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An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released January 26 – 30, 2026, and Posted on the New York Appellate Digest Website on Monday, February 2, 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.

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The First Department, reversing Supreme Court, determined petitioner became aware that the Section 8 rent subsidy benefits were terminated in December 2019 triggering the four-month statute of limitations for challenging the termination. Therefore petitioner's 2024 article 78 petition was time-barred:

The four-month statute of limitations applies to proceedings terminating Section 8 benefits, and it begins to run upon tenant's receipt of the T3 letter advising the tenant of that termination (see CPLR 217[1] …). The statute of limitations may be triggered in the absence of actual notice where, as here, the party knew or should have known about the determination … . The record shows petitioner had actual notice in December 2019, so the statutory limitation period to challenge termination of her subsidy started no later than December 31, 2019, and expired on April 30, 2020, well before she commenced the instant proceeding. Matter of Cruz v New York City Hous. Auth. (NYCHA), 2026 NY Slip Op 00420, First Dept 1-29-26

Practice Point: The statute of limitations for bringing an article 78 petition challenging the termination of section 8 rent-subsidy benefits starts when the tenant receives the T3 letter or when the tenant knew or should have known about the termination.

January 29, 2026

CIVIL PROCEDURE, FORECLOSURE, APPEALS.

MEASUREMENT OF THE SIX-MONTH GRACE PERIOD FOR THE FILING OF A NEW ACTION AFTER DISMISSAL (WHICH WOULD OTHERWISE BE TIME-BARRED) PURSUANT TO CPLR 205(A) AND CPLR 205-A CLARIFIED IN AN OPINION (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Dillon, clarified how the six-month grace period for filing a new action after dismissal (CPLR 205(a) and 205-a) is measured:

This appeal provides our Court with an occasion to resolve some inconsistencies in decisional authority regarding the timing of the termination event from which the six-month grace period under CPLR 205(a) and 205-a are measured. Under certain circumstances, both statutes permit the plaintiff a six-month window to recommence an action that otherwise would be untimely, measured from the "termination" of a prior action. Is the termination of the prior action the date an order of dismissal is executed by the court, the date the order of dismissal is entered with the clerk, or the date that the order of dismissal is served upon other parties with notice of entry? Is the termination of the prior action delayed 30 days for the potential filing of a notice of appeal pursuant to CPLR 5513(a) or a motion for leave to reargue pursuant to CPLR 2221(d), and further delayed by the appellate process when an actual appeal is undertaken, or is there no termination of the prior action until a final judgment is entered or served with notice of entry? The answer to these questions may make a crucial mathematical difference to the timeliness or untimeliness of actions commenced within or without the six-month grace periods under CPLR 205-a and 205(a). We conclude, for reasons stated below, that when no appeal is taken by a party from an order of dismissal, the six-

month period for recommencing an action under CPLR 205-a, and by extension under CPLR 205(a), begins to run once 30 days have elapsed following service of the order of dismissal with notice of entry. HSBC Bank USA, N.A. v Hillaire, 2026 NY Slip Op 00353, Second Dept 1-28-26

Practice Point: Consult this opinion for a definitive discussion of how the six-month grace periods for the filing of a new otherwise time-barred action after dismissal pursuant to CPLR 205(a) and 205-a are measured.

January 28, 2026

CIVIL PROCEDURE, JUDGES.

ONCE THE JUDGE DETERMINED THERE WERE NECESSARY PARTIES WHICH WERE NOT JOINED, THE JUDGE SHOULD NOT HAVE DECIDED THE MOTION FOR A DEFAULT JUDGMENT; THE NECESSARY PARTIES SHOULD HAVE BEEN IDENTIFIED AND SUMMONED IF POSSIBLE; MATTER REMITTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the judge should not have ruled on the motion for a default judgment without first identifying the necessary parties to the action (after concluding there in fact were necessary parties who were not joined):

"[N]ecessary parties are persons who might be inequitably affected by a judgment in the action and must be made plaintiffs or defendants" … . "CPLR 1001(b) requires the court to order the necessary party or parties summoned, where they are subject to the court's jurisdiction, and '[i]f jurisdiction over such necessary parties can be obtained only by their consent or appearance, the court is to determine, in accordance with CPLR 1001(b), whether justice requires that the action proceed in their absence'" … . "The nonjoinder of necessary parties may be raised at any stage of the proceedings, by any party or by the court on its own motion, including for the first time on appeal" … .

