NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
December 22 – 26, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts December 22 – 26, 2025, and Posted on the New York Appellate Digest Website on Thursday, January 1, 2026. 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.

Table of Contents

Contents

Table of Contents

\

APPEALS, ARBITRATION, INSURANCE LAW.

THE FACT THAT THE ARBITRATOR MADE ERRORS OF LAW DID NOT AFFECT THE VALIDITY OF THE AWARD BECAUSE THERE WAS A RATIONAL BASIS FOR THE RULING; ARBITRATION AWARDS ARE LARGELY UNREVIEWABLE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the fact that the arbitrator in this no-fault insurance dispute made errors of law does not negate the validity of the arbitrator's ruling. As long as the arbitrator's award has a rational basis it is largely unreviewable:

"[A]n arbitrator's rulings, unlike a trial court's, are largely unreviewable" … . "A court reviewing the award [*2]of a master arbitrator is limited to the grounds set forth in CPLR article 75" … . Significantly, a master arbitrator's determination is not subject to vacatur by the courts on the basis of an error of law, including, "'the incorrect application of a rule of substantive law,'" unless the master arbitrator's determination is irrational … .

Here, regardless of any errors of law the arbitrator and master arbitrator made regarding burdens of proof, the master arbitrator's determination to affirm the … award to the provider was rationally based on the conclusion that [the] minor delay in providing the insurer with notice of the accident was reasonably justified because [the injured party] was a passenger in the vehicle involved in the accident and, thus, was not making a claim to her own insurance company (see 11 NYCRR 65-3.5[l]). Because the master arbitrator's affirmance of the … award had a rational basis, and "'[i]t is not for the court to decide whether the master arbitrator erred in applying the applicable law,'" the petition to vacate the master arbitrator's award should have been denied and the master arbitrator's award confirmed … . Matter of American Tr. Ins. Co. v Atlantic Med. Care, P.C., 2025 NY Slip Op 07297, Second Dept 12-24-25

Practice Point: Arbitration awards are largely unreviewable by the courts. Errors of law are ignored if there is a rational basis for the ruling.

December 24, 2025

CIVIL PROCEDURE, DEFAMATION, JUDGES.

SUPREME COURT WENT BEYOND THE PARAMETERS OF THE REMITTAL BY ACCEPTING SUPPLEMENTAL ARGUMENTS ON NEW CASE LAW AND BY RENDERING A DECISION ON GROUNDS NOT INCLUDED IN THE REMITTAL; DISMISSAL OF THE COMPLAINT REVERSED, DEFAMATION CAUSES OF ACTION REINSTATED (FOURTH DEPT).

The Fourth Department, reversing (modifying) Supreme Court, determined Supreme Court went beyond the parameters of the remittal. Supreme Court had dismissed the complaint. The Fourth Department reinstated several defamation causes of action:

We agree with plaintiff that the court impermissibly expanded the scope of the remittal. "[A] trial court, upon a remand or remittitur, is without power to do anything except to obey the mandate of the higher court, and render judgment in conformity therewith" … . This Court expressed our remittal directive in our order, and Supreme Court impermissibly expanded the scope of that remittal by accepting supplemental arguments on, inter alia, the effect of new case law relating to the retroactivity of the amended anti-SLAPP statute, and by basing its decision on grounds that were not included within the remittal .. . Trinh v Nguyen, 2025 NY Slip Op 07136, Fourth Dept 12-23-25

Practice Point: Here Supreme Court did not follow the mandate of the remittal by accepting new legal arguments and deciding the case on grounds not included in the remittal. Supreme Court's dismissal of the complaint was reversed.

December 23, 2025

CIVIL PROCEDURE, FORECLOSURE.

