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Weekly Reversal Report
February 10 – 14, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts February 10 – 14, 2025, and Posted on the New York Appellate Digest Website on Monday, February 17, 2025. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report.

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ATTORNEYS, CIVIL PROCEDURE, EVIDENCE, JUDGES, NEGLIGENCE.

IMPROPER CROSS-EXAMINATION OF PLAINTIFF ABOUT HIS STATUS AS A DEFENDANT IN A PENDING LAWSUIT WARRANTED GRANTING PLAINTIFF'S MOTION FOR A MISTRIAL (SECOND DEPT).

The Second Department, reversing the denial of plaintiff's motion for a mistrial, determined plaintiff was improperly cross-examined about his status as a defendant in a pending lawsuit:

… Supreme Court should have granted the plaintiff's motion for a mistrial based upon improper cross-examination of the plaintiff about a pending lawsuit against him relating to his alleged failure to pay for an unrelated medical procedure. Where a lawsuit has not resulted in an adverse finding against a witness, counsel should not be permitted to ask the witness if he or she has been sued since the fact that a lawsuit has been commenced, in and of itself, has little or no probative value with regard to credibility … . Here, the court improvidently permitted defense counsel to cross-examine the plaintiff as to whether he was the defendant in a pending lawsuit alleging nonpayment, since the lawsuit had not resulted in an adverse finding against the plaintiff and the fact that the lawsuit had been commenced, in and of itself, had little to no probative value with regard to the

plaintiff's credibility … . Moreover, defense counsel's reference to an allegation that the plaintiff had taken $200,000 in insurance proceeds that was not forwarded to medical providers and, after being precluded from ascertaining from the plaintiff whether that allegation was true, defense counsel's reference to "someone" taking $250,000 that "didn't belong to them," prejudiced the plaintiff, who was the sole eyewitness on his behalf. Drayton v Putnam Hosp. Ctr., 2025 NY Slip Op 00845, Second Dept 2-13-25

Practice Point: The cross-examination of the plaintiff about his status as a defendant a pending lawsuit was improper and warranted a mistrial.

February 13, 2025

CIVIL PROCEDURE, CONTRACT LAW, CONVERSION, PARTNERSHIP LAW.

ALTHOUGH THE CAUSES OF ACTION WERE PLED AS "CONVERSION" AND "UNJUST ENRICHMENT," THEY STEMMED FROM ALLEGED BREACHES OF THE PARTNERSHIP AGREEMENT; THEREFORE THE SIX-YEAR BREACH-OF-CONTRACT STATUTE OF LIMITATIONS APPLIED, NOT THE THREE-YEAR TORT STATUTE OF LIMITATIONS (SECOND DEPT).

The Second Department determined that, although the causes of action were couched as "conversion" and "unjust enrichment," they stemmed from the alleged breach of a partnership agreement. Therefore the six-year contract, not the three-year tort, statute of limitations applied:

… [T]he causes of action were subject to a six-year statute of limitations rather than a three-year statute of limitations. "In determining which limitations period is applicable to a given cause of action, the court must look to the substance of the allegations rather than to the characterization of those allegations by the parties" … . "[W]hen damage to property or pecuniary interests is involved, the six-year statute governs regardless of how the theory of liability is described, as long as the asserted liability had its genesis in the contractual relationship of the parties" … . Thus, "where liability is premised on a contractual relationship, the six-year statute

of limitations applies" … . Fernandes v Fernandes, 2025 NY Slip Op 00848, Second Dept 2-13-25

Practice Point: Here the causes of action for conversion and unjust enrichment stemmed from alleged breaches of the partnership agreement, so the breach-of-contract, not the tort, statute of limitations applied.

February 13, 2025

CIVIL PROCEDURE, JUDGES, MEDICAL MALPRACTICE.

