NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
June 1 – 5, 2026

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New State Appellate Courts June 1 – 5, 2026, and Posted on the New York Appellate Digest Website on Monday, June 8, 2026. The Entries in the Table 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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CIVIL PROCEDURE, JUDGES.

DISMISSAL OF A MOTION BECAUSE THE PAPERS DID NOT INCLUDE A WORD-COUNT CERTIFICATION WARRANTED REVERSAL AND REMITTAL TO CONSIDER THE MOTION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the motion court's denial of a motion because the papers failed to include a word-count certification warranted reversal a remittal to consider the merits of the motion:

The Supreme Court should have overlooked the appellants' failure to submit a word count certification with their motion for summary judgment, as no substantial right of any party was prejudiced … . Accordingly, we reverse. Since the Supreme Court did not consider the merits of the motion, we remit the matter … for a new determination on the merits of the motion. Hodges v 37-11 30th St., LLC, 2026 NY Slip Op 03428, Second Dept 6-3-26

June 3, 2026

CIVIL PROCEDURE, MUNICIPAL LAW, CONTRACT LAW, VILLAGE LAW.

HERE THE VILLAGE SOUGHT TO ANNUL THE CITY'S IMPOSITION OF HIGHER SEWER CHARGES; THE CITY INTERPOSED SEVERAL COUNTERCLAIMS THAT WERE BASED ON THEORIES NOT INCLUDED IN THE CITY'S EARLIER NOTICE OF CLAIM WHICH ALLEGED ONLY BREACH OF CONTRACT; BECAUSE THE COUNTERCLAIMS RAISED THEORIES NOT ENCOMPASSED BY THE CITY'S EARLIER NOTICE OF CLAIM, THEY WERE DISMISSED (FOURTH DEPT).

The Fourth Department, reversing (modifying) Supreme Court, determined all of the city's counterclaims against the village should have been dismissed for failure to meet the "notice of claim" requirements. The village commenced this hybrid CPLR article 78 and declaratory judgment action seeking to annul the city's determination to charge a higher rate for sewer services than had been charged under the parties "longtime agreement." The city interposed counterclaims based

on theories not encompassed by the city's notice of claim. All the counterclaims should have been dismissed on that ground:

"CPLR 9802 sets forth the procedure by which certain actions against villages may be maintained" … . "In addition to providing for the maintenance of contract actions against villages, the statute also provides, in pertinent part, that 'no other action shall be maintained against [a] village unless the same shall be commenced within one year after the cause of action therefor shall have accrued, nor unless a notice of claim shall have been made and served in compliance with [General Municipal Law § 50-e]' " …). Consequently, "[i]t is a condition precedent to, and indeed an essential element of, any cause of action . . . against a village that the [claimant] have served upon the village a notice of claim setting forth, inter alia, the nature of the claim and the items of damage or injuries claimed to have been sustained" … . "A claimant need not state a precise cause of action in haec verba in a notice of claim . . . , but a claimant may not raise in the [pleading] causes of action or legal theories that were not directly or indirectly mentioned in the notice of claim and that change the nature of the earlier claim or assert a new one" … . Furthermore, "the requirements of notice of claim statutes[, including CPLR 9802,] apply to the filing of counterclaims" … . "[T]he notice of claim requirements of CPLR 9802 [also] apply to . . . causes of action [or claims] for declaratory relief" … .

Here, the notice of claim was premised exclusively on the theory that the City was entitled to monetary damages and a declaratory judgment based on the Village's alleged breach of the parties' agreement. Conversely, the City's first counterclaim seeks a declaration that the agreement had actually expired before the breach alleged in the notice of claim, and the third counterclaim seeks monetary damages for debt allegedly incurred by the Village after the purported expiration of the agreement. The fourth and fifth counterclaims for quantum meruit and unjust enrichment, respectively, are also premised on legal theories other than breach of contract. We thus conclude that those counterclaims improperly raise claims or legal theories "that were not directly or indirectly mentioned in the notice of claim and that change the nature of the earlier claim[s] or assert . . . new one[s]" … . Village of Allegany v City of Olean, 2026 NY Slip Op 03555, Fourth Dept 6-5-26

Practice Point: A condition precedent to an action against a village is the filing of a notice of claim. The condition applies to counterclaims and requests for declaratory judgments. Here the city's earlier notice of claim against the village was based solely on an alleged breach of contract. The subsequent counterclaims raised by the city in response to the village's Article 78 proceeding were based on theories not encompassed by the city's earlier notice of claim and were dismissed on that ground.

June 5, 2026

CIVIL PROCEDURE.

