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AI-GENERATED BRIEFS, APPEALS, ATTORNEYS, FORECLOSURE.

FOR THE FIRST TIME IN NEW YORK, COUNSEL WAS SANCTIONED IN THE AMOUNT OF $5000 FOR SUBMITTING AI-GENERATED BRIEFS CITING 23 "FAKE" DECISIONS; IN ADDITION, COUNSEL AND HIS CLIENT WERE EACH SANCTIONED IN THE AMOUNT OF $2500 FOR FILING A FRIVOLOUS APPEAL (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Fisher, in a matter of first impression, determined (1) counsel for the defendant in this foreclosure action should be sanctioned for submitting appellate briefs generated by AI which cited

23 “fake” appellate decisions, and (2) counsel for the defendant and the defendant should be sanctioned for filing a frivolous appeal: Defendant’s counsel was sanctioned in the amount of $5000 for the AI generated briefs and $2500 for the frivolous appeal. Defendant was sanctioned in the amount of $2500 for the frivolous appeal:

… [R]ecognizing this as the first appellate-level case in New York addressing sanctions for the misuse of GenAI, we find the imposition of a monetary sanction on defense counsel Joshua A. Douglass in the amount of $5,000 to be appropriate under the circumstances, with the further goal of deterring future frivolous conduct by defendant and the bar at large … . To be clear, attorneys and litigants are not prohibited from using GenAI to assist with the preparation of court submissions. The issue arises when attorneys and staff are not sufficiently trained on the dangers of such technology, and instead erroneously rely on it without human oversight. As with the work from a paralegal, intern or another attorney, the use of GenAI in no way abrogates an attorney’s or litigant’s obligation to fact check and cite check every document filed with a court. To do otherwise may be sanctionable, depending on the facts and particular circumstances of each case. * * *

Although defense counsel signed the papers filed with this Court …, it is … not unnoticed that the metadata of numerous documents indicate they originated from a program in his client’s name. Such result would be consistent with defendant filing papers pro se before Supreme Court, and defense counsel’s apparent unfamiliarity during oral argument with certain papers he allegedly filed during the pendency of this appeal. Given the baseless nature of this appeal, and recognizing that sanctions must be goal oriented to deter future conduct to prevent the waste of judicial resources and continued vexatious litigation of specific individuals too … , we conclude that an additional sanction of $2,500 shall be imposed on defense counsel … and $2,500 shall be imposed on defendant … for pursing this appeal. Deutsche Bank Natl. Trust Co. v LeTennier, 2026 NY Slip Op 00040, Third Dept 1-8-25

Practice Point: For the first time in New York an attorney was sanctioned for submitting AI-generated briefs which cited “fake” decisions.

Practice Point: Here both counsel and his client were sanctioned for filing a frivolous appeal. It was clear that the client played a role in creating the AI-generated briefs.

January 8, 2026

COLLATERAL ESTOPPEL, HUMAN RIGHTS LAW, EMPLOYMENT LAW, MUNICIPAL LAW.

THE DISMISSAL OF PLAINTIFF'S FEDERAL EMPLOYMENT DISCRIMINATION (RETALIATION) ACTION PURSUANT TO THE NEW YORK STATE HUMAN RIGHTS LAW PRECLUDED A RELITIGATION OF THE RETALIATION CLAIMS IN STATE COURT PURSUANT TO THE NEW YORK CITY HUMAN RIGHTS LAW (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Shulman, determined plaintiff's employment discrimination (retaliation) cause of action pursuant to the New York City Human Rights Law (NYCHRL) was collaterally estopped by the dismissal of plaintiff's action in federal court pursuant to the New York State Human Rights Law (NYSHRL):

Plaintiff asserts that his cooperation in [an] investigation [of another employee] provoked animus from his supervisors … who allegedly retaliated by reducing his business opportunities and ultimately terminating him.

Plaintiff alleged seven discrete adverse employment actions: (1) the artificial depression of his revenue; (2) denial of his request to transfer to a new position; (3) reassignment of his clients; (4) denial of funding to attend conferences; (5) a negative performance review; (6) no bonus in 2015; and (7) termination in August 2016. * * *

The City HRL is "uniquely broad and remedial," requiring courts to construe its provisions "independently from similar or identical provisions of New York state or federal statutes" … . However, the requirement to interpret the City HRL under a more liberal lens does not relieve plaintiff of his burden to produce evidence of a retaliatory motive behind the adverse actions.