Here, it was premature for the Supreme Court to make a determination on the plaintiff's motion, among other things, for leave to enter a default judgment against

the defendants without first identifying the necessary parties to the action … . After the court concluded that there existed necessary parties to the action, the court … should have ascertained the identity of those parties, whether they can be joined, and, if not, whether the action should proceed in the absence of any necessary parties pursuant to CPLR 1001(b) … . Under the circumstances of this case, "'the questions of whether there are any . . . necessary parties who should be joined in this action and, if so, the appropriate procedural disposition for effecting joinder should not be determined by this court in the first instance'" … . Accordingly, we remit the matter to the Supreme Court, Queens County, to hold a hearing to determine whether there are any necessary parties who should be joined in this action and, if so, to compel their joinder, subject to any affirmative defenses, and if joinder cannot be effectuated, to determine, pursuant to CPLR 1001(b), whether the action should proceed in the absence of any necessary parties. Hossain v Rahman, 2026 NY Slip Op 00352, Second Dept 1-28-26

Practice Point: Consult this decision for insight into to proper procedure which should be followed by a judge when there are necessary parties which have not been joined.

January 29, 2026

CIVIL PROCEDURE, JUDGES.

THE SIX-MONTH GRACE PERIOD FOR FILING A NEW ACTION AFTER DISMISSAL (CPLR 205 (A)) DOES NOT APPLY IF THE UNDERLYING STATUTE OF LIMITATIONS FOR THE ACTION HAS NOT RUN; PLAINTIFF WAS FREE TO COMMENCE ANOTHER ACTION AFTER DISMISSAL ANYTIME WITHIN THE STATUTE-OF-LIMITATIONS PERIOD (FIRST DEPT).

The First Department, reversing Supreme Court, determined the complaint should not have dismissed because the action wasn't recommenced within six months of dismissal (CLPR 205 (a)) because the statute of limitations on the underlying cause of action had not run. The six months grace period in CPLR 205 (a) only applies when the statute has run:

… CPLR 205(a) does not apply because "[w]here, as here, the statutory time limit has not expired . . . [CPLR 205(a)] cannot be applied in such a way as to shorten the period otherwise available to the plaintiff" … . The alleged slip and fall took place on August 24, 2021, and plaintiff filed the prior action on April 5, 2022, which was then dismissed by order entered on or about December 7, 2023. Plaintiff then refiled the instant complaint on August 21, 2024, within the three-year statute of limitations for his personal injury claim.

Nor is the refiled complaint barred by the doctrine of res judicata because the order dismissing plaintiff's prior action was not on the merits … . Defendants moved to dismiss the prior action for failure to respond to discovery demands. Plaintiff did not oppose the motion, which was granted "without opposition," and with no indication that the dismissal was on the merits or with prejudice. Supreme Court was without authority to revise the prior order by adding the words "with prejudice" because that revision substantively changes the prior order … . … [P]laintiff was not required to contest the dismissal of the prior action before commencing this action … . Hermina v 2050 Valentine Ave., LLC, 2026 NY Slip Op 00316, First Dept 1-27-26

Practice Point: The six-month grace period for filing a new action after dismissal (CPLR 205 (a)) only applies if the statute of limitations has run.

January 27, 2026

CRIMINAL LAW, JUDGES, APPEALS, CONSTITUTIONAL LAW.

THE PROBATION-CONDITION REQUIRING DEFENDANT TO PAY THE MANDATORY SURCHARGE AND COURT FEES WAS STRUCK BECAUSE DEFENDANT IS INDIGENT; THE FACIAL CONSTITUTIONAL CHALLENGES TO PROBATION CONDITIONS WERE NOT PRESERVED (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined (1) the challenge to the probation condition that defendant pay the mandatory surcharge and court fees survives the waiver of appeal; (2) the condition should be struck

because defendant is indigent; (3) the facial constitutional challenges to probation conditions were not preserved:

In determining whether a condition is reasonably necessary and related to a defendant's rehabilitation, the Court must consider the particular circumstances of a defendant's case … .

Defendant, who is indigent and a first-time offender, has only sporadic income and otherwise has been supported by his mother. Under these circumstances, the requirement that he pay a total of $375 in surcharges and fees as a condition of probation "will not assist in ensuring [that] he leads a law-abiding life and is not reasonably related to his rehabilitation" … . Accordingly, that condition is stricken. People v Acosta, 2026 NY Slip Op 00324, First Dept 1-27-26

Practice Point: The probation-condition requiring payment of the mandatory surcharge and court fees should not have been imposed on this indigent defendant.

January 27, 2026

CRIMINAL LAW, JUDGES, APPEALS, CONSTITUTIONAL LAW.

