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Weekly Reversal Report
April 4 – 11, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts April 4 – 11, 2025, and Posted on the New York Appellate Digest Website on Monday, April 14, 2025. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on 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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ACCOUNT STATED, CONTRACT LAW.

SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED ON PLAINTIFF'S ACCOUNT STATED CAUSE OF ACTION; CRITERIA EXPLAINED (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff's motion for summary judgment on the account-stated cause of action should have been granted:

Plaintiff established prima facie entitlement to summary judgment on its cause of action for account stated by submitting evidence that it prepared and sent invoices to defendant in the ordinary course of its business; that defendant rendered partial payment, thus confirming that it received the invoices; and that defendant did not timely object to the invoices … .

In opposition, defendant failed to raise a triable issue of fact as to the existence of an account stated. Although the affidavit was submitted by defendant's principal, it does not assert that defendant never received the invoices. Further, although defendant's principal stated that defendant had already paid plaintiff the amounts due, she does not assert that defendant timely disputed those amounts. Accordingly, defendant is deemed to be bound by plaintiff's rendering of the account … . Dape Consulting Inc. v Next Trucking Inc., 2025 NY Slip Op 02128, First Dept 4-10-25

Practice Point: Here defendant stated in an affidavit that it had already paid the amounts due. That claim did not raise a question of fact in this account stated action because defendant did not aver that it timely disputed the amounts due.

April 10, 2025

ADMINISTRATIVE LAW, FAMILY LAW, SOCIAL SERVICES LAW.

THE OFFICE OF CHILDREN AND FAMILY SERVICES (OCFS) DID NOT EXCEED ITS AUTHORITY IN CREATING THE HOST FAMILY PROGRAM FOR TEMPORARY PLACEMENT OF CHILDREN AND FAMILIES (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Garry, over a two-justice dissenting opinion, determined the Office of Children and Family Services (OCFS) did not exceed its authority when creating the Host Family Home program for temporary placement of children and families. The appellants argued the Host Family Home program was essentially a foster care program without the legislative foster-care safeguards:

The subject regulations established the Host Family Home program (see 18 NYCRR 444.1), which aims to provide "supportive services . . . to children and their families . . . for the purpose of: assisting a family in need of day-to-day community-based supports by peers, arranging for parents and children to be temporarily cared for together in a host family home, and/or temporarily supporting a family when a parent has determined that he/she is temporarily unable to care for their child . . . as a way to avert the need for more formal child welfare intervention" … . * * *

Petitioners' argument that OCFS exceeded its authority when it created the Host Family Home program is unpersuasive. "Administrative agencies have all the powers expressly delegated to them by the Legislature, and are permitted to adopt regulations that go beyond the text of their enabling legislation, so long as those regulations are consistent with the statutory language and underlying purpose" … . "While an administrative agency may not, in the exercise of rule-making authority, engage in broad-based public policy determinations, the cornerstone of administrative law is the principle that the Legislature may declare its will, and after fixing a primary standard, endow administrative agencies with the power to fill in the interstices in the legislative product by prescribing rules and regulations consistent with the enabling legislation" … . * * *

On balance, the Boreali factors [Boreali v Axelrod, 71 NY2d 1] lead us to the conclusion that the Host Family Home program regulations are a valid exercise of OCFS's rulemaking authority, bringing an end to our inquiry. We emphasize that "[o]ur role in this regard is not to question the efficacy or wisdom of the means chosen by the agency to accomplish the ends identified by the [L]egislature" … . As we have also found that the regulations are consistent with the governing statutory language and its purpose, we affirm. Matter of Lawyers for Children v New York State Off. of Children & Family Servs., 2025 NY Slip Op 02115, Third Dept 4-10-25

Practice Point: Consult this opinion for an in-depth analysis of the authority of an agency to promulgate regulations.

April 10, 2025

ANIMAL LAW, CONSTITUTIONAL LAW, CRIMINAL LAW.

