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Weekly Reversal Report
May 11 – 15, 2026

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts May 11 – 15, 2026, and Posted on the New York Appellate Digest Website on Monday, May 18, 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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UPON THE PRIOR APPEAL, THE SECOND DEPARTMENT MADE A FINDING THAT RESPONDENT SUFFERED FROM SEXUAL SADISM DISORDER AND REMITTED THE MATTER; SUPREME COURT IGNORED THE FINDING AND HELD A NEW NONJURY TRIAL ON ALL ISSUES; SUPREME COURT DID NOT HAVE THE AUTHORITY TO IGNORE THE SECOND DEPARTMENT'S MANDATE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined Supreme Court improperly ignored the terms of the Second Department's remittitur. On the prior appeal, the Second Department held that the petitioner had proven respondent suffered from sexual sadism disorder. On remittal, however, Supreme Court held a new nonjury trial on all issues, including whether respondent suffered from sexual sadism disorder:

"A trial court, upon remittitur, lacks the power to deviate from the mandate of the higher court" … . Therefore, "an order or judgment entered on remittitur 'must conform strictly to the remittitur'" … .

Here, as the determination of this Court in the January 2024 order is binding upon the Supreme Court … , the Supreme Court erred in, sua sponte, holding a nonjury trial on all issues and redetermining issues already determined by this Court … . Accordingly, the first May 2025 order must be reversed, and we remit the matter again to the Supreme Court, Kings County, for a new trial and determination as to whether the respondent's diagnoses of ASPD, psychopathy, and sexual sadism disorder are sufficient to find that the respondent suffers from a mental abnormality as defined in Mental Hygiene Law § 10.03(i) … , and a dispositional hearing, if appropriate … . Matter of State of New York v Ezikiel R., 2026 NY Slip Op 02987, Second Dept 5-13-26

Practice Point: A trial court cannot deviate from the mandate of a higher court. Here the appellate court's finding was ignored by Supreme Court upon remittal, requiring reversal and another remittal.

May 13, 2026

CIVIL PROCEDURE, APPEALS, FORECLOSURE.

BECAUSE THE ORDER DISMISSING THE COMPLAINT DID NOT DECIDE A MOTION MADE ON NOTICE, THE ORDER IS NOT APPEALABLE AS OF RIGHT; THEREFORE, A MOTION TO VACATE THE DISMISSAL PURSUANT TO CPRL 2221(A) IS PROPER (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff's motion to vacate the dismissal order in this foreclosure action should have been granted. The order dismissing the complaint was not appealable as of right because it did not decide a motion made on notice. Therefore a motion to vacate the dismissal pursuant to CPLR 2221(a) was proper and should have been granted:

The Supreme Court should have granted the plaintiff's motion, in effect, pursuant to CPLR 2221(a) to vacate the dismissal order and to restore the action to the active calendar. A motion pursuant to CPLR 2221(a) is not subject to any specific time limitation … . Where, as here, an order directing dismissal of a complaint is not appealable as of right because it did not decide a motion made on notice, it is procedurally proper for the aggrieved party to move pursuant to CPLR 2221(a) to vacate that order … .

CPLR 3215(c) provides that "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned . . . unless sufficient cause is shown why the complaint should not be dismissed" … . Here, CPLR 3215(c) is not applicable to the defendant under the circumstances of this case, as she appeared in the action by answer … . "Further, this action does not present an extraordinary circumstance as would warrant a sua sponte dismissal of the complaint" … . US Bank N.A. v Jones-Boakai, 2026 NY Slip Op 03019, Second Dept 5-13-26

Practice Point: If an order dismissing a complaint is not appealable as of right because it did not decide a motion made on notice, a motion to vacate the dismissal pursuant to CPLR 2221(a) is proper.

May 13, 2026

CIVIL PROCEDURE, ATTORNEYS, FORECLOSURE.

THE DEFENDANT'S ATTORNEY IN THIS FORECLOSURE ACTION FILED A NOTICE OF APPEARANCE WHICH WAIVED ANY OBJECTION TO PERSONAL JURISDICTION; JUDGMENT OF FORECLOSURE REINSTATED (SECOND DEPT).

The Second Department, reversing Supreme Court and reinstating the judgment of foreclosure, determined that the defendant's (the Church's) attorney's filing of a notice of appearance waived any objection to personal jurisdiction:

CPLR 5015(a)(4) provides in relevant part that "[t]he court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person . . . upon the ground of . . . lack of jurisdiction to render the judgment or order." Under CPLR 5015(a)(4), a default must be vacated once lack of personal jurisdiction has been established … . "[T]he filing of a notice of appearance in an action by a party's counsel serves as a waiver of any objection to personal jurisdiction in the absence of either the service of an answer which raises a jurisdictional objection, or a motion to dismiss pursuant to CPLR 3211(a)(8) for lack of personal jurisdiction" … . Here, since it is undisputed that Goodman filed a notice of appearance on behalf of the Church and that the Church failed, at that time, to file an answer raising the defense of lack of personal jurisdiction or to make a pre-answer motion to dismiss on that ground, the Church waived the defense of lack of personal jurisdiction … . There is no merit to the Church's contention that a notice of appearance that is untimely filed does not confer personal jurisdiction over a defendant … . NYCTL 1998-2 Trust v Grace Christian Church, 2026 NY Slip Op 02995, Second Dept 5-13-26

Practice Point: A notice of appearance by defendant's attorney which is accepted by plaintiff, even if the notice is "late," waives any objection to personal jurisdiction.

May 13, 2026

CIVIL PROCEDURE, EVIDENCE.