THE STAY ON A NEW YORK ACTION TO RECOVER A NAZI-LOOTED PAINTING, PENDING A SWISS RULING ON THE IDENTITY OF THE HEIRS TO THE PAINTING, VACATED IN THE INTEREST OF JUSTICE (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Higgitt, determined a stay on a New York action seeking the return of a Nazi-looted painting should be vacated in the interest of just. The action had been stayed pending a Swiss ruling on the identity of the heirs to the painting. That ruling has yet to be made. The facts of the case are complex and cannot be fairly summarized here. Estate of Margaret Kainer v Christies Inc., 2026 NY Slip Op 03506, First Dept 6-4-26

June 4, 2026

CRIMINAL LAW, APPEALS, JUDGES.

THE ORAL COLLOQUY FOR THE WAIVER OF APPEAL WAS DEFECTIVE; THE DEFECT WAS NOT CURED BY THE WRITTEN WAIVER BECAUSE DEFENDANT WAS NOT ASKED WHETHER HE READ OR UNDERSTOOD IT BEFORE SIGNING; DEFENDANT DID NOT ADMIT TO HAVING AN INTENT TO COMMIT A CRIME WHEN HE ENTERED THE HOUSE, HE ADMITTED ONLY THE INTENT TO RETRIEVE HIS OWN PROPERTY; THE PLEA TO BURGLARY WAS VACATED (FOURTH DEPT).

The Fourth Department, vacating defendant's guilty plea, determined defendant's waiver of appeal was invalid and he did not admit to an essential element of burglary, the intent to commit a crime upon entering:

… [W]e agree with defendant that his waiver of the right to appeal is invalid. Supreme Court's oral colloquy was overbroad inasmuch as the court told defendant that his waiver of the right to appeal marks the "end of the case." Although the record establishes that defendant executed a written waiver of the right to appeal, the written waiver "does not cure the deficient oral colloquy because the court did not inquire of defendant whether he understood the written waiver or whether he had read the waiver before signing it" … .

Defendant contends that his plea is invalid because the plea allocution negated an element of the crime to which he pleaded guilty. As defendant acknowledges, he never moved to withdraw his plea, nor did he ever seek to vacate the judgment of conviction. This case, however, falls within the rare exception to the preservation requirement … . Burglary in the first degree requires that a person knowingly enter or remain unlawfully in a dwelling with the "intent to commit a crime therein" (Penal Law § 140.30). Here, defendant twice indicated during his factual allocution that he did not intend to commit any crimes when he entered the house in question and, while he admitted that he intended to retrieve his own property, retrieving one's own property does not establish larcenous intent … . Although the court attempted to conduct an inquiry following defendant's insistence that he did not intend to commit any crimes when he entered the house, such inquiry was

insufficient … . The court therefore erred in accepting defendant's guilty plea … . People v Small, 2026 NY Slip Op 03560, Fourth Dept 6-5-26

Practice Point: Re: a waiver of appeal, a defect in the oral appeal-waiver colloquy with the judge is not cured by a written waiver unless the defendant is asked whether he read and understood the written waiver before signing it.

Practice Point: Entering a home with the intent to retrieve one's own property is not "burglary" because the entry was not accompanied by an intent to commit a crime.

June 5, 2026

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S STATEMENT THAT THERE WAS A WEAPON IN HIS BACKPACK WAS A RESPONSE TO A DIRECT QUESTION BY A POLICE OFFICER AND WAS THEREFORE NOT ADMISSIBLE AS "SPONTANEOUS;" THE STATEMENT AND THE WEAPON SHOULD HAVE BEEN SUPPRESSED (THIRD DEPT).

The Third Department, reversing County Court, suppressed a statement made by the defendant and the handgun seized from defendant's backpack based on defendant's statement. Defendant's statement that the backpack contained a weapon was not spontaneous. It was made in response to a direct question by a police officer who had possession of the backpack and could feel the weapon inside:

At the suppression hearing, the sergeant who conducted the subject search testified that, upon removing the fanny pack from defendant's backpack, he perceived that the fanny pack was heavy and contained a hard object "shaped like a pistol." At that point, defendant, being booked 8 to 10 feet away, offered, "I can tell you what's in there." The sergeant inquired, "Yeah? What's in there?," to which defendant replied, "It's a pistol." In view of defendant's detention and arrest, the location of the search and the sergeant's admitted knowledge that the fanny pack contained a heavy pistol-shaped object, his question asking defendant what was

contained inside the fanny pack was reasonably likely to trigger an incriminating statement — i.e., that the fanny pack contained a gun. As such, County Court erred in determining that defendant's statements were spontaneous, and they should have been suppressed … . * * *

At the hearing, the sergeant confirmed that defendant's backpack had already been secured when defendant was detained, handcuffed and placed in the rear seat of the vehicle — although it remains unclear at precisely what point defendant's detention ripened into an arrest. The sergeant also established that law enforcement retained control of the backpack at all times thereafter and that he carried it into the station separately as defendant was escorted by another officer and booked in a different area. Defendant's backpack was thus not on his person or within his immediate control or "grabbable area" at the time the search was conducted so as to raise concerns over evidence destruction … . * * * Although the circumstances presented may have, upon a different record, supported the validity of an inventory search conducted pursuant to standardized police procedures, the People neither relied upon nor developed such a theory at the suppression hearing, electing instead to defend the search solely as one incident to arrest, and any passing attempt to raise that theory now is not properly before us … . On this record, we cannot agree that the People carried their burden to overcome the presumption of unreasonableness that attaches to a warrantless search, and the physical evidence therefore should have also been suppressed … . People v Pittman, 2026 NY Slip Op 03478, Third Dept 6-4-26