TWO IRRELEVANT PROBATION CONDITIONS STRUCK, NON-CONSTITUTIONAL CHALLENGES TO PROBATION CONDITIONS NEED NOT BE PRESERVED; FACIAL CONSTITUTIONAL CHALLENGES SURVIVE A WAIVER OF APPEAL BUT MUST BE PRESERVED; AS-APPLIED CONSTITUTIONAL CHALLENGES ARE PRECLUDED BY THE WAIVER OF APPEAL (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined (1) non-constitutional challenges to probation conditions need not be preserved for appeal; (2) although the facial constitutional challenges to probation conditions survive a waiver of appeal, they were not preserved for appeal; (3), the as-applied constitutional challenges are precluded by the waiver of appeal; and (4) two probation conditions must be struck as not relevant to defendant's criminal history or personal life. In addition, the decision identifies several probation conditions which were deemed properly imposed in this drug-possession case:

At the time of his arrest, defendant possessed 100 glassines of heroin and 50 vials of crack cocaine. Accordingly, the sentencing court providently deemed it "reasonably necessary" to order defendant to "[a]void injurious or vicious habits; refrain from frequenting unlawful or disreputable places; and . . . not consort with disreputable people" "to insure that the defendant will lead a law-abiding life or to assist him to do so" … . Based on defendant's selling of heroin, the court also properly ordered him to "[w]ork faithfully at a suitable employment or pursue a course of study or vocational training … that can lead to suitable employment" and to "[s]ubmit proof of such employment, study or training … . For the same reason, the court providently required defendant to submit to testing for alcohol and illegal substances and to participate in substance abuse programming … . …

There is … no evidence to support requiring defendant, who has no children, to "[s]upport dependents and meet other family responsibilities" … . … [T]here is no evidence to support requiring defendant to "[r]efrain from wearing or displaying gang paraphernalia and having any association with a gang or members of a gang … ". People v Tompson, 2026 NY Slip Op 00325, First Dept 1-27-26

Practice Point: Consult this decision for insight into what probation conditions are appropriate for a drug-possession conviction.

Practice Point: Consult this decision for insight into the appealability of challenges to probation conditions.

January 27, 2026

CRIMINAL LAW, JUDGES.

DEFENDANT BASED HIS DECISION TO PLEAD GUILTY, IN PART, ON INACCURATE INFORMATION ABOUT HIS SENTENCING EXPOSURE; GUILTY PLEAS VACATED (FIRST DEPT).

The First Department, vacating defendant's guilty pleas, determined the misinformation provided to the defendant about his sentencing exposure rendered the pleas invalid:

Defendant was told that he faced the possibility of serving two consecutive 15-year sentences if he elected to go to trial. At most, however, he was facing 20 years because of the statutory cap (see Penal Law § 70.30 [1] [e] [i]). Unbeknown to him, he was weighing the benefit of a plea offer of 20 years when in reality, it was the maximum he would serve even if convicted after trial. Defendant was not told about the capping statute and therefore lacked a "full understanding of what his plea connotes and of its consequence" … . This is particularly true because defendant's guilty plea afforded him the exact sentence he would have served. The record is also clear that defendant remained conflicted about pleading guilty and sought to withdraw his plea.

The totality of the circumstances reflect that defendant's sentencing exposure played a decisive role in his decision to plead guilty, and his erroneous understanding that he faced 30 years in prison if he was convicted after trial had an "impact on [his] judgment" significant enough to render his guilty plea not knowing, voluntary and intelligent … . People v Ramos, 2026 NY Slip Op 00430, First Dept 1-29-26

Practice Point: Here defendant agreed to a 20-year sentence with the understanding he could be sentenced to 30 years after trial. In fact, his sentence after trial would be capped at 20 years. His guilty pleas were not knowing, voluntary and intelligent.

January 29, 2026

FAMILY LAW, CONTEMPT, ATTORNEYS, JUDGES, SOCIAL SERVICES LAW.

ADMINISTRATION FOR CHILDREN'S SERVICES PROPERLY HELD IN CIVIL CONTEMPT FOR FAILING TO COMPLY WITH AN ORDER TO PLACE THE CHILD IN TRADITIONAL FOSTER CARE (SECOND DEPT).

The Second Department, modifying Family Court, determined the petitioner (Administration for Children's Services) was properly held in civil contempt upon the motion of the attorney for the child for failure to comply with the court order to

place the child in a traditional foster home. However, the Second Department deemed the imposition of a fine of $250 per day inappropriate:

"'A motion to punish a party for civil contempt is addressed to the sound discretion of the motion court'" … . Upon a finding of civil contempt, "'Judiciary Law § 773 . . . provides for two types of awards: one where actual damage has resulted from the contemptuous act in which case an award sufficient to indemnify the aggrieved party is imposed, and one where the complainant's rights have been prejudiced but an actual loss or injury is incapable of being established'" … . "In the second situation, the fine is limited to $250, plus the complainant's costs and expenses" … . By contrast, "where there is actual loss or injury the statute does not provide for a general $250 fine, single or multiple. It calls instead for an assessment that will indemnify aggrieved parties" … .

