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Weekly Reversal Report
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An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts May 25 – 28, 2026, and Posted on the New York Appellate Digest Website on Monday June 1, 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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AGENCY, CONTRACT LAW, CORPORATION LAW, FORECLOSURE.

DEFENDANT CORPORATION IN THIS FORECLOSURE ACTION RAISED A QUESTION OF FACT ABOUT WHETHER THE PERSON WHO SIGNED THE LOAN DOCUMENTS ON BEHALF OF THE CORPORATION HAD THE APPARENT AUTHORITY TO DO SO; PLAINTIFF CANNOT RELY SOLELY ON THE PURPORTED AGENT'S ASSERTIONS OF AUTHORITY, BUT RATHER MUST MAKE A REASONABLE INQUIRY (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the defendant corporation in this foreclosure action raised a question of fact whether Wing Fung Chau had apparent authority to sign the loan documents on behalf of the corporation at the time of the closing:

"One who deals with an agent does so at his [or her] peril, and must make the necessary effort to discover the actual scope of authority" … . "Essential to the creation of apparent authority are words or conduct of the principal, communicated to a third party, that give rise to the appearance and belief that the agent possesses authority to enter into a transaction. The agent cannot by his [or her] own acts imbue himself [or herself] with apparent authority" … . "'It is axiomatic that apparent authority must be based on the actions or statements of the principal'" … . "[T]he existence of apparent authority depends upon a factual showing that the

third party relied upon the misrepresentations of the agent because of some misleading conduct on the part of the principal—not the agent" … . "A third party cannot rely on the alleged agent's own action and statements, since apparent authority cannot be based upon the agent's acts" … . Furthermore, the third party "may rely on an appearance of authority only to the extent that such reliance is reasonable" … .

Here, the corporation submitted, among other things, affidavits from its president and secretary/vice president, as well as a shareholder agreement dated December 15, 2017, and the corporation's bylaws, which demonstrated that Wing Fung Chau held no corporate office and did not have the authority to execute the consolidated note and mortgage on behalf of the corporation, and that the corporation had not communicated to the plaintiff, as a third party, words or conduct that gave rise to the appearance and reasonable belief that Wing Fung Chau possessed authority to execute the consolidated note and mortgage on behalf of the corporation … . While the plaintiff relied on the purported bylaws it received from Wing Fung Chau that identified him as the sole shareholder of the corporation and the loan documents he signed that identified him as the president, the plaintiff produced no evidence that it took any further steps to assure itself that Wing Fung Chau had the authority to enter into the loan transaction … . Thus, the record showed only that any authority of Wing Fung Chau's arose from his own acts, by which he could not "imbue himself with apparent authority" … . "This is especially true where, as here, the [plaintiff] failed to conduct a reasonable inquiry into the scope of [Wing Fung Chau's] alleged authority" … . BP3 Capital, LLC v 5120 Realty Corp., 2026 NY Slip Op 03286, Second Dept 5-27-26

Practice Point: Here there is a question of fact whether the person who signed the loan documents on behalf of the corporation had the apparent authority to do so. One who deals with a purported agent must make an effort to learn the scope of the purported agent's authority and cannot rely solely on the purported agent's assertions.

May 27, 2026

APPEALS, ATTORNEYS, CIVIL PROCEDURE, FAMILY LAW.

FATHER, PRO SE, DRAFTED HIS APPELLATE BRIEF WITH GENAI, RESULTING IN CITATIONS TO NONEXISTENT AUTHORITY; USING GENAI TO DRAFT AN APPELLATE BRIEF AND THEN FAILING TO VERIFY THE ACCURACY AND LEGITIMACY OF THE CITATIONS IS "FRIVOLOUS CONDUCT" WHICH WARRANTS A MONETARY SANCTION (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Wooten, determined father, who, pro se, drafted his appellate brief using GenAI resulting in citations to nonexistent authority, should be sanctioned for frivolous conduct and fined $250.00. The "frivolous conduct" is the failure to verify the accuracy and legitimacy of the citations:

"Pursuant to 22 NYCRR 130-1.1(a), a court may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct" … . "Conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false" … .

Here, by filing an appellate brief citing to a nonexistent case as the sole support for his claim of judicial bias, the father engaged in conduct that was "completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law" … , and that involved the assertion of "material factual statements that are false" … . Thus, the father's reliance on GenAI, without taking the time to verify that the limited number of cases in his appellate brief stood for the propositions cited, let alone were actually in existence, constituted frivolous conduct. Matter of Julien v Arthur, 2026 NY Slip Op 03308, Second Dept 5-27-26

Practice Point: Using GenAI to draft an appellate brief is not "frivolous conduct." It is the failure to verify the accuracy and legitimacy of citations to nonexistent

authority in the GenAI document which constitutes "frivolous conduct" for which a monetary sanction is appropriate.