Practice Point: Here the statement by defendant that there was a weapon in his backpack was made in direct response to a police officer's question. The statement, therefore, was not admissible as "spontaneous." The statement and the weapon seized in a search based on the statement should have been suppressed.

June 4, 2026

CRIMINAL LAW, EVIDENCE.

THE PEOPLE DID NOT PROVE THE SEARCH OF DEFENDANT'S VEHICLE WAS A VALID INVENTORY SEARCH, CRITERIA EXPLAINED IN DETAIL; TWO HANDGUNS AND HEROIN FOUND IN HIDDEN COMPARTMENTS SHOULD HAVE BEEN SUPPRESSED (THIRD DEPT).

The Third Department, reversing County Court, determined the search of defendant's vehicle was not a valid inventory search. Two handguns and heroin found in hidden compartments were suppressed by the Third Department:

Although the failure to admit into evidence the relevant tow, impound or inventory search protocols is not automatically fatal, the People's additional failure "to ask any substantive questions of the [state troopers] to establish that the policy was sufficiently standardized, that it was reasonable and that the [state troopers performing the search] followed it in this case" does become fatal … . Despite the fact that the testimony of the state troopers confirmed their general understanding of the purpose and legitimate objectives served by an inventory search, their testimony also demonstrated a lack of familiarity with any departmental protocol on how to conduct such a search or whether any protocol even existed — must less a procedure that limited their discretion … . Indeed, there was no testimony establishing the circumstances under which troopers could remove paneling or pry into compartments, such as under the steering wheel column or dashboard … . Nor was there any testimony regarding when a canine unit could be used to assist with an inventory search — and, even assuming such a protocol did exist, it would remain unclear how a canine unit could satisfy the legislative objectives required by law under the circumstances here, where defendant was in custody and the vehicle had already been towed to the State Police barracks … . While inventory search protocols either allowing or disallowing exploration into the compartment of a steering wheel column or the use of a canine unit could be "equally permissible," having "no policy whatever" is what causes the subject search to not be "sufficiently regulated to satisfy the Fourth Amendment" … .

Moreover, the inventory form generated by the search included the loaded revolver that was found at the barracks — although the form indicated that the inventory search had been completed prior to the tow to the barracks. This fact, coupled with

the realization that the items listed on the inventory form were almost entirely the hidden contraband — and not the bag on the back seat containing the Suboxone pills and loose bullet, or the other clothing and perishables testified to be in the vehicle — indicates the troopers' search was not designed to produce a usable inventory to guard against claims of lost property or for officer safety, but to list evidence of a crime … . Accordingly, County Court should have granted defendant's motion to suppress the evidence of heroin and the two handguns. People v Russ, 2026 NY Slip Op 03475, Third Dept 6-3-26

Practice Point: Consult this decision for an in-depth discussion of the criteria for a valid inventory search, not met here.

June 4, 2026

CRIMINAL LAW, EVIDENCE.

WITHOUT A PAT-DOWN FRISK, THE OFFICER WHO MADE THE TRAFFIC STOP DID NOT HAVE PROBABLE CAUSE TO BELIEVE DEFENDANT POSSESSED A WEAPON; THE OFFICER'S SEARCH OF DEFENDANT'S JACKET POCKETS WAS NOT, THEREFORE, JUSTIFIED BY PROBABLE CAUSE; BECAUSE THE OFFICER TESTIFIED HE DID NOT INTEND TO ARREST THE DEFENDANT AT THE TIME OF THE SEARCH, THE SEARCH WAS NOT A VALID SEARCH INCIDENT TO ARREST; SUPPRESSION OF THE SEIZED WEAPONS SHOULD HAVE BEEN GRANTED (THIRD DEPT).

The Third Department, reversing County Court, vacating defendant's plea and conviction, and granting the motion to suppress, determined the officer who made the traffic stop should not have searched defendant's pockets without first doing a pat-down frisk for weapons. The search was not justified by probable cause to believe defendant possessed a weapon, and the search was not justified as a search incident to arrest. The officer testified he did not intend to arrest the defendant at the time of the search:

Although the trooper testified that he conducted the search to ensure that defendant was unarmed, the record contains no evidence that the trooper possessed a

reasonable suspicion that defendant was armed or posed a threat to his safety. In any event, such a suspicion would have justified only a limited pat-down of the jacket's exterior rather than an invasive search of its pockets. Moreover, although the trooper attempted to justify the search through testimony that he believed there was "something on the inside" of the left side of defendant's jacket because it felt "heavier than normal," he did not make this observation until after he had already exceeded the permissible scope of a lawful pat down by unzipping and opening defendant's jacket. Accordingly, the search cannot be sustained as a protective pat down of defendant.