Here, the Family Court correctly determined that the child had suffered actual injury as a result of the contemptuous act. * * *

* * * [T]he court should have imposed a "reasonably certain compensatory fine" that is "properly related to the scope of the injury" … .

… "'Accordingly, '[a]ny penalty imposed is designed not to punish but, rather, to compensate the injured private party or to coerce compliance with the court's mandate or both'" … . Under these circumstances, where the Family Court specifically invoked the petitioner's "inconsisten[cy] and carelessness," the fine of $250 per day of noncompliance appears to represent an improper attempt to punish the contemnor rather than compensate the injured party … . Matter of Emily M. (Joyce G.), 2026 NY Slip Op 00377, Second Dept 1-28-26

Practice Point: Here the Administration for Children's Services, upon the motion of the attorney for the child, was held in civil contempt for failing to comply with an order to place the child in traditional foster care.

January 28, 2026

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), EVIDENCE.

AT THE FORECLOSURE TRIAL, THE BANK DEMONSTRATED THE RPAPL 1304 NOTICE OF FORECLOSURE WAS SENT TO DEFENDANT BY CERTIFIED MAIL BUT FAILED TO PROVE THE NOTICE WAS ALSO SENT BY REGULAR MAIL; COMPLAINT DISMISSED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the proof of mailing of the RPAPL 1304 notice in this foreclosure action was insufficient:

"A plaintiff can establish strict compliance with RPAPL 1304 by submitting domestic return receipts, proof of a standard office procedure designed to ensure that items are properly addressed and mailed, or an affidavit from someone with personal knowledge that the mailing of the RPAPL 1304 notice actually happened" … . Here, although the certified mailing receipt bearing the defendant's signature upon delivery was sufficient to establish the mailing of one notice by certified mail … , the label submitted as proof of the regular first-class mailing, with no postage, no address of intended recipient, "no indicia of actual mailing such as postal codes and . . . [no] mailing receipts or tracking information" … , was insufficient to establish that the notice was actually mailed by regular first-class mail … . Since the plaintiff also failed to submit "proof of a standard office procedure designed to ensure that items are properly addressed and mailed," or testimony "from someone with personal knowledge that the mailing of the RPAPL 1304 notice actually happened" … , the plaintiff failed to establish its strict compliance with RPAPL 1304 at the nonjury trial … . Bank of N.Y. Mellon v Robustello, 2026 NY Slip Op 00340, Second Dept 1-28-26

Practice Point: The RPAPL 1304 notice of foreclosure requirements must be strictly complied with. Here, at trial, the bank proved the RPAPL 1304 notice was sent by certified mail and received by the defendant, but the bank failed to prove the RPAPL 1304 notice was also sent by regular mail. The complaint was dismissed.

January 28, 2026

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF WAS INJURED WHILE STANDING ON INSTALLED REBAR WHICH WOBBLED AS A CO-WORKER HANDED HIM A PIECE OF REBAR; HE DROPPED THE REBAR BUT GRABBED IT BEFORE IT FELL ANY FURTHER, INJURING HIS SHOULDER; INJURY WHILE ATTEMPTING TO PREVENT AN OBJECT FROM FALLING IS COVERED BY LABOR LAW 240(1) (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff was entitled to summary judgment on his Labor Law 240(1) cause of action. Plaintiff dropped a piece of rebar while standing on installed rebar which wobbled. The rebar fell about one foot before he grabbed it to keep it from falling further, injuring his shoulder. Injury from attempting to prevent an object from falling is covered by Labor Law 240(1):

Contrary to defendants' assertion otherwise, they are not entitled to summary judgment on the grounds that plaintiff did not fall and was not struck by a falling object … . On the contrary, liability under the statute may be imposed where, as here, a plaintiff can establish that their injury was caused by an attempt to catch something or prevent something from falling further … . The record establishes that plaintiff was injured in the act of trying to catch a falling piece of rebar, and that his injury may have been prevented had defendants supplied a proper hoist to safely transfer the rebar… . According to the evidence submitted, although a crane was sometimes used to transfer heavy rebar at the job site, no crane was available at the time.

… [D]efendants failed to establish that that the previously installed rebar, which was the sole platform available for plaintiff to stand on while his coworkers passed him the rebar from above, was stable and safe for plaintiff to be working on at an elevated height … . Alonzo v RP1185 LLC, 2026 NY Slip Op 00306, First Dept 1-27-26

Practice Point: Injury when attempting to prevent an object from falling is covered by Labor Law 240(1).

