

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

Mohssen v. Gonzalez

Mohssen, 2026 NY Slip Op 03300 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2021-06396 · Decided May 27, 2026

SUMMARY

The Appellate Division, Second Department dismissed the plaintiff's appeal from an order that, upon reargument, adhered to a prior determination denying the plaintiff's summary judgment motion and granting the defendant's cross-motion to dismiss claims involving trespass and nuisance. The appeal was dismissed because the record omitted many relevant papers, making meaningful appellate review virtually impossible.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Linda Christopher, J.; Barry E. Warhit, J.; Carl J. Landicino, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	May 27, 2026
DOCKET	2021-06396
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff appealed from an order that, upon reargument, adhered to a prior order denying plaintiff's motion for summary judgment and granting defendant's cross-motion for summary judgment dismissing the amended complaint. The Appellate Division dismissed the appeal because the appellate record was incomplete.
STANDARD OF REVIEW	The court did not reach the merits because the incomplete appellate record rendered meaningful review virtually impossible.
PRECEDENTIAL VALUE	Published intermediate appellate decision; uncorrected and subject to revision before publication in the Official Reports.
PARTIES	Fahti Mohssen v. Ruben Gonzalez

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the appeal should be dismissed because the appellant failed to provide a complete record containing the relevant papers that were before the Supreme Court.
2. Whether the plaintiff's remaining appellate contentions were properly before the Appellate Division.

HOLDINGS

1. An appeal must be dismissed when omissions from the appellate record render meaningful review of the challenged order virtually impossible.
2. The plaintiff's remaining contentions were not properly before the Court.

KEY QUOTATIONS

"It is the obligation of the appellant to assemble a proper record on appeal" ([*1])

"An appellant's record must contain all the relevant papers that were before the Supreme Court" ([*1])

"Appeals that are not based upon complete and proper records must be dismissed" ([*1])

FACTUAL BACKGROUND

The underlying action involved claims for damages based in part on trespass and nuisance. Plaintiff sought summary judgment on the amended complaint, while defendant cross-moved for summary judgment dismissing it. The appellate record omitted a majority of the papers submitted in support of and opposition to those motions.

PROCEDURAL HISTORY

The action sought, among other relief, damages for trespass and nuisance. The Supreme Court, Kings County, denied plaintiff's motion for summary judgment and granted defendant's cross-motion for summary judgment dismissing the amended complaint. Upon plaintiff's motion for leave to reargue, the court adhered to that determination in an order dated August 4, 2021. Plaintiff appealed, but the record omitted most of the papers submitted on the underlying summary judgment motions.

DISPOSITION

dismissed

CASES CITED

- *Wilmington Trust Co. v. Buscemi*, 207 AD3d 503, 505

- Fitzpatrick v. CSS Indus., Inc., 236 AD3d 863, 863-864

OPINION

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PER CURIAM.

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2026 NY Slip Op 03300

May 27, 2026

Appellate Division, Second Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

Fahti Mohssen, appellant,

v

Ruben Gonzalez, respondent.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on May 27, 2026

2021-06396, (Index No. 510925/15)

Angela G. Iannacci, J.P.

Linda Christopher

Barry E. Warhit

Carl J. Landicino, JJ.

M. Daniel Bach, New York, NY, for appellant.

Jeanette Malaty, Glendale, NY, for respondent.

[*1]

DECISION & ORDER

In an action, inter alia, to recover damages for trespass and nuisance, the plaintiff appeals from an order of the Supreme Court, Kings County (Lawrence Knipel, J.), dated August 4, 2021. The order, insofar as appealed from, upon reargument, adhered to a prior determination in an order of the same court (Johnny Lee Baynes, J.) dated December 20, 2018, denying the plaintiff's motion for summary judgment on the amended complaint and granting the defendant's cross-motion for summary judgment dismissing the amended complaint.

ORDERED that the appeal is dismissed, with costs.

"It is the obligation of the appellant to assemble a proper record on appeal" (*Wilmington Trust Co. v Buscemi*, 207 AD3d 503, 505). "An appellant's record must contain all the relevant papers that were before the Supreme Court" (*id.*; *see* CPLR 5526). "Appeals that are not based upon complete and proper records must be dismissed" (*Fitzpatrick v CSS Indus., Inc.*, 236 AD3d 863, 863 [internal quotation marks omitted]).

Here, after the Supreme Court denied the plaintiff's motion for summary judgment on the amended complaint and granted the defendant's cross-motion for summary judgment dismissing the amended complaint, the plaintiff moved for leave to reargue his motion and his opposition to the defendant's cross-motion. In an order dated August 4, 2021, the court, upon reargument, adhered to the prior determination denying the plaintiff's motion and granting the defendant's

cross-motion. On the instant appeal, the record does not include all of the relevant papers that were before the court including a majority of the papers submitted in support of, and in opposition to, the underlying summary judgment motions. Since these omissions have rendered meaningful review of the court's order virtually impossible, the plaintiff's appeal from the order dated August 4, 2021, must be dismissed (*see id.* at 863-864; *Wilmington Trust Co. v Buscemi*, 207 AD3d at 505).

The plaintiff's remaining contentions are not properly before this Court.

IANNACCI, J.P., CHRISTOPHER, WARHIT and LANDICINO, JJ., concur.

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PER CURIAM.

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quotation marks omitted]). Here, after the Supreme Court denied the plaintiff's motion for summary judgment on the amended complaint and granted the defendant's cross-motion for summary judgment dismissing the amended complaint, the plaintiff moved for leave to reargue his motion and his opposition to the defendant's cross-motion. In an order dated August 4, 2021, the court, upon reargument, adhered to the prior determination denying the plaintiff's motion and granting the defendant's cross-motion. On the instant appeal, the record does not include all of the relevant papers that were before the court including a majority of the papers submitted in support of, and in opposition to, the underlying summary judgment motions. Since these omissions have rendered meaningful review of the court's order virtually impossible, the plaintiff's appeal from the order dated August 4, 2021, must be dismissed (see *id.* at 863-864; *Wilmington Trust Co. v Buscemi* , 207 AD3d at 505). The plaintiff's remaining contentions are not properly before this Court. IANNACCI, J.P., CHRISTOPHER, WARHIT and LANDICINO, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.