… [I]t is now well settled that, for a search to be authorized as incident to arrest, law enforcement must either actually effectuate the arrest or possess a contemporaneous intent to arrest at the time the search is conducted … . Critically, the intent to arrest must relate to the offense purportedly justifying the search, even if the defendant is ultimately arrested for a different offense … . Absent such intent, a search cannot be retroactively legitimized based on a decision to arrest that is made only after the discovery of additional evidence during the search … . Here, the trooper's hearing testimony unequivocally establishes that he had no intent to arrest defendant at the time he conducted the search, and that the decision to arrest was not made until after he discovered the weapon in the interior pocket of defendant's jacket. People v Roberts, 2026 NY Slip Op 03476, Third Dept 6-4-26

Practice Point: Consult this decision for discussions of the criteria for (1) asking a driver to step out of the car after a traffic stop, (2) a protective pat-down search of the driver, (3) the search of the driver's pockets based on probable cause, and (4) the search of driver's pockets as a search incident to arrest.

June 4, 2026

CRIMINAL LAW, JUDGES, ATTORNEYS.

A HEARING ON A DEFENDANT'S ELIGIBILITY FOR AN ALTERNATIVE SENTENCE PURSUANT TO THE DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT (DVSJA) CANNOT BE WAIVED AS A CONDITION OF A PLEA AGREEMENT; SENTENCE VACATED AND MATTER REMITTED (FOURTH DEPT).

The Fourth Department, vacating defendant's sentence and remitting the matter, determined defendant's waiver of a hearing on whether he was eligible for an alternative sentence pursuant to the Domestic Violence Survivors Justice Act (DVSJA) was invalid:

Defendant appeals from a judgment convicting him, upon his plea of guilty, of two counts of manslaughter in the first degree (Penal Law § 125.20 [1]). As a condition of his plea, defendant waived his right to a Penal Law § 60.12 hearing to determine his eligibility for an alternative sentence under the Domestic Violence Survivors Justice Act. Inasmuch as "section 60.12 hearings are not waivable as a condition of a plea agreement" … , we agree with defendant that this matter must be remitted for further proceedings, including a Penal Law § 60.12 hearing should defendant request one … . We therefore modify the judgment by vacating the sentence, and we remit the matter to County Court for further proceedings…. . People v Jones, 2026 NY Slip Op 03527, Fourth Dept 6-5-26

Practice Point: A defendant cannot waive a hearing on eligibility for an alternative sentence pursuant to the DVSJA as a condition of a plea agreement. Here defendant's sentence was vacated and the matter was remitted for a hearing if defendant requests it.

June 5, 2026

DISCIPLINARY HEARINGS (INMATES), CIVIL PROCEDURE, APPEALS, ADMINISTRATIVE LAW.

THE ISSUANCE DATE OF A DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS) DECISION BY A HEARING OFFICER IS THE DATE THE DECISION IS MAILED; THE 60-DAY APPEAL PERIOD STARTS RUNNING ON THE DATE OF MAILING; HERE DOCCS DID NOT PROVE WHEN THE DECISION WAS MAILED AND THEREFORE FAILED TO PROVE THE APPEAL WAS UNTIMELY; THE DATE STAMPED BY A POSTAGE METER IS NOT NECESSARILY THE DATE OF MAILING (THIRD DEPT).

The Third Department, reversing Supreme Court, determined the respondent Department of Corrections and Community Supervision (DOCCS) did not demonstrate petitioner's appeal of the suspension of her visiting rights was untimely. Petitioner is the fiancee of an incarcerated person and the suspension of visiting rights was related to an incident during one of the visits. The fiancee attempted to appeal the suspension. DOCCS argued that the appeal was untimely and Supreme Court agreed. The Third Department determined DOCCS failed to prove the appeal was untimely because it did not prove when the decision suspending visitation was mailed. Mailing triggers the 60-day period for appeal. The envelope in which the decision was mailed was stamped by a postage meter on January 8, 2024, but that does not prove it was mailed on January 8. Petitioner's appeal was received by DOCCS on March 13, 2024. Without proof of the exact date the decision was mailed, DOCCS did not demonstrate the 60-day appeal period had expired on March 13:

… [P]etitioner's 60-day appeal window began to run on the date the decision was mailed. * * *

… [T]he issuance date of the Hearing Officer's decision is the day it was placed in the mail. … [R]espondents' submissions in support of their motion to dismiss do not reveal this date. Although the record contains a copy of the envelope in which the decision was mailed, it shows only the date the envelope was put through a postage meter, which "is not the equivalent of a postmark date" … . Respondents

have not proffered an affidavit of mailing to establish the date it was placed in the mail. As such, respondents did not meet their burden of establishing that claimant's appeal was untimely … . Matter of Moses v New York State Dept. of Corr. & Community Supervision, 2026 NY Slip Op 03485, Third Dept 6-4-26

Practice Point: If an appeal period is triggered by when a decision is mailed, the party attempting to prove the appeal was untimely must prove precisely when the decision was mailed. The date stamped by a postage meter is not proof of the the precise date of mailing.

