

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

S. Garson, LLC v. Luck

2026 NY Slip Op 00921 (N.Y. Ct. App. 2026) · No. 2024-06749 · Decided February 18, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order permitting S. Garson, LLC to amend the caption to correct its name and denying the defendants’ requests to dismiss the amended complaint and require security for costs. The court held that the name correction did not prejudice any substantial right and that the plaintiff, a foreign limited liability company authorized to do business in New York, had capacity to sue. It also concluded that the amended complaint adequately stated claims for breach of contract and related costs and fees, and that alleged typographical errors did not warrant dismissal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; William G. Ford, J.; Helen Voutsinas, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	February 18, 2026
DOCKET	2024-06749
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed from an order that granted the plaintiff's renewed motion to amend the caption to correct the plaintiff's name and denied defendants' CPLR 3211(a) motion to dismiss the amended complaint and motion requiring the plaintiff to post a bond for security for costs.
STANDARD OF REVIEW	The court reviewed the order for abuse of discretion as to amendment of the caption and applied the CPLR 3211(a)(1) and (7) standards to the dismissal issues. A motion under CPLR 3211(a)(7) is evaluated by liberally construing the complaint, accepting alleged facts as true, and according the plaintiff every favorable inference; when evidentiary material is considered without conversion to summary judgment, the issue is whether the plaintiff has a cause of action. A CPLR 3211(a)(1) motion may be granted only when documentary evidence utterly

	refutes the allegations and conclusively establishes a defense as a matter of law.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Jessica Luck, Joseph Castillo, other defendants v. S. Garson, LLC

TOPICS

motion to amend

motions to dismiss

civil procedure

appellate procedure

breach of contract

PRACTICE AREAS

civil procedure

appellate procedure

contracts

real estate

commercial litigation

QUESTIONS PRESENTED

1. Whether the plaintiff could amend the caption to correct its name when the proper plaintiff was already before the court under a defective name.
2. Whether the plaintiff's failure to submit a new proposed amended complaint or to justify its failure to submit a managing-member affidavit on an earlier motion required denial of the renewed amendment motion.
3. Whether the plaintiff's status as a foreign limited liability company authorized to do business in New York required dismissal for lack of capacity to sue or required security for costs.
4. Whether the amended complaint stated causes of action for breach of contract and related costs and fees under CPLR 3211(a)(7).
5. Whether documentary evidence conclusively established that the lease was a nullity or otherwise required dismissal under CPLR 3211(a)(1), and whether Real Property Law § 238-a(2) required dismissal of the late-fee claim.

HOLDINGS

1. When the proper plaintiff is before the court under a defective name or title, amendment correcting the title is permissible, and the court properly exercised its discretion to grant S. Garson, LLC's renewed motion to amend the caption.
2. Because the plaintiff was a foreign limited liability company authorized to do business in New York, dismissal for lack of capacity to sue was unwarranted and the plaintiff was not required to post a bond as security for costs.
3. The amended complaint adequately stated causes of action for breach of contract and related costs and fees.
4. The typographical error in the apartment address did not defeat notice or require dismissal, and the lease and property-transfer record did not conclusively establish that the lease was a nullity.

KEY QUOTATIONS

*“Where the right party plaintiff is in court but under a defective name or title as party plaintiff, an amendment correcting the title is permissible” (*1)*

*“CPLR 2001 permits a court, at any stage of an action, to disregard a party's mistake, omission, defect, or irregularity if a substantial right of a party is not prejudiced, and CPLR 5019(a) gives trial and appellate courts the discretion to cure mistakes, defects and irregularities that do not affect substantial rights of parties” (*1)*

*“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must liberally construe the complaint, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*2)*

*“A motion to dismiss a complaint pursuant to CPLR 3211(a)(1) may be granted only where the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law” (*2)*

FACTUAL BACKGROUND

In July 2018, S. Garson, LLC leased an apartment at 500A East 87th Street in Manhattan to Jessica Luck and Joseph Castillo for one year. The tenants moved out in February 2019 after complaining about second-hand smoke. In April 2022, the plaintiff commenced an action under the incorrect name SB Garson, LLC, and the amended pleading also contained a typographical error identifying the apartment as SOOA East 87th Street.