THE ACCUSATORY INSTRUMENT CHARGING DEFENDANT WITH "FAILURE TO PROVIDE NECESSARY SUSTENANCE" FOR A DOG, AN A MISDEMEANOR, WAS NOT SUPPORTED BY NONHEARSAY FACTUAL ALLEGATIONS; INSTRUMENT DISMISSED (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Rivera, determined the accusatory instrument charging defendant with "failure to provide necessary sustenance" for a dog was facially insufficient because no nonhearsay factual allegations supporting the charge were provided: The statute at issue is Agriculture and Markets Laws (AML) section 353:

"A valid and sufficient accusatory instrument is a nonwaivable jurisdictional prerequisite to a criminal prosecution" … . We evaluate the accusatory instrument here under the standard applicable to a misdemeanor information. In accordance with CPL 100.40, "[a] misdemeanor information must set forth 'nonhearsay allegations which, if true, establish every element of the offense charged' " … . This requirement is jurisdictional, and an accusatory instrument that falls short must be dismissed … . "[T]he test for whether a flaw in an accusatory instrument is jurisdictional is. . . whether the accusatory instrument failed to supply defendant

with sufficient notice of the charged crime to satisfy the demands of due process and double jeopardy" … . * * *

… [A]n accusatory instrument charging a violation of section 353 need not include documentation from a veterinarian, especially in those cases where the conditions are visible or palpable. The investigator did not allege any facts in support of [an alleged failure to provide veterinary care]. The investigator also failed to describe the conditions under which he first observed [the dog]—splayed in the middle of a traffic lane and barely able to move—which might have allowed for an inference that the dog was mistreated or neglected to the point of being in extremis.

In sum, the factual allegations and inferences to be drawn from the accusatory instrument are insufficient to "establish every element of the offense charged" … , that defendant deprived [the dog] of sustenance in violation of AML section 353. People v Farrell, 2025 NY Slip Op 02100 CtApp 4-10-25

Practice Point: Consult this opinion for some insight into the nature of the nonhearsay factual allegations which must be included in an accusatory instrument charging an A misdemeanor, here a violation of the Agriculture and Markets Law section 353 (failure to provide necessary sustenance for a dog).

April 10, 2025

CRIMINAL LAW, EVIDENCE.

THE CHARGES STEMMED FROM A DEMONSTRATION SPARKED BY THE POLICE KILLING OF GEORGE FLOYD; DEFENDANT THREW TWO MOLOTOV COCKTAILS TOWARD POLICE OFFICERS; THE EVIDENCE DEFENDANT ENGAGED IN "TERRORISM" WAS LEGALLY INSUFFICIENT; SENTENCE REDUCED (THIRD DEPT).

The Third Department, vacating defendant's "terrorism" conviction and significantly reducing his sentence, in a full-fledged opinion by Justice McShan, determined the "attempted aggravated assault upon a police officer as a crime of terrorism" conviction was not supported by legally sufficient evidence. The charges stemmed from a demonstration sparked by the police killing of George

Floyd in 2020. The demonstration turned violent and defendant was captured on video throwing two Molotov cocktails toward police officers:

… "[T]he statute must be applied only in a manner consistent with the unique meaning of the term terrorism by requiring proof of conduct aimed at influencing, as relevant here, government action" … . More specifically, that the conduct was taken with the intent to influence a policy. The term "policy," undefined in the statute (see Penal Law § 490.05), is readily understood as "[a] standard course of action that has been officially established by an organization, business, political party" … . In that sense, the phrase "influence the policy of a unit of government" encompasses a different intent on the part of a defendant that is more specific to a defined policy … . This is all the more evident when considering the clause that follows, as the interference with law enforcement duties referenced by the People is more aptly characterized as conduct that would "affect the conduct of a unit of government," which contains [*5]the additional requirement that it be accomplished "by murder, assassination or kidnapping" (Penal Law § 490.25 [1]). The import of this distinction is that the reference to "policy" utilized in Penal Law § 490.25 (1) requires more than a belief that the government is engaging in some form of misconduct; in this case, systemic racism or police brutality.

… [T]he fact that defendant was motivated by his animus toward law enforcement does not in turn establish that he was attempting to influence any policy, either defined or perceived. People v Parker, 2025 NY Slip Op 02108, Third Dept 4-10-25

Practice Point: Consult this decision for a discussion of the proof requirements for "terrorism" in the context "assault upon a police officer as a crime of terrorism."

April 10, 2025

CRIMINAL LAW, FAMILY LAW.

