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An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by our New York State Appellate Courts June 8 – 12, 2026, and Posted on the New York Appellate Digest Website on Monday, June 15, 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. Copyright 2026 New York Appellate Digest, Inc.

Weekly Reversal
Report
June 8 – 12, 2026

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The Third Department, reversing Supreme Court, in a full-fledged opinion by Justice Corcoran, determined the preliminary injunction prohibiting certain inspections of petitioners’ businesses, which are licensed for the retail sale of cannabis, should not have been granted. The respondent is an agency, the NYS Cannabis Control Board.

... [Re:] petitioners’ attempt to show the likelihood of a successful constitutional challenge, we find that Supreme Court abused its discretion in granting the preliminary injunction because petitioners failed to show that the statutory and regulatory scheme is invalid in all of its applications * * * When viewed as a whole, we find that the statutory and regulatory framework provides “meaningful limitation[s]” on an inspector’s discretion and ensures that “the search is limited in scope to that necessary to meet the interest that legitimized the search in the first place”

To the extent petitioners challenge the manner in which inspections were applied to their particular businesses, these “as-applied” claims are premature because they have not been subjected to administrative review. A facial challenge requires examination of the statute “on a cold page” and without reference to the particular conduct ... , whereas an “as-applied” challenge “requires an analysis of the facts of

a particular case” [Matter of Super Smoke N Save LLC v New York State Cannabis Control Bd., 2026 NY Slip Op 03715, Third Dept 6-11-26](#)

Practice Point: A court can review an agency’s regulations which are alleged to be unconstitutional “on a cold page,” but a court cannot review the manner in which the regulations are applied absent an agency determination (the “exhaustion of remedies” rule in administrative law).

June 11, 2026

ADMINISTRATIVE LAW, CIVIL PROCEDURE.

“EXHAUSTION OF REMEMDIES” IS NOT ALWAYS REQUIRED BEFORE AN AGENCY ACTION CAN BE CHALLENGED IN COURT; HERE THE CHALLENGE INVOLVED A PURE QUESTION OF LAW (SECOND DEPT).

The Second Department noted that the “exhaustion of remedies” rule does not apply to administrative actions where, as here, an agency’s action is challenged as either unconstitutional or beyond the agency’s power. Here petitioners alleged the respondent NYC Water Board overcharged for excess water consumption. That agency’s procedure was properly reviewed by the court (but the argument was ultimately rejected):

... “[E]xhaustion of administrative remedies is not required where an agency’s action is challenged as either unconstitutional or beyond its grant of power, or when resort to an administrative remedy would be futile, or when its pursuit would cause irreparable injury” This is because while review of some claims “hinges upon factual issues reviewable at the administrative level [which] must first be addressed to the agency so that a necessary factual record can be established” ... , other claims present “a circumstance where the issue to be determined is purely a question of law” To the extent the fifth cause of action sought a declaration that the Water Board is acting in contravention of an established statutory scheme for setting rates for excess water consumption, exhaustion was not required ... , and the court should not have dismissed that portion of the fifth cause of action on those procedural grounds. [Matter of Town of Carmel v New York City Water Bd., 2026 NY Slip Op 03680, Second Dept 6-10-26](#)

Practice Point: This decision presents an example of when a court challenge to an agency action does not trigger the “exhaustion of remedies” requirement. Here the challenge presented a pure question of law which did not require the development of a factual record at the agency level.

June 10, 2026

ATTORNEYS, CRIMINAL LAW, EVIDENCE, JUDGES.

DEFENDANT ALLEGED HIS ATTORNEY DELIBERATELY WITHHELD IMPEACHMENT EVIDENCE ABOUT AN EXPERT WITNESS WHEN HIS ATTORNEY PERSUADED HIM TO HIRE THE EXPERT; BECAUSE OF THE IMPORTANCE OF THE EXPERT’S TESTIMONY, A HEARING ON DEFENDANT’S MOTION TO VACATE HIS CONVICTION ON INEFFECTIVE-ASSISTANCE GROUNDS SHOULD HAVE BEEN HELD; MATTER REMITTED (THIRD DEPT).