PROCEDURAL HISTORY

The plaintiff commenced an action in April 2022 under the name SB Garson, LLC to recover damages for breach of contract and related costs and fees. After the plaintiff sought to correct its name to S. Garson, LLC, the Supreme Court, Westchester County, granted the renewed motion to amend the caption and denied defendants' dismissal and bond motions. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Glanz v Parkway Kosher Caterers, 176 AD3d 686, 687-688
- Smith v Realty on Fox Croft Corp., 233 AD3d 908, 909
- Putrelo Constr. Co. v Town of Marcy, 137 AD3d 1591, 1592
- Medina v City of New York, 134 AD3d 433, 433
- 1S REO Opportunity 1, LLC v Harlem Premier Residence, LLC, 234 AD3d 401, 402-403
- Solon Automated Servs. v Eastwood Mgt. Corp., 94 AD2d 961, 961
- Rosas v Morales, 235 AD3d 678, 679
- Jesberger v CVS Health Solutions, LLC, 222 AD3d 849, 849

- Matter of Chet's Garage, Inc. v Village of Goshen, 161 AD3d 727, 731
- Katsorhis v 718 W. Beech St, LLC, 234 AD3d 744, 746
- Guido v Orange Regional Med. Ctr., 102 AD3d 828, 832
- H.B.A. Realty Co. v Miller, 14 AD2d 607, 607

OPINION

PER CURIAM.

S. Garson, LLC v Luck (2026 NY Slip Op 00921) S. Garson, LLC v Luck 2026 NY Slip Op 00921 Decided on February 18, 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 February 18, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P.

WILLIAM G. FORD HELEN VOUTSINAS LAURENCE L. LOVE, JJ. 2024-06749 (Index No. 60097/22) [*1]S. Garson, LLC, respondent, v Jessica Luck, et al., appellants. Boatti PLLC, Brooklyn, NY (Richard Stephen Boatti of counsel), for appellants. DECISION & ORDER In an action, inter alia, to recover damages for breach of contract, the defendants appeal from an order of the Supreme Court, Westchester County (Thomas Quiñones, J.), dated May 30, 2024.

The order, insofar as appealed from, granted the plaintiff's renewed motion to amend the caption to correct the name of the plaintiff and denied those branches of the defendants' cross-motion which were pursuant to CPLR 3211(a) to dismiss the amended complaint and to require the plaintiff to post a bond as security for costs. ORDERED that the order is affirmed insofar as appealed from, without costs or disbursements.

In July 2018, the plaintiff, S. Garson, LLC, as landlord, and the defendants Jessica Luck and Joseph Castillo (hereinafter together the tenants), as tenants, entered into a lease agreement with respect to an apartment located at 500A East 87th Street in Manhattan for a term of one year.

In February 2019, the tenants moved out of the apartment after complaining to the landlord about second-hand smoke. In April 2022, the plaintiff, under the name "SB Garson, LLC," commenced this action against the tenants and another defendant (hereinafter collectively the defendants) to recover damages for breach of contract and related costs and fees.

The plaintiff, which was actually named "S. Garson, LLC," subsequently made a renewed motion to amend the caption to correct its name. The defendants cross-moved, inter alia, pursuant to CPLR 3211(a) to dismiss the amended complaint and to require the plaintiff to post a bond as security for costs.

In an order dated May 30, 2024, the Supreme Court, among other things, granted the plaintiff's motion and denied those branches of the defendants' cross-motion. The defendants appeal. Where the right party plaintiff is in court but under a defective name or title as party plaintiff, an amendment correcting the title is permissible (see *Glanz v Parkway Kosher Caterers*, 176 AD3d 686, 687).

