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Personal Injury
Reversal Report
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An Organized Compilation of Summaries of Selected Decisions Addressing Personal Injury, Mostly Reversals, Released by Our New York State Appellate Courts and Posted on the New York Appellate Digest Website in January 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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BATTERY, EMPLOYMENT LAW, CONTRACT LAW, BATTERY.

DEFENDANT HOME CARE AGENCY WAS HIRED BY DEFENDANT HEALTHCARE PLAN AS AN INDEPENDENT CONTRACTOR, NOT AN EMPLOYEE; THEREFORE THE HEALTHCARE PLAN WAS NOT LIABLE FOR THE ALLEGED ASSAULT, BATTERY AND NEGLIGENT SUPERVISION COMMITED BY AN EMPLOYEE OF THE HOME CARE AGENCY (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined that Lighthouse, the parent company of GuildNet, a long-term healthcare plan, could not be held liable for the assault, battery and negligence allegedly committed by an employee of Ellison Home Care Companion Agency, which provided healthcare aides who attended to plaintiff's mother. Plaintiff alleged his mother was assaulted and battered by Shaw, who was employed by Ellison. The contract between GuildNet and Ellison described Ellison as an independent contractor. Because Shaw was not GuldNet's employee, GuildNet was not vicariously liable for Shaw's actions:

The assault, battery, and negligence claims should have been dismissed as against GuildNet on the ground that Shaw was not its employee at the time of the underlying events. GuildNet and Ellison's Participating Provider Agreement expressly defined their relationship as one of independent contractors rather than employer-employee … . The record discloses that GuildNet had only incidental control and general supervisory power over Ellison's work, which is insufficient to establish an employer-employee relationship … . Further, Ellison admitted that Shaw was its employee and acting within the scope of her employment at the time of the underlying events.

The remaining claim for negligent supervision should also have been dismissed. To the extent that it is predicated on GuildNet's alleged failure to supervise Shaw despite knowledge of her "propensity for the sort of behavior which caused" [plainiff's mother's] injuries and death … , Shaw was not GuildNet's employee, and the record is bereft of any information that could impute to GuildNet

knowledge of her propensity either to commit assault or battery or to ignore a client in distress … . To the extent that the claim is instead predicated on GuildNet's alleged failure to supervise the care that [plaintiff's mother] received, namely, by failing to assign a competent agency to assign a competent home health care aide to work with [her], plaintiff has not identified how such a failure proximately caused [her] injuries and death, assuming that GuildNet even had a duty to do so in the first place … . Pander v GuildNet, Inc., 2026 NY Slip Op 00201, First Dep-15-26

Practice Point: A party which hires a party as an "independent contractor" and does not exercise supervisory control over the independent contractor's work will not be vicariously liable for wrongdoing by the independent contractor.

January 15, 2026

CHILD VICTIMS ACT, EDUCATION-SCHOOL LAW, CIVIL PROCEDURE.

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

DOG KNOCKED PLAINTIFF TO THE GROUND, STRICT LIABILITY (INJURY CAUSED BY A DOG), EVIDENCE, NEGLIGENCE.

PLAINTIFF ALLEGED HE WAS KNOCKED TO THE GROUND BY DEFENDANTS' DOG; DEFENDANTS DEMONSTRATED THEY WERE NOT AWARE OF AND SHOULD NOT HAVE BEEN AWARE OF THE DOG'S VICIOUS PROPENSITIES AND PLAINTIFF FAILED TO RAISE A QUESTION OF FACT TO THE CONTRARY; DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendants' motion for summary judgment in this "plaintiff knocked to the ground by a dog" action should have been granted. Plaintiff was unable to raise a question of fact in the face of defendants' proof they were not aware of, and should not have been aware of, the dog's vicious propensities:

"To recover in strict liability for damages caused by a dog, a plaintiff must establish that the dog had vicious propensities and that the owner knew or should have known of the dog's vicious propensities" … . "Vicious propensities include the propensity to do any act that might endanger the safety of the persons and property of others in a given situation" … . "Knowledge of vicious propensities may be established by evidence of, among other things, a prior similar attack or by evidence that the dog was known to growl, snap, or bare its teeth" … . In contrast, "'[k]nowledge of normal canine behavior, such as running around, pulling on a leash and barking at another dog or passerby, barking at strangers, or chasing animals, will not support a finding of knowledge of vicious propensities'" … .