May 27, 2026

CIVIL PROCEDURE, CONTRACT LAW, JUDGES, LANDLORD-TENANT.

THE JUDGE SHOULD NOT HAVE, SUA SPONTE, TERMINATED THE LEASE BASED ON ALLEGED NONPAYMENT; AND THE JUDGE SHOULD NOT HAVE ISSUED A PRELIMINARY INJUNCTION WHICH GRANTED PLAINTIFF THE ULTIMATE RELIEF SOUGHT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the judge should not have, sua sponte, terminated the lease and should not have issued a preliminary injunction. Plaintiff alleged defendant breached the lease and sought to enjoin defendant from using the land pending the outcome of the litigation:

The Supreme Court erred in, sua sponte, declaring that the Lease Agreement terminated due to the defendant's nonpayment of rent … . There was no motion for summary judgment before the court, and the court did not afford the parties notice of any intention to deem the plaintiff's motion, inter alia, for leave to amend the complaint, as one, among other things, for summary judgment … .

… [A] preliminary injunction may not issue unless the moving party demonstrates a probability of success on the merits, a danger of irreparable injury in the absence of an injunction, and a balance of equities in that party's favor … . The purpose of a preliminary injunction is to maintain the status quo pending a final determination in the action or proceeding … and "not to determine the ultimate rights of the parties" … . "[A]bsent extraordinary circumstances, a preliminary injunction will not issue where to do so would grant the movant the ultimate relief to which he or she would be entitled in a final judgment" … .

Here, the plaintiff "failed to demonstrate that the circumstances were of such an extraordinary nature to justify th[e] relief that was granted pending the resolution of the action" … . County of Nassau v NY Youth Sports Network, Inc., 2026 NY Slip Op 03289, Second Dept 5-27-26

Practice Point: The appellate courts do not like "sua sponte" actions by a judge. Here the judge terminated the lease based on nonpayment in the absence of any motion requesting that relief.

Practice Point: A preliminary injunction which grants the ultimate relief sought by the plaintiff should only rarely be issued. Here the circumstances did not justify such extraordinary relief.

May 27, 2026

CIVIL PROCEDURE, FRAUD, LANDLORD-TENANT, MUNICIPAL LAW.

THIS TENANT ACTION ALLEGING FRAUDULENT RENT OVERCHARGES AND VIOLATIONS OF THE NYC RENT STABILIZATION LAW AND CODE IS APPROPRIATE FOR A CLASS ACTION; THE MOTION FOR CERTIFICATION OF A CLASS ACTION SHOULD NOT HAVE BEEN DENIED (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the tenants' motion for class certification in this action alleging fraudulent rent overcharges and violations of the NYC Rent Stabilization Law and Code should not have been dismissed:

CPLR 901(a) sets forth the five requirements for certification of a class action: "1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; 2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members; 3. the claims or defenses of the representative parties are typical of the claims or defenses of the class; 4. the representative parties will fairly and adequately protect the interests of the class; and 5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy." "These factors are commonly referred to as the requirements of numerosity, commonality, typicality, adequacy of representation and superiority" … . "[T]he court's inquiry 'vis-à-vis the merits is limited to a determination as to whether on the surface there appears to be a cause of action which is not a sham'" … .

… [T]he issue of whether the defendant overcharged tenants in violation of the rent stabilization laws pursuant to a fraudulent scheme predominates over the questions affecting the individual class members … . …

… [T]he plaintiffs demonstrated that they "will fairly and adequately protect the interests of the class" … . Because the plaintiffs' attorneys had "assume[d] responsibility for litigation expenses, the [plaintiffs'] personal financial condition [was] irrelevant" … . The plaintiffs also demonstrated that a class action was the superior vehicle for addressing their allegations … . Abdelrazek v 12-15 Broadway Astoria, LLC, 2026 NY Slip Op 03283, Second Dept 5-27-26

Practice Point: Consult this decision for insight into how the criteria for a class action are applied to allegations of fraudulent rent overcharges.

May 27, 2026

CIVIL PROCEDURE.

