

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

American Tr. Ins. Co. v. Barakat PT PC

2026 NY Slip Op 01751 (N.Y. Ct. App. 2026) · No. 2024-13392 · Decided March 25, 2026

SUMMARY

The Appellate Division, Second Department reversed an order granting American Transit Insurance Company's motion for leave to renew and reargue its opposition to a motion to strike the complaint. The court held that the insurer failed to establish grounds for reargument or renewal and reinstated the prior order striking the complaint under CPLR 3126(3) for failure to comply with discovery obligations.

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.; Paul Wooten, J.; Carl J. Landicino, J.; Donna-Marie E. Golia, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	March 25, 2026
DOCKET	2024-13392
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed from an order granting plaintiff leave to renew and reargue its opposition to defendant's motion under CPLR 3126(3) to strike the complaint, vacating the prior order striking the complaint, and denying that branch of defendant's motion.
STANDARD OF REVIEW	A motion for reargument is addressed to the sound discretion of the court that determined the original motion and may be granted only upon a showing that the court overlooked or misapprehended the facts or law, or otherwise mistakenly reached its original decision. Leave to renew requires new facts that would change the prior determination and a reasonable justification for failing to present those facts earlier.
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QUESTIONS PRESENTED

1. Whether the Supreme Court properly granted plaintiff leave to reargue its opposition to defendant's motion to strike the complaint under CPLR 3126(3).
2. Whether plaintiff satisfied CPLR 2221(e)'s requirements for renewal by presenting new facts that would change the prior determination and reasonably justifying its failure to present them earlier.
3. Whether plaintiff could raise for the first time on reargument the contention that defendant was required to serve the discovery order with notice of entry.

HOLDINGS

1. Leave to reargue should have been denied because plaintiff did not show that the Supreme Court overlooked or misapprehended the facts or law, or otherwise mistakenly reached its earlier decision.
2. Plaintiff's contention that defendant was required to serve the April 2023 discovery order with notice of entry was improperly raised for the first time on reargument.
3. Leave to renew should have been denied because plaintiff did not offer a reasonable justification for failing to submit the purportedly new facts in opposition to defendant's original motion.
4. The November 6, 2024 order was reversed, plaintiff's motion for leave to renew and reargue was denied, and the August 9, 2023 order striking the complaint was reinstated.

KEY QUOTATIONS

"A motion for reargument is addressed to the sound discretion of the court which determined the original motion, and leave to reargue may be granted upon a showing that the court overlooked or misapprehended the facts or the law, or otherwise mistakenly arrived at the original decision"

"A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination"

FACTUAL BACKGROUND

The Supreme Court ordered American Transit Insurance Company to produce specified discovery documents within 30 days and warned that failure to comply could result in sanctions under CPLR 3126. Barakat PT PC moved to strike the complaint under CPLR 3126(3) based on the alleged failure to comply, and the Supreme Court granted that motion in August 2023. American Transit later sought renewal and reargument, asserting that

the court had overlooked legal and factual matters, but did not provide a reasonable justification for failing to present its purportedly new facts earlier.

PROCEDURAL HISTORY

American Transit Insurance Company commenced an Insurance Law § 5106(c) action for a de novo determination of no-fault insurance benefit claims. The Supreme Court directed plaintiff to provide discovery and warned that noncompliance could result in sanctions under CPLR 3126. After plaintiff failed to comply, the court granted defendant's motion to strike the complaint under CPLR 3126(3). The Supreme Court later granted plaintiff's motion to renew and reargue, vacated the prior order, and denied the motion to strike; the Appellate Division reversed and reinstated the prior order.

DISPOSITION

reversed

CASES CITED

- Christopulos v. Christopulos, 209 AD3d 968, 969
- US Bank N.A. v. Cimino, 212 AD3d 683, 684
- Sokolnik v. Voronova, 221 AD3d 1036, 1037
- HSBC Bank USA, N.A. v. Halls, 98 AD3d 718, 720-721
- Kugel v. Reynolds, 228 AD3d 743, 746-747
- Matter of Butler v. City of Rye Planning Commn., 114 AD3d 937, 938
- Matter of Government Empls. Ins. Co. v. Bermeo, 230 AD3d 1141, 1143
- Rangel v. Target Corp., 216 AD3d 683, 685
- Robert v. Azoulay Realty Corp., 209 AD3d 781, 786
- Incorporated Vil. of Cove Neck v. Petrara, 47 AD3d 885, 887

OPINION

PER CURIAM.

American Tr. Ins. Co. v Barakat PT PC (2026 NY Slip Op 01751) American Tr. Ins. Co. v Barakat PT PC 2026 NY Slip Op 01751 Decided on March 25, 2026 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 March 25, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P. PAUL WOOTEN CARL J. LANDICINO DONNA-MARIE E. GOLIA, JJ. 2024-13392 (Index No. 521651/22) [*1]American Transit Insurance Company, respondent, v Barakat PT PC, appellant. Roman Kravchenko, Melville, NY (Jason Tenenbaum of counsel), for appellant.