* * * Plaintiff's arguments … invite relitigating facts already adjudicated by two federal courts after full and fair litigation. The federal courts expressly found no retaliatory animus after reviewing extensive evidence. … [T]his compels preclusion.

We emphasize that the City HRL's liberal construction rule lowers the causation threshold, not the evidentiary one. Once the federal record established the absence of any retaliatory motive, no genuine factual issue remained even under the City HRL's mixed-motive framework. To allow this case to go to a jury under the guise of liberal construction finds no support in the record. Abromavage v Deutsche Bank Sec. Inc., 2026 NY Slip Op 00052, First Dept 1-8-25

Practice Point: Here the federal courts' dismissal of plaintiff's employment discrimination (retaliation) claims pursuant to the New York State Human Rights Law (NYSHRL) precluded relitigation of those claims in state court pursuant to the New York City Human Rights Law (NYCHRL). Consult this opinion for insight into when collateral estoppel will be invoked to preclude a state action under the NYCHRL which raises retaliation claims identical to those dismissed by the federal courts under the NYSHRL. Although the NYCHRL lowers the causation threshold in comparison with the NYSHRL, it does not lower the evidentiary threshold.

January 8, 2026

DUPLICATIVE CAUSES OF ACTION, NEGLIGENCE, EDUCATION-SCHOOL LAW.

IN THIS CHILD VICTIMS ACT ACTION AGAINST A SCHOOL AND SCHOOL EMPLOYEES ALLEGING SEXUAL ABUSE OF PLAINTIFFS-STUDENTS, AN ACTION ALLEGING NEGLIGENT FAILURE TO PROVIDE A SAFE AND SECURE ENVIRONMENT WAS DISMISSED AS DUPLICATIVE OF THE NEGLIGENT SUPERVISON AND RETENTION CAUSES OF ACTION (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court in this Child Victims Act case, determined that the cause of action alleging defendant school's negligent failure to provide a safe and secure environment for plaintiff-students, although sufficiently pled, must be dismissed as duplicative of the negligent supervision and negligent retention causes of action:

… [T]he duty element for plaintiffs' ["failure to provide a safe and secure environment"] claim is premised on the special duty owed to them under the doctrine of in loco parentis. … [T]eachers and schools owe their students "such care of them as a parent of ordinary prudence would observe in comparable circumstances" …. . This duty stems from the fact that schools "in assuming physical custody and control over [their] students, effectively take[] the place of parents and guardians" … . Negligence claims based on in loco parentis require actual or constructive notice to the school of previous similar conduct … .

Although plaintiffs adequately pleaded a claim for negligent failure to provide a safe and secure environment, this claim should have been dismissed as duplicative of plaintiffs' claims for negligent supervision and negligent retention. A cause of action is duplicative when it relies on the same facts and seeks the same relief as another cause of action … . Significantly, "'it is not the theory behind a claim that determines whether it is duplicative,' but rather the conduct alleged and the relief sought" … .

Here, the fact that the cause of action for negligent failure to provide a safe and secure environment is based on a different theory — the duty of in loco parentis — than the other causes of action pleaded is not germane to whether it is duplicative.

Rather, the claim is duplicative because the conduct alleged and the relief sought, for both the failure to provide a safe and secure environment and the negligent supervision and retention claims, are identical. John Doe 42 v Yeshiva Univ., 2026 NY Slip Op 00225, First Dept 1-20-26

Practice Point: Consult this decision for an explanation of duplicative causes of action. Here the action for negligent failure to provide a safe and secure environment was deemed duplicative of the actions for negligent supervision and negligent retention, even though it was based on a different theory (in loco parentis).

January 20, 2026

NECESSARY PARTIES, JOINDER, 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

PIERCING THE CORPORATE VEIL, ALLEGATIONS SUFFICIENT, CORPORATION LAW, FRAUD.

THE ALLEGATIONS IN THE COMPLAINT SUPPORTED "PIERCING THE CORPORATE VEIL;" PLAINTIFF ALLEGED FUNDS OWED TO HER WERE DIVERTED TO RENDER THE CORPORATION JUDGMENT PROOF (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined the cause of action alleging alter-ego liability should not have been dismissed. The court noted that New York does not recognize a separate cause of action to pierce the corporate veil, but in the context of a motion to dismiss, the issue is whether the facts fit any cognizable legal theory. Piercing the corporate veil is such a theory:

“Generally. . . piercing the corporate veil requires a showing 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” … .

