NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
December 15 – 19, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts December 15 – 19, 2025, and Posted on the New York Appellate Digest Website on Monday, December 22, 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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CIVIL PROCEDURE, CONTRACT LAW, FALSE ARREST, MUNICIPAL LAW.

ALTHOUGH PLAINTIFF MAY NOT HAVE INTENDED THE RELEASE TO APPLY TO A PENDING FALSE ARREST ACTION, THE PENDING ACTION WAS NOT LISTED IN THE RELEASE AS AN EXCLUSION AND IS THEREFORE PRECLUDED (CT APP).

The Court of Appeals determined that, even if plaintiff did not intend to release the city from the second false arrest action when he signed a release for the first false arrest action, the release must be enforced according to its plain language. The release had a section where any actions not intended to be encompassed by the release must be specifically identified and listed. Plaintiff, with counsel present, signed the release without listing the second false arrest action as an exclusion, so the release precluded the second action:

This Court has repeatedly made clear that "[i]f 'the language of a release is clear and unambiguous, the signing of a release is a "jural act" binding on the parties' " … . "As with contracts generally, the courts must look to the language of a release—the words used by the parties—to determine their intent, resorting to extrinsic evidence only when the court concludes as a matter of law that the contract is ambiguous" … , or where such evidence establishes one of the " 'traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake' " … . With respect to mutual mistake, a "high order of evidence is required" to overcome the " 'heavy presumption that a deliberately

prepared and executed written instrument [manifests] the true intention of the parties' " … .

Here, the City established its prima facie entitlement to summary judgment based on the clear language of the release, and plaintiff failed to raise any triable question of fact in opposition. The City's intent to secure a release from plaintiff of "any and all" claims is evidenced by the plain text of the document it transmitted for plaintiff's signature. As the Appellate Division correctly held, there was nothing "surreptitious" about the way the release was drafted or transmitted … . Although plaintiff, who was represented by counsel, could have excluded this action from the release by the simple act of listing it in the space provided for that purpose, he signed the release without doing so, an objective manifestation of assent that is binding upon him notwithstanding any unilateral mistake or subsequent regret on his part … . Smith v City of New York, 2025 NY Slip Op 07081, CtApp 12-18-24

Practice Point: A release is strictly enforced according to its plain language. If a release includes a section where any exclusions from its reach must be listed, and that section is left blank, the release will preclude any other pending action, even where the failure to list a pending action was unintentional.

December 18, 2025

CORPORATION LAW, FRAUD.

TO PIERCE THE CORPORATE VEIL THE PLAINTIFF MUST DEMONSTRATE (1) THE OWNERS EXERCISED COMPLETE DOMINATION OF THE CORPORATION WITH RESPECT TO THE TRANSACTION AT ISSUE AND (2) THE DOMINATION WAS USED TO COMMIT A FRAUD OR WRONG AGAINST THE PLAINTIFF; HERE THERE WAS NO EVIDENCE THE TRANSACTION AT ISSUE WAS FRAUDULENT (CT APP).

The Court of Appeals, affirming the Appellate Division, over a three-judge concurrence, determined the complaint in this "pierce the corporate veil" action

was properly dismissed because there was no evidence the recapitalization at issue was done to commit a fraud:

From the concurrence:

A court will disregard the corporate form and pierce the corporate veil when there is a showing by plaintiffs that: "(1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" … . Because the use of the corporate form to limit liability of owners is a legal and beneficial principle of corporations, those who seek to pierce the corporate veil bear a heavy burden … .

Here, [the] attempts to pierce the corporate veil fail to raise a triable issue on prong two. The … defendants met their initial burden on summary judgment to demonstrate that they did not abuse the privilege of doing business in the corporate form to perpetrate a wrong or injustice, and [plaintiff] failed to raise a triable issue of material fact in opposition. [Plaintiff] points to no evidence in the record that supports its claim that the 2006 recapitalization at issue was fraudulent. Cortlandt St. Recovery Corp. v Bonderman, 2025 NY Slip Op 07078, CtApp 12-18-25

Practice Point: This decision illustrates the two prongs of proof required to pierce the corporate veil: the owners must completely dominate the corporation with respect to the transaction at issue; and the transaction at issue must be fraudulent or wrongful with respect to the plaintiff.

December 18, 2025

CRIMINAL LAW, EVIDENCE.

DEFENDANT, WHO WAS CHARGED WITH FIRST DEGREE ROBBERY, PRESENTED NO EVIDENCE THE BB GUN DISPLAYED DURING THE ROBBERY WAS NOT CAPABLE OF CAUSING DEATH OR SERIOUS INJURY; THEREFORE THE TRIAL JUDGE PROPERLY REFUSED TO INSTRUCT THE JURY ON THE "DISPLAYED-WEAPON-COULD-NOT-CAUSE-DEATH-OR-SERIOUS-INJURY" AFFIRMATIVE DEFENSE; A THREE-JUDGE DISSENT ARGUED THAT, BECAUSE IT WAS UNCONTROVERTED THAT DEFENDANT DISPLAYED A BB GUN, SECOND DEGREE ROBBERY WAS THE ONLY AVAILABLE CHARGE (CT APP).

