

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

Trinidad v. All Faiths Cemetery

Trinidad, 2026 NY Slip Op 03997 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2025-02123 · Decided June 24, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying All Faiths Cemetery's motion to dismiss an amended complaint under CPLR 3211(a)(4) based on a related pending proceeding. The court held that although the actions involved substantially identical parties and arose from the same alleged wrong, they were not sufficiently similar and did not seek the same or substantially the same relief.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Colleen D. Duffy, J.P.; Paul Wooten; Laurence L. Love; Phillip Hom
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 24, 2026
DOCKET	2025-02123
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order denying its motion under CPLR 3211(a)(4) to dismiss the amended complaint based on another pending proceeding.
STANDARD OF REVIEW	Abuse of discretion; under CPLR 3211(a)(4), the court has broad discretion to determine whether dismissal is warranted based on another pending action.
PRECEDENTIAL VALUE	Published
PARTIES	All Faiths Cemetery v. Juan Trinidad, et al.

TOPICS

- motions to dismiss
- civil procedure
- appellate procedure
- negligence

PRACTICE AREAS

Civil procedure

Appellate procedure

Torts

QUESTIONS PRESENTED

1. Whether the amended complaint should be dismissed under CPLR 3211(a)(4) because of the pending 2022 proceeding involving substantially the same parties and alleged wrong.
2. Whether the relief sought in the present action was the same or substantially the same as the relief sought in the 2022 proceeding.

HOLDINGS

1. Dismissal was not warranted because, although there was a substantial identity of the parties and both matters arose from the same alleged wrong, the two proceedings were not sufficiently similar and sought relief that was not the same or substantially the same.

KEY QUOTATIONS

“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” ([*1])

“It is not necessary that the precise legal theories presented in the first action also be presented in the second action so long as the relief . . . is the same or substantially the same” ([*1])

FACTUAL BACKGROUND

The plaintiffs alleged that All Faiths Cemetery unlawfully disinterred their father's remains and reinterred them in an adjacent grave at the request of one of the decedent's children. The child allegedly did not notify the plaintiffs or obtain their consent. The plaintiffs brought a 2022 proceeding seeking, among other relief, an order directing return of the remains to the original grave, and later commenced this action seeking, among other relief, damages for gross negligence.

PROCEDURAL HISTORY

The plaintiffs commenced an action in January 2024 seeking, among other relief, damages for gross negligence arising from the alleged disinterment and reinterment of their father's remains. The defendant moved to dismiss under CPLR 3211(a)(4), asserting that the action was barred by a proceeding commenced in July 2022 under N-PCL 1510(e). The Supreme Court, Queens County, denied the motion, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Busiello v Whelan, 240 AD3d 736, 737
- DAIJ, Inc. v Roth, 85 AD3d 959, 959
- Brach v Schwartz, 215 AD3d 913, 914
- St. Paul Fire & Mar. Ins. Co. v Getty Props. Co., 228 AD3d 971, 973
- JPMorgan Chase Bank, N.A. v Luxama, 172 AD3d 1341, 1341
- Feldman v Harari, 183 AD3d 629, 631
- Matter of Hirsch v Beda, 226 AD3d 899, 900

OPINION

PER CURIAM.

Trinidad v All Faiths Cemetery - 2026 NY Slip Op 03997 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Trinidad v All Faiths Cemetery 2026 NY Slip Op 03997 June 24, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports. Juan Trinidad, et al., respondents, v All Faiths Cemetery, appellant. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 24, 2026 2025-02123, (Index No. 701212/24) Colleen D. Duffy, J.P. Paul Wooten Laurence L. Love Phillip Hom, JJ. Philips Nizer LLP, New York, NY (Michael S. Fischman and Judith L. Swartz of counsel), for appellant.

Mark A. Cuthbertson, Huntington, NY (Matthew DeLuca of counsel), for respondents. [*1] DECISION & ORDER In an action, inter alia, to recover damages for gross negligence, the defendant appeals from an order of the Supreme Court, Queens County (Mojgan C. Lancman, J.), entered January 15, 2025.

The order, insofar as appealed from, denied the defendant's motion pursuant to CPLR 3211(a)(4) to dismiss the amended complaint. ORDERED that the order is affirmed insofar as appealed from, with costs. In January 2024, the plaintiffs commenced this action, inter alia, to recover damages for gross negligence against the defendant, All Faiths Cemetery (hereinafter the Cemetery).

The plaintiffs alleged, among other things, that the Cemetery unlawfully disinterred the remains of the plaintiffs' father (hereinafter the decedent) and reinterred them in an adjacent grave at the request of one of the decedent's children, who had not notified the plaintiffs or obtained their consent to do so. Thereafter, the Cemetery moved pursuant to CPLR 3211(a)(4) to dismiss the amended complaint, arguing that the action was barred due to a pending proceeding commenced in July 2022 (hereinafter the 2022 proceeding) by the plaintiffs against, among others, the Cemetery,

pursuant to N-PCL 1510(e), inter alia, to direct the return of the decedent's remains to their original grave.

In an order entered January 15, 2025, the Supreme Court, among other things, denied the Cemetery's motion. The Cemetery appeals. "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" (*Busiello v Whelan*, 240 AD3d 736, 737, quoting *DAIJ, Inc. v Roth*, 85 AD3d 959, 959; see *Brach v Schwartz*, 215 AD3d 913, 914). "It is not necessary that the precise legal theories presented in the first action also be presented in the second action [so] long as the relief... is the same or substantially the same" (*St. Paul Fire & Mar.*

Ins. Co. v Getty Props. Co., 228 AD3d 971, 973, quoting *JPMorgan Chase Bank, N.A. v Luxama*, 172 AD3d 1341, 1341; see *Feldman v Harari*, 183 AD3d 629, 631). Here, while there was a substantial identity of the parties, and this action and the 2022 [*2] proceeding arose from the same alleged wrong, this action and the 2022 proceeding were not sufficiently similar to warrant dismissal pursuant to CPLR 3211(a)(4), and the relief sought was not the same or substantially the same (see *Busiello v Whelan*, 240 AD3d at 737; *Matter of Hirsch v Beda*, 226 AD3d 899, 900).

Thus, the Supreme Court providently exercised its discretion in denying the defendant's motion pursuant to CPLR 3211(a)(4) to dismiss the amended complaint. The plaintiffs' remaining contention is not properly before this Court. DUFFY, J.P., WOOTEN, LOVE and HOM, 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.