"CPLR 2001 permits a court, at any stage of an action, to disregard a party's mistake, omission, defect, or irregularity if a substantial right of a party is not prejudiced, and CPLR 5019(a) gives trial and appellate courts the discretion to cure mistakes, defects and irregularities that do not affect substantial rights of parties" (*id.* at 687-688 [citations and internal quotation marks omitted]).

Here, the Supreme Court providently exercised its discretion in granting the plaintiff's [*2]renewed motion to amend the caption to correct its name (see *id.*). Contrary to the defendants' contention, the plaintiff was not required to demonstrate a reasonable justification for its failure to submit an affidavit of its managing member on a prior motion it had made, as the relevant branch of that prior motion was denied with leave to renew (see *Smith v Realty on Fox Croft Corp.*, 233 AD3d 908, 909).

Inasmuch as the limited proposed correction was clearly described in the moving papers, the plaintiff's failure to submit a new copy of its proposed amended complaint did not prejudice the defendants (see CPLR 2001; *Putrelo Constr. Co. v Town of Marcy*, 137 AD3d 1591, 1592; *Medina v City of New York*, 134 AD3d 433, 433).

Moreover, a substantial right of the defendants was not prejudiced by the typographical error of the plaintiff's name in the caption. Since it is undisputed that the plaintiff is a foreign limited liability company authorized to do business in New York, the Supreme Court properly denied dismissal of the amended complaint pursuant to CPLR 3211(a) on the ground that the plaintiff lacked capacity to sue and properly denied that branch of the defendant's cross-motion which was to require the plaintiff to post a bond as security for costs (see Limited Liability Company Law § 808[a]; CPLR 8501[a]; *1S REO Opportunity 1, LLC v Harlem Premier Residence, LLC*, 234 AD3d 401, 402-403; *Solon Automated Servs. v Eastwood Mgt.*

Corp., 94 AD2d 961, 961). "'On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must liberally construe the complaint, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*Rosas v Morales*, 235 AD3d 678, 679, quoting *Jesberger v CVS Health Solutions, LLC*, 222 AD3d 849, 849).

"Further, 'where, as here, evidentiary material is submitted and considered on a motion pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question

becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and the motion should not be granted unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact as all and unless it can be said that no significant dispute exists regarding it" (*id.*, quoting *Matter of Chet's Garage, Inc. v Village of Goshen*, 161 AD3d 727, 731).

"A motion to dismiss a complaint pursuant to CPLR 3211(a)(1) may be granted only where the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Katsorhis v 718 W. Beech St, LLC*, 234 AD3d 744, 746).

Here, accepting the allegations in the amended complaint as true, as supplemented by the affidavit submitted in opposition to the defendants' cross-motion, and according the plaintiff the benefit of every possible favorable inference, the plaintiff alleged facts sufficient to state causes of action to recover damages for breach of contract and related costs and fees (see *Guido v Orange Regional Med.*

Ctr., 102 AD3d 828, 832). Since the defendants were able to identify "the correct apartment," the apparent typographical error in the proposed amended complaint identifying the subject property as "SOOA East 87th Street" was sufficient to give the Supreme Court and the parties notice of the occurrences at issue (see CPLR 3013, 3026). Contrary to the defendants' further contention, the lease identifying the plaintiff as landlord and the record conveying the property to an alleged affiliate of the plaintiff did not conclusively establish that the parties' lease agreement was a nullity (*cf.* *H.B.A.*

Realty Co. v Miller, 14 AD2d 607, 607). Furthermore, Real Property Law § 238-a(2) does not require dismissal of the plaintiff's cause of action to recover late fees. Accordingly, the Supreme Court properly denied dismissal of the amended complaint pursuant to CPLR 3211(a)(1) and (7). BRATHWAITE NELSON, J.P., FORD, VOUTSINAS and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court