The Court of Appeals, affirming the Appellate Division on different grounds, in a full-fledged opinion by Judge Troutman, over a three-judge dissent, determined the trial judge properly refused to instruct the jury on the affirmative defense that the weapon displayed by defendant during the robbery was not capable of causing death or serious injury. Defendant had displayed BB gun during the robbery and was charged with first degree robbery. The dissent argued that, because it was uncontroverted that defendant displayed a BB gun, second degree robbery is the only available charge. Penal Law 160.15(4) provides "A person is guilty of robbery in the first degree when he forcibly steals property and when, in the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:* * * [d]isplays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged. Nothing contained in this subdivision shall constitute a defense to a prosecution for, or preclude a conviction of, robbery in the second degree … .":

… [T]he court properly denied [defendant's] request to charge the jury on the affirmative defense. "When a defense declared by statute to be an 'affirmative defense' is raised at a trial, the defendant has the burden of establishing such

defense by a preponderance of the evidence" (Penal Law § 25.00 [2]). The court must charge the affirmative defense to robbery in the first degree when, viewing the evidence in the light most favorable to the defendant, there is "sufficient evidence for the jury to find by a preponderance of the evidence that the elements of the defense are satisfied, i.e., that the object displayed was not a loaded weapon [readily] capable of producing death or other serious physical injury" … . BB guns are capable of producing injury, including but not limited to protracted impairment of vision … . Whether a particular BB gun is "readily capable" of doing so is not a question that we can decide as a matter of law … .

Here, although defendant made a prima facie showing that the object he displayed during the robbery was a BB gun that the police recovered from his home, he presented no evidence concerning the capabilities of that particular gun. Given the absence of such evidence, "the members of the jury could do no more than speculate that defendant's gun was not [readily] capable of causing death or other serious physical injury, and thus the court properly denied defendant's request to submit the issue to them" … . People v Smith, 2025 NY Slip Op 07082, CtApp 12-18-25

Practice Point: When a defendant seeks a jury instruction on an affirmative defense, the defendant has the burden to establish the defense by a preponderance of the evidence. Here the defendant argued the BB gun he displayed during the robbery could not cause death or serious injury and he was therefore entitled to a jury instruction on the "displayed weapon could not cause death or serious injury" affirmative-defense to first degree robbery. But because defendant presented no evidence on the capabilities of the BB gun, the Court of Appeals held the defendant did not meet his burden of proof and the trial judge properly denied the request for the affirmative-defense jury instruction.

December 18, 2025

CRIMINAL LAW.

THE PEOPLE DID NOT PROVE A VERMONT OFFENSE WAS EQUIVALENT TO A NEW YORK VIOLENT FELONY OFFENSE; THEREFORE THE PERSISTENT VIOLENT FELONY ADJUDICATION WAS VACATED (SECOND DEPT).

The Second Department, vacating defendant's persistent violent felony offender adjudication, determined the People did not prove that a Vermont assault and robbery offense was the equivalent to a New York violent felony offense:

While the defendant admitted at sentencing that he was the person convicted of two prior felonies … , the People failed to satisfy their burden of establishing that the defendant was convicted of an offense in a foreign jurisdiction that is equivalent to a violent felony in New York … . The People failed to demonstrate that the Vermont offense of assault and robbery with a dangerous weapon … is equivalent to a New York criminal offense designated as a violent felony … . Accordingly, we modify the judgment by vacating the defendant's adjudication as a persistent violent felony offender and the sentences imposed thereon, and we remit the matter to the Supreme Court … for resentencing … . People v Parris, 2025 NY Slip Op 07028, Second Dept 12-17-25

Practice Point: If a foreign conviction is the basis of a persistent violent felony offender adjudication, the People must prove the foreign offense is the equivalent of a New York violent felony. If the People fail to prove the equivalence the adjudication will be vacated on appeal.

December 17, 2025

DISCPLINARY HEARINGS (INMATES), ATTORNEYS, CORRECTION LAW.

PURSUANT TO THE "HUMANE ALTERNATIVES TO LONG-TERM CONFINEMENT ACT (HALT ACT)," AN INMATE WHO IS FACING SEGREGATED CONFINEMENT HAS A RIGHT TO THE PRESENCE OF COUNSEL AT THE DISPOSITIONAL PHASE OF THE DISCIPLINARY HEARING (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Powers, determined that the incarcerated petitioner had a right to have his attorney present during the dispositional phase of the disciplinary hearing after he was found guilty of possession of a weapon. The Hearing Officer had determined counsel's presence was "no longer necessary" in violation of the "Humane Alternatives to Long-Term Solitary Confinement Act" (the HALT Act—Correction Law 137):

… [F]ollowing the passage of the HALT Act, Correction Law § 137 provides that an incarcerated individual "shall be permitted to be represented" during a disciplinary hearing that may result in placement in segregated confinement "by any attorney or law student, or" with certain limitations, "any paralegal or incarcerated person" (Correction Law § 137 [6] [l]). The pertinent regulations have since also been amended to specify that "[w]here an incarcerated individual is placed in, or pending possible placement in, segregated confinement pending a disciplinary hearing or superintendent's hearing, such incarcerated individual shall be permitted to be represented by," as is relevant here, "an attorney, having good standing, admitted to practice in any state" (7 NYCRR 251-5.2 [a] [1]).

Therefore, pursuant to both statute and regulation, if an incarcerated individual so chooses, he or she is entitled to have representation present during a disciplinary hearing when the permissible sanctions include the imposition of segregated confinement. Contrary to the Hearing Officer's determination, the dispositional phase is an integral aspect of the disciplinary hearing and the statutory and regulatory right to representation at issue here extends to that phase of the hearing. Matter of Wingate v Martuscello, 2025 NY Slip Op 07048, Third Dept 12-18-25

December 18, 2025

ENVIRONMENTAL LAW, MUNICIPAL LAW, CIVIL PROCEDURE.