January 27, 2026

INSURANCE LAW, CONTRACT LAW.

EXCLUSIONS FROM COVERAGE IN AN INSURANCE POLICY ARE STRICTLY CONSTRUED AGAINST THE INSURER; HERE DAMAGE CAUSED BY "INTERIOR TILE" WORK WAS COVERED UNDER THE POLICY; IN PREPARING THE BATHROOM FLOOR FOR TILING THE INSURED USED WELDING EQUIPMENT WHICH CAUSED A FIRE; THE INSURER DID NOT DEMONSTRATE THE PREPARATORY WORK WAS NOT ENCOMPASSED BY THE COVERAGE FOR "INTERIOR TILE" WORK (FIRST DEPT).

The First Department, reversing Supreme Court, determined that plaintiff insurance company was, by the terms of the policy, obligated to cover property damage caused by defendant contractor, who was retained to refurbish a bathroom. The policy issued by plaintiff to defendant excluded from coverage any property damage caused by the defendant. There was an "exception to the exclusion" for "interior tile" work. In preparing the bathroom floor for tiling, defendant's worker used welding equipment which started a fire, causing damage. The question before the court was whether the "interior tile" work "exception to the exclusion" included the preparation for the tile work using welding equipment:

Policy exclusions must be stated "in clear and unmistakable terms so that no one could be misled" … and "are to be accorded a strict and narrow construction" … . To avoid coverage pursuant to an exclusion, the insurer must establish that the exclusions or exemptions apply to the incident in question and are subject to "no other reasonable interpretation" … .

Plaintiff here failed to meet this burden. The Policy fails to define "interior tile" work. Nor does it indicate the scope or extent of what constitutes "tiling work" or articulate whether the phrase was meant to encompass closely related preparatory tasks, which is a reasonable interpretation advanced by defendants … . Accordingly, the Policy's exclusions and the "interior tile" exception is ambiguous.

The record before us is conclusory and does not resolve these ambiguities. Well-settled "precedent[] require us to adopt the readings that narrow the exclusion[]" and construe ambiguities against the insurer plaintiff, resulting in coverage as a matter of law … . Mt. Hawley Ins. Co. v Michelle Kuo Corp., 2026 NY Slip Op 00427, Frist Dept 1-29-26

Practice Point: Consult this decision for insight into how a court will strictly construe "exceptions" to "exclusions from coverage" in an insurance policy.

January 29, 2026

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF TRIPPED AND FELL OUTSIDE, NOT IN A "PASSAGEWAY" WITHIN THE MEANING OF THE INDUSTRIAL CODE; THE LABOR LAW 241(6) CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined the Labor Law 241(6) cause of action should have been dismissed because plaintiff tripped and fell outside and not in a "passageway" within the meaning of Industrial Code 23-1.7(e)(1):

… [T]he Labor Law § 241(6) claim insofar as it was predicated on Industrial Code § 23-1.7(e)(1), as the accident occurred outdoors and therefore did not take place in a "passageway" within the meaning of the Industrial Code provision (see Quigley v Port Auth. of N.Y. & N.J., 168 AD3d 65, 67-68 [1st Dept 2018] [holding that a "passageway" under § 23-1.7(e)(1) pertains to "an interior or internal way of passage inside a building"]). Lacruise v Memorial Sloan-Kettering Cancer Ctr., 2026 NY Slip Op 00424, First Dept 1-29-26

Practice Point: At least in the First Department, the Industrial Code reference to "passageway" means an interior passage inside a building, not a walkway outside.

January 29, 2026

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF WAS INJURED WHEN A DRILL FELL FROM A CO-WORKER WHO WAS STANDING ON AN A-FRAME LADDER; THE DRILL SHOULD HAVE BEEN TETHERED TO THE CO-WORKER'S PERSON; PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff in this Labor Law 240(1) action was entitled to summary judgment in this falling object case. Plaintiff was struck by a drill which fell from a co-worker standing on an A-frame ladder. The drill should have been tethered to the co-worker's person:

… [T[he coworker's elevated work atop the A-frame ladder, warranted overhead protection or tethering of the tools to the coworker's person to safeguard other workers from falling objects … . Elmaz v CNY Constr. LLC, 2026 NY Slip Op 00313, First Dept 1-27-26

Practice Point: Labor Law 240(1) requires protection against falling objects. Here a tool used by a co-worker who was standing on an A-frame ladder fell and struck plaintiff. Plaintiff was entitled to summary judgment because the tool should have been tethered to the co-worker's person.

January 27, 2026

LEGAL MALPRACTICE, NEGLIGENCE, ATTORNEYS, CIVIL PROCEDURE.