DEFENDANTS' ATTENDANCE AT A MANDATORY SETTLEMENT CONFERENCE (CPLR 3408) IN THIS FORECLOSURE CASE DID NOT CONSTITUTE AN "APPEARANCE" IN THE ACTION; THEREFORE DEFENDANTS WERE NOT ENTITLED TO FIVE DAYS NOTICE (PURSUANT TO CPLR 3215 (G)) RE: PLAINTIFF'S MOTION FOR LEAVE TO ENTER A DEFAULT JUDGMENT (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Duffy, in a matter of first impression, determined defendants' attendance at a mandatory settlement conference in this foreclosure action did not constitute an "appearance" such that defendants were entitled to five-days notice of an application for leave to enter a default judgment:

The issue on appeal, an issue of first impression for this Court, is whether a party's attendance at a mandatory settlement conference pursuant to CPLR 3408 constitutes an appearance by a party for the purpose of CPLR 3215(g), which provides, among other things, that a party who has appeared in an action is entitled to at least five days' notice of an application for leave to enter a default judgment. * * * Supreme Court properly determined that the defendants had not appeared in the action and, thus, the five-day notice provision set forth in CPLR 3215(g) was not applicable with respect to the plaintiff's motion, inter alia, for leave to enter a default judgment against the defendants. HSBC Bank USA, N.A. v Saris, 2025 NY Slip Op 07287, Second Dept 12-24-25

Practice Point: A defendant's attendance at a mandatory settlement conference (CPLR 3408) is not an "appearance" in the action and does not entitle defendant to five days notice (pursuant to CPLR 3215 (g)) re: plaintiff's motion for leave to enter a default judgment.

December 24, 2025

CONTRACT LAW, REAL ESTATE.

PLAINTIFF'S SUBMISSIONS RAISED A QUESTION OF FACT WHETHER THE ORAL AGREEMENT THAT DEFENDANT WOULD BUY PLAINTIFF'S HOUSE FOR $40,000, OTHERWISE VOID UNDER THE STATUTE OF FRAUDS, WAS ENFORCEABLE BECAUSE IT WAS PARTIALLY PERFORMED (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined there was a question of fact whether part performance took the oral contract to purchase property out of the statute of frauds. Plaintiff allowed defendant to move in to plaintiff's vacant house. At some point, plaintiff and defendant entered an oral agreement that defendant would buy the house for $40,000:

… [P]laintiff submitted, inter alia, defendant's deposition testimony. Defendant testified that he and plaintiff were friends and that plaintiff allowed him to move into plaintiff's then-vacant home in 2019 with no agreement to pay rent. Sometime thereafter, the parties orally agreed that, over a period of three years, defendant would pay plaintiff $40,000 for the purchase of the home. Defendant was to pay $600 per month during the first year, and there was no specified payment schedule for the remainder of the term. Defendant made 12 monthly payments of $600 in the first year and thereafter made various lump-sum payments to plaintiff, for a total of $33,200. Defendant also tendered the funds to pay the outstanding balance, but plaintiff rejected that payment and commenced court proceedings. * * *

Although such an oral agreement would generally be unenforceable under the statute of frauds, which provides, inter alia, that a "contract for . . . the sale[ ] of any real property . . . is void unless the contract or some note or memorandum thereof, expressing the consideration, is in writing" … , an exception exists "in cases of part performance" … , i.e., where a party to an otherwise unenforceable oral agreement has partially performed under it. The exception is an equitable one, which recognizes that a party may "waive [the] protection [of the statute of frauds] . . . by inducing or permitting without remonstrance another party to the agreement to do acts, pursuant to and in reliance upon the agreement, to such an extent and so substantial in quality as to irremediably alter [the] situation and make the interposition of the statute against performance a fraud" … . Importantly, "[t]he

[part] performance must be unequivocally referable to the agreement" … . Dacko v Kiladze, 2025 NY Slip Op 07165, Fourth Dept 12-23-25

Practice Point: Part performance of an oral contract to buy real estate may render the otherwise void contract enforceable.

December 23, 2025

CRIMINAL LAW, FAMILY LAW, APPEALS, JUDGES, EVIDENCE.

ALTHOUGH THE 16-YEAR-OLD DEFENDANT IN THIS MURDER CASE WAS LIABLE AS AN ACCOMPLICE, ACCOMPLICE-LIABILITY STANDING ALONE DOES NOT PRECLUDE REMOVAL TO FAMILY COURT; A GUILTY PLEA DOES NOT FORFEIT AN APPELLATE CHALLENGE TO THE DENIAL OF REMOVAL; THE WAIVER OF APPEAL WAS INVALID BECAUSE IT PURPORTED TO FORECLOSE ALL APPELLATE CHALLENGES (FOURTH DEPT).