ALTHOUGH THIS MEDICAL MALPRACTICE ACTION WAS IMPROPERLY BROUGHT AS AN ORDER TO SHOW CAUSE AND PETITION, IT SHOULD NOT HAVE BEEN DISMISSED; RATHER IT SHOULD HAVE BEEN CONVERTED BY DEEMING THE ORDER TO SHOW CAUSE A SUMMONS AND THE PETITION A COMPLAINT; MATTER REMITTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined that the action should not have been dismissed because it was in the form of a proceeding rather than an action. Supreme Court should have converted the proceeding into the proper form:

The petitioner commenced this purported proceeding by the filing of an order to show cause and a petition, inter alia, for injunctive relief and to recover damages for medical malpractice. In opposition to the order to show cause and the petition, the respondent submitted an affirmation of counsel, in which counsel argued, among other things, that the proceeding should be dismissed because it was not brought in the proper form. The Supreme Court conducted a hearing on the petition. Thereafter, the court issued a judgment, in effect, denying the petition and dismissing the proceeding. The petitioner appeals.

Although this matter was improperly commenced in the form of a proceeding instead of an action, dismissal is not required. "Pursuant to CPLR 103(c), a proceeding should not be dismissed 'solely because it is not brought in the proper form,' and the court has the power to convert a proceeding into the proper form" … . Accordingly, we convert this proceeding into an action, inter alia, for injunctive relief and to recover damages for medical malpractice, with the order to

show cause deemed to be the summons and the petition deemed to be the complaint (see CPLR 103[c] …), and remit the matter to the Supreme Court, Nassau County, to afford the respondent an opportunity to serve and file an answer within 20 days of service upon it of this decision and order with notice of entry … . Matter of Robinson v NYU Langone Hosps., 2025 NY Slip Op 00870, Second Dept 2-13-25

Practice Point: A proceeding brought in the wrong form can be converted to the proper form by the court pursuant to CPLR 103 (c).

February 13, 2025

CONSTITUTIONAL LAW, MENTAL HYGIENE LAW, ADMINISTRATIVE LAW.

THE REGULATIONS WHICH PLACE A CAP ON THE NUMBER OF SERIOUSLY MENTALLY ILL PERSONS WHO CAN BE ADMITTED TO A LONG-TERM CARE FACILITY DO NOT DISCRIMINATE AGAINST PERSONS WITH DISABILITIES (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Halligan, determined the regulations putting a cap on the number of seriously mentally ill persons who can be accepted by a long-term care facility did not facially discriminate against persons with disabilities:

The State of New York's Department of Health (DOH) licenses certain facilities known as "adult homes" to provide "long-term care, room, board, housekeeping, personal care and supervision to five or more adults unrelated to the operator" (Dept of Health Regs [18 NYCRR] § 485.2 [b]). Regulations promulgated by DOH provide that an adult home may not admit additional residents with serious mental illness if it has a capacity of 80 or more beds and its resident population is over 25% persons with serious mental illness … . Oceanview Home for Adults, Inc., an adult home subject to this admissions cap, claims that those regulations discriminate against persons with disabilities in violation of the Fair Housing Act Amendments of 1988 (FHAA), which extended the protections of the Fair Housing Act (FHA) to persons with disabilities (see 42 USC § 3604 [f] [1]-[2]). We conclude that plaintiff has failed to establish that the challenged regulations

facially discriminate against persons with disabilities, and therefore affirm. Matter of Oceanview Home for Adults, Inc. v Zucker, 2025 NY Slip Op 00805, CtApp 2-13-25

February 13, 2025

CRIMINAL LAW, EVIDENCE.

HERE AN ALLEGED PRIOR INCONSISTENT STATEMENT BY THE ROBBERY VICTIM, OFFERED AT TRIAL SOLELY FOR IMPEACHMENT, DID NOT RENDER THE EVIDENCE LEGALLY INSUFFICIENT; THE VICTIM WAS THE SOLE WITNESS TO TESTIFY ABOUT THE FACTS (CT APP).