Short & Billy, P.C., New York, NY (Christopher E. O'Donnell and Seok Ho [Richard] Kang of counsel), for respondent. DECISION & ORDER In an action pursuant to Insurance Law § 5106(c) for a de novo determination of claims for no-fault insurance benefits, the defendant appeals from an order of the Supreme Court, Kings County (Leon Ruchelsman, J.), dated November 6, 2024.

The order granted the plaintiff's motion for leave to renew and reargue its opposition to that branch of the defendant's prior motion which was pursuant to CPLR 3126(3) to strike the complaint, which had been granted in an order of the same court (Leon Ruchelsman, J.) dated August 9, 2023, and, upon renewal and reargument, vacated the order dated August 9, 2023, and thereupon, denied that branch of the defendant's prior motion.

ORDERED that the order dated November 6, 2024, is reversed, on the law, with costs, the plaintiff's motion for leave to renew and reargue its opposition to that branch of the defendant's prior motion which was pursuant to CPLR 3126(3) to strike the complaint is denied, and the order dated August 9, 2023, is reinstated.

The plaintiff commenced this action pursuant to Insurance Law § 5106(c) for a de novo determination of the defendant's claims for no-fault insurance benefits. In an order dated April 21, 2023 (hereinafter the April 2023 order), the Supreme Court directed the plaintiff to provide certain discovery documents within 30 days of the filing of the April 2023 order on the New York State Courts Electronic Filing System and stated that failure to comply with the April 2023 order will result in the plaintiff being sanctioned pursuant to CPLR 3126.

The defendant moved, inter alia, pursuant to CPLR 3126(3) to strike the complaint for failure to comply with the April 2023 order. The plaintiff opposed the motion. In an order dated August 9, 2023 (hereinafter the August 2023 order), the court granted that branch of the defendant's motion. Thereafter, the plaintiff moved for leave to renew and reargue its opposition to that branch of the defendant's prior motion which was pursuant to CPLR 3126(3) to strike the complaint and, upon renewal and reargument, to vacate the August 2023 order and to deny that branch of the defendant's prior motion.

The defendant opposed motion. In an order dated November 6, 2024, the court granted the plaintiff's motion. The defendant appeals. "A motion for reargument is addressed to the sound discretion of the court which determined the original motion, and leave to reargue may be granted upon a showing that the court overlooked or misapprehended the facts or the law, or otherwise mistakenly arrived at the original decision" (*Christopulos v Christopulos*, 209 AD3d 968, 969; see *US Bank N.A. v Cimino*, 212 AD3d 683, 684).

"A motion for leave to reargue... shall not include any matters of fact not offered on [*2]the prior motion" (*Sokolnik v Voronova*, 221 AD3d 1036, 1037 [internal quotation marks omitted]; see CPLR 2221[d][2]). "Further, even where a motion for reargument is technically untimely under

CPLR 2221(d)(3), a court has discretion to reconsider its prior ruling" (*HSBC Bank USA, N.A. v Halls*, 98 AD3d 718, 720-721; see *Kugel v Reynolds*, 228 AD3d 743, 746-747).

The Supreme Court should have denied that branch of the plaintiff's motion which was for leave to reargue its opposition to that branch of the defendant's prior motion which was pursuant to CPLR 3126(3) to strike the complaint, "as there is no indication that the court misapprehended the facts or law, or mistakenly arrived at its earlier decision" (*Matter of Butler v City of Rye Planning Commn.*, 114 AD3d 937, 938; see CPLR 2221[d][2]).

The plaintiff's contention that the court overlooked the fact that the defendant was required to serve the plaintiff with a copy of the April 2023 order with notice of entry to enforce the April 2023 order against the plaintiff was improperly raised for the first time on reargument (see *Matter of Government Empls. Ins. Co. v Bermeo*, 230 AD3d 1141, 1143; *Rangel v Target Corp.*, 216 AD3d 683, 685).

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" (CPLR 2221[e][2]) and "shall contain reasonable justification for the failure to present such facts on the prior motion" (*id.* § 2221[e][3]).

Here, the plaintiff did not offer a reasonable justification for failing to submit the purported new facts in opposition to the defendant's prior motion (see *id.*; *Robert v Azoulay Realty Corp.*, 209 AD3d 781, 786; *Incorporated Vil. of Cove Neck v Petrara*, 47 AD3d 885, 887).

The plaintiff's remaining contentions are without merit. Accordingly, the Supreme Court should have denied the plaintiff's motion for leave to renew and reargue its opposition to that branch of the defendant's prior motion which was pursuant to CPLR 3126(3) to strike the complaint. DILLON, J.P., WOOTEN, LANDICINO and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court