The Fourth Department, vacating defendant's guilty plea, over a two-justice dissent, determined (1) defendant's waiver of appeal was invalid because it purported to foreclose all appellate challenges; and (2) the statutory procedure for removing the 16-year-old defendant's prosecution to Family Court was violated. The fact that defendant was charged as an accomplice in this carjacking/murder case did not disqualify the defendant from the removal procedure. Once the removal procedure is started, the People have 30 days to demonstrate removal is not appropriate. The majority disagreed with the dissent's argument that the "removal-to-Family-Court-issue" was forfeited by defendant's guilty plea:

Defendant orally waived his right to appeal and executed a written waiver thereof. The language in the written waiver, however, is "inaccurate and misleading insofar as it purports to impose 'an absolute bar to the taking of a direct appeal' and to deprive defendant of his 'attendant rights to counsel and poor person relief, [as well as] all postconviction relief separate from the direct appeal' " … . * * *

Defendant contends that the court erred in concluding that the People established by a preponderance of the evidence that defendant "caused significant physical injury to a person other than a participant in the offense" (CPL 722.23 [2] [c] [i]) and that defendant was therefore disqualified from having the matter transferred to Family Court. Initially, we respectfully disagree with our dissenting colleagues that defendant's contention is forfeited by his guilty plea. It is undisputed that a guilty plea does not "extinguish every claim on appeal" and that the issues that are not forfeited by the plea generally "relate either to jurisdictional matters . . . or to rights of a constitutional dimension that go to the very heart of the process" … . * * *

The plain language of CPL 722.23 (2) (c) supports the conclusion that the Legislature did not intend for the circumstances disqualifying an adolescent offender from removal to Family Court to be coextensive with criminal liability, including principles of accessorial liability, for a statutorily designated violent crime. Indeed, such a result could have been achieved by disqualifying adolescent offenders based solely on the crime charged without reference to any further factors. People v Jacobs, 2025 NY Slip Op 07124, Fourth Dept 12-23-25

Practice Point: Here the 16-year-old defendant should not have been denied removal to Family Court solely based on accomplice liability for murder. The right to challenge the denial of removal was not forfeited by defendant's guilty plea. The waiver of appeal was invalid because it purported to foreclose all appellate challenges.

December 23, 2025

CRIMINAL LAW, JUDGES, ATTORNEYS, CONSTITUTIONAL LAW.

DEFENDANT'S WAIVER OF HIS RIGHT TO COUNSEL WAS NOT KNOWING, INTELLIGENT AND VOLUNTARY; NEW HEARINGS AND TRIAL ORDERED; CRITERIA EXPLAINED IN SOME DETAIL (FIRST DEPT).

The First Department, ordering new hearings and a new trial, determined defendant's waiver of his right to counsel was not knowing, voluntary and intelligent:

Defendant's criminal history, which included drug possession and sale convictions dating back to 1992, and his in-court remarks regarding his history of substance abuse issues and present drug use constituted a "red flag" which should have triggered at least a brief inquiry into defendant's mental capacity and comprehension of the proceedings … . The record also does not "affirmatively disclose" that the court "delved into [] defendant's age, education, occupation, previous exposure to legal procedures and other relevant factors bearing on a competent, intelligent, voluntary waiver" … . As the trial judge was only assigned to defendant's case about a month before trial, this was not a case where the judge "had numerous opportunities to see and hear defendant firsthand" to evaluate his knowledge and familiarity with the criminal justice system … .

Moreover, the court's colloquy did not "accomplish the goals of adequately warning a defendant of the risks inherent in proceeding pro se, and apprising a defendant of the singular importance of the lawyer in the adversarial system of adjudication" … . Although defendant correctly recited the charges against him, he also suggested that he could get convicted of additional charges, and the record does not reflect that he was ever informed of the potential aggregate sentence he faced after trial … . The court reminded defendant that he was "not trained as a lawyer" and did not "understand about cross-examination," so it was "dangerous" and not in his best interests to proceed pro se; these "brief, generalized warnings do not satisfy the requirement for a searching inquiry" … . "The court failed to warn defendant about the numerous pitfalls of representing himself before and at trial, such as unfamiliarity with legal terms, concepts, and case names; the potential challenges of cross-examining witnesses and delivering an opening statement and summation as a pro se criminal defendant" … . People v Rivera, 2025 NY Slip Op 07231, First Dept 12-23-25

Practice Point: Consult this decision for insight into what a judge must explain to a defendant seeking to waive the right to counsel.