HERE THE "RENEWED" SUMMARY JUDGMENT MOTION WAS BASED ON EVIDENCE WHICH WAS AVAILABLE FOR THE FIRST MOTION; THE "RENEWED" MOTION SHOULD HAVE BEEN DENIED (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined plaintiff's renewed motion for summary judgment should not have been granted; it was based on evidence which was available for the first motion:

… "[S]uccessive motions for summary judgment should not be entertained without a showing of newly discovered evidence or other sufficient justification" … . In support of the renewed motion for summary judgment, plaintiff presented an affirmation from Joseph DeCiutiis, a senior vice president at a title insurance company who represented that his company had determined that a secretary certificate of authority for the sale of the subject real property was "insurable authorization for the sale." While the DeCiutiis affirmation is dispositive of the issue of fact identified by this Court in Apple Bank I with respect to plaintiff's entitlement to summary judgment, plaintiff offers no reason why it could not have obtained a similar affirmation in support of its first summary judgment motion. Such evidence "was clearly available to [plaintiff] earlier, and thus should be rejected for failure to show due diligence in attempting to obtain the statement before the submission of the prior motion" … . Apple Bank for Sav. v Prime Rok Real Estate LLC., 2026 NY Slip Op 03057, First Dept 5-14-26

Practice Point: A "successive" summary judgment motion which is based on evidence which could have been included in the initial motion will be denied.

May 14, 2026

CIVIL PROCEDURE, FORECLOSURE, TRUSTS AND ESTATES, APPEALS.

THE DEATH OF ONE OF THE DEFENDANTS DURING THE FORECLOSURE PROCEEDINGS RENDERED THE JUDGMENT OF FORECLOSURE, WHICH INCLUDED A DEFICIENCY JUDGMENT AGAINST THE DECEASED DEFENDANT, A NULLITY (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the judgment of foreclosure was a nullity and the court did not have jurisdiction over the appeal because one of the defendants died during the proceedings:

"'Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the substitution of a personal representative for the decedent'" … . Ordinarily, any determination rendered without such a substitution is deemed a nullity … . However, under certain circumstances, where a party's death does not affect the merits of a case, this Court has found that there is no need for strict adherence to the requirement that the proceedings be stayed pending substitution … .

Here, the record demonstrates that as of July 2021, the plaintiff and the Supreme Court were on notice that [defendant] Trevor P. Williams had died. Nevertheless, the proceedings continued after that date, and in March 2022, the court issued the subject order and judgment of foreclosure and sale, which contains a deficiency provision applicable to Trevor P. Williams.

Given the deficiency provision contained in the order and judgment of foreclosure and sale, the demise of Trevor P. Williams affects the merits of the case … . The contention of nonparty U.S. Bank Trust, N.A., that it waived the right to seek a deficiency against Trevor P. Williams is based on evidence dehors the record and, therefore, is not properly considered on this appeal … . Therefore, under the circumstances of this case, since a proper substitution was not made as required by CPLR 1015(a), the Supreme Court was without jurisdiction, inter alia, to issue the order and judgment of foreclosure and sale. Accordingly, the order and judgment of foreclosure and sale appealed from is a nullity and must be vacated and the appeal must be dismissed, as this Court has no jurisdiction to entertain the appeal
. Champion Mtge. v Williams, 2026 NY Slip Op 02960, Second Dept 5-13-28

Practice Point: If the death of a party doesn't affect the merits of the case, sometimes the need to stay the proceeding and substitute a personal representative can be overlooked. Here, however, the judgment of foreclosure included a deficiency judgment against the deceased defendant. Therefore the death affected the merits and the proceedings were rendered a nullity.

May 13, 2026

CIVIL PROCEDURE, FORECLOSURE.

THE ONLY ACTION PLAINTIFF TOOK WITHIN A YEAR OF DEFENDANT'S DEFAULT IN THIS FORECLOSURE CASE WAS TO REQUEST A SETTLEMENT CONFERENCE; BUT A SETTLEMENT CONFERENCE IS NOT REQUIRED WHEN THE DEFENDANT DOES NOT RESIDE AT THE PROPERTY SUBJECT TO FORECLOSURE; SINCE NO ACTION WAS TAKEN TO ENTER THE DEFAULT JUDGMENT WITHIN A YEAR, THE COMPLAINT WAS DISMISSED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff in this foreclosure action did not take proceedings for the entry of a default judgment within one year requiring dismissal of the complaint. Although plaintiff did request a settlement conference within one year, the settlement conference was not required because the defendant did not reside at the property subject to foreclosure:

… [P]laintiff had one year from July 17, 2012, to take proceedings for the entry of judgment against the defendant (see CPLR 3215[c] …). However, the plaintiff did not take such proceedings until over two years later, when it moved, inter alia, for leave to enter a default judgment against the defendant and for an order of reference in March 2015. Thus, the plaintiff failed to take proceedings for the entry of judgment within one year after the defendant's default. Although the plaintiff filed a request for judicial intervention requesting a foreclosure settlement conference within the one-year period after the defendant's default, a settlement conference was not required in this case because the defendant did not reside at the property subject to foreclosure (see CPLR 3408[a][1]). As such, the filing of the

request for judicial intervention did not constitute the taking of proceedings for the entry of a judgment pursuant to CPLR 3215(c) and did not toll the one-year deadline to do so … . U.S. Bank N.A. v Islam, 2026 NY Slip Op 03015, Second Dept 5-13-26

Practice Point: Requesting a settlement conference which is not required does not toll the one-year period for taking proceedings to enter a default judgment in a foreclosure action.

May 13, 2026

CRIMINAL LAW, ATTORNEYS, CONSTITUTIONAL LAW, JUDGES.