June 4, 2026

INSURANCE LAW.

HERE IN THIS PERSONAL INJURY ACTION, BASED ON PLAINTIFF'S ALLEGATION HE WAS AN INDEPENDENT CONTRACTOR WORKING FOR THE INSURED EMPLOYER, THE INSURER WAS OBLIGATED TO DEFEND THE EMPLOYER; INSTEAD THE INSURER DISCLAIMED COVERAGE AND PLAINTIFF TOOK A DEFAULT JUDGMENT AGAINST THE EMPLOYER; ON APPEAL, THE INSURER WAS FOUND LIABLE FOR THE DEFAULT JUDGMENT UP TO THE POLICY LIMITS (FOURTH DEPT).

The Fourth Department, reversing (modifying) Supreme Court, determined defendant insurer was obligated to defend plaintiff's personal injury action against plaintiff's employer, Lipinski. Plaintiff alleged he was an independent contractor. The insurer disclaimed coverage on the ground plaintiff was an employee entitled to workers' compensation. But, because of plaintiff's allegation he was an independent contractor, the insurer was obligated to defend: The insurer was therefore obligated to pay the damages assessed in the default judgment against Lipinski up to the policy limits:

An insurer's "duty to defend is exceedingly broad and an insurer will be called upon to provide a defense whenever the allegations of the complaint suggest . . . a reasonable possibility of coverage" … . "If, liberally construed, the claim is within the embrace of the policy, the insurer must come forward to defend its insured no

matter how groundless, false or baseless the suit may be" … . Here, the complaint in the underlying personal injury action alleged that plaintiff was an employee of Lisinski but also included the alternative allegation that plaintiff was an independent contractor. Thus, defendant was required at least to provide Lisinski with a defense … . Instead, defendant disclaimed coverage on the ground, inter alia, that plaintiff was an employee and therefore a policy exclusion precluded coverage inasmuch as plaintiff would be covered by a workers' compensation claim. * * *

An insurer's "duty to defend is exceedingly broad and an insurer will be called upon to provide a defense whenever the allegations of the complaint suggest . . . a reasonable possibility of coverage" … . "If, liberally construed, the claim is within the embrace of the policy, the insurer must come forward to defend its insured no matter how groundless, false or baseless the suit may be" … . Here, the complaint in the underlying personal injury action alleged that plaintiff was an employee of Lisinski but also included the alternative allegation that plaintiff was an independent contractor. Thus, defendant was required at least to provide Lisinski with a defense … . Instead, defendant disclaimed coverage on the ground, inter alia, that plaintiff was an employee and therefore a policy exclusion precluded coverage inasmuch as plaintiff would be covered by a workers' compensation claim. Shattuck v Dryden Mut. Ins. Co., 2026 NY Slip Op 03538, Fourth Dept 6-5-26

Practice Point: Consult this decision for insight into the risks taken by an insurer which wrongfully refuses to defend the insured and disclaims coverage. Plaintiff procured a default judgment against the insured and sued the insurer directly. The insurer was liable for the default judgment up to the policy limits.

June 5, 2026

LABOR LAW-CONSTRUCTION LAW.

EVIDENCE THAT THE A-FRAME LADDER WAS NOT SECURED AND WAS "IMPROPERLY PLACED" WARRANTED SUMMARY JUDGMENT IN THIS LADDER-FALL CASE ON THE LABOR LAW 240(1) CAUSE OF ACTION; THERE IS NO NEED TO DEMONSTRATE THE LADDER WAS DEFECTIVE (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, over a two-justice dissent which argued there are triable issues of fact, determined plaintiff was entitled to summary judgment on the Labor Law 240(1) cause of action in this A-frame ladder-fall case. The court noted that plaintiff need not demonstrate the ladder was defective. It is sufficient to demonstrate the ladder was not secured and was "improperly placed:"

To establish a prima facie case of liability under Labor Law § 240 (1), a plaintiff must " 'show that the statute was violated and that the violation proximately caused [the] injury' " … . "Where a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to ensure that it remain[s] steady and erect while being used, constitutes a violation of Labor Law § 240 (1)" … . "[T]he fact that the ladder failed and [that the] plaintiff fell to the ground demonstrates that it was not so placed . . . as to give proper protection to [the plaintiff]" (… "Evidence that the ladder was structurally sound and not defective is not relevant on the issue of whether it was properly placed" …).