The Court of Appeals, affirming defendant's conviction. over a three-judge concurring opinion, determined that an alleged prior inconsistent statement made by the robbery victim, the only fact witness, offered at trial solely for impeachment, did not render the evidence legally insufficient. Neither the memorandum decision nor the concurring opinion discusses the underlying facts:

The victim, who was the sole person to testify about the facts concerning defendant's conviction of robbery in the third degree, gave a statement to police, through an interpreter, several hours after the alleged robbery that was inconsistent on a material element of the offense with his trial testimony. That statement was introduced through the officer's testimony at trial, solely for the purpose of impeachment. When an alleged contradictory prior statement is admitted solely for the purpose of impeachment, the rule of People v Ledwon (153 NY 10 [1897]) and People v Jackson (65 NY2d 265 [1985]) is not implicated. The evidence was legally sufficient to support the inference that defendant intended to steal property forcibly … . People v Howard, 2025 NY Slip Op 00804, CtApp 2-13-25

Practice Point: Here a prior inconsistent statement by the robbery victim, the only fact witness at trial, did not render the evidence legally insufficient.

February 13, 2025

CRIMINAL LAW, EVIDENCE, APPEALS.

IF THE TRIAL EVIDENCE VARIES FROM THE THEORY OF THE INDICTMENT, THE RELATED CONVICTIONS WILL BE VACATED (FIRST DEPT).

The First Department, vacating defendant's convictions on some counts, determined the trial evidence varied from the theory of the indictment. The facts were not explained:

This Court agrees with the parties that defendant's conviction under count 2 of the indictment charging grand larceny in the fourth degree, as well as criminal acts 1 and 6 alleged in count 1 of the indictment charging enterprise corruption, must be reversed because the trial evidence, which included evidence suggesting that defendant threatened physical damage to construction sites through vandalism, varied from the theory of the indictment (see People v Grega, 72 NY2d 489, 496-498 [1988]). People v Correll, 2025 NY Slip Op 00796, First Dept 2-11-25

Practice Point: If the trial evidence does not comport with the theory of the indictment, the related counts will be vacated.

February 11, 2025

FAMILY LAW, JUDGES, CIVIL PROCEDURE.

PETITIONER, WHO IS NOT RELATED TO THE CHILD, DID NOT HAVE STANDING BY EQUITABLE ESTOPPEL TO SEEK CUSTODY OR VISITATION; CRITERIA EXPLAINED (FIRST DEPT).

The First Department, reversing Family Court, determined petitioner, who is not related to the child, did not have standing by equitable estoppel to seek custody of or visitation with the child. The evidence did not demonstrate the relationship between petitioner and the child rose to the level of parenthood:

While the record contains evidence suggesting that petitioner and the child had an ongoing relationship throughout the child's formative years, the record does not support the idea that disrupting such a relationship would be harmful to the child's best interests. Petitioner never lived with the child or assumed any financial responsibilities for her. Although petitioner credibly testified that the child visited

her frequently during the first three years of the child's life, there was no evidence that petitioner consistently cared for the child or that the child looked upon petitioner as a parental figure.

… [T]here was evidence that the child did not recognize or view petitioner as parental figure … . From the child's perspective, the only other parent she knew, aside from respondent, the child's biological mother, was the mother's companion, whom she regarded as her father and with whom she reported having a close, bonded relationship with, undercutting petitioner's equitable estoppel claim … . Matter of April B. v Relisha H., 2025 NY Slip Op 00782, First Dept 2-11-25

Practice Point: To demonstrate standing to bring a custody petition by equitable estoppel, the petitioner must demonstrate a relationship with the child which rises to the level of parenthood, not the case here.

February 11, 2025

LANDLORD-TENANT, CIVIL PROCEDURE, CONTRACT LAW, JUDGES.

HERE THE PLAINTIFFS-TENANTS WERE ENTITLED TO A YELLOWSTONE INJUNCTION WHICH TOLLS THE CURE PERIOD UNTIL A COURT DETERMINES WHETHER THE TENANT HAS ACTUALLY DEFAULTED; PURPOSES OF AND CRITERIA FOR A YELLOWSTONE INJUNCTION CLEARLY EXPLAINED (FIRST DEPT).