THE PROCESS SERVER DID NOT EXERCISE DUE DILIGENCE IN ATTEMPTING TO SERVE DEFENDANT BEFORE RESORTING TO NAIL AND MAIL; THE PROCESS SERVER WAS AWARE OF DEFENDANT'S PLACE OF EMPLOYMENT BUT DID NOT ATTEMPT TO SERVE DEFENDANT THERE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the process server did not exercise due diligence in attempting to serve the defendant before resortinng to nail and mail. Defendant's motion to vacate the default judgment should have been granted:

"CPLR 308 requires that service be attempted by personal delivery of the summons 'to the person to be served' … , or by delivery 'to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode' … " …. "Service pursuant to CPLR 308(4) may be resorted to only where personal service pursuant to CPLR 308(1) and (2) 'cannot be made with due diligence'" …. "The due diligence requirement of CPLR 308(4) must be strictly observed, given the reduced likelihood that a summons served pursuant to that

section will be received. What constitutes due diligence is determined on a case-by-case basis, focusing not on the quantity of the attempts at personal delivery, but on their quality" … . "The due diligence requirement may be met with a few visits on different occasions and at different times to the defendant's residence or place of business when the defendant could reasonably be expected to be found at such location at those times" … . "Additionally, '[f]or the purpose of satisfying the due diligence requirement of CPLR 308(4), it must be shown that the process server made genuine inquiries about the defendant's whereabouts and place of employment'" … .

Here, the plaintiff failed to demonstrate that the process server acted with due diligence before resorting to affix and mail service pursuant to CPLR 308(4) … . The process server averred that he made two prior attempts to personally serve the defendant at the property before affixing the summons and complaint to the door. However, there was no indication in the record that the process server made any genuine inquiries about the defendant's whereabouts or place of business … . Moreover, the record reflects that the plaintiff was aware of the defendant's employment address as of the commencement of the action, but no attempts were made to serve the defendant at his place of employment … . Castro v Castro, 2026 NY Slip Op 03287, Second Dept 5-27-26

Practice Point: Here the process server was aware of where defendant worked but did not attempt to serve defendant there before resorting to nail and mail. The process server failed to exercise due diligence and the default judgment against defendant was vacated.

May 27, 2026

CONTRACT LAW, DEBTOR-CREDITOR.

A CONTRACT WHICH ALLOWS A PARTY "SOLE DISCRETION" TO ASSIGN A LOAN IS CONSTRAINED BY THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; HERE IT WAS ALLEGED THE ASSIGNMENT WAS PART OF A "BACKROOM DEAL" TO EXCLUDE PLAINTIFF FROM A DEVELOPMENT PROJECT AND BENEFIT FROM A RESULTING WINDFALL; THE BREACH OF THE IMPLIED COVENANT CAUSE OF ACTION WAS REINSTATED BY THE COURT OF APPEALS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, over a three-judge partial dissent, reversing (modifying) thee Appellate Division, determined the cause of action alleging breach of the implied covenant of good faith and fair dealing should not have been dismissed. The complex facts of the case center around loans and contracts to develop a luxury residential tower. Under the Pledge Agreement at issue the defendant, Apollo, had "sole discretion" to assign a "junior mezzanine loan." The majority concluded that the "sole discretion" did not override the implied covenant of good faith and fair dealing. Plaintiff alleged the assignment of the loan to "Spruce" was part of a "backroom deal" to push plaintiff out of the project's capital structure and benefit from a resulting windfall:

We concur with the prevailing view among the Appellate Division departments—that a party's "sole discretion" with respect to a right does not exculpate that party from complying with the implied covenant with respect to that right. Although "parties to a contract are basically free to make whatever agreement they wish, no matter how unwise it might appear to a third party . . . [t]here exists an unavoidable tension between the concept of freedom to contract . . . and the equally fundamental belief that an enlightened society must to some extent protect its members from the potentially harsh effects of an unchecked free market system" … . In light of those competing interests, "rightly or wrongly, society has chosen to intervene in various ways in the dealings between private parties," for example by "mandating the express or implicit inclusion of certain substantive or procedural provisions in various types of contracts" … . Indeed, one of those implicit

substantive provisions is the implied covenant, which has the primary purpose of ensuring that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract," when that conduct is "inconsistent with the other terms of the contractual relationship," and yet not negotiated for in advance … .

This doctrine is even more important "where a contract contemplates the exercise of discretion," or in other words awards one party the freedom to act in ways the contract may not directly foresee … . Accordingly, the implied covenant obligates the party with discretion act in good faith, and "not [] arbitrarily or irrationally," when "exercising that discretion" … . A promisor's discretion may not be used to violate a promise that "a reasonable person in the position of the promisee would be justified in understanding w[as] included" … . 111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC, 2026 NY Slip Op 03376, CtApp 5-28-26

Practice Point: A contract provision allowing a party "sole discretion" to take certain actions is constrained by the implied covenant of good faith and fair dealing. i.e., a party cannot exercise discretion in a way that frustrates another party's rights under the contract.