EVEN IF DEFENSE COUNSEL FAILED TO INFORM DEFENDANT OF THE DEPORTATION CONSEQUENCES OF HIS GUILTY PLEA, THE JUDGE SO INFORMED HIM AND HE ACKNOWEDGED THE CONSEQUENCES ON THE RECORD; THEREFORE DEFENDANT WAS UNABLE TO SHOW HE WAS PREJUDICED BY THE ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendant's motion to vacate his conviction by guilty plea on ineffective assistance grounds should have been denied. Even if defense counsel had failed to inform defendant of the deportation-consequences of his guilty plea, the defendant was made aware of them by the judge:

The defendant failed to establish, sufficiently to warrant an evidentiary hearing, that his counsel's allegedly deficient advice deprived him of the effective assistance of counsel under either the federal or state constitutional standards … . It is clear from the record of the plea proceeding that prior to accepting the plea, the court advised the defendant that he may be subject to deportation as a result of his plea of guilty. The defendant acknowledged his understanding thereof and confirmed that he wished to plead guilty. Under the circumstances of this case, even if defense counsel had failed to advise the defendant of the possible immigration consequences of pleading guilty, the defendant was indisputably

aware of those possible consequences before he entered his favorable plea … . Accordingly, the defendant cannot show prejudice resulting from defense counsel's alleged failure to provide that advice himself … , and there is no reasonable probability that the defendant would not have pleaded guilty but for defense counsel's alleged deficiency … . People v Lewis, 2026 NY Slip Op 03001, Second Dept 5-13-26

Practice Point: Here defendant's motion to vacate his conviction by guilty plea based upon ineffective assistance of counsel should have been denied without a hearing. Even if defense counsel was ineffective in failing to inform defendant of the deportation consequences of his plea, defendant was not prejudiced because the judge so informed him.

May 13, 2026

CRIMINAL LAW, EVIDENCE, CONSTITUTIONAL LAW.

AFTER A TRAFFIC STOP, THE POLICE HAD PROBABLE CAUSE FOR A WARRANTLESS SEARCH OF DEFENDANT'S AUTOMOBILE FOR EVIDENCE OF DWI; DURING THE SEARCH THE POLICE OPENED A CLOSED BOX AND DISCOVERED A FIREARM; REVERSING SUPREME COURT, THE SECOND DEPARTMENT DETERMINED THE POLICE HAD PROBABLE CAUSE TO SEARCH FOR ALCOHOL IN THE CLOSED BOX (SECOND DEPT).

The Second Department, reversing Supreme Court on the People's appeal, determined the police, after a traffic stop, had probable cause to search the defendant's car for evidence of DWI. The police therefore had probable cause to open a closed box which could have contained alcohol, but in fact contained a firearm:

… Supreme Court credited the officers' testimony that the defendant apparently had been drinking, and those factual findings and credibility determinations are entitled to great deference on appeal … . Thus, the police had probable cause to

search the vehicle for evidence of the crime of operating a motor vehicle while under the influence of alcohol as a misdemeanor.

"If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search" … , which may include closed containers … "found therein in which there was probable cause to believe that the [contraband] may be found" … .

The scope of a warrantless search of a vehicle is defined not by the nature of the container in which the contraband is secreted, but by the object of the search and the places in which there is probable cause to believe that it may be found … . The relevant inquiry here is not whether the cardboard box could physically hold an open container of alcohol, but whether there was reason to believe that it did … .

Here the cardboard box containing the gun was unsealed and heavy, indicating it was not empty. Further the defendant moved his hands under the seat when he was stopped, indicating he may have been secreting contraband in the box. The issue was whether that search could extend to the cardboard box. The label on the box stating that it originally contained "lithium battery portable power station" was not particularly significant since the box was not new, was unsealed, and was of a size and shape that could store a variety of objects, including an alcohol bottle or a gun. People v Perry, 2026 NY Slip Op 03005, Second Dept 5-13-26

Practice Point: Upon a traffic stop, evidence the driver had been drinking authorized a warrantless search of every part of the car for alcohol. Because there was reason to believe a closed box could contain alcohol, the police were authorized to search the box and seize the firearm inside.

May 13, 2026

CRIMINAL LAW, EVIDENCE, CONSTITUTIONAL LAW.

IF A DEFENDANT CHALLENGES THE LEGALITY OF HIS ARREST, THE PEOPLE MUST PROVE THE ARREST WAS BASED UPON PROBABLE CAUSE; THE ISSUANCE OF AN I-CARD DEMONSTRATING PROBABLE CAUSE IS NOT, BY ITSELF, ENOUGH; THERE MUST BE TESTIMONY AT THE SUPPRESSION HEARING DEMONSTRATING THE ARREST WAS IN FACT BASED ON THE INFORMATION IN THE I-CARD (SECOND DEPT).

The Second Department, reversing the denial of defendant's motion to suppress his statements, determined the People did not prove the legality of defendant's arrest at the suppression hearing. An I-card demonstrating probable cause for defendant's arrest had been issued by the police two months before the arrest. But no one testified that the arrest was based upon the information in the I-card:

At a suppression hearing, a detective testified that he had generated still images and wanted flyers from a video of the alleged robbery, circulated the still images and wanted flyers throughout the police department, and activated an I-card for the defendant's arrest, and that the defendant was apprehended by the Queens Warrant Squad nearly two months later. The arresting officers did not testify at the suppression hearing, nor did the detective testify about the circumstances of the arrest. After the hearing, the Supreme Court, among other things, denied that branch of the defendant's omnibus motion which was to suppress his statements to law enforcement officials. The defendant thereafter pleaded guilty to attempted assault in the first degree. The defendant appeals.