The Third Department, reversing County Court, determined County Court should have held a hearing on defendant’s motion to vacate the judgment of conviction on ineffective-assistance grounds. Defendant alleged his attorney, Mary Rain, deliberately withheld impeachment information about an expert witness, Baerthlein, when persuading defendant to hire the expert:

... [D]efendant’s claim is that Rain was ineffective because she deliberately withheld impeachment evidence about Baerthlein when she persuaded defendant to hire him as an expert and the sole defense witness; that same impeachment evidence was ultimately used to vitiate Rain’s chosen defense; and that defendant would not have retained Baerthlein if Rain had disclosed the evidence in the first place. Given the central importance of Baerthlein’s credibility — particularly “in a case such as this, where casting doubt on the prosecution’s medical proof is the crux of the defense” ... — Rain’s alleged failures, if true, were not the product of a legitimate but ill-advised trial strategy [People v Thornton, 2026 NY Slip Op 03699, Third Dept 6-11-26](#)

Practice Point: Here the allegation defense counsel deliberately withheld impeachment evidence about an expert witness while persuading defendant to hire the expert raised a factual question which required a hearing re: defendant's motion to vacate his conviction on ineffective-assistance grounds.

June 11, 2026

CIVIL PROCEDURE, APPEALS.

A PLAINTIFF CAN USE THE SIX-MONTH "SAVINGS CLAUSE" IN CPLR 205(A) MORE THAN ONCE; WHEN THERE HAS BEEN AN APPEAL OF THE DISMISSAL OF THE COMPLAINT, THE SIX-MONTH PERIOD DOESN'T START TO RUN UNTIL 30 DAYS AFTER SERVICE OF THE APPELLATE DIVISION'S ORDER WITH NOTICE OF ENTRY (FIRST DEPT).

The First Department determined the dismissal of the complaint should have been "without prejudice" because plaintiff is entitled to use the six-month "savings clause" (CPLR 205(a)) more than once. The six-month period begins to run when when an appeal taken as of right is exhausted. Therefore the six-month period won't start running until 30 days after the service of the First Department's order with notice of entry:

The motion court properly determined that plaintiff did not have capacity to initiate this action because plaintiff has not yet obtained the necessary letters of administration. Dismissal of the action was therefore warranted. However, plaintiff is entitled to use the savings clause of CPLR 205(a) more than once Accordingly, we modify to make the dismissal without prejudice. . . .

Defendant's contention that the grace period for plaintiff to bring a third action expired on December 3, 2025 (six months after the order appealed from was filed with notice of entry) is unavailing. "[A] prior action terminates for purposes of CPLR 205(a) when an appeal taken as of right is exhausted" Thus, "the six-month period for recommencing an action . . . begins to run once 30 days have elapsed following service of [our] order . . . with notice of entry" [Lewis v TCRNC, LLC, 2026 NY Slip Op 03635, First Dept 6-9-26](#)

Practice Point: The six-month “savings clause” in CPR 205(a) can be used more than once.

Practice Point: Where, as here, there has been an appeal of the initial dismissal of the complaint, the CPLR 205(a) six-month period does not start to run until 30 days after the service of the appellate division’s order with notice of entry.

June 9, 2026

CIVIL PROCEDURE, CONSTITUTIONAL LAW, ENVIRONMENTAL LAW.

HERE THE STATE STATUTE OF LIMITATIONS FOR TOXIC TORTS ACTIONS WAS PRE-EMPTED BY A FEDERAL “DISCOVERY RULE” WHICH ALLOWS A TOXIC-TORT ACTION TO BE BROUGHT WITHIN ONE YEAR AFTER THE DATE PLAINTIFF KNEW OR REASONABLY SHOULD HAVE KNOWN THE CAUSE OF AN INJURY, EVEN IF MORE THAN FIVE YEARS HAVE ELAPSED SINCE THE DISCOVERY OF THE INJURY (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Dowling, determined the federal “discovery rule” for toxic tort actions pre-empts the state statute of limitations. The lawsuit alleged a town landfill near a school emitted toxic materials causing illness among the school’s staff and students:

42 USC § 9658 has been deemed a “discovery rule” ... , and “does not purport to create an entirely new statute of limitations framework for state toxic tort actions” Instead, the statute provides “a limited ‘[e]xception to State statutes’ [that] applies only if the state statute ‘provides a commencement date which is earlier than the federally required commencement date’” Thus, in New York, where suit was not brought within three years of the discovery-of-injury date as provided by CPLR 214-c(2), the primary effect of 42 USC § 9658 is to allow a plaintiff to bring suit within one year after “the date the plaintiff knew (or reasonably should have known)” the cause of an injury, even if more than five years have elapsed since discovery of the injury * * *