December 23, 2025

CRIMINAL LAW, EVIDENCE, CONSTITUTIONAL LAW, JUDGES.

EVERY STATEMENT DEFENDANT MADE AFTER HE TOLD THE OFFICERS "I AIN'T GOT NOTHING TO TALK ABOUT" SHOULD HAVE BEEN SUPPRESSED (FOURTH DEPT).

The Fourth Department, vacating defendant's guilty plea, determined defendant had unequivocally asserted his right to remain silent and all statements defendant made thereafter should have been suppressed:

After defendant indicated that he understood [the Miranda] rights, the officer asked whether defendant would agree to waive them and speak to the officer. Defendant did not respond in the affirmative. Instead, he said, "I ain't got nothing to talk about. I just want to go to jail. I want to go to sleep." * * *

… [D]efendant said in no uncertain terms that he did not want to talk to the officer and instead wanted to be taken to jail … , and "[n]o reasonable police officer could have interpreted that statement as anything other than a desire not to talk to the police" … . The officer nevertheless continued to ask defendant questions that were "reasonably likely to elicit an incriminating response" … . Under the circumstances, we conclude that the court's determination that defendant did not unequivocally invoke his right to remain silent is "unsupported by the record" … . People v Williams, 2025 NY Slip Op 07158, Fourth Dept 12-23-25

Practice Point: If a defendant tells the police "I ain't got nothing to talk about" and the police continue questioning him, that is a Miranda violation requiring suppression.

December 23, 2025

CRIMINAL LAW, EVIDENCE.

THE DEFENDANT DROVE THE SHOOTER TO AND AWAY FROM THE MURDER SCENE; BUT THERE WAS NO EVIDENCE DEFENDANT SHARED THE SHOOTER'S INTENT TO KILL; DEFENDANT'S MURDER CONVICTION AS AN ACCOMPLICE WAS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE AND WAS AGAINST THE WEIGHT OF THE EVIDENCE (FOURTH DEPT).

The Fourth Department, reversing defendant's murder conviction and dismissing the indictment, determined the evidence that defendant drove to shooter to various locations, including the scend of the murder, there was no evidence defendant shared the shooter's intent. Therefore the evidence was legally insufficient and the conviction was against the weight of the evidence:

… [A] "… defendant's presence at the scene of the crime, alone, is insufficient for a finding of criminal liability" … . Indeed, evidence that a defendant was at the crime scene and even assisted the perpetrator in removing evidence of that crime is insufficient to support a defendant's conviction where the People fail to offer evidence from which the jury could rationally exclude the possibility that the defendant was without knowledge of the perpetrator's intent … . … Here, we have no difficulty concluding, based on the video evidence showing defendant picking up the codefendant immediately after the shots were fired and speeding away from the scene, that there is a valid line of reasoning and permissible inferences by which the jury could have found that defendant intentionally aided the codefendant after the murder, but we cannot conclude that there is legally sufficient evidence to support the inference that defendant shared the codefendant's intent to kill the victim … . … [T]here was no evidence at trial establishing that defendant and the codefendant had any conversations pertaining to the shooting of the victim; indeed, there is hardly any evidence establishing that defendant and the codefendant had much, if any interaction with each other before the day of the murder. Consequently, we conclude that the evidence was insufficient to establish that defendant was aware of, and shared, the codefendant's intent to kill the victim … . People v Scott, 2025 NY Slip Op 07167, Fourth Dept 12-23-25

Practice Point: To be guilty of murder as an accomplice, there must be proof defendant shared the killer's intent. Here there was proof the defendant drove the shooter to the murder scene and drove the shooter away from the murder scene. But there was no evidence defendant was aware of the shooter's plan to kill, or even that the shooter was armed. Indictment dismissed.

December 23, 2025

CRIMINAL LAW, JUDGES, ATTORNEYS.

DEFENDANT WAS NOT COERCED INTO PLEADING GUILTY; THE JUDGE'S DESCRIBING THE POSSIBLE RANGE OF SENTENCING, PLEADING GUILTY TO AVOID A HARSHER SENTENCE, THE JUDGE'S COMMENTING ON THE STRENGTH OF THE PEOPLE'S CASE, AND COUNSEL'S TELLING DEFENDANT THE SENTENCE WOULD LIKELY BE HARSHER AFTER TRIAL, DID NOT AMOUNT TO "COERCION" (FOURTH DEPT).