Initially, “while fraud certainly satisfies the wrongdoing requirement, other claims of inequity or malfeasance will also suffice” … . “Allegations that corporate funds were purposefully diverted to make [the corporation] judgment proof . . . are sufficient to satisfy the pleading requirement of wrongdoing which is necessary to pierce the corporate veil on an alter-ego theory” … . When “legitimate business activity” is involved, we have sometimes required a plaintiff to allege that the dominator “engaged in th[e] conduct for the purpose of harming plaintiff” … . However, this requirement does not apply when “the defendant against whom alter ego liability [i]s asserted . . . commit[s] fraud and malfeasance” … .

In any event, giving plaintiff the benefit of all favorable inferences as required on a CPLR 3211(a)(7) motion, she alleges that [defendant] caused the … funds owed to her to be diverted … in order to circumvent payment of the funds owed to her, which would render her judgment against the [the corporation] “nothing more than a pyrrhic victory” … . This allegation satisfies the “fraud or wrong” requirement of piercing the corporate veil … . Cohen v Cohen, 2026 NY Slip Op 00192, First Dept 1-15-26

Practice Point: Consult this decision for insight into what type of “fraud or wrong” must be alleged in the complaint to support piercing the corporate veil.

January 15, 2026

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SIX-MONTH GRACE PERIOD FOR FILING NEW ACTION, 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

SIX-MONTH GRACE PERIOD FOR FILING NEW ACTION, TRUSTS AND ESTATES, NEGLIGENCE.

THE COMPLAINT SHOULD HAVE BEEN DISMISSED BECAUSE PLAINTIFF HAD NOT YET BEEN APPOINTED ADMINISTRATOR OF PLAINTIFF'S DECEDENT'S ESTATE; PLAINTIFF IS FREE TO COMMENCE A NEW ACTION WITHIN SIX MONTHS PURSUANT TO CPLR 205 (A) UPON ISSUANCE OF LETTERS OF ADMINISTRATION (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the complaint should have been dismissed because plaintiff had not yet been appointed administrator of the estate of her mother, but noted that if she obtains letters of administration within the six-month savings period under CPLR 205(a) a new action may be commenced:

"A personal representative who has received letters of administration of the estate of a decedent is the only party who is authorized to bring a survival action for personal injuries sustained by the decedent and a wrongful death action to recover the damages sustained by the decedent's distributees on account of his or her death" … . "[T]he statutory requirement of a duly appointed administrator is in the nature of a condition precedent to the right to bring the suit" … . Thus, a "proposed administrator" who has not obtained letters of administration lacks capacity to bring an action to recover damages for personal injuries or wrongful death on behalf of a decedent's estate … .

… [W]here, as here, a plaintiff lacks the capacity to bring an action to recover damages for personal injuries or wrongful death on behalf of a decedent's estate because the plaintiff has not been issued letters of administration, the plaintiff may "remedy this defect by obtaining letters of administration within the six-month savings period provided under CPLR 205(a)" … . Estate of Joyce Moore v Nassau Operating Co., LLC, 2026 NY Slip Op 00241, Second Dept 1-21-26

January 21, 2026

SIX-MONTH GRACE PERIOD FOR FILING NEW ACTION, 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

STATUTE OF LIMITATIONS, ARTICLE 78, TERMINATION OF SECTION 8 BENEFITS, ADMINISTRATIVE LAW, LANDLORD-TENANT, MUNICIPAL LAW, SOCIAL SERVICES LAW.

THE FOUR-MONTH STATUTE OF LIMITATIONS FOR BRINGING AN ARTICLE 78 PETITION CHALLENGING TERMINATION OF SECTION 8 RENT-SUBSIDY BENEFITS STARTS WHEN THE TENANT BECOMES AWARE OF THE TERMINATION; THE PETITION WAS TIME-BARRED (FIRST DEPT).

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

STATUTE OF LIMITATIONS, REFORMATION OF DEED, REAL PROPERTY LAW, 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

STATUTE OF LIMITATIONS, DECLARATORY JUDGMENT, CONTRACT LAW, FRAUD, REAL PROPERTY LAW, TRUSTS AND ESTATES.