DEFENDANTS-ATTORNEYS WAIVED A DEFENSE WITHOUT THEIR CLIENTS' CONSENT; THE LEGAL MALPRACTICE COMPLAINT SHOULD NOT HAVE BEEN DISMISSED (FIRST DEPT).

The First Department, reversing Supreme Court, determined the motion to dismiss the legal malpractice complaint should not have been granted. Defendants-attorneys represented Park West. A driver working for Park West was in an

accident and both Park West and the driver were sued. The contract between the driver and Park West indicated the driver was an independent contractor. The attorneys, however, conceded the driver was an employee and Park West settled. The essence of the legal malpractice action was the attorneys' failure to raise the independent-contractor-defense to Park West's liability. The First Department noted that the evidence indicated the driver may in fact have been Park West's employee, but that cannot be decided at the motion-to-dismiss stage. The only relevant question for the motion to dismiss is whether the complaint stated a cause of action for legal malpractice:

The motion court improperly held that plaintiffs failed to state a cause of action for legal malpractice against defendants. To state a claim for legal malpractice, a "plaintiff must show that (1) the attorney was negligent; (2) the attorney's negligence was a proximate cause of plaintiff's losses; and (3) plaintiff suffered actual damages" … . Moreover, an "attorney's conduct or inaction is the proximate cause of a plaintiff's damages if but for the attorney's negligence the plaintiff would have succeeded on the merits of the underlying action or would not have sustained actual and ascertainable damages" … .

Here, plaintiffs argue that but for defendants' negligence in waiving Park West's independent contractor defense in the underlying action, without their consent and without disclosing conflicts in their representation of several defendants in the action, they would not have been compelled to settle the action, and they would not have been held vicariously liable for [the driver's] negligence. Park W. Exec. Servs., Inc. v Gallo Vitucci & Klar, LLP, 2026 NY Slip Op 00428, First Dept 1-29-26

Practice Point: The question at the motion-to-dismiss stage is whether the complaint states a cause of action, not whether the elements of the cause of action can be proven. Here the defendants-attorneys' waiver of a defense without their client's consent stated a cause of action for legal malpractice. Whether that defense would hold up at trial is not relevant to a dismissal for failure state a cause of action.

January 29, 2026

NEGLIGENCE, EVIDENCE, LANDLORD-TENANT.

IN THIS HOTEL-ROOM SLIP AND FALL CASE, THE OUT-OF-POSSESSION LANDLORD WAS NOT OBLIGATED BY CONTRACT OR COURSE OF CONDUCT TO REPAIR DANGEROUS CONDITIONS AND THE LESSEE OF THE HOTEL DEMONSTRATED IT DID NOT HAVE CONSTRUCTIVE OR ACTUAL NOTICE OF THE WATER ON THE BATHROOM FLOOR IN PLAINTIFF'S ROOM; DEFENDANTS ENTITLED TO SUMMARY JUDGMENT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the out-of-possession landlord and the lessee of the hotel where plaintiff slipped and fell on water on the bathroom floor were entitled to summary judgment. The out-of-possession landlord was not bound by contract or course of conduct to repair a dangerous condition. The lessee demonstrated it had no constructive or actual notice of the condition:

"'An out-of-possession landlord is not liable for injuries that occur on its premises unless the landlord has retained control over the premises and has a duty imposed by statute or assumed by contract or a course of conduct'" … . "[A] landowner who has transferred possession and control is generally not liable for injuries caused by dangerous conditions on the property" … . * * *

Here, the moving defendants established, prima facie, that New Ram [the lessee] did not create or have constructive notice of the alleged dangerous condition …. [T]he moving defendants submitted … plaintiff's deposition transcript indicating that the plaintiff did not see any water on the bathroom floor prior to his fall. The plaintiff testified that he showered in the bathroom at approximately 6:00 p.m., after which there was no water on the bathroom floor. Thereafter, he went to sleep and awoke at approximately 1:00 a.m. to use the bathroom, where he fell and then first noticed the leak. The plaintiff also testified that he never noticed or reported any leaks or water on the bathroom floor prior to this incident and that he never before complained about water on the bathroom floor or leaks … .

The moving defendants also submitted a transcript of the deposition testimony of [the lessee's] former general manager, who testified that there had never before

been reports of a water leak from one room to another, nor had there been reports of any other slip and falls in the bathrooms of the hotel. She further stated that any such report would have been recorded in a log, and no such report existed. Additionally, another hotel worker averred in an affidavit that he was not aware of any incidents in the hotel where water leaked from one room to another. Gibbs v New Ram Realty, LLC, 2026 NY Slip Op 00349, Second Dept 1-28-26

Practice Point: Here the out-of-possession landlord was not obligated to repair dangerous conditions by contract or course of conduct and the lessee of the property demonstrated a lack of constructive and actual notice of the condition which allegedly caused plaintiff's slip and fall. The property defendants were entitled to summary judgment.

