2019, as denied that branch of the plaintiffs' motion which was for leave to reargue is dismissed; and it is further, ORDERED that the order dated January 10, 2019, is affirmed insofar as reviewed; and it is further, ORDERED that one bill of costs is awarded to the defendants.

As a threshold matter, no appeal lies from an order denying reargument (see *MP v Davidsohn*, 169 AD3d 788, 789). Accordingly, the appeal from so much of the order as denied that branch of the plaintiffs' motion which was for leave to reargue must be dismissed (see *id.* at 789). Pursuant to CPLR 2221(e), a motion for leave to renew, inter alia, "shall be based upon new facts not offered on the prior motion that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion" (*Krobath v South Nassau Communities Hosp.*, 178 AD3d 810, 810-811 [internal quotation marks omitted]).

"A motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation" (*Worrell v Parkway Estates, LLC*, 43 AD3d 436, 437; see *Carmike Holding I, LLC v Smith*, 180 AD3d 744; *Krobath v South Nassau Communities Hosp.*, 178 AD3d at 811).

Here, we agree with the Supreme Court's determination that the plaintiffs did not provide a reasonable justification for their failure to present the alleged new evidence in opposition to the

defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint (see *Krobath v South* [\*2]*Nassau Communities Hosp.*, 178 AD3d at 811; *U.S. Bank N.A. v Ahmed*, 174 AD3d 661, 665).

Accordingly, the court providently exercised its discretion in denying that branch of the plaintiffs' motion which was for leave to renew their opposition to the defendants' motion to dismiss the complaint. RIVERA, J.P., CHAMBERS, AUSTIN and WOOTEN, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court