When a defendant challenges the admission of statements he or she has made, claiming they are the product of an illegal arrest, the People bear the burden of going forward to establish the legality of the police conduct in the first instance … . Under the fellow officer rule, a police officer can make a lawful arrest even without personal knowledge sufficient to establish probable cause, so long as the officer is acting upon the direction of an officer in possession of information sufficient to constitute probable cause for the arrest … .

Here, the People failed to present evidence sufficient to establish that the arresting officers stopped and arrested the defendant on probable cause allegedly

communicated by the I-card … . Contrary to the People's contention, the issuance of an I-card nearly two months before the defendant's arrest, standing alone, was insufficient to establish that the officers who stopped and detained the defendant were actually acting upon the direction of an officer in possession of information sufficient to constitute probable cause … . People v Moreno, 2026 NY Slip Op 03004, Second Dept 5-13-26

Practice Point: The existence of an I-card does not, by itself, demonstrate an arrest was based on probable cause. There must be testimony by the arresting officer that the arrest was, in fact, based upon the information in the I-card.

May 13, 2026

CRIMINAL LAW, JUDGES, CONSTITUTIONAL LAW, APPEALS.

THE JUDGE'S FAILURE TO MENTION THE POSTRELEASE SUPERVISION (PRS) COMPONENT OF THE SENTENCE RENDERS THE PLEA UNCONSTITUTIONAL; THE ISSUE NEED NOT BE PRESERVED (FIRST DEPT).

The First Department, vacating defendant's plea, determined the judge never informed the defendant of the postrelease supervision (PRS) component of the sentence. The court noted that the issue may be raised for the first time on appeal. The issue need not be preserved by a motion to withdraw the plea or vacate the conviction:

The record does not establish that the court advised defendant when he pleaded guilty that the sentence would include a period of PRS. Consequently, the plea "cannot be deemed knowing, voluntary and intelligent" … , and it must be vacated.

Where a trial judge does not fulfill the obligation to advise a defendant of PRS during the plea allocution, "the defendant may challenge the plea as not knowing, voluntary and intelligent on direct appeal, notwithstanding the absence of a post-allocution motion" … . The prosecution's reference to its offer of PRS at the plea proceeding does not change this conclusion where the court itself never mentioned PRS at the plea proceeding … . Similarly, defendant's failure to move to withdraw

the plea or vacate the judgment of conviction does not bar him from raising the issue at this time. People v Ndiaye, 2026 NY Slip Op 03080, First Dept 5-14-26

Practice Point: A guilty plea is not "knowing, voluntary and intelligent" if the judge fails to mention the postrelease supervision (PRS) component of the sentence.

May 14, 2026

CRIMINAL LAW, JUDGES.

HERE COUNTY COURT DID NOT OFFER ANY RATIONALE FOR EMPANELING AN ANONYMOUS JURY AND NONE IS APPARENT FROM THE RECORD; NEW TRIAL ORDERED (THIRD DEPT).

The Third Department, reversing defendant's convictions and ordering a new trial, determined the judge should not have empaneled an anonymous jury:

We turn next to defendant's argument that County Court erred by empaneling an anonymous jury — that is, by referring to prospective jurors "only by numbers and initials, with neither the attorneys nor [the] spectators knowing the jurors' names." On that, the record clearly bears out that County Court improperly empaneled an anonymous jury in clear violation of CPL former 270.15 … . However, acknowledging that no objection was raised before the trial court, defendant first argues that doing so constituted a mode of proceedings error. As we recently determined on two separate occasions, that contention is without merit … . We may nevertheless reach the issue as a matter of our discretion in the interest of justice (see CPL 470.15 [6] [a]). In assessing whether it is appropriate to do so, "we consider the totality of the circumstances, including the nature of the statutory violation, the explanation offered by the trial court and the potential for prejudice to the defendant" … ..

We agree with defendant's contention that reversal is warranted based upon the totality of the circumstances. Although the empaneling of an anonymous jury may be appropriate under certain limited circumstances, where, as here, there is "no 'factual predicate for the extraordinary procedure,' " to do so was error … . Indeed,

there is no dispute that County Court failed to provide any rationale for doing so, and "[t]he record does not reflect any concern regarding juror safety, intimidation or interference, nor any circumstances that would otherwise warrant the use of an anonymous jury" … . Moreover, unlike those cases where defense counsel was made aware of the juror names … , the record is devoid of any indication that such occurred here, "which materially heightens the risk of prejudice" … . We therefore exercise our interest of justice jurisdiction, reverse and remit for a new trial. People v Zakrzewski, 2026 NY Slip Op 03029, Third Dept 5-14-26

Practice Point: Although improperly impaneling an anonymous jury is not a mode of proceedings error, and no objection was raised to the anonymous jury at trial, because there appears to have been no rationale for using an anonymous jury, the Third Department, in the interest of justice, reversed defendant's convictions and ordered a new trial.

May 14, 2026

CRIMINAL LAW.

HERE THE INDICTMENT PURPORTED TO CHARGE CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE THIRD DEGREE, WHICH REQUIRES POSSESSION OF 1/2 OUNCE OR MORE, BUT THE FACTUAL RECITATION IN THE INDICTMENT ASSERTED POSSESSION OF 1/8 OUNCE OR MORE; THE INDICTMENT IS JURISDICTIONALLY DEFECTIVE AND MUST BE DISMISSED (THIRD DEPT).