Here, the defendants established their prima facie entitlement to judgment as a matter of law dismissing the complaint by demonstrating that they were not aware, nor should have been aware, that the dog had vicious propensities … . In opposition, the plaintiff failed to raise a triable issue of fact. The plaintiff's affidavit raised only feigned issues of fact designed to avoid the consequences of his earlier deposition testimony … . Yi-Ching Liu v Chu, 2026 NY Slip Op 00284, Second Dept 1-21-26

Practice Point: Here plaintiff alleged he was injured when defendants' dog knocked him to the ground. Consult this decision for insight into the proof a defendant dog-owner must present to demonstrate defendant was not not aware of, and should not have been aware of, a dog's "vicious propensities."

January 21, 2026

LABOR LAW-CONSTRUCTION LAW, FALLING OBJECT.

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

LABOR LAW-CONSTRUCTION LAW, FALLING OBJECTS.

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

LABOR LAW-CONSTRUCTION LAW, INJURY WHEN CUTTING A TREE, EVIDENCE, MUNICIPAL LAW.

A TREE IS NOT A "BUILDING OR STRUCTURE" WITHIN THE MEANING OF LABOR LAW 240 (1); THEREFORE PLAINTIFF'S INJURY, INCURRED WHILE CUTTING A LIMB OFF A TREE, WAS NOT COVERED BY THE LABOR LAW (SECOND DEPT).

The Second Department, reversing Supreme Court, determined that plaintiff's injury while he was cutting a tree was not covered by Labor Law 240 (1). Plaintiff, a county parks department employee, argued that the tree cutting and removal was part of a larger construction project, i.e., setting up a holiday light show:

"Labor Law § 240(1) imposes upon owners and general contractors, and their agents, a nondelegable duty to provide safety devices necessary to protect workers from risks inherent in elevated work sites" … . The statute "applies where an employee is engaged 'in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure'" … . "[T]ree cutting and removal, in and of themselves, are not activities subject to Labor Law § 240(1). Those activities are generally excluded from statutory protection because a tree is not a building or structure, as contemplated by the statute but, rather, 'a product of nature'" … .

Here, the defendant established its prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging a violation of Labor Law § 240(1) by submitting evidence demonstrating that, at the time of his accident, the plaintiff was engaged in tree cutting and removal, which "constituted routine maintenance outside of a construction or renovation context" … . In support of its motion, the defendant submitted, inter alia, transcripts of the deposition testimony of James Leonard, the director of general maintenance for the Department, and Russell Argila, a senior maintenance mechanic in the general maintenance department. Leonard testified that, on the date of the accident, the plaintiff and his coworkers were engaged in "thinning out, pruning trees, dead branches along . . . [a] hillside," and that the tree the plaintiff was cutting at the time of his accident was part of that

work. Argila testified that the tree crew, of which the plaintiff was a member, was "coming up there to clean it up, to do their normal tree work," and denied that the purpose of the tree work was to prepare for the installation of the [light show]. Peterkin v Westchester Parks Found., Inc., 2026 NY Slip Op 00268, Second Dept 1-21-26

Practice Point: Here tree cutting and removal was deemed "routine maintenance" which was not covered by Labor Law 240 (1) because a tree is not a "building of structure."

January 21, 2026

LABOR LAW-CONSTRUCTION LAW, TRIP AND FALL.

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

LEGAL MALPRACTICE, WAIVER OF DEFENSE, 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

MEDICAL MALPRACTICE, INFORMED CONSENT, EVIDENCE.