The Fourth Department, affirming defendant's conviction, over a dissent, determined defendant's guilty plea was knowing, intelligent and voluntary, the dissent disagreed:

[D]espite the court's initial inclination to end the plea proceeding and allow the matter to proceed to trial and its indication that it could not accept a plea that was not voluntary, the court continued with the plea proceeding after defendant emphatically insisted that the plea "is voluntary . . . is voluntary . . . is voluntary" and that the court was not pressuring him. Defendant was given another opportunity to consult with defense counsel and then indicated that he wanted to proceed with the plea, and the court thereafter asked again whether defendant, with intent to cause serious physical injury, did in fact cause such injury to the victim by repeatedly stabbing her, to which defendant answered in the affirmative. The court then followed up one more time by asking defendant whether he was telling the truth when he answered that prior question, to which defendant again responded in the affirmative. Therefore, contrary to the dissent's suggestion that the law required

more of the court, the record reflects that the court "properly conducted such [a further] inquiry and that defendant's responses to the court's subsequent questions removed [any] doubt about [his] guilt" with respect to the previously negated elements of assault in the first degree … . …

n any event, we conclude that defendant's challenge to the voluntariness of the plea lacks merit. Indeed, defendant's contention that the court coerced him into accepting the plea is belied by the record because, during the plea colloquy, defendant denied that he had been threatened or otherwise pressured into pleading guilty and, moreover, defendant specifically denied that the court had pressured him into taking a plea … . Further, contrary to defendant's assertion, "[a]lthough it is well settled that '[a] defendant may not be induced to plead guilty by the threat of a heavier sentence if [the defendant] decides to proceed to trial,' " we conclude that the statements made by the court " 'amount to a description of the range of the potential sentences' rather than impermissible coercion" … . The fact that defendant " 'may have pleaded guilty to avoid receiving a harsher sentence does not render his plea coerced' " … . Likewise, contrary to defendant's assertion, we conclude on this record that the court "did not coerce defendant into pleading guilty merely . . . by commenting on the strength of the People's evidence against him" … . Contrary to defendant's related assertion, we conclude that "defense counsel's advice that [defendant] was unlikely to prevail at trial and that he would likely receive a harsher sentence if convicted after trial . . . does not constitute coercion" … . People v Freeman, 2025 NY Slip Op 07125, Fourth Dept 12-23-25

Practice Point: Consult this decision for insight into what does and does not amount to "coercion" in the context of a guilty plea.

December 23, 2025

FAMILY LAW, CIVIL PROCEDURE, EVIDENCE.

THE FACT THAT THE CHILD LIVED WITH THE GRANDMOTHER FOR FOUR YEARS WAS AN "EXTRAORDINARY CIRCUMSTANCE" WHICH AFFORDED GRANDMOTHER STANDING TO SEEK CUSTODY (FOURTH DEPT).

The Fourth Department, reversing Family Court, determined grandmother had demonstrated "extraordinary circumstances" such that she had standing to seek custody:

… [T]he grandmother met her burden of demonstrating other extraordinary circumstances with respect to both the mother and the father. The Court of Appeals has explained that "[i]n the absence of 'surrender, abandonment, persisting neglect, unfitness or other like extraordinary circumstances', a parent may not be denied custody" … . Consistent with that principle of law, we have determined that "an extended disruption of custody as defined in [the statute] is merely 'a specific example of extraordinary circumstances' . . . and the statute was 'not intended to overrule existing case law relating to third parties obtaining standing in custody cases' " … .

In determining whether extraordinary circumstances exist, "[n]o one factor should be viewed in isolation . . . , but rather the 'analysis must consider the cumulative effect of all issues present in a given case . . . , including, among others, the length of time the child has lived with the nonparent, the quality of that relationship and the length of time the . . . parent allowed such custody to continue without trying to assume the primary parental role' " … .