The Third Department, reversing County Court, determined the indictment was jurisdictionally defective and must be dismissed. The indictment purported to charge criminal possession of a controlled substance in the third degree, which requires possession of 1/2 ounce or more, but the factual recitation in the indictment asserted defendant possessed 1/8 ounce or more:

As the factual allegations effectively negated an essential element of the particular crime sought to be charged (i.e., the requisite aggregate weight of 1/2 ounce or more) and altered the theory upon which the People proceeded in prosecuting

defendant, the indictment was jurisdictionally defective … . Regardless of statements made by defendant during the plea allocution regarding the aggregate weight of the substance he possessed, such statements are insufficient to cure the defects in the indictment. As the indictment negated an essential element of the purported crime charged, we are constrained to reverse the conviction and dismiss the indictment as jurisdictionally defective … . People v Head, 2026 NY Slip Op 03028 Third Dept 5-14-26

Practice Point: Here a discrepancy between the amount of a controlled substance required by the statute and the amount asserted in the factual recitation in the indictment rendered the indictment jurisdictionally defective.

May 14, 2026

FAMILY LAW, CIVIL PROCEDURE, INDIAN LAW, JUDGES.

AN IN DEPTH ANALYSIS OF THE JURISDICTIONAL PRIORITY ISSUES RAISED IN A CUSTODY MATTER REGARDING A NAVAJO CHILD, BORN TO A NAVAJO MOTHER IN NEW MEXICO, LIVING ON THE NAVAJO NATION RESERVATION IN UTAH, WITH FATHER RESIDING IN NEW YORK (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Mackey, grappled with the complex procedural and jurisdictional issues surrounding the custody of a Navajo child, born in New Mexico to a Navajo mother, living on the Navajo Nation reservation in Utah, and residing with father in New York. The issue is jurisdictional priority at the convergence of the Indian Child Welfare Act (ICWA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The opinion is far too complex to summarize here. Matter of Kody II. v Shaunta JJ., 2026 NY Slip Op 03044, Third Dept 5-14-26

May 14, 2026

FORCIBLE TOUCHING, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, BATTERY, CIVIL PROCEDURE, CRIMINAL LAW.

T HE ALLEGATIONS THAT DEFENDANT' GRABBED PLAINTIFF'S SHOULDERS AND TOUCHED PLAINTIFF'S CHEEKS DID NOT STATE CAUSES OF ACTION FOR TORTIOUS "FORCIBLE TOUCHING" OR FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; COMPLAINT DISMISSED OVER AN EXTENSIVE DISSENT (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Webber, over an extensive dissent, reversing Supreme Court, determined this lawsuit alleging a tortious "forcible touching" and intentional infliction of emotional distress should have been dismissed:

Plaintiff alleges that during the summers from 2000 through 2003, he worked in the wardrobe department of Roanoke Island Historical Association (RIHA), where defendant Long also worked. According to plaintiff, during that period there were numerous instances where Long committed acts of sexual misconduct toward plaintiff. The most egregious occurred in 2002, when Long engaged in nonconsensual sex with plaintiff while plaintiff was intoxicated. Plaintiff alleges that six years later, in 2008, after not having had any contact with Long, he briefly encountered Long in a public costume shop where Long grabbed plaintiff's shoulders and touched plaintiff's cheeks. * * *

Supreme Court erred in denying defendant Long's motion to dismiss the complaint pursuant to CPLR 3211, as defendant established that plaintiff's allegations do not "fit within any cognizable legal theory" … . Plaintiff failed to properly allege facts sufficient to establish a tort that would constitute forcible touching under Penal Law § 130.52(1). Long's alleged acts of grabbing plaintiff's shoulders and touching his cheeks "with the intimacy of a grandmother greeting her grown grandchild" were not, under the circumstances, sexual or intimate in nature, as required by the statute.

Penal Law § 130.52(1) was enacted in 2000. It states that "a person is guilty of forcible touching when such person intentionally, and for no legitimate purpose forcibly touches the sexual or other intimate parts of another person for the purpose

of degrading or abusing such person, or for the purpose of gratifying the actor's sexual desire." "[F]orcible touching includes squeezing, grabbing or pinching" … .
* * *

Plaintiff's shoulders and cheeks did not constitute "sexual or intimate parts" that were "sufficiently personal or private that [they] would not be touched in the absence of a close relationship between the parties" … . Thus, Long's acts of grabbing plaintiff's shoulders and touching his cheeks were not, under the circumstances, sexual or intimate in nature, as necessary to state a claim for forcible touching … . Watson v Roanoke Is. Historical Assn., 2026 NY Slip Op 02949, First Dept 5-12-26

Practice Point: Consult this decision for insight into the allegations necessary to state a cause of action for tortious "forcible touching."

May 12, 2026

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

RPAPL 1301, WHICH PROHIBITS SIMULTANEOUS ACTIONS AT LAW TO RECOVER ON A NOTE AND ACTIONS IN EQUITY TO FORECLOSE A MORTGAGE, DOES NOT APPLY TO OUT-OF-STATE PROPERTIES; RPAPL 1371 DOES NOT APPLY TO OUT-OF-STATE FORECLOSURES AND THEREFORE DOES NOT PROVIDE A BASIS TO DEEM A JUDGMENT SATISFIED UPON A FORECLOSURE SALE (FIRST DEPT).

The First Department noted that RPAPL 1301 and 1371 do not apply to out-of-state foreclosures:

The motion court properly rejected defendants' position that RPAPL 1301 was a ground to deny plaintiff's motion. That section "prohibits a mortgage lender seeking repayment of a loan from simultaneously prosecuting an action at law to recover upon a promissory note and an action in equity to foreclose the mortgage" … . However, RPAPL 1301 does not apply "where, as here, the property securing

the loan is located outside of New York State" … . This is the case even though the parties in their loan documents agreed that New York law would govern any disputes arising from the agreements.