HERE PLAINTIFF'S SIGNING A CONSENT FORM DID NOT ENTITLE DEFENDANT TO SUMMARY JUDGMENT IN THIS "LACK OF INFORMED CONSENT" MEDICAL MALPRACTICE ACTION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendant's motion for summary judgment in this "lack of informed consent" medical malpractice case should not have been granted. The court noted that plaintiff's signing a consent form was not enough to establish defendant's entitlement to judgment as a matter of law:

"To establish a cause of action to recover damages based upon lack of informed consent, a plaintiff must prove (1) that the person providing the professional treatment failed to disclose alternatives thereto and failed to inform the patient of reasonably foreseeable risks associated with the treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances, (2) that a reasonably prudent patient in the same position would not have undergone the treatment if he or she had been fully informed, and (3) that the lack of informed consent is a proximate cause of the injury"' … . Thus, "a defendant can establish entitlement to summary judgment by demonstrating that the plaintiff signed a detailed consent form after being apprised of alternatives and foreseeable risks, by demonstrating that a reasonably prudent person in the plaintiff's position would not have declined to undergo the surgery, or by

demonstrating that the actual procedure performed for which there was no informed consent was not a proximate cause of the injury" … . "If the defendant makes such a showing, the burden then shifts to the plaintiff to raise a triable issue of fact as to those elements on which the defendant met its prima facie burden of proof" … .

Here, the defendant failed to establish his prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging lack of informed consent … . "The mere fact that the plaintiff signed a consent form does not establish the defendant['s] prima facie entitlement to judgment as a matter of law" … , and the defendant's submissions, including a transcript of the plaintiff's deposition testimony, did not establish that the plaintiff was given sufficient information on the risks and alternatives regarding the materials used and the procedures performed … . Furthermore, the defendant failed to establish, prima facie, that the procedure performed for which there was no informed consent was not a proximate cause of the plaintiff's injury. Rymer v Bernstein, 2026 NY Slip Op 00273, Second Dept 1-21-26

Practice Point: Here n this "lack of informed consent" medical malpractice action, plaintiff's signing a consent form did not entitle defendant to summary judgment as a matter of law.

January 21, 2026

PEDESTRIAN-VEHICLE ACCIDENT, PEDESTRIAN SIGNAL PLACEMENT, 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

SLIP AND FALL, HOTEL ROOM, 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

SLIP AND FALL, NON-DELEGABLE DUTY, NEGLIGENCE, EMPLOYMENT LAW, CONTRACT LAW.

HERE AN INDEPENDENT CLEANING CONTRACTOR APPARENTLY CREATED A DANGEROUS FLOOR CONDITION WHICH INJURED PLAINTIFF; ALTHOUGH THE COMPANY WHICH HIRED THE INDEPENDENT CONTRACTOR WAS NOT LIABLE FOR THE INDEPENDENT CONTRACTOR'S NEGLIGENCE, MARSHALLS, THE RETAIL STORE WHERE THE INJURY OCCURRED, COULD BE VICARIOUSLY LIABLE FOR THE INDEPENDENT CONTRACTOR'S NEGLIGENCE BECAUSE MARSHALLS HAS A NONDELGABLE DUTY TO KEEP THE PUBLIC AREAS OF ITS STORE SAFE; WHETEHER MARSHALLS HAD NOTICE OF THE DANGEROUS CONDITION IS NOT AN ISSUE WHERE VICARIOUS LIABILITY MAY APPLY (FIRST DEPT).

The First Department noted that Marshall's had a nondelegable duty to keep the public area of its store safe. The underlying fact of the case are not described but plaintiff was apparently injured because of the negligence of defendant cleaning subcontractor. The defendant which hired the subcontractor was not liable because the subcontractor was retained as an independent contractor. But the store was liable for the subcontractor's negligence based upon its nondelegable duty to keep public areas safe (notice of the dangerous condition is not an issue):

The general rule is that a party who retains an independent contractor is not liable for that contractor's negligent acts … . The record establishes that neither USM [the company which hired the independent contractor] nor Marshalls exercised control over how [the independent contractor] performed its cleaning tasks at the Marshalls store where plaintiff was injured, and that USM was not even present at the location at the time of the accident. * * *

… [T]he court should not have granted summary judgment dismissing the complaint as against Marshalls, which had a nondelegable duty to maintain the public area of its store in a reasonably safe condition. Therefore, Marshalls can be held vicariously liable for any negligence on the part of the subcontractor that

caused the floor to become unsafe … . In light of the foregoing, we find it unnecessary to consider whether Marshalls established lack of notice of the hazardous condition. Jones v Marshalls, 2026 NY Slip Op 00087, First Dept 1-13-26

Practice Point: Here a retail store, Marshall's could be vicariously liable for a slip and fall caused by the negligence of an independent cleaning contractor. The store has a nondelegable duty to keep its public areas safe. The question whether Marshall's had notice of the dangerous condition is irrelevant where liability is vicarious. [Why is a retail store's notice of the dangerous condition a crucial issue where no independent contractor is involved, but irrelevant when the cleaning is done by an independent contractor?]