Here, we conclude that there are " 'other like extraordinary circumstances' " that give the grandmother standing to seek custody of the child … . Extraordinary circumstances arise from the fact that the now-six-year-old child has resided exclusively with the grandmother since she was two years old, the mother was incapable of caring for the child due to mental illness, and the father has not been significantly involved in the child's life since birth. The father has had limited and sporadic visitation with the child and has never had the child with him overnight. He has not attended school events or medical appointments. Nor has he paid child

support to either the mother or the grandmother. Finally, the child is emotionally attached to the grandmother and her half-brother, who has also been raised by the grandmother … . Matter of Morris v Smith, 2025 NY Slip Op 07133, Fourth Dept 12-23-25

Practice Point: Consult this decision for insight into the "extraordinary circumstances" which will afford a nonparent standing to seek custody. Here the fact that the child had resided with grandmother for four years was deemed such an "extraordinary circumstance."

December 23, 2025

INSURANCE LAW, CONTRACT LAW, EVIDENCE.

A CERTIFICATE OF INSURANCE NAMING A PARTY AS AN ADDITIONAL INSURED IS EVIDENCE THAT THERE IS A CONTRACT TO THAT EFFECT, BUT IT IS NOT CONCLUSIVE PROOF OF THE EXISTENCE OF A CONTRACT AND WILL NOT SUPPORT SUMMARY JUDGMENT ON THE ISSUE (SECOND DEPT).

The Second Department noted that identifying a party as an additional insured on a certificate of insurance is evidence of a contract naming that party as an additional insured, but only the contract itself constitutes definitive proof of additional-insured status:

"A certificate of insurance is evidence of a contract for insurance, but is not conclusive proof that the contract exists and not, in and of itself, a contract to insure" … . [There was no proof of] a specific agreement … to name [plaintiff] School District as an additional insured. Accordingly, the Supreme Court properly denied that branch of the School District's motion which was for summary judgment declaring that One Beacon is obligated to defend and indemnify it as an additional insured in the underlying action … . Island Trees Union Free Sch. Dist. v A 1 Constr. Serv., Inc, 2025 NY Slip Op 07289, Second Dept 12-24-25

Practice Point: A certificate of insurance naming a party as an additional insured is evidence there is a contract to that effect, but, without the contract, the certificate will not support summary judgment on the issue.

December 24, 2025

LABOR LAW-CONSTRUCTION LAW, NEGLIGENCE, EVIDENCE.

HERE THE OWNER AND GENERAL CONTRACTOR DEMONSTRATED THEY DID NOT EXERCISE SUPERVISION AND CONTROL OVER THE WORK PLAINTIFF WAS DOING WHEN INJURED; THEREFORE THE LABOR LAW 200 AND COMMON LAW NEGLIGENCE CAUSES OF ACTION AGAINST THEM SHOULD HAVE BEEN DISMISSED; THE COURT NOTED THAT THE RIGHT TO GENERALLY SUPERVISE THE WORK OR TO STOP THE WORK FOR SAFETY VIOLATIONS DOES NOT CONSTITUTE "SUPERVISION AND CONTROL" OF THE WORK WITHIN THE MEANING OF LABOR LAW 200 OR COMMON LAW NEGLIGENCE (SECOND DEPT).

The Second Department, dismissing the Labor Law 200 and negligence causes of action against the owner and general contractor, noted that the right to generally supervise the work, to stop the work for a safety violation or to ensure compliance with safety regulations does not amount to the level of supervision and control of the work for liability under Labor Law 200. Plaintiff worked for a subcontractor and was injured while attempting to guide a heavy concrete object as it was lowered into a hole by a crane:

"The right to generally supervise the work, to stop the work if a safety violation is noted, or to ensure compliance with safety regulations does not amount to the supervision and control of the work necessary to impose liability on an owner or a general contractor pursuant to Labor Law § 200" … . Here, … defendants established … that the alleged incident arose from work performed over which they did not exercise supervision or control … . Kelly v RBSL Realty, LLC, 2025 NY Slip Op 07291, Second Dept 12-24-25

Practice Point: In the context of the requirements for Labor Law 200 and common law negligence liability for construction accidents, the owner's and/or general contractor's right to generally supervise the work and/or to stop the work for safety violations does not amount to "supervision and control" of the work.

December 24, 2025

MUNICIPAL LAW, IMMUNITY, MEDICAL MALPRACTICE.

THE TOWN AMBULANCE PARAMEDICS DECIDED NOT TO TAKE PLAINTIFF'S DECEDENT TO THE HOSPITAL; THAT DECISION WAS DISCRETIONARY IN NATURE ENTITLING THE TOWN TO GOVERNMENTAL FUNCTION IMMUNITY IN THIS MED MAL ACTION (FOURTH DEPT).