CRIMINAL POSSESSION OF STOLEN PROPERTY FOURTH AND FIFTH DEGREE ARE LESSER INCLUDED OFFENSES OF CRIMINAL POSSESSION OF STOLEN PROPERTY THIRD DEGREE; UNAUTHORIZED USE OF A VEHICLE, HOWEVER, IS NOT BECAUSE THE CRIMINAL POSSESSION STATUTE DOES NOT REQUIRE POSSESSION OF A VEHICLE (FIRST DEPT).

The First Department, in this juvenile delinquency proceeding, determined the criminal possession of stolen property fourth and fifth degree convictions should have been vacated as lesser included offenses of criminal possession of stolen property third degree. The court noted that unauthorized use of a vehicle is not a lesser included offense of criminal possession of stolen property because the criminal-possession statute does not require possession of a motor vehicle:

"When it is impossible to commit a particular crime without concomitantly committing, by the same conduct, another offense of lesser grade or degree, the latter is, with respect to the former, a 'lesser included offense'" (CPL 1.20[37]). However, appellant's argument that unauthorized use of a vehicle is a lesser included offense of criminal possession of stolen property is incorrect. It is possible to criminally possess stolen property without also committing, by the same conduct, the crime of unauthorized use of a vehicle, because the criminal possession statute does not require possession of a motor vehicle as the other statute does … . Matter of D.P. 2025 NY Slip Op 02132 First Dept 4-10-25

Practice Point: Consult this decision for some insight into what is, and what is not, a lesser included offense.

April 10, 2025

CRIMINAL LAW, JUDGES, ATTORNEYS.

THE JUDGE PRONOUNCED A FELONY SENTENCE WITHOUT AN UPDATED AND COMPLETE PRESENTENCE REPORT; SENTENCE VACATED (FIRST DEPT).

The First Department, vacating defendant's sentence after his period of incarceration was served but before his postrelease supervision was complete, determined the absence of a complete and updated presentence report invalidated the sentence:

Where a person is convicted of a felony, the court must order a presentence investigation of the defendant and it may not pronounce sentence until it has received a written report of that investigation (CPL 390.20[1] …). The presentence report must be current and contain updated information pertinent to the imposition of a proper sentence … . We hold that the presentence report in this case was inadequate, as it omitted crucial information regarding defendant's history of trauma, mental health and substance abuse issues and failed to include a victim impact statement, among other things (CPL 390.30). We particularly note that defendant had not been interviewed prior to the report's issuance and that Probation requested an adjournment of sentencing so that the newly assigned case officer could conduct the investigation.

Defendant, who was not represented by his assigned counsel at sentencing, did not waive his entitlement to a current, updated report by failing to affirmatively object to the presentence report's sufficiency … . People v Camacho, 2025 NY Slip Op 02136, First Dept 4-10-25

Practice Point: A judge cannot pronounce sentence for a felony before receiving an updated and complete presentence report.

April 10, 2025

FORECLOSURE, CIVIL PROCEDURE, EVIDENCE, UNIFORM COMMERCIAL CODE.

THE NOTE WAS ENDORSED IN BLANK REQUIRING PLAINTIFF TO DEMONSTRATE POSSESSION OF THE NOTE AT THE TIME THE FORECLOSURE ACTION WAS COMMENCED; FAILURE TO DEMONSTRATE POSSESSION CONSTITUTED A FAILURE TO DEMONSTRATE STANDING TO FORECLOSE (THIRD DEPT).

The Third Department, reversing Supreme Court, determined the plaintiff mortgage company did not demonstrate standing to foreclose. The note was endorsed in blank, meaning that it was payable to any bearer of the instrument. Therefore the plaintiff was required to show possession of the note at the time the action was commenced. The evidence submitted was insufficient:

Despite being the originator of the note, the record fails to demonstrate whether plaintiff reacquired the note prior to commencement of this action in order to satisfy its moving burden. Plaintiff's reliance on JP Morgan Chase Bank, N.A. v Venture (148 AD3d 1269, 1270-1271 [3d Dept 2017]) is misplaced. Although the type of indorsement was not identified in the decision that was handed down, we take judicial notice of the record filed in that matter and confirm that the note annexed to the complaint in Venture contained a special indorsement payable to only plaintiff … . This is materially different than here, where the note was indorsed in blank, meaning it was payable to any bearer of the instrument (see UCC 1-201 [b] [21] [B]), therefore requiring plaintiff to perform the additional step of proving possession at the time of commencement … . Neither the moving attorney affirmation nor the affidavit of merit for the loan servicer/attorney-in-fact are sufficient to do so. We further reject plaintiff's contention that the complaint was sufficient to establish possession of the note at commencement, as the complaint contained conflicting allegations and was unverified, and therefore it lacked the evidentiary value to support such claim … . United Wholesale Mtge., LLC v Smith, 2025 NY Slip Op 02117, Third Dept 4-10-25