THE STATUTE OF LIMITATIONS FOR DECLARATORY JUDGMENTS DEPENDS ON THE UNDERLYING THEORY, FRAUD IN THIS CASE; AN AGREEMENT TO ASSIGN OR OBTAIN A MORTGAGE IS A CONTRACT INVOLVING AN INTEREST IN REAL PROPERTY AND IS SUBJECT TO THE STATUTE-OF-FRAUDS WRITING-REQUIREMENT (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined that certain causes of action in this dispute over ownership of real property should have been dismissed as time-barred or as violative of the statute of frauds:

“Actions for declaratory judgments are not ascribed a certain limitations period. The nature of the relief sought in a declaratory judgment action dictates the applicable limitations period” … . The statute of limitations for an action based upon fraud generally is six years from the date the cause of action accrued (see CPLR 213[8]). … [T]he first and second causes of action were untimely, as the amended complaint alleged that [defendant’s] fraud in obtaining those interests occurred more than six years before the commencement of this action … .

… Causes of action to impose a constructive trust upon real property and to recover damages for unjust enrichment are governed by a six-year statute of limitations, which begins to accrue at the time of the wrongful act giving rise to the duty of restitution … . … [Defendant’s] alleged fraudulent acquisition of ownership interests … occurred more than six years before the commencement of this action.

… The statute of frauds requires any contract transferring or creating an interest in real property to be in writing (see General Obligations Law § 5-703[1] …). Here, [the] … complaint alleged [defendants] breached their agreements to assign or obtain a mortgage in favor of the plaintiffs. A mortgage constitutes an interest in real property, and the agreements to transfer or obtain mortgages in favor of the plaintiffs, therefore, were required to be in writing. Hersko v Hersko, 2026 NY Slip Op 00120, Second Dept 1-14-26

Practice Point: The statute of limitations for a declaratory judgment is that which applies to the underlying theory. Here the six-year statute for fraud applied.

Practice Point: An agreement to assign or obtain a mortgage is subject to the statute-of-frauds because a mortgage constitutes an interest in real property.

January 14, 2026

SUMMARY JUDGMENT, DENIAL OF MOTION ON GROUND NOT RAISED IN OPPOSITION, JUDGES, EVIDENCE, FORECLOSURE.

DEFENDANT DID NOT OPPOSE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION; THE JUDGE SHOULD NOT HAVE DENIED THE MOTION ON AN EVIDENTIARY GROUND NOT RAISED BY THE DEFENDANT (FIRST DEPT).

The First Department, reversing Supreme Court, determined the judge in this foreclosure action should not have denied plaintiff's motion for summary judgment on an evidentiary ground which was not raised by the defendant:

Plaintiff … moved for summary judgment, submitting an affirmation by counsel, to which the loan documents were annexed, and an affidavit from the same first vice president, which did not attach the subject loan documents. The affiant attested that defendant failed to make monthly payments and that defendant owed plaintiff $2,302,848.55 through June 15, 2024. He did not attest that he based his knowledge of the default and amount due on his review of any records. Defendant did not oppose plaintiff's motion.

… Although it is the movant's burden to establish its entitlement to summary judgment and the failure of the nonmovant to oppose summary judgment does not obviate the movant's need to establish its prima facie case … , "a court should not examine the admissibility of evidence submitted in support of a motion for summary judgment unless the nonmoving party has specifically raised that issue in its opposition to the motion" … . This is because courts "are not in the business of blindsiding litigants, who expect us to decide their appeals on rationales advanced by the parties, not arguments their adversaries never made" … .

On its original motion, plaintiff established its prima facie entitlement to summary judgment by establishing, through the affidavit of a first vice president who was also the loan officer in charge of the loan's collection and enforcement, the existence of the consolidated note, consolidated mortgage, and the existence and amount of defendant's default … . Defendant did not oppose the motion and thus did not raise any objections as to the admissibility of plaintiff's evidence, and the court should not have raised evidentiary objections sua sponte … . Valley Natl. Bank v Community Prot. Church of Co-op City, Inc., 2026 NY Slip Op 00036, First Dept 1-6-25

Practice Point: A judge should not, sua sponte, deny a motion for summary judgment on a ground not raised by the nonmoving party.

January 6, 2026

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UNIFIED TRIAL ON LIABILITY AND DAMAGES, NEGLIGENCE, EVIDENCE.

