

NEW YORK APPELLATE DIGEST. LLC

A Succinct Compilation of the Salient Issues Raised in the Decisions
Addressing Negligence Released by Our New York State Appellate Courts and
Summarized on the New York Appellate Digest Website in September 2021.

Right Click on the Citations to Keep York Place in the Pamphlet.
Copyright 2021 New York Appellate Digest, LLC

Negligence Practice
Newsletter
September 2021

BEDBUGS.

THE MOTION FOR A JUDGMENT AS A MATTER OF LAW (CPLR 4401) FINDING THE NYC HOUSING AUTHORITY LIABLE FOR A BEDBUG INFESTATION SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT).

Aponte v New York City Hous. Auth., 2021 NY Slip Op 05114, Second Dept 9-29-21

Practice Point: The violation of a municipal ordinance is some evidence of negligence, it is not negligence per se which would support a judgment as a matter of law.

LABOR LAW-CONSTRUCTION LAW, WORKERS' COMPENSATION, COLLATERAL ESTOPPEL.

THE LABOR-LAW CONSTRUCTION-ACCIDENT ACTION WAS PRECLUDED BY THE RESULT OF THE PRIOR WORKERS' COMPENSATION HEARING UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL; THE MOTION TO AMEND THE ANSWER TO ADD THE COLLATERAL ESTOPPEL DEFENSE WAS PROPERLY GRANTED, EVEN THOUGH THE MOTION WAS MADE AFTER THE NOTE OF ISSUE WAS FILED (SECOND DEPT).

Lennon v 56th & Park(NY) Owner, LLC, 2021 NY Slip Op 04972, Second Dept 9-15-21

Practice Point: Here claimant was represented by counsel at the Workers' Compensation hearing and witnesses were presented and cross-examined. The administrative law judge concluded the accident never occurred. The plaintiff was collaterally estopped from bringing a Labor Law-Construction Law action based on the same alleged incident.

MUNICIPAL LAW, IMMUNITY.

QUESTIONS OF FACT PRECLUDED SUMMARY JUDGMENT IN THIS ACTION AGAINST THE TOWN; TOWN POLICE HAD CONFISCATED PLAINTIFF'S DECEDENT'S HUSBAND'S GUN AFTER SHE TOLD THE POLICE HE HAD ASSAULTED HER; THE TOWN SUBSEQUENTLY RETURNED THE GUN TO HER HUSBAND AFTER LEARNING HE WAS A RETIRED POLICE OFFICER; HER HUSBAND THEN SHOT AND KILLED PLAINTIFF'S DECEDENT AND TOOK HIS OWN LIFE (SECOND DEPT).

Santaiti v Town of Ramapo, 2021 NY Slip Op 04986, Second Dept 9-15-21

Practice Point: A municipality may be liable for a ministerial (as opposed to a discretionary) act, here the return of a confiscated firearm to a retired police officer (who used it to kill his wife), if the ministerial act violated a special duty owed to the plaintiff. There was a question of fact whether the police owed plaintiff's decedent a special duty based upon their confiscation of the firearm after she had previously alleged an assault by her husband.

SLIP AND FALL, ESPINAL, LAUNCH AN INSTRUMENT OF HARM.

THE “BUILDING” DEFENDANTS AND THE COMPANY WHICH INSTALLED AND MAINTAINED THE AIR CONDITIONING UNIT WHICH ALLEGEDLY LEAKED WATER ON THE FLOOR WERE NOT ENTITLED TO SUMMARY JUDGMENT IN THIS SLIP AND FALL CASE; THE LANDLORD DID NOT DEMONSTRATE IT WAS AN OUT-OF-POSSESSION LANDLORD; THE “BUILDING” DEFENDANTS DID NOT DEMONSTRATE THEY DID NOT HAVE ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE CONDITION; AND THE COMPANY WHICH INSTALLED AND MAINTAINED THE AIR CONDITIONER DID NOT SHOW IT DID NOT LAUNCH AND INSTRUMENT OF HARM.

Taliana v Hines REIT Three Huntington Quadrangle, LLC, 2021 NY Slip Op 05138, Second Dept 9-29-21

Practice Point: Here plaintiff slipped and fell on water which had dripped from an air conditioner. The company which installed and maintained the air conditioner could be liable for the slip and fall despite the absence of a contractual relationship with the plaintiff if the company is deemed to have launched an instrument of harm (Espinal theory).

SLIP AND FALL, ESPINAL, LAUNCH AN INSTRUMENT OF HARM.

QUESTION OF FACT WHETHER A CONTRACTOR WAS LIABLE TO A SUBCONTRACTOR FOR LAUNCHING AN INSTRUMENT OF HARM; THE SUBCONTRACTOR WAS INJURED ATTEMPTING TO FIX THE PROBLEM ALLEGEDLY CREATED BY THE CONTRACTOR (SECOND DEPT).

Santibanez v North Shore Land Alliance, Inc., 2021 NY Slip Op 04921, Second Dept 9-1-21

Practice Point: Here a contractor may be liable to a subcontractor under an Espinal theory (for launching an instrument of harm). The contractor had ordered that sheet metal be placed over a chimney during the installation of gas fireplace inserts,

causing smoke to back up. Plaintiff subcontractor fell attempting to remove the sheet metal.

SLIP AND FALL, FIREFIGHTERS.

PLAINTIFF FIREFIGHTER ALLEGED DEBRIS ON STAIRS IN DEFENDANT'S HOME CAUSED HIM TO FALL WHILE FIGHTING A FIRE; THE DEBRIS DID NOT VIOLATE THE NYC ADMINISTRATIVE CODE SO THE GENERAL MUNICIPAL LAW 205-A CAUSE OF ACTION WAS PROPERLY DISMISSED; HOWEVER THE COMMON LAW NEGLIGENCE CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED (SECOND DEPT).

[Pomilla v Bangiyev, 2021 NY Slip Op 04984, Second Dept 9-15-21](#)

Practice Point: A firefighter, who was fighting a fire on defendant's property, slipped and fell on debris on a stairway. Because the debris did not violate the NYC Administrative Code, the firefighter could not sue the property owner pursuant to General Municipal Law 205-a. But the firefighter can sue the property owner under a common-law negligence theory.

Copyright 2021 New York Appellate Digest, LLC