January 13, 2026

SLIP AND FALL, PARKING LOT, EVIDENCE.

IN THIS PARKING LOT SLIP AND FALL CASE, THE DEFENDANTS FAILED TO PROVE WHEN THE AREA WAS LAST INSPECTED OR CLEANED OF ICE AND SNOW; THEREFORE DEFENDANTS DID NOT PROVE A LACK OF CONSTRUCTIVE NOTICE OF THE ICY CONDTION AND SUMMARY JUDGMENT SHOULD NOT HAVE BEEN AWARDED (SECOND DEPT).

The Second Department, reversing Supreme Court in this slip and fall action and denying defendants' summary judgment motion, determined defendants did not demonstrate they did not have constructive notice of the icy condition. To demonstrate a lack of constructive notice, a defendant must prove the area of the slip and fall was recently inspected or cleaned. Proof of general snow and ice removal practices is not enough:

"In moving for summary judgment in an action predicated upon the presence of snow or ice, the defendants [have] the burden of establishing, prima facie, that [they] neither created the snow or ice condition that allegedly caused the plaintiff to fall nor had actual or constructive notice of that condition" … . "Accordingly, a property owner seeking summary judgment in a slip-and-fall case has the initial

burden of making a prima facie showing that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it" … .

Here, the defendants failed to establish, prima facie, that they lacked constructive notice of the alleged icy condition. The defendants' maintenance employee provided only general information about his snow and ice removal practices, and he failed to specify when he last salted, removed ice from, or inspected the area where the plaintiff fell relative to the time of the accident … . Jackson v A M E Zion-Trinity Hous. Dev. Fund Co., Inc., 2026 NY Slip Op 00243, Second Dept 1-21-26

Practice Point: There used to be reversals of slip and fall cases on this ground every week for ten years or so. Now they are rare.

January 21, 2026

SLIP AND FALL, SIDEWALK, MUNICIPAL LAW.

IN THIS SIDEWALK SLIP AND FALL CASE, DEFENDANT WAS EXEMPT FROM THE NYC SIDEWALK LAW (MAKING ABUTTING PROPERTY OWNERS RESPONSIBLE FOR SIDEWALK MAINTENANCE) BECAUSE HIS PROPERTY IS OWNER-OCCUPIED; HOWEVER THERE IS A QUESTION OF FACT WHETHER DEFENDANT IS LIABLE UNDER THE COMMON-LAW "SPECIAL USE" DOCTRINE; DEFENDANT USED THE SIDEWALK AS A DRIVEWAY FOR HIS GARAGE (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Manzanet-Daniels, reversing summary judgment in favor of defendant property owner in this slip and fall case, determined there was a question of fact whither defendant was liable for a sidewalk defect bases upon defendant's "special use" of the sidewalk as a driveway leading to defendant's garage. Supreme Court properly found that defendant was not liable under the NYC Sidewalk Law, which makes abutting property owners responsible for sidewalk maintenance, because of the statutory exemption for owner-occupied properties. The statutory exception was not, however, a ground for

summary judgment here because defendant could be liable under the common-law "special use" doctrine:

The parties agree that the defendant/owner made "special use" of the sidewalk by using it as a driveway … . Where the parties disagree is with respect to the scope of duty under the "special use" exception to liability, and whether it contains a causation requirement that is tied to the owner's special use. We find that it does. * * *

… [A]n owner will only be liable for a defect on the abutting sidewalk if it is tied to his special use of the property, and not if it arises from a wholly unrelated cause … . * * *