Here, plaintiff met his initial burden on the motion by submitting his deposition testimony wherein he testified that [an] … employee [of the lessor of the property] covered the ladder's feet with socks [to protect the tile floor], that [the employee] instructed plaintiff to use the modified ladder, and that the socks caused the ladder to slide and plaintiff to fall. Plaintiff's unrebutted testimony established that "the statute was violated and that the violation proximately caused his injury" … . Delisle v FBBT/US Props., LLC, 2026 NY Slip Op 03529, Fourth Dept 6-5-26

Practice Point: In this ladder-fall case, the unsecured ladder was not defective. Rather it was deemed "improperly placed" warranting summary judgment. It was

alleged that socks placed over the feet of the ladder to protect the tile floor caused the ladder to slide.

June 5, 2026

LABOR LAW-CONSTRUCTION LAW.

SUPREME COURT HAD RULED THAT, AT THE TIME HE WAS STRUCK BY A FALLING OBJECT, PLAINTIFF WAS NOT ENGAGED IN A TASK COVERED BY THE LABOR LAW; PLAINTIFF'S TASK AT THE EXACT MOMENT OF THE ACCIDENT IS NOT DISPOSITIVE; THE LABOR LAW COVERS ALL TASKS NECESSARY AND INCIDENTAL TO THE RELEVANT WORK, HERE THE REMOVAL OF DEBRIS FROM THE WORKSITE (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff's activities were within the scope of the Labor Law when he was struck by a falling object. Plaintiff was struck when returning to the truck he had just moved. Defendants successfully argued below that, at the time of his injury, plaintiff was not engaged in work covered by the Labor Law. The First Department disagreed:

Plaintiff was injured when an object, alleged to be a pallet or a skid, fell on his head while he was working as a garbage truck driver at an active construction site owned by defendant MIP One Wall Street Acquisition LLC and where defendant J.T. Magen & Company Inc. was the general contractor. Plaintiff's employer, Independence Carting, had contracted with J.T. Magen to perform Saturday carting services at the site. Plaintiff drove the garbage truck to the loading area where J.T. Magen laborers tasked with debris removal at the construction site loaded construction debris onto the truck while plaintiff operated the truck's compacting machinery. J.T. Magen laborers directed plaintiff to move the garbage truck to another location in the loading dock area for additional construction debris to be loaded. At this second location, plaintiff exited the truck to check its position. When returning to the truck he was hit on the head by an object alleged to be a pallet or skid that fell from an elevated platform adjacent to plaintiff's truck.

Plaintiff's task at the exact moment of his accident is not dispositive of whether he was engaged in a protected activity … . "Rather, the inquiry includes whether the plaintiff's employer was contracted to perform the kind of work enumerated in the statutes . . . and whether the plaintiff was performing work 'necessary and incidental to' a protected activity" … . Here, plaintiff was performing construction debris removal services at the construction site pursuant to a contract between J.T. Magen and his employer. The record establishes that the work he was performing was necessary and incidental to construction-related cleaning for an active construction site … . Therefore, plaintiff was protected by the Labor Law. Lapinski v MIP One Wall St. Acquisition LLC, 2026 NY Slip Op 03392, First Dept 6-2-26

Practice Point: The exact task performed by a worker at the time of an accident is not dispositive of whether the accident is within the scope of the Labor Law. Here plaintiff's employer was hired by the general contractor to remove debris from a worksite. The fact that the plaintiff was struck by a falling object after moving a truck at the request of employees of the general contractor did not take the accident out of the scope of the Labor Law.

June 2, 2026

NEGLIGENCE, MUNICIPAL LAW, EDUCATION-SCHOOL LAW.

MOTHER DEMONSTRATED THE SCHOOL DISTRICT HAD TIMELY ACTUAL KNOWLEDGE OF THE FACTS UNDERLYING THE ALLEGATION THE SCHOOL DISTRICT WAS NEGLIGENT IN ADDRESSING THE BULLYING OF HER SON; MOTHER'S APPLICATION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined claimant-mother demonstrated the school district had timely knowledge of the underlying facts of the potential negligence action against the district stemming from the bullying of her son. In addition, mother had a valid excuse for failing to file a timely notice of claim, i.e., she was involved in related Family Court proceedings against her son.

Mother's application for leave to file a late notice of claim should have been granted:

"General Municipal Law § 50-e (5) permits a court, in its discretion, to [grant leave] extend[ing] the time for a [claimant] to serve a notice of claim" (id. at 460-461). "The decision whether to grant such leave 'compels consideration of all relevant facts and circumstances,' including the 'nonexhaustive list of factors' in section 50-e (5)" … . " 'It is well settled that key factors for the court to consider in determining an application for leave to serve a late notice of claim are [1] whether the claimant has demonstrated a reasonable excuse for the delay, [2] whether the [school district] acquired actual knowledge of the essential facts constituting the claim within 90 days of its accrual or within a reasonable time thereafter, and [3] whether the delay would substantially prejudice the [school district] in maintaining a defense on the merits' " … . "The presence or absence of any given factor is not determinative of the application and, moreover, the factors are 'directive rather than exclusive' " … .

