

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

Bank of America, N.A. v. Greenfield

2026 NY Slip Op 00764 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2026) · Decided February 11, 2026

SUMMARY

The Appellate Division, Second Department affirmed an order and judgment awarding Bank of America, N.A. \$2,774,431.16 against Moses Greenfield on a personal guaranty. The court held that the appeal from an earlier order was properly dismissed as superseded, service of process was valid, exclusion of defendant-prepared video evidence was not an abuse of discretion, and dismissal based on another pending action was unwarranted because Greenfield had been dismissed from the prior action.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, Second Judicial Department                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Lara J. Genovesi, J.P.; Deborah A. Dowling, J.; Lillian Wan, J.; Janice A. Taylor, J.                                                                                                                                                                                                                                   |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                                                                                  |
| DECIDED               | February 11, 2026                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Defendant appealed from an order denying his CPLR 3211(a)(8) motion to dismiss for lack of personal jurisdiction after a service-of-process hearing and from an order and judgment granting plaintiff summary judgment and denying defendant's CPLR 3211(a)(4) cross-motion to dismiss based on another pending action. |
| STANDARD OF REVIEW    | Evidentiary rulings are reviewed for improvident exercise of discretion or prejudice to a substantial right under CPLR 2002. A ruling under CPLR 3211(a)(4) concerning dismissal based on another pending action is reviewed for abuse or improvident exercise of discretion.                                           |
| PRECEDENTIAL VALUE    | Published New York Appellate Division opinion                                                                                                                                                                                                                                                                           |
| PARTIES               | Moses Greenfield v. Bank of America, N.A.                                                                                                                                                                                                                                                                               |

## TOPICS

service of process

motions to dismiss

appellate procedure

evidence

contracts

## PRACTICE AREAS

civil procedure

appellate procedure

contracts

commercial litigation

evidence

## QUESTIONS PRESENTED

1. Whether the appeal from the May 15, 2023 order was reviewable after entry of the October 18, 2023 order and judgment.
2. Whether the Supreme Court improvidently exercised its discretion by refusing to admit Greenfield's compilation of video surveillance footage at the service hearing.
3. Whether the complaint should have been dismissed under CPLR 3211(a)(4) because the prior action remained pending and involved substantially identical parties, claims, and relief.
4. Whether the order and judgment granting Bank of America summary judgment should be affirmed.

## HOLDINGS

1. The appeal from the May 15, 2023 order had to be dismissed because the right to a direct appeal from that order terminated upon entry of the final order and judgment; the issues raised on that appeal were reviewable on the appeal from the order and judgment.
2. The Supreme Court did not improvidently exercise its discretion in denying admission of Greenfield's compilation of video surveillance footage, and Greenfield failed to show prejudice to a substantial right.
3. The Supreme Court properly denied Greenfield's CPLR 3211(a)(4) cross-motion because, although the two actions had a substantial identity of parties, were substantially similar, and sought substantially the same relief, Greenfield was no longer a party to the prior action after obtaining dismissal and was never re-served.

## KEY QUOTATIONS

*"[T]rial courts are accorded wide discretion in making evidentiary rulings and those rulings should not be disturbed on appeal absent an improvident exercise of discretion or a showing of prejudice to a substantial right pursuant to CPLR 2002"" (at 2)*

*"Pursuant to CPLR 3211(a)(4), a court has broad discretion in determining whether an action should be dismissed based upon another pending action where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same"" (at 2)*

## FACTUAL BACKGROUND

Dollar Phone Corp. defaulted under a 2013 commercial line of credit agreement with Bank of America, and Moses Greenfield allegedly guaranteed DPC's obligations. Greenfield was dismissed from the prior action because he had not been properly served, and although the court gave the plaintiff time to effect proper service, the plaintiff did not re-serve him. Bank of America later commenced this separate action to enforce the guaranty,

obtained a determination that service was valid, and secured summary judgment for the amount awarded against the other defendants in the prior action, plus disbursements.

#### PROCEDURAL HISTORY

Bank of America previously sued Greenfield and others concerning a commercial line of credit and Greenfield's personal guaranty. Greenfield obtained dismissal from the prior action for improper service, and the plaintiff did not re-serve him. The plaintiff then commenced this action against Greenfield, obtained a ruling that service was valid, and obtained summary judgment for \$2,774,431.16. The Appellate Division dismissed the appeal from the earlier order because that right terminated upon entry of the order and judgment, reviewed the issues on the appeal from the judgment, and affirmed.

#### DISPOSITION

affirmed

#### CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- 6 Harbor Park Dr., LLC v. Town of N. Hempstead, 230 AD3d 721, 723
- Dyszkiewicz v. City of New York, 218 AD3d 546, 550
- Quinones v. Z & B Trucking, Inc., 220 AD3d 901, 902
- Melis v. Blake Stone, LLC, 227 AD3d 882, 884-885
- DAIJ, Inc. v. Roth, 85 AD3d 959, 959
- Hempstead Hous. Auth. v. Middle County Resources Mgt., Inc., 216 AD3d 621, 622