HERE THE TOWN PASSED A LOCAL LAW REQUIRING THE CLOSURE OF A LANDFILL OWNED AND OPERATED BY SMI; BECAUSE SMI'S PROPERTY IS THE VERY SUBJECT OF THE LOCAL LAW, SMI NEED NOT DEMONSTRATE "ENVIRONMENTAL HARM" AS AN ELEMENT OF STANDING TO CHALLENGE THE TOWN'S STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) DECLARATION THAT THE CLOSURE OF THE LANDFILL WILL NOT HAVE A SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT; SMI HAS STANDING TO CHALLENGE THE TOWN'S NEGATIVE SEQRA DECLARATION ON THE GROUND THAT THE TOWN DID NOT TAKE THE REQUIRED "HARD LOOK" AT THE EVIDENCE BEFORE ISSUING THE NEGATIVE DECLARATION (CT APP).

The Court of Appeals, reversing the Appellate Division, in a full-fledged opinion by Judge Rivera, determined the petitioner-plaintiff Seneca Meadows, Inc. (SMI), the owner and operator of a landfill, had standing to challenge the town's State Environmental Quality Review Act (SEQRA) finding that the closure of the landfill pursuant to a Local Law would not have a significant adverse environmental impact. SMI argued the town did not take the required "hard look" at the evidence before issuing its negative SEQRA declaration:

"SEQRA is designed to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources . . . by injecting environmental considerations directly into governmental decision making; thus the statute mandates that social, economic and environmental factors shall be considered together in reaching decisions on proposed activities" … . Standing to sue under SEQRA, as with other statutory causes of action, requires that the plaintiff establish an injury-in-fact and that the in-fact injury fall within the zone of interest that the statute protects … . Thus, to sue under SEQRA, a plaintiff must ordinarily show that their injury falls within the statute's environmental zone of

interest by "demonstrat[ing] that it will suffer an injury that is environmental and not solely economic in nature" … .

However, [Matter of Har Enters. v Town of Brookhaven (74 NY2d 524 [1989])] established that "no such specific allegation [of environmental harm] is necessary" when the petitioner's property is "the very subject" of the government's action … . That case involved a rezoning of the petitioner's property from commercial to residential use … . As the Court explained, "[i]t seems evident that if any party should be held to have a sufficient interest to object—without having to allege some specific harm—it is an owner of property which is the subject of a contemplated rezoning" … . Following that ruling, a few years later, the Court held in [Gernatt Asphalt Prods. v Town of Sardinia (87 NY2d 668 [1996])] that a landowner whose potential mining operations would be eliminated by rezoning was directly impacted by the governmental land use regulation and thus had standing under Har to challenge the government's lack of compliance with SEQRA … . Matter of Seneca Meadows, Inc. v Town of Seneca Falls, 2025 NY Slip Op 06961, CtApp 12-16-25

Practice Point: When the petitioner's property is the subject of the government's action, the petitioner need not demonstrate "environmental harm" to have standing to challenge the government's SEQRA declaration. Here the town passed a local law requiring closure of petitioner's landfill. Petitioner need not demonstrate "environmental harm" to have standing to challenge the town's SEQRA negative declaration on the ground the town did not take the required "hard look" at the evidence before finding that the landfill closure would not have a significant adverse environmental impact.

December 16, 2025

FAMILY LAW, JUDGES, EVIDENCE.

FAMILY COURT DID NOT PROVIDE FATHER WITH EVERY REASONABLE INFERENCE AND RESOLVE ALL CREDIBILITY ISSUES IN HIS FAVOR WHEN CONSIDERING MOTHER'S MOTION TO DISMISS THE CUSTODY MODIFICATION PETITION AFTER FATHER'S TESTIMONY; ALTHOUGH FATHER DESCRIBED WHAT THE CHILDREN TOLD HIM, SUCH HEARSAY CAN BE ADMISSIBLE IN ABUSE AND NEGLECT PROCEEDINGS; IN ADDITION, THE LINCOLN HEARING, WHICH WAS CANCELLED BY THE JUDGE, COULD HAVE SERVED TO CORROBORATE FATHER'S TESTIMONY; MATTER REMITTED (THIRD DEPT).

The Third Department, reversing Family Court, determined mother's motion to dismiss at the close of father's testimony in this modification of custody proceeding should not have been granted. The judge granted the motion to dismiss because there was no corroboration of father's testimony which described what the children told him. However the children's hearsay is admissible when it concerns abuse or neglect. After dismissing the petition, the court cancelled the scheduled Lincoln hearing The cancellation compounded the judge's error because the children's testimony at a Lincoln hearing can serve to corroborate a parent's testimony:

The father testified that the children made numerous statements to him describing the mother's physical discipline of them and detailing the mother's excessive alcohol consumption. The father also stated that he had observed changes in the children's behavior, pointing specifically to the older child exhibiting signs of excessive nervousness and both children's reluctance to return to their mother's home at the conclusion of his parenting time. "A child's out-of-court statements are admissible in a Family Ct Act article 6 proceeding when they pertain to abuse or neglect and are sufficiently corroborated" … , and "the hearing court is accorded considerable discretion in determining whether there is sufficient corroboration" … . Notably, "[a] relatively low degree of corroboration is sufficient, and the requirement may be satisfied by any other evidence tending to support the reliability of the child's statements" … .

We find that Family Court improperly granted the mother's motion to dismiss as it failed to provide the father with the benefit of every reasonable inference and resolve all credibility issues in his favor … . Of greater concern, given the court's reason for granting the motion — lack of corroboration of the father's accusations — it abused its discretion in canceling the Lincoln hearing as "information shared by [the children] during a Lincoln hearing may serve to corroborate other evidence adduced at a fact-finding hearing" … . At the time of the hearing, the children were nine and six years of age and the record is bereft of any indication that the children were unwilling or incapable of participating in the Lincoln hearing. Thus, we remit the matter to Family Court to conduct a Lincoln hearing and any appropriate hearing following same … . Matter of Kalam EE. v Amber EE., 2025 NY Slip Op 07050, Third Dept 12-18-25

Practice Point: Consult this decision for insight into how the evidence presented by the petitioner in a custody modification proceeding should be analyzed in the face of a motion to dismiss, including the admissibility of hearsay presented by the petitioner describing what the children told the petitioner.