HERE THE NATURE OF INFANT PLAINTIFF'S INJURIES WAS PROBATIVE OF HOW THE ACCIDENT OCCURRED; PLAINTIFF ALLEGED DEFENDANTS' VAN RAN OVER INFANT PLAINTIFF'S FOOT; DEFENDANTS ALLEGED INFANT PLAINTIFF WAS INJURED WHEN SHE FELL OFF HER BICYCLE; PLAINTIFFS' MOTION FOR A UNIFIED TRIAL ON LIABILITY AND DAMAGES SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the denial of plaintiffs' motion for a unified trial on liability and damages was an abuse of discretion. Plaintiffs alleged defendants' van ran over infant plaintiff's foot. Defendants alleged infant plaintiff was injured when she fell off her bicycle. Because the nature of the injury was relevant to proof of defendants' liability, an unified trial was necessary:

"Unified trials should only be held 'where the nature of the injuries has an important bearing on the issue of liability'" … . "'The party opposing bifurcation has the burden of showing that the nature of the injuries necessarily assists the factfinder in making a determination with respect to the issue of liability'" … . "Although bifurcation is encouraged in appropriate settings, bifurcation is not an absolute given and it is the responsibility of the trial judge to exercise discretion in determining whether bifurcation is appropriate in light of all relevant facts and circumstances presented by the individual cases" … . Thus, "'[t]he decision whether to conduct a bifurcated trial rests within the discretion of the trial court, and should not be disturbed absent an improvident exercise of discretion'" … .

Here, the plaintiffs and [defendants] offered conflicting accounts of how the infant plaintiff allegedly was injured, and the plaintiffs demonstrated that evidence regarding the nature of the infant plaintiff's alleged injuries was probative in determining how the accident occurred … . I.R. v Santos, 2026 NY Slip Op 00270, Second Dept 1-21-26

Practice Point: It is a matter of judicial discretion whether to hold a bifurcated or a unified personal-injury trial on liability and damages. But where the nature of the injury is relevant to proving liability, it is an abuse of discretion to deny a motion for a unified trial.

January 21, 2026

VESTED RIGHT DOCTINE INAPPLICABLE, CONSTITUTIONAL LAW, NEGLIGENCE.

THE DISMISSAL OF TWO FEDERAL LAWSUITS AGAINST DEFENDANT SCHOOL (ALLEGING SEXUAL AND PHYSICAL ABUSE OF PLAINTIFFS-STUDENTS) ON STATUTE-OF-LIMITATIONS GROUNDS DID NOT GIVE RISE TO A "VESTED RIGHT" REQUIRING THE DISMISSAL OF THE STATE ACTION UNDER THE CHILD VICTIMS ACT ALLEGING THE SAME FACTS (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Moulton, determined that the dismissal of two federal lawsuits as barred by the statute of limitations did not create a "vested right" such that a state Child Victims Act action based on the facts alleged in the federal lawsuits should be dismissed. The lawsuits stemmed from allegations of sexual and physical abuse of plaintiffs, students at defendant school:

The federal doctrine of vested rights has roots in common and even natural law. * * *

The case most often cited by modern cases for articulating the doctrine is McCullough v Virginia (172 US 102 [1898]). There, a taxpayer prevailed in a Virginia state court against the State of Virginia, obtaining a judgment for a tax refund (id.). Before the judgment was executed, the Virginia legislature repealed the legislation that had entitled the taxpayer to a refund (id.). McCullough held that the United States Constitution barred the state legislature from repudiating the state court judgment, explaining that "[it] is not within the power of the legislature to take away rights which have been once vested by a judgment," and that when "passed into judgment the power of the legislature to disturb the rights created thereby ceases" … .

McCullough, its progeny, and earlier cases establish that a final money judgment gives rise to a vested due process property right, which entitles the judgment creditor to the same constitutional protections afforded other forms of property … .
* * *

In describing their purported property right, the … defendants argue that they are not asserting a property right in "any previously-applicable statute of limitations, but rather in the final federal judgments that they received." Indeed, if the final federal judgments, standing alone, do not vest defendants with a constitutionally protected property right, the argument fails because, as the … defendants concede, "[o]f course a statute of limitations itself does not create property rights" … . M.T. v Yeshiva Univ., 2026 NY Slip Op 00218, First Dept 11-15-26

Practice Point: The dismissal of federal lawsuits as barred by the statute of limitations did not constitute a "vested right" requiring dismissal of the state action under the Child Victims Act based on the same facts.

January 15, 2026

WAIVER OF A DEFENSE, LEGAL MALPRACTICE, NEGLIGENCE, ATTORNEYS.

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.

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