… [T]here are three distinct bases for abutting owner liability at common law: (1) when the owner derives a "special use" from the subject area, (2) when the owner causes the defect, and (3) when a statute otherwise imposes liability. * * *

We are … not persuaded by plaintiff's argument that it is fair and reasonable to expect an abutting owner who derives a special benefit from a public sidewalk to shoulder the full responsibility for maintaining that part of the sidewalk … . It would be more unfair to saddle a property owner with the general responsibility of maintaining the sidewalk abutting its driveway when its special use did not give rise to the defect. Prete v JJ Hoyt LLC, 2026 NY Slip Op 00325, First Dept 1-22-26

Practice Point: Even where, as here, an abutting property owner is exempt from the NYC statutory requirement to maintain the abutting sidewalk, the property owner may be liable for a defect in the sidewalk based upon the owner's special use of the sidewalk, here as a driveway leading to the owner's garage.

January 22, 2026

SLIP AND FALL, WET FLOOR, 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

SPOLIATION, VIDEO OF INCIDENT, NEGLIGENCE, EVIDENCE.

THE INCIDENT IN WHICH PLAINTIFF WAS INJURED BY BROKEN GLASS IN A DOOR WAS CAPTURED ON VIDEO WHICH WAS NEGLIGENTLY ERASED; PLANTIFF ALLEGED THE GLASS BROKE WHEN PLAINTIFF PULLED ON THE DOOR; AN EMPLOYEE OF THE BUILDING'S SECURITY COMPANY WHO SAW THE VIDEO CLAIMED PLAINTIFF PUNCHED THE GLASS; PRECLUSION OF TESTIMONY ABOUT THE CONTENTS OF THE VIDEO WAS TOO SEVERE A SANCTION FOR SPOLIATION; PLAINTIFF WAS ENTITLED TO AN ADVERSE INFERENCE JURY INSTRUCTION (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, over a two-justice concurrence, determined the video showing plaintiff's injury from broken glass in a door was negligently, not intentionally, erased. Therefore the proper sanction was an adverse inference charge, not the preclusion of any evidence about the contents

of the video. Plaintiff alleged the glass broke when plaintiff pulled on the door. Williams, an employee of the building-security company who viewed the video, claimed plaintiff punched the glass:

… [P]laintiff showed that the defendants had an obligation to preserve the video surveillance footage of the incident at the time that the footage was destroyed. Williams learned that the glass in the door was broken the same day that the incident occurred, and she investigated and documented it. Furthermore, the defendants' site manager testified at a deposition that the plaintiff's mother called after the incident to report that the plaintiff's arm had gone through the glass in the door, causing "severe injury," and that he was in the hospital. After receiving this report, the site manager testified, she spoke with Williams and learned that Williams had viewed video surveillance footage depicting the incident and had created an incident report. "Given the nature of the plaintiff's injuries and the immediate documentation and investigation into the accident by the defendants' employee[ ], the defendants were on notice of possible litigation and thus under an obligation to preserve any evidence that might be needed for future litigation" … .
* * *

Supreme Court improvidently exercised its discretion in precluding the defendants from presenting any evidence regarding Williams's observations of the video surveillance footage, as this sanction disproportionately eliminated their defense to this action. Instead, under the circumstances, including the negligent, rather than intentional, destruction of the video surveillance footage and the degree of prejudice to the plaintiff, the court should have directed that an adverse inference charge be given against the defendants at trial with respect to the video surveillance footage of the incident … . Battle v Fulton Park Site 4 Houses, Inc., 2026 NY Slip Op 00114, Second Dept 1-14-26

Practice Point: Here preclusion of testimony about the contents of a negligently (not intentionally) erased video which depicted the incident was deemed too severe a spoliation sanction because preclusion eliminated the only defense to the action. An adverse inference charge was deemed the appropriate sanction.

January 14, 2026

TRAFFIC ACCIDENTS, 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

UNIFIED TRIAL ON LIABILITY AND DAMAGES, CIVIL PROCEDURE, 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

WRONGFUL DEATH, ADMINISTRATOR NOT YET APPOINTED WHEN SUIT FILED, CIVIL PROCEDURE, TRUSTS AND ESTATES.

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