Similarly, RPAPL 1371 does not apply to out-of-state foreclosures and therefore does not provide a basis to deem the judgment against defendants satisfied upon the foreclosure sale of the properties … . Thus, defendants' motion seeking an order deeming the judgment satisfied because plaintiff failed to move for a deficiency judgment after the out-of-state properties were foreclosed upon and sold was also properly denied. WPC Billboard Lender LLC v Bartkowski, 2026 NY Slip Op 02951, First Dept 5-12-26

May 12, 2026

HUMAN RIGHTS LAW, EMPLOYMENT LAW, CIVIL PROCEDURE, EVIDENCE, JUDGES.

DEFENDANTS DESTROYED SPEADSHEETS WHICH MAY HAVE DEMONSTRATED PLAINTIFF'S TERMINATION WAS NOT MOTIVATED BY THE NEED TO CUT COSTS; PLANTIFF IN THIS EMPLOYMENT DISCRIMINATION ACTION WAS ENTITLED TO AN ADVERSE INFERENCE JURY CHARGE (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined defendants in this employment discrimination action should have been sanctioned for spoliation of evidence. The defendants destroyed retail store spreadsheets which could have demonstrated plaintiff's termination was not motivated by the need to cut costs. Plaintiff alleged he was terminated because he aided Egyptian employees who complained on national origin or religious discrimination. The First Department held plaintiff was entitled to an adverse inference jury charge:

… [T]he court erred in denying spoliation sanctions. Defendants breached their duty to preserve evidence by destroying retail store spreadsheets which were the only contemporaneous data on profits, payroll, and performance after litigation was reasonably anticipated … . Plaintiff's October 2017 warning against tampering

with accounting and payroll records triggered a preservation obligation that required defendants to suspend routine destruction policies … . Defendants cannot claim the records were deleted in the ordinary course of business, as a routine retention policy is no defense once the duty to preserve attaches … . Further, sanctions are warranted where a party's negligence or intent deprives an opponent of the means of proving their claim … . Here, the destroyed spreadsheets are central to the issue of pretext. While defendants claim cost-based downsizing as the reason for termination, the destroyed data was the only evidence available to test whether the stores were actually underperforming or if plaintiff's termination was retaliatory. Because this unique, irrecoverable evidence was within defendants' exclusive control, its destruction is highly prejudicial. Accordingly, plaintiff should be granted an adverse inference charge at the time of trial. Pescales v Pax Ventures LLC, 2026 NY Slip Op 02942, First Dept 5-12-26

Practice Point: Defendants in this employment discrimination action were sanctioned for destroying financial records which could have demonstrated plaintiff's termination was not motivated by the need to cut costs.

May 12, 2026

JUDGES, ATTORNEYS, CIVIL PROCEDURE.

AFTER PLAINTIFF'S COUNSEL WITHDREW, THE JUDGE SET A DEADLINE FOR PLAINTIFF TO APPEAR WITH NEW COUNSEL; WHEN THE DEADLINE PASSED, THE JUDGE, SUA SPONTE, DISMISSED THE MEDICAL MALPRACTICE COMPLAINT; THE JUDGE DID NOT HAVE THE AUTHORITY FOR THE "SUA SPONTE" DISMISSAL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the judge did not have the authority to, sua sponte, dismiss the complaint when plaintiff missed the court's deadline for finding new counsel:

… [C]ounsel … moved for leave to withdraw as the plaintiff's counsel. … Supreme Court, inter alia, granted the motion and directed that should the plaintiff fail to retain counsel by February 1, 2023, the complaint would be dismissed.

Thereafter, in an order dated February 8, 2023, the court, upon the conditional order, sua sponte, directed dismissal of the complaint with prejudice. The plaintiff appeals.

"A court's power to dismiss a complaint sua sponte is to be used sparingly, and only when extraordinary circumstances exist to warrant such a dismissal" … . Here, the Supreme Court was without authority, either pursuant to CPLR 3216 or 22 NYCRR 202.27 … , to direct dismissal of the complaint … . Under these circumstances, the court improperly, sua sponte, directed dismissal of the complaint .. . Dowd v Tischler, 2026 NY Slip Op 02968, Second Dept 5-13-26

Practice Point: Appellate courts don't like "sua sponte" dismissals of complaints.

May 13, 2026

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF WAS INJURED WHEN A GRINDER WITH NO GUARD KICKED BACK; THE ALLEGATION PLAINTIFF WAS TOLD TO USE A SLEDGEHAMMER, NOT THE GRINDER, DID NOT RAISE A QUESTION OF FACT; A SLEDGEHAMMER IS NOT A SAFETY DEVICE (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff's motion for summary judgment on his Labor Law 240(1) and 241(6) causes of action should have been granted. Plaintiff was injured when a grinder with no guard kicked back. The allegation that plaintiff was told to use a sledgehammer, not the angle grinder, did not raise a question of fact:

Plaintiff established prima facie entitlement to summary judgment as to liability on his Labor Law § 241(6) claim insofar as that claim was predicated on a violation of Industrial Code § 23-1.5(c)(3), which mandates that equipment in use shall be kept sound and operable and that damaged equipment shall be immediately repaired, restored, or removed from the job site. …

… [E]ven if plaintiff was negligent by using the grinder instead of the sledgehammer, this at most constitutes comparative negligence, which is insufficient to defeat plaintiff's motion … .

To the extent that [defendant] argues that plaintiff was recalcitrant in ignoring the alleged instructions to use a sledgehammer and to not use an angle grinder, this is insufficient to raise a triable issue of fact. … [E]ven if the defense were to apply to a Labor Law § 241(6) claim … it has no application where, as here, no adequate safety devices were provided because a sledgehammer is not a safety device. Terron-Alcantara v Charlie's Real Estate LLC, 2026 NY Slip Op 03091, First Dept 5-14-26

Practice Point: Comparative negligence does not defeat a Labor Law 240(1) cause of action.