The First Department reversed Supreme Court and granted plaintiff's a "Yellowstone" injunction to allow time for a court to determine the nature and status of an ambiguous lease. Supreme Court had erroneously struck the "temporary restraining order" paragraph in plaintiffs-tenants' order to show cause, which allowed the period to cure the alleged defaults to run out resulting in termination of the lease. The opinion includes a clear explanation of the nature and equitable purpose of a Yellowstone injunction, which is applicable to commercial leases. One of the issue here was whether the lease was commercial or residential:

A Yellowstone injunction "maintains the status quo so that a commercial tenant, when confronted by a threat of termination of its lease, may protect its investment in the leasehold by obtaining a stay tolling the cure period so that upon an adverse

determination on the merits the tenant may cure the default and avoid a forfeiture" … .

… [T]he Yellowstone injunction tolls the relevant cure period, thereby preventing the termination of the lease … . With the Yellowstone injunction in place, the tenant can litigate with some confidence: if the tenant prevails in the underlying dispute with the landlord, the tenant walks away from the litigation with the lease intact; if the tenant loses the underlying dispute, the tenant can cure the demonstrated lease defaults before the expiration of the remaining cure period … .

* * * Yellowstone relief is a unique injunction. Unlike a standard preliminary injunction that can be granted only upon a demanding three-part showing of a likelihood of success on the merits, irreparable injury, and that the equities favor the party seeking the preliminary injunction, a Yellowstone injunction is granted on "far less" a showing … .

The party seeking Yellowstone relief must demonstrate the following four elements: "(1) It holds a commercial lease; (2) it received from the landlord either a notice of default, a notice to cure, or a threat of termination of the lease; (3) it requested injunctive relief prior to the termination of the lease; and (4) it is prepared and maintains the ability to cure the alleged default by any means short of vacating the premises" … . Wharton-Bickley v 388 Broadway Owners LLC, 2025 NY Slip Op 00802, First Dept 2-11-25

Practice Point: Consult this decision for a clear explanation of the purposes of and the criteria for a Yellowstone injunction.

February 11, 2025

LANDLORD-TENANT, MUNICIPAL LAW, ADMINISTRATIVE LAW, CIVIL PROCEDURE, CONSTITUTIONAL LAW.

THE 2024 AMENDMENTS WHICH SET A STANDARD FOR DETERMINING CLAIMS ALLEGING A FRAUDULENT SCHEME TO DEREGULATE A RENT-STABILIZED APARTMENT APPLY TO CLAIMS PENDING AT THE TIME OF ENACTMENT AND ARE CONSTITUTIONAL (SECOND DEPT).

The Second Department, in a comprehensive opinion by Justice Connolly, determined the 2024 amendments (the "chapter amendments"), which set forth a standard for determining claims alleging a fraudulent scheme to deregulate a rent-stabilized apartment, applied retroactively to claims pending when the amendments were enacted and are constitutional:

First, we must determine whether so much of the chapter amendments as set forth the standard for determining a fraudulent scheme to deregulate a rent-stabilized apartment unit applies to actions such as this one, which were commenced before the effective date of the chapter amendments but were pending before a court on the effective date. We hold that it does.

Next, we must determine whether the defendant established that so much of the chapter amendments as set forth the standard for determining a fraudulent scheme to deregulate an apartment unit is unconstitutional on its face or whether it would be unconstitutional to apply that portion of the chapter amendments to this action. We hold that the defendant did not establish that the relevant portion of the chapter amendments is unconstitutional, either on its face or as applied in this action.

Finally, applying the standard set forth in the chapter amendments, we must determine whether the plaintiffs met their prima facie burden of demonstrating that the defendant engaged in a fraudulent scheme to deregulate the subject apartment units such that the formula set forth in Rent Stabilization Code (9 NYCRR) §§ 2522.6(b)(3) and 2526.1(g) (hereinafter the default formula) should be used to calculate the legal regulated rent and any rent overcharges. We hold that the plaintiffs did not meet their prima facie burden. Gomes v Vermyck, LLC, 2025 NY Slip Op 00849, Second Dept 2-13-25

February 13, 2025

LIMITED LIABILITY COMPANY LAW, CONTRACT LAW.