... [W]ith respect to those plaintiffs in this action who did not bring suit within three years of the discovery of their alleged injuries (see CPLR 214-c[2]), 42 USC § 9658 applies to allow those plaintiffs to bring suit within one year after “the date the plaintiff knew (or reasonably should have known)” the cause of an injury, even if more than five years have elapsed since discovery of the injury [Klaus v Town of Brookhaven, 2026 NY Slip Op 03669, Second Dept 6-10-26](#)

Practice Point: Here the state statute of limitations for toxic tort cases was pre-empted by a federal “discovery rule” which allows suit within one year after “the date the plaintiff knew (or reasonably should have known)” the cause of an injury, even if more than five years have elapsed since discovery of the injury.

June 10, 2026

CIVIL PROCEDURE, CONTRACT LAW, CORPORATION LAW.

DEFENDANT HAD SUFFICIENT CONTACTS WITH NEW YORK TO ALLOW THIS BREACH OF CONTRACT ACTION TO BE BROUGHT IN NEW YORK (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendant, which issued preferred stock to plaintiff, had sufficient contacts with New York to bring the breach of contract action in New York:

Pursuant to the certificates of designation governing the preferred stock issued by defendant to plaintiff, defendant was required to provide dividends to a paying agent, which then provided the funds to a depository to pay the preferred stockholders. To facilitate dividend distributions, defendant designated entities located in New York as the paying agent and the depository. Further, defendant’s agreements with each of the depositories required the depository to maintain facilities in New York City. Defendant also contracted with multiple underwriters based in New York to sell the preferred stock. * * *

... [The] New York-based contacts are sufficiently related to plaintiff’s underlying breach of contract claim because “at least one element [of the cause of action] arises from the New York contacts” Defendant allegedly breached its duty

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under the certificates of designation not to sell stock to its affiliates “unless full cumulative dividends on the [preferred stock] . . . have been paid.” Defendant’s alleged breach consisted of not only its agreement to sell stock to one of its affiliates but also its failure to make full cumulative dividend payments to the preferred stockholders before completing the sale. . . . [D]efendant’s failure to make dividend payments, which necessarily would have been sent to its paying agent in New York, sufficiently connects defendant’s contacts with New York to the breach of contract cause of action [Katz v Navios Mar. Holdings, Inc., 2026 NY Slip Op 03731, First Dept 6-11-26](#)

Practice Point: Consult this decision for insight into when a defendant’s contacts with New York are sufficient to support a breach of contract action.brought in New York.

June 11, 2026

CRIMINAL LAW, EVIDENCE, ATTORNEYS, JUDGES.

THE BELATED TURNING OVER OF ROSARIO MATERIAL PREJUDICED THE DEFENSE; NEW TRIAL ORDERED (SECOND DEPT).

The Second Department, reversing defendant’s conviction and ordering a new trial, determined the People’s belated turning over of Rosario material to the defense deprived defendant of a fair trial. The Rosario material consisted of notes taken by social workers describing the complainant’s therapy sessions. Defendant was prejudiced by the inability to adequately review the notes or to have an expert review them before the cross-examination of the complainant. The fact that the judge precluded the notes as a remedial measure was not helpful to the defendant:

. . . [D]efendant correctly contends that he is entitled to a new trial based on the People’s belated disclosure of certain notes between the complainant and social workers describing therapy sessions. The social workers were employed by the People, and their notes at all times had been in the People’s possession. The People must turn over to the defense any prior statements by a witness which relate to the subject matter of that witness’s testimony for use on cross-examination The material must be provided at a time when it can be useful to the defense When

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the late disclosure of Rosario material results in substantial prejudice to the defendant, a new trial is required Here, the defendant was substantially prejudiced by the late disclosure of these notes, as he was unable to sufficiently review the material or to retain an expert to do so. Moreover, the prejudice was not obviated by the remedial action taken by the Supreme Court, since the preclusion of the notes was not helpful to the defendant In light of the substantial prejudice to the defendant that resulted from the late disclosure of the Rosario material, a new trial is required [People v Ibrahim, 2026 NY Slip Op 03687, Second Dept 6-10-26](#)

Practice Point: The belated turning over of Rosario material deprived defendant of an adequate opportunity to review it before the cross-examination of the complainant warranting a new trial.

