

**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

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Reinaldo E. Rivera, J.P.; Cheryl E. Chambers, J.; Leonard B. Austin, J.; Paul Wooten, J.
JURISDICTION	New York
DECIDED	August 12, 2020
DOCKET	2019-03356
DISPOSITION	affirmed
PROCEDURAL POSTURE	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.
STANDARD OF REVIEW	The denial of leave to renew is reviewed for an abuse of discretion; the court determined that the Supreme Court providently exercised its discretion.
PRECEDENTIAL VALUE	published
PARTIES	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

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