The Fourth Department, reversing (modifying) Supreme Court, determined the town defendants were entitled to immunity for the actions of the two ambulance paramedics who decided against taking the decedent to the hospital:

"A municipality is immune from liability where the actions of its employees in performing governmental functions involve[ ] the exercise of discretion" … . "[A]mbulance assistance rendered by first responders . . . should be viewed as a classic governmental, rather than proprietary, function" … .

"[D]iscretionary . . . acts involve the exercise of reasoned judgment which could typically produce different acceptable results whereas a ministerial act envisions direct adherence to a governing rule or standard with a compulsory result" … . As the First Department recently made clear, "a generally uniform approach in assessment and care does not change the discretionary nature" of a first responder's actions or the governmental function they provide … . Under the circumstances presented here, we conclude that the Town defendants established that Rutenkroger's and Rice's actions were discretionary and, thus, the Town defendants are entitled to governmental function immunity. Indeed, plaintiff's contentions pertain "to the quality of the care rendered by [Rutenkroger and Rice and,] even if such decisions prove to be erroneous, they do not cast the [Town] in

damages" … . We further note that, "[b]ecause the actions of the [Town's employees] were discretionary, this Court need not address the issue of whether a special duty was owed to [decedent]" … . Gumkowski v Schwaab, 2025 NY Slip Op 07139, Fourth Dept 12-23-25

Practice Point: Consult this decision for insight into the difference between discretionary and ministerial actions by government personnel. Here the town was immune from liability in this med mal case because the town ambulance paramedics' determination that plaintiff's decedent did not need to be taken to the hospital was a discretionary action (governmental function immunity).

December 23, 2025

NEGLIGENCE, CIVIL PROCEDURE, EVIDENCE.

LAWSUIT ALLEGING NONCONSENSUAL SEXUAL TOUCHING PURSUANT TO THE ADULT SURVIVORS ACT (CPLR 214-J) NEED NOT ALLEGE PLAINTIFF'S INTIMATE PARTS WERE TOUCHED BY THE DEFENDANT TO STATE A CAUSE OF ACTION; IT IS ENOUGH THAT THE COMPLAINT ALLEGE PLAINTIFF WAS TOUCHED UNDER CIRCUMSTANCES WHICH AFFORDED THE DEFENDANT SEXUAL GRATIFICATION (SECOND DEPT).

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice Wilson, in a matter of first impression, determined that a complaint under the Adult Survivors Act (CPLR 214-j) need not allege the defendant touched plaintiff's intimate parts to state a cause of action for nonconsensual sexual touching. Here defendant, a doctor, allegedly touched plaintiff's lower back while she was undressed and standing on a step stool facing away from the defendant to determine whether her kidneys were causing lower back pain. Although defendant did not touch plaintiff's intimate parts, it was alleged the examination was motivated by sexual gratification:

The Adult Survivors Act (ASA) (CPLR 214-j) is a statute that permits adult survivors of sexual abuse to revive otherwise time-barred civil actions against

alleged abusers arising from, among other things, conduct that would constitute a sexual offense under Penal Law article 130. The offense of forcible touching under Penal Law § 130.52(1) requires that there be a nonconsensual touching of "sexual or other intimate parts" of another person for the purpose of degradation or abuse of such person or for the purpose of gratifying the actor's sexual desire. The offense of sexual abuse in the third degree under Penal Law § 130.55 requires nonconsensual "sexual contact." This appeal provides our Court with an opportunity to address an issue of first impression in this judicial department regarding how narrow, or broad, we should construe the elemental concepts of sexual touching and sexual contact under the ASA. We hold that where, as here, the alleged nonconsensual touching or sexual contact was to a part of the body other than an anatomically sexual part, in the classic sense, these Penal Law offenses may still qualify as a predicate for an action pursuant to the ASA if the broader facts, manner, and circumstances of the touching or sexual contact involve intimacy or the alleged sexual gratification of the abuser. Aguilar v Wishner, 2025 NY Slip Op 07265, Second Dept 12-24-25

Practice Point: Here the complaint alleged defendant, a doctor, touched plaintiff's lower back during a physical examination under circumstances which afforded defendant sexual gratification. That was sufficient to state a cause of action under the Adult Survivor's Act. Under the Act, a plaintiff need not allege defendant touched plaintiff's intimate parts.