June 10, 2026

FORECLOSURE, CIVIL PROCEDURE.

THE BANK'S NOTICE OF DEFAULT WHICH STATED THE MORTGAGE DEBT WOULD BE ACCELERATED IF THE ARREARS WERE NOT PAID IN 32 DAYS WAS A STATEMENT OF FUTURE INTENT AND DID NOT SERVE TO ACCELERATE THE DEBT; THEREFORE THE NOTICE DID NOT TRIGGER THE SIX-YEAR STATUTE OF LIMITATIONS AND THE FORECLOSURE ACTION WAS TIMELY BROUGHT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the notice by the bank stating that the mortgage debt would be accelerated if the defendant did not pay the arrears within 32 days was merely a statement of future intent and did not serve to accelerate the debt. Therefore the notice did not trigger the running of the six-year statute of limitations and the foreclosure action should not have been dismissed:

... [T]he July 31, 2010 default notice did not accelerate the debt. The language in the default notice, that the mortgage debt would be accelerated if Edmund J. Burns, Jr., did not pay the arrears within 32 days from the date of the default notice, was

merely an expression of future intent that fell short of an actual acceleration of the mortgage debt The mortgage debt was not accelerated until the plaintiff commenced the first action on December 12, 2012, and elected in the complaint to call due the entire loan amount and demanded payment of the outstanding loan in full This action was timely commenced on June 29, 2017, prior to the expiration of the statute of limitations on December 12, 2018. [Bank of N.Y. Mellon Trust Co., N.A. v Burns, 2026 NY Slip Op 03658, Second Dept 6-10-26](#)

Practice Point: In a foreclosure action, a notice of default which states the mortgage debt will be accelerated if the arrears are not paid in 32 days does not accelerate the debt and therefore does not trigger the six-year statute of limitations.

June 10, 2026

HUMAN RIGHTS LAW, EMPLOYMENT LAW, EVIDENCE.

PETITIONER ALLEGED EMPLOYMENT DISCRIMINATION BASED LARGELY ON THE EMPLOYER’S REFUSAL TO ACCOMMODATE PETITIONER’S DISABILITIES BY ALLOWING HER TO WORK REMOTELY FROM HOME; THE EMPLOYER DID NOT PRESENT SUFFICIENT FACTUAL INFORMATION TO WARRANT SUMMARY JUDGMENT; CRITERIA EXPLAINED (THIRD DEPT).

The Third Department, reversing Supreme Court, determined there were questions of fact precluding summary judgment on petitioner’s employment discrimination allegations which are based largely on the employer’s refusal to accommodate petitioner’s disabilities by allowing her to work remotely from home. The decision is too detailed to fairly summarize here. The decision lays out in detail what an employer must demonstrate to warrant summary judgment in this context:

“[T]he first step in providing a reasonable accommodation is to engage in a good faith interactive process that assesses the needs of the disabled individual and the reasonableness of the accommodation requested” “[T]he essential functions of the position need to be part of the interactive process the law requires, not a unilateral employer decision cloaked by business judgement” An employer

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generally cannot obtain summary judgment on a discrimination claim unless the record demonstrates that it engaged in a good faith interactive process * * *

To meet its prima facie burden on summary judgment, [the employer] sought to prove that petitioner could not perform those essential functions, even with an accommodation. . . .

Bereft of rudimentary discovery such as depositions of the parties, [the employer] failed to establish the essential functions of petitioner’s position. “To avoid unfounded reliance on uninformed assumptions, the identification of the essential functions of a job requires a fact-specific inquiry into both the employer’s description of a job and how the job is actually performed in practice” * * *

... [The employer] did not address which, if any, of petitioner’s duties must be performed in person. * * *

... [The employer] failed to demonstrate that petitioner’s requested accommodation would constitute an undue hardship. [Matter of Smelyansky v New York State Off. of Gen. Servs., 2026 NY Slip Op 03708, Third Dept 6-11-26](#)

Practice Point: Consult this decision for insight into what an employer must demonstrate to warrant summary judgment on an employment-discrimination action alleging the employer’s failure to accommodate petitioner’s disability.

June 11, 2026

LIEN LAW.

ONLY A DEFECT APPARENT ON THE FACE OF THE NOTICE OF LIEN WARRANTS SUMMARY DISCHARGE OF A MECHANIC’S LIEN; ANY OTHER THEORY MUST AWAIT TRIAL OF THE FORECLOSURE ACTION (FIRST DEPT).