Practice Point: Here, the allegation plaintiff was told to use a sledgehammer, not the unsafe grinder, did not raise a question of fact on the Labor Law 241(6) cause of action.

May 14, 2026

LABOR LAW-CONSTRUCTION LAW, NEGLIGENCE.

A PRIOR PROPERTY OWNER CAN BE LIABLE FOR A DANGEROUS CONDITION UNDER LABOR LAW 200 AND COMMON LAW NEGLIGENCE (PREMISES LIABILITY); BUT A PRIOR PROPERTY OWNER CANNOT BE LIABLE UNDER LABOR LAW 240(1) OR 241(6) FOR CONSTRUCTION-RELATED ACTIVITIES (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined a prior owner of property may be liable pursuant to Labor Law 200 and common law negligence for a dangerous condition which the new owner did not have time to remedy, but prior owners cannot be liable under Labor Law 240(1) and 241(6) which relate to construction activities:

… Supreme Court properly denied those branches of Federal Brick's motion which were for summary judgment dismissing the causes of action alleging a violation of Labor Law § 200 and common-law negligence insofar as asserted against it to the extent that they sounded in premises liability. … Federal Brick failed to establish, prima facie, that it could not be held liable for the allegedly dangerous premises

condition as a former owner. Inasmuch as "Labor Law § 200 is a codification of the common-law duty of property owners and general contractors to provide workers with a safe place to work" … .

… T]he "narrow exception" that allows for premises liability to be extended to prior owners of property … does not apply to the statutory liability imposed by Labor Law §§ 240(1) and 241(6). Those statutes apply to certain construction-related activities … , rather than premises conditions for which a prior owner might remain responsible. Quintero v MBH Capital, LLC, 2026 NY Slip Op 03010, Second Dept 5-13-26

Practice Point: Under some circumstances a prior property owner may be liable for injury caused by a dangerous condition if the new owner has not yet had time to learn of it and remedy it. This prior-owner liability may be pursunat Labor-Law-200 and common-law negligence theories.

May 13, 2026

LANDLORD-TENANT, NEGLIGENCE, CONTRACT LAW, EVIDENCE.

TENANTS AND THE PROPERTY MANAGER COULD BE LIABLE FOR INJURY CAUSED BY FURNITURE BLOWN OFF A 12TH STORY TERRACE BY WIND (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined the plaintiff's actions against the property manager and tenants should not have been dismissed. Plaintiff alleged she was injured by a heavy wooden lounge chair that was blown off a 12th story apartment terrace:

In this personal injury action, plaintiff seeks damages for injuries that she allegedly sustained when a heavy wooden lounge chair struck her after it was blown off the terrace of a 12th floor apartment in Manhattan. The building was owned by 15 Union Square West and managed by BHS; the apartment itself was owned by GR Realty and was rented to the tenant defendants.

Supreme Court should not have dismissed the complaint as against the tenant defendants and BHS. There are issues of fact as to whether the tenant defendants,

who owe a common-law duty of reasonable care to maintain the premises in a reasonably safe condition independent of any obligation that might be imposed by their lease, had constructive notice of the potentially hazardous condition created by the unsecured lounge chair … . Although the lease stated that tenant defendants were not permitted to change the location of any furniture in the apartment, there were occasions when GR Realty granted tenant requests to move furniture. The record also presents evidence that the tenant defendants used the terrace during their occupancy, and issues of fact exist as to whether the risk posed by this furniture was visible and apparent during this period.

Similarly, there are issues of fact as to whether BHS, which managed the property, had constructive notice of the potentially hazardous condition and exercised control over the use of the terraces yet failed to take sufficient precautions in order to prevent or remedy a hazardous condition … . There is evidence in the record that BHS had previously been involved in notifying owners of potential hazards posed by windy conditions, and in fact had helped owners to secure furniture or bring it inside during bad weather…. . Sen v GR Realty Holdings LLC, 2026 NY Slip Op 02947, First Dept 5-12-26

Practice Point: Consult this decision for insight into the various theories of liability triggered by injury caused by furniture which was blown off a 12th story apartment terrace.

May 12, 2026

MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE, AGENCY.

ALTHOUGH PLAINTIFF'S EXPERT WAS NOT BOARD CERTIFIED IN EMERGENCY MEDICINE, THE EXPERT SET FORTH A SUFFICIENT FOUNDATION FOR THE OPINION; THE HOSPITAL DID NOT DEMONSTRATE IT COULD NOT BE HELD VICARIOUSLY LIABLE FOR TREATMENT BY AN INDEPENDENT PHYSICIAN (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the medical malpractice action should not have been dismissed. Plaintiff's medical expert need

not be board certified in emergency medicine to be qualified to offer an opinion. The hospital did not demonstrate it could not be held vicariously liable for the care provided by an independent physician:

Contrary to the defendants' contention, the plaintiffs' expert was qualified to offer an opinion despite not being board certified in emergency medicine. "'A physician need not be a specialist in a particular field to qualify as a medical expert and any alleged lack of knowledge . . . [or] expertise goes to the weight and not the admissibility of the testimony'" … . Here, the plaintiffs' expert set forth a sufficient foundation for his or her opinion, based on his or her clinical experience and familiarity with the applicable standards of care … . …

… [G]enerally, a hospital may not be held vicariously liable for the negligence of a private attending physician chosen by the patient … . "However, an exception to the rule that a hospital may not be held vicariously liable for the treatment provided by an independent physician applies where a patient comes to the emergency room seeking treatment from the hospital and not from a particular physician of the patient's choosing, or a nonemployee physician otherwise acted as an agent of the hospital or the hospital exercised control over the physician" … . Here, the defendants failed to demonstrate, prima facie, that [the hospital] was free from vicarious liability for [plaintiff's] care and treatment in its emergency department as a matter of law … . Valitutto v Staten Is. Univ. Hosp., 2026 NY Slip Op 03020, Second Dept 5-13-26

Practice Point: Here plaintiff's expert was qualified to offer an opinion despite not being board certified in emergency medicine.