December 24, 2025

NEGLIGENCE, EDUCATION-SCHOOL LAW, EVIDENCE, FAMILY LAW, MUNICIPAL LAW, CIVIL PROCECURE.

IN THIS CHILD VICTIMS ACT CASE, DEFENDANT COUNTY, WHICH HAD ASSUMED CUSTODY OF PLAINTIFF FOSTER CHILD, PLACED PLAINTIFF IN DEFENDANT SCHOOL WHERE SHE ALLEGEDLY WAS SEXUALLY ABUSED BY A TEACHER DAILY FOR SIX MONTHS; THE ALLEGED FREQUENCY OF THE ABUSE RAISED A QUESTION OF FACT WHETHER DEFENDANTS HAD CONSTRUCTIVE NOTICE OF IT (SECOND DEPT).

he Second Department, reversing Supreme Court, determined this Child Victims Act (CPLR 214-g) action against the county and a school should not have been dismissed. The county had assumed custody over plaintiff, a foster child, and placed her in defendant school. Plaintiff alleged she was sexually abused by a teacher daily for six months. The alleged frequency of the abuse raised a question of fact whether defendants should have known of the abuse (constructive notice):

"By assuming legal custody over [a] foster child, the applicable government official steps in as the sole legal authority responsible for determining who has daily control over the child's life" … . Therefore, "a municipality owes a duty to a foster child over whom it has assumed legal custody to guard the child from foreseeable risks of harm arising from the child's placement with the municipality's choice of foster [home]" … . "In order to find that a child care agency breached its duty to adequately supervise the children entrusted to its care, a plaintiff must establish that the agency had sufficiently specific knowledge or notice of the dangerous conduct which caused injury; that is, that the third-party acts could reasonably have been anticipated" … . "Where the complaint alleges negligent supervision due to injuries related to an individual's [*2]intentional acts, the plaintiff generally must allege that the entity knew or should have known of the individual's propensity to engage in such conduct, such that the individual's acts could be anticipated or were foreseeable" … . M.F. v Putnam County, 2025 NY Slip Op 07283, Second Dept 12-24-25

Practice Point: In Child Victims Act cases alleging sexual abuse by a teacher, courts are finding that allegations of frequent abuse raise a question of fact about whether defendants should have been aware of it.

December 24, 2025

NEGLIGENCE, VEHICLE AND TRAFFIC LAW, MUNICIPAL LAW.

ALTHOUGH THE OFFICER WAS RESPONDING TO AN EMERGENCY WHEN PLAINTIFF'S VEHICLE WAS STRUCK, PLAINTIFF RAISED A QUESTION OF FACT WHETHER THE OFFICER ACTED WITH RECKLESS DISREGARD FOR THE SAFETY OF OTHERS; SPECIFICALLY QUESTIONS WERE RAISED ABOUT THE EXCESSIVE SPEED OF THE POLICE VEHICLE AND WHETHER THE SIREN WAS ON AS REQUIRED BY DEPARTMENT POLICY (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined the defendant city was not entitled to summary judgment dismissing this action stemming from plaintiff's vehicle being struck by a police vehicle responding to an emergency. Plaintiff raised a question of fact whether the police officer's conduct rose to the level of reckless disregard for the safety of others. The officer drove in the oncoming lane of traffic where plaintiff was attempting a left turn:

The "reckless disregard standard demands more than a showing of a lack of due care under the circumstances—the showing typically associated with ordinary negligence claims . . . Rather, for liability to be predicated upon a violation of Vehicle and Traffic Law § 1104, there must be evidence that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome" … . Although the reckless disregard standard is a heightened standard compared to ordinary negligence, it "retains and recognizes the potential for liability as a protection for the general public against disproportionate, overreactive conduct" … . * * *

… [P]laintiff's submissions raise questions of fact as to the speed at which the officer's vehicle was traveling at the time of the accident and whether the officer was operating the siren in his vehicle, which would have been required by department policy … . Gwathney v City of Buffalo, 2025 NY Slip Op 07175, Fourth Dept 12-23-25

Practice Point: Here in this police-emergency-traffic-accident case, questions of fact about the speed of the police vehicle (in the oncoming lane where plaintiff was attempting a left turn) and whether the siren was on as required by department policy precluded summary judgment.

December 23, 2025