Practice Point: Children's testimony at a Lincoln hearing can serve to corroborate a parent's testimony. Here it was deemed reversible error for the judge to dismiss the petition after petitioner's testimony on the ground there was no corroboration of the statements petitioner ascribed to the children while cancelling the Lincoln hearing which could have provided corroboration.

December 18, 2025

FAMILY LAW, JUDGES.

THE MODIFICATION OF CUSTODY PETITION WAS SUFFICIENT TO WITHSTAND THE MOTION TO DISMISS, CRITERIA EXPLAINED (THIRD DEPT).

The Third Department, reversing Family Court, determined the maternal grandmother, who has custody of the children, sufficiently alleged a change of circumstances which may warrant an modification of custody such that the children could choose to spend time with the maternal grandfather and the

maternal grandmother and grandmother could live together. The petition for modification was based upon the ages of the children (late teens to age of majority) and the grandfather's extended period of sobriety. The petition was deemed sufficient to withstand a motion to dismiss:

"In any modification proceeding, the threshold issue is whether there has been a change in circumstances since the prior custody order significant enough to warrant a review of the issue of custody to ensure the continued best interests of the children" … . "In assessing whether the petitioner has alleged the requisite change in circumstances, so as to withstand a motion to dismiss for failure to state a claim, Family Court must liberally construe the petition, accept the facts alleged in the petition as true, afford the petitioner the benefit of every favorable inference and resolve all credibility questions in favor of the petitioner" … .

The grandmother sustained this threshold burden. Matter of Christine X. v James Y., 2025 NY Slip Op 07060, Third Dept 12-18-25

Practice Point: Consult this decision for the analytical criteria for assessing whether a petition for a modification of custody is sufficient to withstand a motion to dismiss.

December 18, 2025

LABOR LAW-CONSTRUCTION LAW, CONTRACT LAW.

SUBCONTRACTOR DAL HAD ENTERED CONTRACTS FOR THIS RENOVATION PROJECT WITH THE GENERAL CONTRACTOR, JRM, AND THE PROPERTY OWNER, ROCKEFELLER; PLAINTIFF, WHO DID NOT WORK FOR DAL, WITHOUT DAL'S PERMISSION, KNOWING THE LADDER WAS DEFECTIVE, USED A DEFECTIVE LADDER OWNED BY DAL; THE LADDER WOBBLED AND PLAINTIFF FELL; THE COURT OF APPEALS HELD THE INDEMNIFICATION CLAUSES IN DAL'S CONTRACTS WITH JRM AND ROCKEFELLER DID NOT APPLY TO PLAINTIFF'S INJURIES (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, over a two-judge dissent, determined that DAL, a subcontractor, was not contractually required to indemnify the general contractor, JRM, and the property owner, Rockefeller, for plaintiff's injuries from a ladder-fall. The plaintiff, Dibrino, a carpenter working for a nonparty subcontractor, Jacobsen, had already completed his measurements using his employer's A-frame ladder and a scaffold, which he had moved to his next work-area, when he was asked to redo the measurements. Plaintiff, knowing it was defective, used an A-frame ladder owned by DAL when he remeasured. The ladder wobbled, plaintiff fell; a tool on his belt impaled his abdomen. The ruling that DAL was not obligated to indemnify the general contractor (JAM) and the owner (Rockefeller) for plaintiff's injuries is based on the contractual language:

Mr. Dibrino's unauthorized use of an unattended ladder (which he knew was not furnished by his employer and knew he was not supposed to use) instead of using the scaffold and ladder supplied by Jacobson that he had used earlier that day in that same spot, to perform work squarely outside the scope of the agreement between DAL and JRM, is not reasonably construed as arising from performance DAL's work. JRM and Rockefeller's reading would mean DAL's contractual duty to indemnify would be triggered by any event that could be traced to DAL through any path—even, for example, had DAL disposed of the defective ladder in a dumpster and Mr. Dibrino retrieved it. Such an expansive reading of these indemnity provisions is implausibly broad, … an indemnification provision "must

be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed" … . Dibrino v Rockefeller Ctr. N., Inc., 2025 NY Slip Op 07077, CtApp 12-18-25

Practice Point: Consult this opinion for insight into how indemnification clauses in contracts among a subcontractor, the general contractor and the owner should be interpreted under the Labor Law. Here the clauses did not apply to injuries suffered by a worker who (1) did not work for the subcontractor and (2) used the subcontractor's ladder without the subcontractor's permission, knowing that the ladder was defective.

December 18, 2025

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF WAS STANDING ON THE SECOND RUNG FROM THE TOP, STRADDLING THE LADDER, WHEN IT WOBBLED AND FELL; THE NEED TO STAND NEAR THE TOP OF THE LADDER TO DO THE WORK DEMONSTRATES THE LADDER WAS NOT AN ADEQUATE SAFETY DEVICE ENTITLING PLAINTIFF TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION; THERE WAS A TWO JUSTICE DISSENT WHICH ARGUED THERE WAS A QUESTION OF FACT WHETHER PLAINTIFF'S MISUSE OF THE LADDER WAS THE SOLE PROXIIMATE CAUSE OF THE ACCIDENT (THIRD DEPT).