January 28, 2026

NEGLIGENCE, EVIDENCE.

DEFENDANTS WERE NOT ENTITLED TO SUMMARY JUDGMENT IN THIS WET-FLOOR SLIP AND FALL CASE; THEY FAILED TO PROVE THERE WAS A STORM IN PROGRESS, THEY FAILED TO PROVE THEY TOOK REASONABLE PRECAUTIONS TO REMEDY THE WET FLOOR, AND THEY FAILED TO PROVE THEY DID NOT HAVE CONSTRUCTIVE OR ACTUAL NOTICE OF THE CONDITION (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendants were not entitled to summary judgment in this slip and fall case. The slip and fall was related to tracked-in water in the lobby of defendants' premises. The court noted what defendants failed to prove, i.e., there was a "storm in progress," they took reasonable precautions to remedy the wet floor, and they didn't have constructive or actual notice of the condition. The decision provides insight into how those issues can be proven:

Defendants failed to demonstrate that they are protected from liability for plaintiff's accident by the storm in progress rule. They did not submit any weather reports or expert opinions to show an ongoing storm at the time of plaintiff's fall,

and plaintiff's conclusory, affirmative response when asked whether it was "snowing when [her] accident happened" is insufficient to show that a storm was in progress … .

… [T]he superintendent … could not recall whether he placed … signs or dry-mopped on the morning of plaintiff's accident or if he even worked that day. In fact, there was no evidence that a caution sign was placed in the lobby or that anyone had mopped the area prior to the accident, or throughout that day … . Although defendants were not obligated to continuously mop moisture tracked onto the lobby floor by people entering from outside or to cover the entire floor with mats, here plaintiff claims that her accident was caused by a lack of matting on the portion of the lobby between the entrance and the stairway … . …

Defendants … failed to demonstrate when they last inspected the lobby on the day of the accident … . … [T]hey failed to produce a witness to testify that no complaints about the location of plaintiff's fall were received before the accident and that there were no prior incidents in that area before plaintiff fell … . * * * … [T]he superintendent, who could not recall if he worked on the day of plaintiff's accident, testified that he could not recall if anyone had complained to him about water on the floor of the lobby and that he had "no idea" about the procedure for tenants to make complaints. Rodney v 840 Westchester Ave, LLC, 2026 NY Slip Op 00435, First Dept 1-29-26

Practice Point: Consult this decision for insight into what evidence a defendant in a wet-floor slip and fall case should present to prove (1) the "storm in progress" defense, (2) actions were taken to remedy the wet floor, (3) defendant's lack of constructive notice of the condition, and (4) defendant's lack of actual notice of the condition.

Practice Point: Note that the plaintiff's testimony that it was snowing at the time of her fall was not sufficient to prove defendants' "storm in progress" defense.

January 29, 2026

NEGLIGENCE, MUNICIPAL LAW, EVIDENCE.

THE INSTALLATION OF A TEMPORARY PEDESTRIAN TRAFFIC SIGNAL AT AN INTERSECTION IS NOT SUBJECT TO THE REQUIREMENT THAT A MUNICIPALITY HAVE WRITTEN NOTICE OF A DEFECTIVE CONDITION; THE COMPLAINT IN THIS PEDESTRIAN-VEHICLE ACCIDENT CASE SHOULD NOT HAVE BEEN DISMISSED BECAUSE THERE WAS NO "WRITTEN NOTICE" (FIRST DEPT).

The First Department, reversing Supreme Court, determined the complaint in this pedestrian-vehicle accident case should not have been dismissed on the ground the defendant city did not have written notice of the allegedly negligently designed temporary pedestrian signal at an intersection. The written notice requirement does not apply to the failure to maintain or install pedestrian signals. In addition, the expert evidence created a question of fact whether the city created the defect through an affirmative act of negligence:

… [T]he requirement that the municipality have prior written notice of the alleged defect before it can be held liable for injuries arising from the defect does not apply here (Administrative Code of City of NY § 7-201[c][2]). The prior written notice requirement applies to physical defects such as holes or cracks in the street, not the failure to maintain or install pedestrian signals … .