May 28, 2026

CRIMINAL LAW, APPEALS.

THE STENOGRAPHER DELIBERATELY FAILED TO TRANSCRIBE PORTIONS OF THE TRIAL TESTIMONY, INSTEAD RECORDING "BLAH, BLAH, BLAH," "OMITTED," AND "UNTRANSCIBABLE;" THE APPELLATE DIVISION PROPERLY SENT THE MATTER BACK FOR A RECONSTRUCTION HEARING AND THE RECONSTRUCTED TESTIMONY WAS SUFFICIENT TO PROTECT DEFENDANT'S RIGHT TO AN APPEAL (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, affirming the Appellate Division, determined (1) the Appellate Division, holding the appeal in abeyance, properly sent the matter back for a reconstruction hearing because the

seriously flawed trial transcript omitted testimony, and (2) the reconstruction of the transcript was adequate to allow appellate review. Defendant's conviction was affirmed:

During the trial of Joseph A. Meyers, the primary stenographer failed to capture substantial portions of the proceedings and frequently recorded "blah blah blah," "blah blah," "omitted," "untranscribable" or undecipherable characters instead of the words actually spoken. Those transgressions by the court reporter were first discovered during the pendency of Mr. Meyers's appeal. The Appellate Division ordered a reconstruction hearing, at which Supreme Court took testimony from the trial judge who heard the case, the attorneys who tried it and court clerks who helped administer it, and also supplemented the record with the extensive notes the judge took during the trial. Although Supreme Court did not, at the conclusion of the reconstruction hearing, identify the contents of the reconstructed record, the Appellate Division affirmed Mr. Meyers's convictions based on the original trial record as supplemented by the proof established at the reconstruction hearing. The core issues before us are: (1) whether the Appellate Division appropriately ordered a reconstruction hearing instead of summarily reversing Mr. Meyers's criminal convictions and ordering a new trial; and (2) if the Appellate Division properly required a reconstruction hearing, whether that hearing produced a record sufficient to protect Mr. Meyers's right to an appeal that comported with due process. Although the transcript prepared by the court reporter at trial is utterly inexcusable, we affirm the Appellate Division's holding that, on the unique facts of this case, the results of the reconstruction hearing were sufficient to protect Mr. Meyers's right to an appeal. People v Meyers, 2026 NY Slip Op 03261, CtApp 5-26-26

Practice Point: Consult this opinion for insight into how trial testimony omitted from the transcribed record can be reconstructed such that defendant's right to an appeal is protected.

May 26, 2026

CRIMINAL LAW, EVIDENCE.

DEFENDANT PLANNED WITH TWO OTHERS TO ROB THE VICTIM; THE FACTS THAT THE DEFENDANT WAS MERELY PRESENT DURING THE ROBBERY AND DID NOT RECEIVE ANY OF THE STOLEN CASH DID NOT NEGATE THE FACT THAT DEFENDANT SHARED THE ACCOMPLICES' INTENT; THE INDICTMENT SHOULD NOT HAVE BEEN DISMISSED (SECOND DEPT).

The Second Department, reversing County Court's dismissal of the robbery indictment, determined the evidence was sufficient to support defendant's liability as an accomplice. Defendant planned to rob the victim with two others. Defendant knew the victim and set up a meeting with him. As planned, defendant's accomplices robbed the victim at gunpoint during the meeting with defendant. Defendant later picked up the two accomplices, who were still wearing masks. Defendant convinced the victim to not report the robbery. $3000 was stolen, but defendant received none of it:

Viewing the evidence in the light most favorable to the People, the evidence was legally sufficient to establish the defendant's commission of the charged crimes as an accomplice. The defendant's conduct before, during, and after the commission of the robbery established his shared intent to commit the crime of robbery … . People v Symns, 2026 NY Slip Op 03325, Second Dept 5-27-26

Practice Point: Mere presence during a robbery is not enough for accomplice liability. But here, although he did not participate in the theft of the victim's cash at gunpoint and did not receive any of the cash, defendant participated in the planning of the robbery, transported his accomplices to and from the robbery scene, and arranged the meeting with the victim at the robbery scene. His actions before and after the robbery demonstrated he shared the intent of the persons who executed the robbery and therefore defendant was properly indicted as an accomplice.

May 27, 2026

CRIMINAL LAW, EVIDENCE.