The Third Department, reversing Supreme Court, over a two-justice dissent, determined plaintiff in this ladder-fall case was entitled to summary judgment on the Labor Law 240(1) cause of action. Plaintiff was standing on the second rung from the top of an extendable step ladder, straddling the ladder, when the ladder fell away from the building. The majority concluded the fact that plaintiff had to stand on the second rung from the top and straddle the ladder to do the work, he was not provided with an adequate safety device. The dissent argued there was a question of fact whether plaintiff's misuse of the ladder was the sole proximate cause of the accident:

Supreme Court erred in finding that plaintiff failed to meet his prima facie burden, as "[w]e have repeatedly held that when a worker injured in a fall was provided with an elevation-related safety device, [here the ladder,] the question of whether that device provided proper protection within the meaning of Labor Law § 240 (1) is ordinarily a question of fact, except in those instances where the unrefuted evidence establishes that the device collapsed, slipped or otherwise failed to perform its function of supporting the worker and his or her materials" … . Accordingly, … an unexplained fall of the ladder while plaintiff was using it to reach an elevated work area, he is entitled to the presumption that the ladder was not good enough to afford proper protection … . Nusbaum v 1455 Wash. Ave. LLC, 2025 NY Slip Op 07066, Third Dept 12-18-25

Practice Point: Here the fact that plaintiff had to stand on the second rung from the top, straddling the ladder, to do the work demonstrated the ladder was not an adequate safety device, entitling plaintiff to summary judgment on the Labor Law 240(1) cause of action.

December 18, 2025

LANDLORD-TENANT, ADMINISTRATIVE LAW, MUNICIPAL LAW.

THE NYC DEPARTMENT OF HOUSING PRESERVATON AND DEVELOPMENT HAD A RATIONAL BASIS FOR FINDING THAT PETITIONER DID NOT USE HIS BROTHER'S APARTMENT AS HIS PRIMARY RESIDENCE FOR ONE YEAR PRIOR TO HIS BROTHER'S DEATH; THEREFORE PETITIONER WAS NOT ENTITLED TO SUCCESSION RIGHTS TO THE MITCHELL-LAMA APARTMENT; THERE WAS AN EXTENSIVE TWO-JUDGE DISSENT (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Cannataro, over an extensive two-judge dissent, determined the NYC Department of Housing Preservation and Development had a rational basis for finding that petitioner did not use his brother's apartment as his primary residence for one year prior to his

brother's death and therefore was not entitled to succession rights to the Mitchell-Lama apartment:

The administrative hearing officer found that petitioner failed to establish co-residency during the relevant one-year period. Initially, the hearing officer found petitioner's claim that the subject apartment had been his primary residence since August 2018 was contradicted by documents addressed to him at a North Miami, Florida address during that timeframe—specifically, a February 2019 letter from the Social Security Administration and bank statements from petitioner's Wells Fargo account for the period from October 2018 through January 2019. In addition, the hearing officer considered undated documents, documents dated outside of the one-year period and documents that did not include an address but determined such documents did not prove the requisite co-residency. The hearing officer likewise concluded that the statements from 2018 through 2020 for tenant's bank account, listing petitioner as power of attorney, were not "credible, sufficient and reliable proof" that petitioner resided in the apartment as his primary residence. The hearing officer observed that the only documents that reflected petitioner's address as the subject apartment during the required co-residency period were the April and May 2019 letters regarding SNAP benefits. Further, the hearing officer noted that petitioner had maintained his connection to Florida, as he had kept his Florida driver's license throughout the co-residency period [FN2]. Based on these findings, the hearing officer denied the appeal, concluding that petitioner failed to meet the eligibility requirements. The opinion made no mention of petitioner's failure to submit tax returns. Matter of Mantilla v New York City Dept. of Hous. Preserv. & Dev., 2025 NY Slip Op 07079, CtApp 12-18-25

December 18, 2025

LIEN LAW, CIVIL PROCEDURE, CONTRACT LAW, EMPLOYMENT LAW, FIDUCIARY DUTY, TRUSTS AND ESTATES.

UNDER THE LIEN LAW, THE GENERAL CONTRACTOR IN A FAILED SOLAR ENERGY PROJECT, AS TRUSTEE OF THE SETTLEMENT FUNDS, WAS PROPERLY PRECLUDED FROM USING THE FUNDS TO PAY ITSELF FIRST; THE SUBCONTRACTORS MUST BE PAID FIRST; THERE WAS A TWO JUSTICE DISSENT (THIRD DEPT).

The Third Department, affirming Supreme Court, over a two-justice dissent, in a matter of first impression, determined the subcontractors' motion to enjoin the general contractor from using settlement funds to pay itself for expenditures in a failed solar-energy project was properly granted. The Lien Law created a trust for the settlement funds and required the general contractor, as trustee, to pay the subcontractors before paying itself:

"Article 3-A of the Lien Law impresses with a trust any funds paid or payable to a contractor 'under or in connection with a contract for an improvement of real property' " (… Lien Law § 70 [1]). Given this statutory definition, we readily conclude that the settlement funds at issue constitute trust funds under Lien Law article 3-A … . The Court of Appeals has "repeatedly recognized that the primary purpose of [Lien Law] article 3-A . . . is to ensure that those who have directly expended labor and materials to improve real property . . . at the direction of the owner or a general contractor receive payment for the work actually performed" … . With respect to a contractor's trust, the parties entitled to a beneficial status are expressly enumerated in Lien Law § 71 (2) (a)-(f) … Pursuant to Lien Law § 71 (2) (a), "[t]he trust assets of which a contractor . . . is trustee shall be held and applied for [enumerated] expenditures arising out of the improvement of real property," including "payment of claims of subcontractors, architects, engineers, surveyors, laborers and materialmen" (Lien Law § 71 [2] [a] …). The language is mandatory and does not include the "cost[s] of improvement," which is a term specifically defined to address an owner's costs (Lien Law § 2 [5]; see Lien §§ 70 [5]; 71 [1] …). L.C. Whitford Co., Inc. v Babcock & Wilcox Solar Energy, Inc., 2025 NY Slip Op 07063, Third Dept 12-18-25

Practice Point: Under the Lien Law the general contractor here is the trustee of the settlement funds and must use the funds to pay the subcontractors before paying itself.