Neither plaintiff's expert nor defendants' expert, both professional engineers, cite a standard or regulation setting forth specific height requirements for temporary pedestrian signals. In addition, the experts disagree as to whether the temporary pedestrian signal was installed at a proper height. …

An issue of fact also exists as to whether the height or the placement of the signal proximately caused plaintiff's accident. Although defendants' expert opined that the temporary pedestrian signal would have been within plaintiff's field of view, plaintiff testified that he remembered looking for a signal and not seeing one. Plaintiff's testimony, together with the conflicting expert opinions as to whether the pedestrian signal was installed at a proper height, is sufficient to raise a triable issue of fact as to the City's negligence … . Harelick v De La Cruz Lora, 2026 NY Slip Op 00315, First Dept 1-27-26

Practice Point: The requirement that a city have written notice of a dangerous condition before liability for an injury will attach applies to physical defects like holes or cracks in the street. It does not apply to an allegedly negligently designed temporary pedestrian traffic signal.

January 27, 2026

NEGLIGENCE, VEHICLE AND TRAFFIC LAW, EVIDENCE.

ALTHOUGH PLAINTIFF IN THIS INTERSECTION ACCIDENT CASE DID NOT HAVE A STOP SIGN AND HAD THE RIGHT-OF-WAY, THERE WAS A QUESTION OF FACT WHETHER PLAINTIFF DRIVER COULD HAVE AVOIDED THE COLLISION WITH DEFENDANT WHO HAD ENTERED THE INTERSECTION AFTER STOPPING AT A STOP SIGN (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the plaintiffs in this intersection traffic accident case did not not demonstrate plaintiff driver, who had the right-of-way (no stop sigh), was not at fault. Defendant testified he stopped at a stop sign, looked both ways, proceeded slowly into the intersection and was half-way through when the rear of his car was struck by the plaintiff driver. Although not specifically discussed, it appears that testimony raised a question of fact whether plaintiff exercised reasonable care to avoid the collision:

"There can be more than one proximate cause of an accident" … . Hence, "[a] defendant moving for summary judgment in a negligence action has the burden of establishing, prima facie, that he or she was not at fault in the happening of the subject accident" … . "Pursuant to Vehicle and Traffic Law § 1142(a), a driver entering an intersection controlled by a stop sign must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard" … . "As a general matter, a driver who fails to yield the right-of-way after stopping at a stop sign is in violation of Vehicle and Traffic Law § 1142(a) and is negligent as a matter of law" … . "Even though the driver with the right-of-way is entitled to assume that other drivers will obey the traffic laws requiring them to yield, he or she still has a duty to exercise reasonable

care to avoid a collision with another vehicle already in the intersection" … . Ficalora v Almeida, 2026 NY Slip Op 00346, Second Dept 1-28-26

Practice Point: Having the right-of-way does not necessarily guarantee summary judgment in an intersection traffic accident case. A driver with the right-of-way is obligated to use reasonable care to avoid a collision with a vehicle already in the intersection.

January 28, 2026

REAL PROPERTY LAW, CIVIL PROCEDURE, LIMITED LIABILITY COMPANY LAW.

HERE THE PURPORTED TRANSFER BY DEED OF AN INTEREST IN REAL PROPERTY TO A LIMITED LIABILTY COMPANY WAS NULL AND VOID FROM THE OUTSET BECAUSE THE LLC DID NOT EXIST WHEN THE DEED WAS EXECUTED; THEREFORE THE STATUTE OF LIMITATIONS FOR REFORMATION OF THE DEED NEVER STARTED RUNNING; PLAINTIFF WAS ENTITLED TO A DECLARATORY JUDGMENT THAT THE TRANSFER TO THE LLC WAS NULL AND VOID (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the action seeking a declaratory judgment that a deed is null and void should not have been dismissed as time-barred. The deed was void from the outset because the limited liability company listed as a property owner did not not exist at the time the deed was executed. Because the deed was void (re; the LLC) at the time of execution, the statute of limitations for a reformation of the deed never started running:

"'A cause of action seeking reformation of an instrument on the ground of mistake is governed by the six-year statute of limitations pursuant to CPLR 213(6), which begins to run on the date the mistake was made'" … . Here, however, the deed, insofar as it purported to convey an interest in the property from Gold to the LLC, was void at its inception, since it is undisputed that the LLC did not exist at the time the deed was executed … . Since "a statute of limitations cannot validate what

is void at its inception," the statute of limitations cannot act as a bar to the cause of action for a judgment declaring the LLC's purported interest in the property null and void … . JPMorgan Chase Bank, N.A. v Katz, 2026 NY Slip Op 00359, Second Dept 1-28-26

Practice Point: A statute of limitations cannot be used to validate a purported transfer of property that was void at its inception. Here the statute of limitations for a judgment declaring a purported transfer of property by deed to an LLC which did not exist when the deed was executed should not have been invoked to bar reformation of the deed.

January 28, 2026