The First Department, reversing Supreme Court, determined petitioner should not have been awarded summary discharge of a mechanic’s lien. Summary discharge is available only when a defect in the lien is apparent on the face of the notice of lien. Any other theory must await trial of the foreclosure action:

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The court should not have granted the petition for summary discharge of the mechanic's lien that respondent placed on petitioner's property. As relevant here, summary discharge of a lien is available “[w]here it appears from the face of the notice of lien that the claimant has no valid lien by reason of the character of the labor or materials furnished and for which a lien is claimed” (Lien Law § 19[6]). “[A] lien may be summarily discharged only for defects appearing on its face” ... , and “any dispute regarding the validity of the lien must await trial of the foreclosure action” (... Matter of Northside Tower Realty, LLC v Klin Constr. Group, Inc., [73 AD3d 1072](#), 1072 [2d Dept 2010] [“A court has no inherent power to vacate or discharge a notice of lien except as authorized by Lien Law § 19(6)”]).

Petitioner identifies no defect appearing on the face of the notice of lien, raising instead lack of consent and other issues related to the validity of the lien. Those issues cannot be resolved under Lien Law § 19(6) Lien Law § 38 does not provide alternative grounds to affirm the lien discharge, as no court has issued an order requiring respondent to provide an itemized statement [Matter of Broadway PT 1710 LLC v Kingdom Assoc., Inc., 2026 NY Slip Op 03624, First Dept 6-9-26](#)

Practice Point: Any defect warranting summary discharge of a mechanic's lien must be apparent on the face of the notice of lien.

June 9, 2026

NEGLIGENCE, EVIDENCE, JUDGES, CIVIL PROCEDURE.

PLAINTIFF IN THIS SLIP AND FALL CASE DID NOT CALL HER TREATING PHYSICIAN AS A WITNESS AND DID NOT DEMONSTRATE THE PHYSICIAN WAS UNAVAILABLE OR THAT HIS TESTIMONY WOULD BE CUMULATIVE; PLAINTIFF RELIED SOLELY ON THE TESTIMONY OF A PSYCHIATRIST WHO FIRST SAW PLAINTIFF SIX YEARS AFTER THE ACCIDENT; DEFENDANT’S REQUEST FOR A “MISSING WITNESS” JURY INSTRUCTION SHOULD HAVE BEEN GRANTED; VERDICT SET ASIDE (FIRST DEPT).

The First Department, granting defendant’s motion to set aside the jury verdict and direct a new trial in this sidewalk slip and fall case, determined plaintiff’s failure to call her treating physician as a witness warranted the “missing witness” jury instruction. Plaintiff called only, Dr. Guy, a psychiatrist who saw plaintiff only a few times six years after the injury:

Plaintiff alleges that she was injured when she was walking on the sidewalk adjacent to defendant’s property when her foot became trapped in a hole, causing her to fall. At trial, plaintiff alleged that because of the accident, she suffered a cervical herniation that caused radiculopathy and required surgery. She further alleged that injuries to her knee and her lumbar spine would require future surgery.

The trial court should have given the jury a missing witness charge with regard to Dr. Jason Gallina, plaintiff’s treating physician and surgeon from the period beginning months after the accident until at least a year afterward. Dr. Gallina was the orthopedic surgeon who performed plaintiff’s cervical fusion surgery, and he was the doctor who allegedly recommended the lumbar surgery that plaintiff contended she would need in the future.

The law is well settled that a missing witness charge is warranted for the failure to call a treating physician as a witness at trial, unless the party opposing the inference shows that the witness is either unavailable or not under the party’s control, or that the witness’s testimony would be cumulative . . . * * *

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Although the burden was on plaintiff to show that Dr. Gallina was unavailable or not under her control, she made no such showing [T]he testimony from Dr. Gallina would not have been cumulative. Dr. Guy is a physiatrist, while Dr. Gallina is the orthopedic surgeon who performed plaintiff’s surgery. [Encarnacion v St. Barnabas Hosp., 2026 NY Slip Op 03630, First Dept 6-9-26](#)

Practice Point: The plaintiff in a personal injury action must call the treating physician as a witness or adequately explain the failure to do so. In the absence of an adequate explanation, the defendant is entitled to a “missing witness” jury instruction.

June 9, 2026

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