We agree with claimant that respondent possessed actual knowledge of the essential facts constituting the claim within 90 days of its accrual … Claimant averred in her affidavit in support of the application that, during the relevant time period, she made numerous calls to the Waterloo Middle School and the Waterloo Village Police about the ongoing abuse and bullying of her son. Additionally, claimant submitted documentation pertaining to a Family Court proceeding that was brought against her son due to actions he took apparently out of his frustration with the alleged abuse and bullying. The documentation states that the school counselor was involved in that investigation and that claimant's son was "well known" to him. The school counselor also expressed the opinion that the bullying incidents were "unfounded." Cindy W. v Waterloo Cent. Sch. Dist., 2026 NY Slip Op 03554, Fourth Dept 6-5-26

Practice Point: Here, demonstrating that the school district had timely actual knowledge of the facts underling a negligence allegation against the district was a major factor in granting the application tor leave to file a late notice of claim.

June 5, 2026

NEGLIGENCE, VEHICLE AND TRAFFIC LAW.

THAT PLAINTIFF IN A TRAFFIC ACCIDENT CASE DID NOT HAVE A PROPER DRIVER'S LICENSE DOES NOT RAISE A QUESTION OF FACT ABOUT PLAINTIFF'S COMPARATIVE NEGLIGENCE (FIRST DEPT).

The Frist Department, reversing Supreme Court, noted that the fact that plaintiff in this traffic accident case did not have a proper driver's license at the time of the accident did not raise a question of fact about plaintiff's purported comparative negligence:

… [T]hat plaintiff was driving without a proper driver's license does not provide a basis for finding an issue of fact as to comparative negligence (see Huff v Rodriguez, 88 AD3d 1274, 1275 [4th Dept 2011] …"["the absence or possession of a driver's license is not relevant to the issue of negligence"]). Torres v Occhino, 2026 NY Slip Op 03412, First Dept 6-2-25

Practice Point: In a traffic accident case, the fact that plaintiff did not have a proper driver's license does not raise a question of fact about plaintiff's purported comparative negligence.

June 2, 2026

NEGLIGENCE.

IN THIS BICYCLE ACCIDENT CASE, WHETHER A ONE-AND-A-QUARTER-INCH GAP IN THE ROADWAY WAS "OPEN AND OBVIOUS AND NOT INHERENTLY DANGEROUS" SHOULD NOT HAVE BEEN DETERMINED AS A MATTER OF LAW; IT IS A QUESTION FOR THE JURY BASED ON ALL THE CIRCUMSTANCES (THIRD DEPT).

The Third Department, reversing Supreme Court, determined there were questions of fact precluding summary judgment in this bicycle-accident case based upon a 1 1/4 inch gap in the roadway. Supreme Court granted defendant's summary judgment motion based, in part, on the conclusion that the defect was open and

obvious and not inherently dangerous. The Third Department noted that whether a defect is open and obvious is usually a question for a jury:

To the extent Supreme Court dismissed the complaint based upon its conclusion that the gap was open and obvious and not inherently dangerous, we note that "[w]hether a condition is open and obvious does not preclude liability . . . as a matter of law; rather, it is a factor that impacts the foreseeability of an accident and the comparative negligence of the injured party" … . Indeed, "[t]he determination as to whether a condition is open and obvious generally falls within the province of a jury, as it requires consideration of the unique facts presented by the case before it" . "In this regard, the determination of whether an asserted hazard is open and obvious cannot be divorced from the surrounding circumstances, and whether a condition is not inherently dangerous, or constitutes a reasonably safe environment, depends on the totality of the specific facts of each case" … . Here … [plaintiff] indicated that his attention was occupied by a changing traffic light ahead and a moving motor vehicle to the left, and that there were cars parked to his right in… designated spots. Viewing all of the evidence in the light most favorable to plaintiffs as the nonmovants … , the record does not compel the conclusion that the gap was readily observable with the reasonable use of one's senses and not inherently dangerous … . Stegman v City of Glens Falls, N.Y., 2026 NY Slip Op 03486, Third Dept 6-4-26

Practice Point: Here in this bicycle accident case, a 1 1/4 inch gap in the roadway could not be deemed "trivial" or "open and obvious and not inherently dangerous" as a matter of law.

June 4, 2026

TRUSTS AND ESTATES, ATTORNEYS, JUDGES, MENTAL HYGIENE LAW.