December 18, 2025

MUNICIPAL LAW, CONTRACT LAW, CONSTITUTIONAL LAW, ENVIRONMENTAL LAW, ZONING.

A CONTRACT (A MEMORANDUM OF UNDERSTANDING OR "MOU") WHICH PURPORTED TO BIND CURRENT AND FUTURE TOWN OFFICIALS TO A REZONING REQUEST FOR A REAL ESTATE DEVELOPMENT PROJECT VIOLATED THE "TERM LIMITS DOCTRINE" AND WAS THEREFORE UNENFORCEABLE (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Singas, over a three-judge concurrence, determined that a memorandum of understanding (MOU) which purported to bind current and future municipal officials to plaintiff's rezoning request for a real estate development project violated the term limits doctrine and was unenforceable:

"The term limits rule prohibits one municipal body from contractually binding its successors in areas relating to governance unless specifically authorized by statute or charter provisions to do so" … . It recognizes that "[e]lected officials must be free to exercise legislative and governmental powers in accordance with their own discretion and ordinarily may not do so in a manner that limits the same discretionary right of their successors" … . The doctrine thus instructs "that where a contract 'involves a matter of discretion to be exercised by the [municipal body,] unless the statute conferring power to contract clearly authorizes th[at body] to make a contract extending beyond its own term, no power . . . so to do exists' " … . The term limits doctrine reaches only "matters relating to governmental or legislative functions" … and does not apply where the municipality is "acting in its proprietary capacity" … . * * *

… [W]e conclude that by entering into the MOU, the Town Board violated the term limits doctrine by purporting to "limit" a "discretionary right of [its] successors," rendering the MOU invalid and unenforceable … . Absent an enforceable agreement, plaintiff's contractual claims fail as a matter of law. Hudson View Park Co. v Town of Fishkill, 2025 NY Slip Op 07080, CtApp 12-18-25

Practice Point: Here an attempt to bind current and future municipal officials to a rezoning request for a real estate development project was deemed unenforceable because it violated the "term limits doctrine." Consult this opinion for insight into how the "term limits doctrine" is applied.

December 18, 2025

NEGLIGENCE, MUNICIPAL LAW, EVIDENCE.

AN ARCH-SHAPED BOLLARD (A BARRIER TO PROTECT A TREE FROM VEHICLES USING A PARKING LOT) IS SUBJECT TO THE WRITTEN-NOTICE REQUIREMENT IN THE GENERAL MUNICIPAL LAW; HERE THE BOLLARD, WHICH FELL OVER WHEN A CHILD TRIED TO SWING ON IT, WAS INSTALLED 14 YEARS AGO; BECAUSE THERE WAS NO WRITTEN-NOTICE AND BECAUSE THE DANGEROUS CONDITION WAS NOT IMMEDIATELY APPARENT WHEN THE BOLLARD WAS INSTALLED, THE CITY WAS NOT LIABLE (CT APP).

The Court of Appeals, affirming the Appellate Division, determined an arch-shaped bollard (a barrier to protect a tree from damage by vehicles using a parking lot), which fell over when a child attempted to swing on it, was subject to the written-notice requirement in the General Municipal Law. Because the city did not have written notice of the dangerous condition it cannot be held not liable. The Court of Appeals noted that a parking lot is a "highway" within the meaning of the General Municipal Law section 50-e "written notice" requirement:

Prior written notice is not required "where the locality created the defect or hazard through an affirmative act of negligence" which "immediately results in the

existence of a dangerous condition" … . The exception is meant to "address[] situations where a hazard was foreseeable, insofar as the municipality created it" as opposed to situations where there is "difficulty in determining, after the passage of time," whether the municipality was initially negligent … .

Plaintiffs failed to meet their burden raising a triable issue of fact as to whether the City caused or created an immediately dangerous condition through an act of affirmative negligence … . Nor did the affidavit from plaintiffs' expert create a triable issue of fact as to the City's affirmative negligence because, among other things, it did not tend to establish that the City left behind an unsafe condition at the time it installed the bollard 14 years prior to the accident. Although the expert opined that the bollard was unsafe from "the moment" it was installed, they failed to explain this conclusory opinion through reliance on industry standards or empirical data, nor did they explain how their "professional experience in construction" supported their conclusion … . Rather, the summary judgment record suggests that, to the extent the installation method created a defect, any such defect resulted from the effects of environmental conditions over time. Gurbanova v City of Ithaca, 2025 NY Slip Op 07076, CtApp 12-18-25

Practice Point: A parking lot is a "highway" for purposes of the General Municipal Law 50-e "written notice" requirement.

Practice Point: A bollard (a post which serves as a vehicle-barrier in a parking lot) is subject to the "highway" "written-notice" requirement in the General Municipal Law.

December 18, 2025

RELIGION, CIVIL RIGHTS LAW, EDUCATION-SCHOOL LAW, EMPLOYMENT LAW.

THE MINISTERIAL EXCEPTION DOES NOT PRECLUDE THIS HOSTILE-WORK-ENVIRONMENT ACTION BY EMPLOYEES OF A PRIVATE CATHOLIC HIGH SCHOOL; THE MINISTERIAL EXCEPTION PRECLUDES ACTIONS AGAINST RELIGIOUS INSTITUTIONS WHICH INTERFERE WITH RELIGIOUS DOCTRINE; THE ALLEGATIONS OF HARASSMENT BY SCHOOL OFFICIALS DO NOT INVOLVE RELIGIOUS DOCTRINE (FIRST DEPT).