Practice Point: Here the hospital did not demonstrate it could not be held vicariously liable for treatment by an independent physician.

May 13, 2026

MUNICIPAL LAW, EMPLOYMENT LAW.

THE ALBANY LOCAL LAW WHICH GIVES THE COMMISSIONER OF THE DEPARTMENT OF PUBLIC SAFETY EXCLUSIVE AUTHORITY TO HANDLE POLICE DISCIPLINARY MATTERS IS VALID (THIRD DEPT).

The Third Department, in an extensive full-fledged opinion by Justice Corcoran, determined an Albany local law gave the Commissioner of the Department of Public Safety the exclusive authority to handle police disciplinary matters. The opinion is complex and cannot be fairly summarized here. Matter of City of Albany, N.Y. (Albany Police Benevolent Assn.), 2026 NY Slip Op 03038, Third Dept 5-14-26

May 14, 2026

NEGLIGENCE, CIVIL PROCEDURE, EVIDENCE.

ALTHOUGH DEFENDANT IN THIS REAR-END COLLISION CASE DID NOT PLEAD THE EMERGENCY DOCTRINE AS AN AFFIRMATIVE DEFENSE, THE DEFENSE WAS PROPERLY RAISED IN OPPOSITION TO PLAINTIFFS' SUMMARY JUDGMENT MOTION (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendant raised a question of fact in this rear-end collision case. Although defendant had not pleaded the emergency doctrine as an affirmative defense, the doctrine was properly raised in opposition to plaintiffs' summary judgment motion. Defendant was travelling behind a box car on the interstate when the box car suddenly moved into the right lane to avoid plaintiff's vehicle which was stopped or disabled. Defendant alleged she was unable to stop or change lanes before striking plaintiffs' vehicle

… Jakubcin [defendant] raised a triable issue of fact by offering a nonnegligent explanation for the collision … . Jakubcin testified that she was travelling southbound in the center lane on Interstate 95 and that she was following a box car for about 10 miles at 60 miles per hour, when the box car suddenly moved into the right lane after signaling, at which time Jakubcin first observed plaintiffs' car.

Jakubcin testified that plaintiffs' car was slow moving or became disabled and abruptly stopped in the center lane, only "seconds" in travel time ahead of Jakubcin's car. The box car had obstructed Jakubcin's view of the center lane conditions. Jakubcin quickly discerned she could not safely move into either the left or right lanes of the highway due to cars travelling in those lanes near her vehicle. Thus, Jakubcin's testimony "raises a triable issue as to whether [s]he was entitled to expect that traffic would continue unimpeded" … . Further, there was evidence that plaintiffs' car was not working and had no lights or emergency lights activated … . While Jakubcin did not plead the emergency doctrine as an affirmative defense, she was not precluded "from raising the issue in response to [plaintiffs'] summary judgment motions" … . Pearson v Jakubcin, 2026 NY Slip Op 02930, First Dept 5-12-26

Practice Point: Here in this rear-end collision case, defendant successfully raised the emergency doctrine in opposition to summary judgement, despite not pleading the doctrine as an affirmative defense.

May 12, 2026

NEGLIGENCE, EVIDENCE.

DEFENDANT'S ALLEGATION PLAINTIFF'S VEHICLE STOPPED SUDDENLY FOR NO APPARENT REASON DID NOT DEFEAT SUMMARY JUDGMENT ON LIABILITY IN THIS REAR-END COLLISION CASE; HOWEVER PLAINTIFF'S COMPARATIVE NEGLIGENCE, IF ANY, COULD OFFSET THE AMOUNT OF DAMAGES AT TRIAL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the allegation plaintiff's vehicle came to a sudden stop for no apparent reason did not raise a question of fact in this rear-end collision case:

… [A] rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision" (id. [internal quotation marks omitted]).

"A plaintiff is no longer required to show freedom from comparative fault to establish her or his prima facie entitlement to judgment as a matter of law on the issue of liability" … .

"An assertion that the lead vehicle came to a sudden stop, standing alone, is insufficient to rebut the presumption of negligence on the part of the operator of the rear vehicle" … , although such an assertion may be sufficient to raise a triable issue of fact on the issue of comparative fault … . * * *

[Defendant driver] asserted that the plaintiff brought his vehicle to a sudden stop for no apparent reason and "without any vehicle slowing or stopping ahead of plaintiff." In essence, "this explanation amounts to nothing more than a claim that the plaintiff's vehicle came to a sudden stop which, without more, failed to raise a triable issue of fact" as to the defendants' liability … .

… Supreme Court erred in denying the plaintiff's motion for summary judgment on the issue of liability.

Comparative negligence on the part of the plaintiff, if any, which would offset the amount of damages, must abide the trial … . Brindisi v ARJ Transp., Inc., 2026 NY Slip Op 02958, Second Dept 5-13-26

Practice Point: The allegation that plaintiff's car stopped suddenly for no apparent reason will not defeat summary judgment in a rear-end collision case.

Practice Point: However if plaintiff is shown to be comparatively negligent at trial, the amount of damages could be offset.

May 13, 2026