PETITIONER, THE GUARDIAN OF THE PERSON AND PROPERTY OF AN INCAPACITATED PERSON SINCE 2012, WAS ASKED TO RECERTIFY THE GUARDIANSHIP BY A NEW BANK WHICH TOOK OVER THE ACCOUNTS; PETITIONER SOUGHT TO CONTINUE THE TERMS OF THE 2012 ORDER; THE JUDGE SHOULD NOT HAVE, SUA SPONTE, MODIFIED THE TERMS OF THE ORIGINAL ORDER ABSENT A REQUEST FROM A PARTY TO DO SO (THIRD DEPT).

The Third Department, reversing (modifying) Supreme Court, determined the justice presiding over this guardianship proceeding should not have "sua sponte" changed the terms of the existing guardianship absent a request from a party to do so. The appellate courts do not like "sua sponte" rulings. The petitioner was appointed guardian of the person and property of an incapacitated person in 2012. This proceeding was prompted by a new bank which took over the incapacitated person's accounts and requested that petitioner "recertify" his guardianship status. Petitioner brought this proceeding to continue the terms of the original 2012 order:

… [P]etitioner [the contends that Supreme Court erred in modifying the terms of the guardianship. We find this contention to have merit. As petitioner was appointed guardian in 2012, there was no basis to appoint a temporary guardian (see Mental Hygiene Law § 81.23 [a]). Nor was there a basis to remove the guardian (see Mental Hygiene Law § 81.35). Although a court may terminate or modify a guardian's powers upon a showing that, "for some other reason, . . . the guardian is no longer necessary . . . or the powers of the guardian should be modified based upon changes in the circumstances of the incapacitated person" (Mental Hygiene Law § 81.36 [a] [4]), such application cannot be made sua sponte, but must "be made by the guardian, the incapacitated person, or any person entitled to commence a proceeding under this article" (Mental Hygiene Law § 81.36 [b] …). Nevertheless, when authorizing the powers that may be exercised by a guardian of the property, courts are to employ "the least restrictive form of intervention," taking into consideration, among other things, the incapacitated "person's wishes, preferences, and desires with regard to managing the activities of daily living" (Mental Hygiene Law § 81.21 [a]).

Here, there was no request before Supreme Court to modify the terms of the guardianship, as petitioner moved to continue the same terms of the original order to satisfy the requests of the new banking institution — specifically, petitioner's access to "all bank accounts, annuity payments, entitlements and other financial resources in [respondent's] possession or payable to her." However, the order issued by Supreme Court failed to contain this language and otherwise did not conform to the requirements of the statute (see Mental Hygiene Law §§ 81.15 [c]; 81.16). To the extent that this order is further interpreted as increasing the powers of the guardian by requiring petitioner to now pay certain monthly expenses that respondent already successfully handles on her own, we agree with petitioner that the record does not support this change as being the least restrictive form of intervention (see Mental Hygiene Law § 81.21 [a]). Accordingly, this portion of Supreme Court's order must be reversed and vacated. Matter of Karissa W., 2026 NY Slip Op 03490, Third Dept 6-4-26

Practice Point: The decision illustrates the appellate courts' disapproval of sua sponte rulings, i.e,, rulings which are not precipitated by a party's motion.

June 4, 2026

TRUSTS AND ESTATES, EVIDENCE, JUDGES.

DECEDENT'S DAUGHTER RAISED QUESTIONS OF FACT ABOUT DECEDENT'S WIFE'S FITNESS TO ADMINISTER THE ESTATE; SURROGATE'S COURT SHOULD HAVE HELD A HEARING TO DETERMINE THE FACTS (THIRD DEPT).

The Third Department, reversing Surrogate's Court, determined the decedent's daughter had raised questions of fact about whether decedent's wife was fit to administer the estate. Surrogate's Court should have held a hearing to determne the facts:

… [T]he wife, as the surviving spouse of the decedent, established prima facie entitlement to letters of administration pursuant to SCPA 1001. However, the daughter's opposition papers raised triable issues of fact about the wife's eligibility to serve as administrator. Her averments that the wife stole or destroyed a

purported will of the decedent, neglected to pay the decedent's bills, discarded estate property and engaged in misconduct in the administration of another estate, if credited, may constitute dishonesty or improvidence within the meaning of SCPA 707 (1). Finally, the considerable hostility between the parties, which led to an order of protection and other court proceedings, is undisputed. Viewing the evidence in the light most favorable to the daughter, and mindful that Surrogate's Court is limited at this stage to identifying triable issues of fact, not resolving credibility or weighing the evidence, the daughter's submissions were sufficient to create a factual dispute that required a hearing before determining the wife's motion … . Accordingly, Surrogate's Court erred in granting the wife's motion for summary judgment granting her letters of administration and dismissing the daughter's competing petition without first conducting a hearing to determine whether the wife is disqualified pursuant to SCPA 707. Matter of Kosier, 2026 NY Slip Op 03491, Third Dept 6-4-26

Practice Point: Consult this decision for a detailed explanation of the proper procedure when questions of fact about the honesty of a person seeking to be appointed administrator of an estate are raised.

June 4, 2026