The First Department, reversing Supreme Court, determined the-hostile work-environment causes of action by employees of a private Catholic high school should not have been dismissed pursuant to the "ministerial exception" which, in certain circumstances, will preclude employment discrimination actions against a religious institution:

Plaintiffs … were all employed by … a private Catholic school . The case stems from plaintiffs' allegations that the school's Principal … regularly subjected them to vulgar, sexist, ageist, racist and homophobic remarks and epithets. Plaintiffs further allege that … the school's Vice Principal … and … the school's Dean of Men, regularly repeated [the Principal's] vile language and assisted in his efforts to discriminate against staff. In addition, plaintiffs allege that … the head of defendant Archdiocese of New York … and the defendant Archdiocese knew about [the Principal's] conduct but did nothing to stop it.

Plaintiffs' claims for hostile work environment were improperly dismissed under the ministerial exception, which precludes some employment claims against religious institutions on First Amendment grounds … . Although the ministerial exception was created to protect churches from state interference in their decisions to employ and supervise ministerial employees, it was not intended as a shield from all types of workplace conduct … . * * *

Here, plaintiffs are correct that there is no religious justification for [the Principal's] appalling conduct, and analyzing their hostile work environment claims would not require the Court to improperly interfere with religious doctrine

or defendants' personnel decisions. Boliak v Reilly, 2025 NY Slip Op 07088, First Dept 12-18-25

Practice Point: Some employment discrimination actions against religious institutions are barred by the ministerial exception. Here the allegations plaintiffs, employees of a private Catholic School, were harassed by school officials did not require a court's interference with religious doctrine and therefore were not precluded by the ministerial exception.

December 18, 2025

RELIGION, EMPLOYMENT LAW, LABOR LAW, CIVIL RIGHTS LAW, CONSTITUTIONAL LAW.

PLAINTIFF, WHO WAS HIRED BY DEFENDANT TEMPLE AS A "FULL TIME JEWISH EDUCATOR," WAS FIRED AFTER WRITING A BLOG POST CRITICIZING ISRAEL AND ZIONISM; PLAINTIFF SUED ALLEGING HER FIRING WAS A VIOLATION OF THE LABOR LAW; THE COURT DID NOT ADDRESS THE LABOR-LAW-VIOLATION THEORY FINDING THAT THE "MINISTERIAL EXCEPTION" PRECLUDED THE APPLICATION OF EMPLOYMENT DISCRIMINATION LAWS TO THE RELATIONSHIP BETWEEN A RELIGIOUS INSTITUTION AND ITS MINISTERS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Halligan, over two concurrences, determined the ministerial exception precluded this employment discrimination action brought by plaintiff, a "full time Jewish educator" employed by the Westchester Reform Temple. Plaintiff was fired after writing a blog post criticizing Israel and Zionism. She alleged her firing was a violation of Labor Law 201-d (2) which prohibits an employer from taking adverse action against an employee based on legal "recreational activities." The court did not address the viability of the Labor-Law theory. The court held that plaintiff's lawsuit was precluded by the ministerial exception, which precludes application of employment discrimination laws to relationships between a religious institution and its ministers:

We need not resolve today questions such as whether the [Labor Law 201-d (2)] covers blogging specifically or public expression generated during any protected activity, because the ministerial exception dispositively bars Plaintiff's claim. That exception "precludes application of [employment discrimination] legislation to claims concerning the employment relationship between a religious institution and its ministers" … . Requiring a religious institution "to accept or retain an unwanted minister, or punishing [them] for failing to do so" both "infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments" and "violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions" … . * * *

Defendants invoked the ministerial exception here as grounds for dismissal on a CPLR 3211 (a) (1) motion. Such a motion "may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" … . Defendants rely on Plaintiff's offer letter, which is appended as an exhibit to the motion to dismiss. It states that Plaintiff was responsible for guiding the development of programs such as "Shabbat, Havdalah, and other teen led events and initiatives"; planning, supporting, and attending "Confirmation" experiences; and supporting the "Rabbi's Table initiative." In her fifteen weekly hours of teaching, she was responsible for "Chevruta (1:1 tutoring for our learners)," "Pre-bimah tutoring," and "Parsha of the week." And she was responsible for furthering the Temple's "mission," including by "support[ing] the development of a strong Jewish identity" and "bringing Torah to life and inspiring Jewish dreams." Sander v Westchester Reform Temple, 2025 NY Slip Op 06958, CtApp 12-16-25

Practice Point: The "ministerial exception" precludes the application of employment discrimination laws to the relationship between a religious institution and its ministers. Here the ministerial exception precluded a suit alleging plaintiff was fired from her teaching job at the defendant temple for a blog post criticizing Israel and Zionism.

December 16, 2025

TOXIC TORTS, CIVIL PROCEDURE, EVIDENCE, JUDGES.

IT WAS AN ABUSE OF DISCRETION TO ORDER AN EVIDENTIARY HEARING IN THIS TOXIC TORT CASE; NO FRYE HEARING WAS NECESSARY BECAUSE THE EXPERTS DID NOT USE NOVEL OR EXPERIMENTAL METHODS; NO PARKER HEARING WAS NECESSARY BECAUSE GENERAL AND SPECIFIC CAUSATION WERE ADEQUATELY ADDRESSED IN THE EXPERTS' SUBMISSIONS AND GENERALLY ACCEPTED METHODS WERE USED (THIRD DEPT).