Practice Point: Consult this decision for some insight into the proof required to demonstrate a note, endorsed in blank, was possessed by the plaintiff at the time

the foreclosure action was commenced. If the defendant raises plaintiff's lack of standing as an issue, the plaintiff must prove possession at commencement in order to proceed.

April 10, 2025

FORECLOSURE, CONTRACT LAW.

HERE THE "BORROWER" SIGNED THE MORTGAGE AGREEMENT AND THEN CONVEYED A TWO-THIRDS INTEREST IN THE PROPERTY TO TWO "OWNERS" WHO DID NOT SIGN THE MORTGAGE AGREEMENT; THE BANK SOUGHT TO RECOVER THE COSTS OF MAINTAINING THE ALLEGEDLY ABANDONED PROPERTY UNDER "QUASI CONTRACT" THEORIES; THE QUASI-CONTRACT CAUSES OF ACTION WERE DISMISSED BECAUSE THE MORTGAGE AGREEMENT WAS DEEMED TO COVER THE "BORROWER" AND THE NONSIGNATORY "OWNERS" (SECOND DEPT).

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice Landicino, determined the bank's (mortgagee's) counterclaims for unjust enrichment, quantum meruit, an equitable lien and an equitable mortgage should have been dismissed. The bank was seeking reimbursement for costs associated with maintaining the mortgaged property which had allegedly been abandoned. Essentially, the Second Department held that the existence of the mortgage agreement, a contract, precluded recovery on the equitable theories, even though two of the three parties did not sign the mortgage agreement:

On September 6, 2005, the defendant Gladys Villa (hereinafter the borrower) executed a note that was secured by a mortgage on residential property located in Ossining (hereinafter the property). By bargain and sale deed dated March 8, 2006, the borrower retained a one-third interest in the premises for herself and conveyed the remaining interest to the plaintiffs, Miguel Auquilla and Hilda Guzman (hereinafter together the owners), as tenants in common. The borrower and the

owners allegedly defaulted on their obligations under the note and the mortgage by failing to make the monthly payments due in December 2009, and thereafter. * * *

The mortgagee's theory that the mortgage agreement does not govern the dispute since it was executed by the borrower and not by the owners is a novel one in this Court, but is ultimately unpersuasive. Although this Court has not explicitly recognized such a rule in this context, we now hold that there can be no quasi contract claim by a mortgagee against a third-party nonsignatory owner of property encumbered by a mortgage, the terms of which covers the subject matter of the dispute. Auquilla v Villa, 2025 NY Slip Op 02053, Second Dept 4-9-25

Practice Point: Where there is a contract which binds both signatories third-party nonsignatories, quasi-contractual theories of recovery are not available.

April 9, 2025

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

SUPREME COURT HELD A HEARSAY STATEMENT ATTRIBUTED TO PLAINTIFF WAS ADMISSIBLE AS AN EXCITED UTTERANCE AND RAISED A QUESTION OF FACT IN THIS LADDER-FALL CASE; THE FIRST DEPARTMENT RULED THE STATEMENT WAS NOT MADE "UNDER STRESS OF EXCITEMENT" AND WAS THEREFORE INADMISSIBLE (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff's motion for summary judgment in this Labor Law 240(1) ladder-fall case should have been granted. Plaintiff demonstrated a piece of duct, which should have been secured, fell and knocked him off the ladder. The defendant alleged that plaintiff told the foreman he fell because he jumped down several rungs. That hearsay statement was admitted as an excited utterance. The First Department held the statement was not made "under stress of excitement" and should not have been admitted in evidence:

Defendant submitted the affidavit of its foreman, who averred that after the accident, plaintiff told him that he, plaintiff, fell from the ladder because he had

jumped down several rungs. Supreme Court admitted this statement under the excited utterance exception to the hearsay rule, finding that it raised a triable issue of fact sufficient to defeat summary judgment. This finding was error. According to the foreman, plaintiff was taking a break and told the foreman that he felt "fine" when he made the statement. Thus, there was no evidence that plaintiff made the purported hearsay statement "under the stress of excitement" … . As defendant did not argue any other valid basis for admitting the hearsay statement, it is "insufficient to defeat summary judgment" … , and there was no other admissible evidence in opposition to plaintiff's motion. Vivar v Citigroup Tech., Inc., 2025 NY Slip Op 02051, First Dept 4-8-25

Practice Point: Here, whether the defendant raised a question of fact in this ladder-fall case turned on whether plaintiff's alleged statement that he fell because he "jumped down several rungs" was admissible as an excited utterance. The First Department determined the alleged hearsay statement was not made "under stress of excitement" and was inadmissible. Therefore plaintiff's motion for summary judgment should have been granted.

April 8, 2025

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

THE ALLEGATION A SCAFFOLD COLLAPSED AND FELL ON PLAINTIFF SUPPORTED SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION; PLAINTIFF NEED NOT DEMONSTRATE THE SCAFFOLD WAS DEFECTIVE; THE FACT THAT PLAINTIFF DID NOT SEE THE SCAFFOLD FALL WAS IRRELEVANT (FIRST DEPT).

The First Department, reversing Supreme Court, determined the allegation that a scaffold collapsed and fell on plaintiff warranted summary judgment on the Labor Law 240(1) cause of action. The plaintiff was not required to show the scaffold was defective and the fact that plaintiff did not see the scaffold fall was not relevant:

Plaintiff was struck by a wooden plank dropped by coworkers while constructing the second level of a 16-foot tall, wheeled scaffold and then was struck by the scaffold when it fell over and landed on top of him. Plaintiff is entitled to summary judgment. The collapse of a scaffold is one of those special hazards contemplated by the statute, and an accident caused by a scaffold collapse is prima facie evidence of a Labor Law § 240(1) violation … Cabgram's argument that summary judgment is not warranted because the scaffold was not defective is unpersuasive because plaintiff need not demonstrate that the scaffold was defective to establish his prima facie case … . Nor is it relevant that plaintiff did not see the scaffold tip over, inasmuch as his back was turned when the accident occurred … . Alonso v Cabgram Dev., LLC, 2025 NY Slip Op 02029, First Dept 4-8-25

Practice Point: Injury from a collapsing scaffold warrants summary judgment on a Labor Law 240(1) cause of action without proof the scaffold was defective.

April 8, 2025

NEGLIGENCE, MUNICIPAL LAW.

THE PETITIONER DID NOT DEMONSTRATE THE CITY HAD TIMELY ACTUAL NOTICE OF THE NATURE OF HER CLAIM AND HER ALLEGATION THAT HER INJURIES PREVENTED HER FROM MAKING A TIMELY CLAIM WAS NOT SUPPORTED BY MEDICAL EVIDENCE; THE PETITION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN DENIED (FIRST DEPT).

The First Department, reversing Supreme Court, determined the petition for leave to file a late notice of claim against the city should not have been granted. Petitioner did not demonstrate the city had timey actual notice of the nature of the claim and did not submit medical records to support her excuse that her injuries prevented her from filing a timely notice of claim:

Petitioner failed to show that respondents had actual knowledge of the facts underlying the legal theories on which liability was predicated in the notice of claim … . Contrary to her contention, neither the police report, the NYPD

complaint, nor the Department of Education occurrence report provided respondents with the facts underlying her theory of liability, as none of these documents linked the accident to any potentially actionable wrongdoing committed by them.

Although petitioner demonstrated that respondents would not suffer any prejudice by the delay in serving the notice of claim, as the alleged defect has not changed since the incident … , her assertion that the severity of her injuries precluded her from serving notice, without any supporting medical documentation or evidence, was insufficient to constitute a reasonable excuse for her delay … .

Petitioner's submission to the motion court failed to include any medical records detailing her surgery and follow-up visits, and her petition stated that she was able to leave the apartment for her medical treatments and ultimately work remotely. Furthermore, it is not clear from the petition when she retained counsel, and a lack of due diligence in determining the identity of the parties involved is not a reasonable excuse for the failure to serve a timely notice of claim … . Matter of Kayam v City of New York, 2025 NY Slip Op 02037, First Dept 4-8-25

Practice Point: An allegation that injuries prevented the filing of a timely notice of claim should be backed up by medical records.