HERE THE LLC AGREEMENT, IN ACCORDANCE WITH ITS TERMS, WAS UNILATERALLY AMENDED BY DEFENDANT SUCH THAT DEFENDANT'S PRIOR CONTRACTUAL OBLIGATION TO PLAINTIFF WAS EXTINGUISHED AFTER PLAINTIFF HAD PERFORMED; ALTHOUGH HARSH, THIS OUTCOME WAS SUPPORTED BY DELAWARE LAW AND WAS AFFIRMED BY THE MAJORITY OVER A THREE-JUDGE DISSENT (CT APP).

The Court of Appeals, affirming the Appellate Division, in a full-fledged opinion by Judge Singas, over a three-judge dissenting opinion, determined plaintiff was bound by the terms of an amended limited liability company (LLC) agreement which was unilaterally amended by defendant. The amended agreement included a merger clause which effectively nullified a prior oral agreement between plaintiff and defendant providing that defendant would buy-out plaintiff's interest in the LLC after five years. Plaintiff had invested three million and his share of the LLC was worth over 11 million at the five-year mark:

… [T]he amended LLC agreement … contained a merger clause which states:

"This Agreement, together with the Certificate of Formation, each Subscription Agreement and all related Exhibits and Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter, including the Original Agreement." * * *

Upon his initial investment, plaintiff became bound by the original LLC agreement, including its clause dictating how its terms could be altered. Once the agreement was altered pursuant to its terms, plaintiff became bound by the amended LLC agreement, including its merger clause. Pursuant to the amended LLC agreement's choice-of-law provision, Delaware law governs its interpretation and reach … . Under Delaware's Limited Liability Company Act, which aims to "give the maximum effect to the principle of freedom of contract and to the

enforceability of limited liability company agreements" … , a member of an LLC "is bound by the limited liability company agreement whether or not the member . . . executes the limited liability company agreement" … . Plaintiff, as a member of [the LLC], is therefore bound by its operating LLC agreement—the amended LLC agreement—regardless of whether he signed it. * * *

Though an outcome whereby one member to a contract unilaterally extinguishes his contractual obligation, even after the other party has performed, may appear "harsh," … Delaware law "unambiguously advises prospective investors in a closely held LLC (especially one considering a multimillion-dollar investment) to scrutinize the existing LLC agreement and condition their investment upon the clear written delineation thereunder of . . . their contracted-for rights in the event of any future amendments to the LLC agreement" … . Behler v Kai-Shing Tao, 2025 NY Slip Op 00803, CtApp 2-13-25

Practice Point: Here the LLC agreement was, in accordance with its terms, unilaterally amended by defendant to extinguish a prior contractual obligation owed plaintiff after plaintiff had performed. This harsh result was supported by Delaware law, which basically says anyone entering an LLC agreement which can be unilaterally changed should think twice.

February 13, 2025

NEGLIGENCE, EVIDENCE.

DEFENDANT IN THIS REAR-END COLLISION CASE RAISED A NONNEGLIGENT EXPLANATION FOR THE COLLISION; PLAINTIFF'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff's summary judgment motion in this rear-end collision case should not have been granted. Defendant had raised a nonnegligent explanation for the collision:

In this action arising from a vehicle collision, plaintiff established prima facie entitlement to summary judgment as to liability. In his sworn affidavit, he averred that he was slowing down on the expressway due to upcoming traffic congestion when his vehicle was hit in the rear by a tractor trailer truck driven by defendant

Scott Martin. “It is well settled that a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the driver of the rear vehicle and imposes a duty on the part of the operator of the moving vehicle to come forward with an adequate nonnegligent explanation” for the collision … .

However, defendants raised an issue of fact in opposition by submitting Martin’s affidavit stating that plaintiff pulled directly in front of him from the nearby on-ramp, during inclement weather, in a manner that Martin described as “sudden.” This statement in Martin’s affidavit presented a nonnegligent explanation for the collision, raising an issue of fact as to whether plaintiff was comparatively negligent for swerving in front of Martin or cutting him off … . Madera v Charles Hukrston Truck, Inc., 2025 NY Slip Op 00788, Frist Dept 2-11-25

Practice Point: Here is a rare example of a nonnegligent explanation for a rear-end collision which was deemed sufficient to defeat plaintiff’s motion for summary judgment.

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