The Third Department, reversing Supreme Court, in a full-fledged opinion by Justice Ceresa, determined there was no need for a Frye hearing in this toxic tort case because none of the three experts used methods that were novel or experimental. In addition, there was no need for a Parker hearing because the expert's used generally accepted methods to determine general and specific causation. Therefore ordering the evidentiary hearing was an abuse of discretion:

"The singular purpose of a Frye hearing is to ascertain the reliability of novel scientific evidence by determining whether the methods used to generate such evidence will, when properly performed, produce results accepted as reliable within the scientific community generally" … . " 'A court need not hold a Frye hearing where it can rely upon previous rulings in other court proceedings as an aid in determining the admissibility of the proffered testimony' " … . "Absent a novel or experimental scientific theory, a Frye hearing is generally unwarranted" … . * * *

… [U]nder Parker, " '[t]he focus moves from the general reliability concerns of Frye to the specific reliability of the procedures followed to generate the evidence proffered and whether they establish a foundation for the reception of the evidence at trial.' . . . [In toxic tort cases,] [i]t is well-established that an opinion on causation should set forth a plaintiff's exposure to a toxin, that the toxin is capable of causing the particular illness (general causation) and that plaintiff was exposed to sufficient levels of the toxin to cause the illness (specific causation)" (Parker v Mobil Oil Corp., 7 NY3d at 447-448 …). … [A] s plaintiffs' [experts'] written submissions … offered the requisite causal links, there was no need for a hearing

to determine whether these foundational standards were met. Marpe v Tonoga, Inc., 2025 NY Slip Op 07053, Third Dept 12-18-25

Practice Point: Consult this opinion for insight into when a Frye/Parker hearing is necessary to determine the admissibility of expert evidence in a toxic tort case. The evidentiary hearing had been ordered by the trial judge, but the Third Department held ordering the hearing was an abuse of discretion.

December 18, 2025

UNEMPLOYMENT INSURANCE, EMPLOYMENT LAW, LABOR LAW.

CERTAIN EMPLOYEES OF THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS) WERE NOT ENTITLED TO "PANDEMIC UNEMPLOYMENT ASSISTANCE" DURING THE SUMMER OF 2020 PURSUANT TO THE "CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY (CARES) ACT;" THE COURT'S ANALYSIS IS TOO DETAILED TO FAIRLY SUMMARIZE HERE (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Singas, determined certain employees of the Department of Corrections and Community Supervision (DOCCS) who were not offered employment during the summer of 2020 because of the COVID-19 pandemic were not entitled to "pandemic unemployment assistance" under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The opinion has a detailed analysis of the federal and state unemployment insurance systems and how they interact with the COVID-related legislation. Matter of Klosterman v New York State Dept. of Corr. & Community Supervision, 2025 NY Slip Op 06960, CtApp 12-16-25

December 16, 2025

VEHICLE AND TRAFFIC LAW, ADMINISTRATIVE LAW, CIVIL PROCEDURE, CONSTITUTIONAL LAW.

THE ADMINISTRATIVE LAW JUDGE WENT AHEAD WITH THE DRIVER'S LICENSE REVOCATION HEARING IN THE ABSENCE OF THE OFFICERS WHO ARRESTED THE DRIVER FOR DWI; THE DRIVER'S ARGUMENT HE WAS DENIED DUE PROCESS BECAUSE HE WAS UNABLE TO CROSS-EXAMINE THE OFFICERS WAS REJECTED; THE DRIVER HAD SUBPOENAED THE OFFICERS BUT CHOSE NOT TO USE THE CPLR 2308 PROCEDURE FOR ENFORCEMENT OF THE SUBPOENAS; THE AVAILABILITY OF THE ENFORCEMENT PROCEDURE WAS DEEMED "SUFFICIENT PROCESS" (CT APP).

The Court of Appeals, affirming the Appellate Division, in a full-fledged opinion by Judge Wilson, determined a driver, Monaghan, whose license was automatically suspended when he refused to submit to a chemical test at the time he was arrested for DWI, was not denied due process rights when the Department of Motor Vehicles (DMV) Administrative Law Judge (ALJ) revoked his license despite the arresting officers' failure to appear at the revocation hearing. Monaghan had subpoenaed the officers and argued he was denied his right to cross-examine them. The Court of Appeal noted that Monaghan could have sought to enforce the subpoenas but chose not to. The Court found that the procedure for enforcement of subpoenas is not unduly burdensome. Therefore requiring Monaghan to use that procedure to exercise his right to cross-examine the officers does not amount to a denial of due process:

… [W]e reject the contention that Mr. Monaghan's was deprived of his due process right to cross-examine the Troopers. His private interest in retaining his driver's license and the government's interest in public safety are both significant. The due process analysis, here, turns on the benefit and burden of requiring a motorist to seek judicial enforcement of a subpoena. Mr. Monaghan chose not to avail himself of the process set forth in CPLR 2308 (b). The process of applying to enforce a nonjudicial subpoena is not so unduly burdensome as to constitute a deprivation of due process of law. Our holding is consistent with appellate courts' decisions

rejecting due process challenges in other types of administrative proceedings where the petitioner has not attempted to enforce a subpoena … . It is undisputed that Mr. Monaghan did not seek enforcement, nor did he request an adjournment to do so. Matter of Monaghan v Schroeder, 2025 NY Slip Op 06959, CtApp 12-16-25

Practice Point: Here the officers who arrested the driver for DWI did not appear at the license revocation hearing. The driver argued his inability to cross-examine the officers deprived him of due process of law. However, the driver had subpoenaed the officers. He could have used the CPLR 2308 (b) procedure for enforcing the subpoenas but chose not to. The availability of the enforcement procedure was deemed sufficient process.

December 16, 2025