April 8, 2025

REAL PROPERTY TAX LAW, EVIDENCE, MUNICIPAL LAW.

THE BEST EVIDENCE OF THE VALUE OF REAL PROPERTY FOR PROPERTY-TAX-ASSESSMENT PURPOSES IS A RECENT ARMS-LENGTH SALE; ASSESSMENT REDUCED (THIRD DEPT).

The Third Department, reversing Supreme Court and lowering the property tax assessment of petitioners' property, determined the best evidence of the value of the property is an arms-length sale for an amount $750,000 less than the assessment:

"In an RPTL article 7 tax certiorari proceeding, a rebuttable presumption of validity attaches to the valuation of property made by the taxing authority" … .

Therefore, on a summary judgment motion, a petitioner bears the initial burden of "presenting substantial evidence to demonstrate that the subject property was overvalued" … . In considering whether this minimal threshold has been met … , "[i]t is well settled that the best evidence of market value is a recent sale of the subject property between a seller under no compulsion to sell and a buyer under no compulsion to buy" … .

Petitioners submitted evidence that the December 20, 2020 sale for $3,495,000, occurring 18 months prior to the July 1, 2022 valuation date, was carried out at arm's length. This was sufficient to rebut the presumption of the assessment's validity and to satisfy petitioners' burden on summary judgment … . …

… [R]espondents provided no support for their valuation of $4,257,000, a 22% increase in value since the sale just 18 months prior … . The assessor's broad claim that the market for properties such as this one "rose remarkably" during that time was conclusory … , and his assertion regarding the types of approaches "[g]enerally" used to establish fair market value did not indicate whether either or both of those approaches were used in this particular instance. The fact that respondents engaged an outside appraisal firm while completing their town-wide revaluation is also of no moment, as respondents did not show how that firm evaluated this particular property or what conclusions it reached. As such, petitioners' motion should have been granted … . Matter of Robins v Board of Assessment Review, 2025 NY Slip Op 02119, Third Dept 4-9-25

Practice Point: Here the tax assessor's claim that property values had risen "remarkably" did not raise a question of fact in this tax certiorari proceeding seeking a reduction of the property-tax assessment. The best evidence of the value of the property was deemed to be the amount of a recent arms-length sale of the property.

April 9, 2025

WORKERS' COMPENSATION, MUNICIPAL LAW, RETIREMENT AND SOCIAL SECURITY LAW

THE CITY CANNOT SEEK REIMBURSEMENT FROM WORKERS' COMPENSATION AWARDED TO A DISABLED FIREFIGHTER WHERE THE FIREFIGHTER RECEIVED BENEFITS FROM MORE THAN ONE SOURCE WHICH, IN TOTAL, EXCEEDED THE FIREFIGHTER'S FORMER SALARY (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, determined the city (Newburgh) could not recoup payments made to a disabled firefighter (Mr. Schulze) from workers' compensation awards. The opinion is too complex to fairly summarize here:

Pursuant to a complicated statutory scheme, paid firefighters outside New York City who become disabled at work may receive benefits from different sources: their local governmental employer, New York State, and the Workers' Compensation System. Adam Schulze is a retired paid firefighter who, when employed by the City of Newburgh, was disabled in the performance of duty. He received benefits from all three sources. This case concerns whether the City can compel the Workers' Compensation Board to pay Mr. Schulze's workers' compensation benefits to the City, as a way to allow it to recoup an overpayment it claims to have made to Mr. Schulze. Based on the clear language of the relevant statutes, the City cannot do so. * * *

Neither Workers' Compensation Law § 25 (4) (a) nor Workers' Compensation Law § 30 (2) allows reimbursement from workers' compensation awards for payments made under General Municipal Law § 207-a (2). The provision that prevents Mr. Schulze and other firefighters like him from receiving duplicative benefits is General Municipal Law § 207-a (4-a). The City of Newburgh Fire Department is therefore not entitled to reimbursement directly from Mr. Schulze's workers' compensation award for its prior payments to him under General Municipal Law § 207-a (2). Matter of Schulze v City of Newburgh Fire Dept., 2025 NY Slip Op 02101, CtApp 4-10-25

Practice Point: Consult this opinion for a breakdown of the sources of disability payments available to an injured firefighter who was employed outside New York City.

April 10, 2025