THE MURDER TOOK PLACE ON NOVEMBER 20; DEFENDANT WAS ARRESTED FOR POSSESSION OF A WEAPON ON NOVEMBER 21 AND INDICTED ON THAT CHARGE ALONE; SUBSEQUENTLY, BASED ON FORENSIC EVIDENCE (BALLISTIC AND DNA), DEFENDANT WAS SEPARATELY INDICTED FOR MURDER COMMITTED WITH THE SAME WEAPON ON NOVEMBER 20; THE MAJORITY CONCLUDED DEFENDANT WAS PROPERLY INDICTED SEPARATELY BECAUSE THE TWO OFFENSES WERE NOT PART OF "THE SAME CRIMINAL TRANSACTION" (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Rivera, over a two-judge dissent, affirming the Appellate Division, determined defendant was properly separately indicted for (1) possession of a weapon and (2) using that weapon to commit murder. Criminal Procedure Law 40.40(2) prohibits separate indictments for joinable offenses. The majority concluded that the possession-of-a-weapon was not part of the "same criminal transaction" as the murder:

Defendant contends that County Court properly dismissed the murder indictment under CPL 40.40 (2) and, as relevant here, argues that the charges were part of the same criminal transaction because there was no break in possession between her use of the weapon in the murder on November 20, 2021 and her possession of the weapon the next day, November 21. The prosecution responds that the passage of time between defendant's completion of the homicide on November 20 and her subsequent apprehension on November 21 while in possession of the firearm used to commit the offense separates the criminal acts into different criminal incidents, allowing separate prosecution of the possession and the murder charges. The prosecution has the better argument. We conclude that the Appellate Division properly denied defendant's motion to dismiss and reinstated the murder indictment. People v Harris, 2026 NY Slip Op 03260, CtApp 5-26-26

Practice Point: Here criminal possession of a weapon on November 21 and murder using that same weapon on November 20 were deemed offenses which were not part of the same criminal transaction. Therefore the two offenses were properly

indicted separately. The separate indictments did not violate the prohibition of separate indictments for joinable offenses in CPL 40.40(2).

May 26, 2026

CRIMINAL LAW, JUDGES, ATTORNEYS.

THE AGREEMENT WHICH PROMPTED DEFENDANT'S GUILTY PLEA WAS SUBSEQUENTLY DETERMINED TO BE ILLEGAL BECAUSE IT PROMISED PROBATION FOR A D FELONY; ONCE IT WAS CLEAR DEFENDANT MUST BE SENTENCED TO INCARCERATION, THE JUDGE GAVE THE DEFENDANT THE OPTION TO WITHDRAW HIS PLEA, WHICH HE DECLINED TO DO; SENTENCE AFFIRMED (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Rivera, over a two-judge dissent, affirming the Appellate Division, determined defendant's guilty plea should not be vacated. Defendant unsuccessfully argued that the plea agreement had not been honored by the prosecutor. The plea agreement was unenforceable because it called for an illegal sentence—probation for a D felony. Once it was clear defendant must be sentenced to incarceration, the judge gave defendant the option of withdrawing his guilty plea, which he declined to do. The opinion is fact-intensive and cannot be fairly summarized here. People v Flesch, 2026 NY Slip Op 03258, CtApp 5-26-26

May 26, 2026

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

ALTHOUGH A DEFENDANT CAN PROPERLY REQUEST A DOWNWARD DEPARTURE FROM THE SORA RISK-LEVEL ASSESSMENT BASED ON HIS "RELEASE ENVIRONMENT." I.E., GAINFUL EMPLOYMENT, STRONG FAMILY SUPPORT, ETC., THE DEFENDANT MUST DEMONSTRATE THE "RELEASE ENVIRONMENT" WAS NOT ADEQUATELY TAKEN INTO ACCOUNT BY THE GUIDELINES AND HIS "RELEASE ENVIRONMENT" REDUCES THE LIKELIHOOD OF REOFFENDING (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Cannataro. over a three-judge concurrence, affirming the Appellate Division, determined that a defendant's "release environment" can be considered as a basis for a downward departure, but that the Appellate Division properly found defendant did not demonstrate his "release environment" made his reoffending less likely and his "release environment" had been adequately accounted for by the Guidelines:

In support of his downward departure request, defendant emphasized that he had been living offense-free in the community for the 3½ years since his release from incarceration and argued that there were mitigating factors not adequately accounted for by the Guidelines, including, as relevant here, his gainful full-time employment and strong family support. He explained that he had worked as a food delivery driver, obtained his commercial driver's license, become a full-time truck driver, and eventually purchased his own tractor-trailer and founded a freight trucking business. Additionally, defendant supplemented his income by working nights and weekends parking cars as a production assistant on film sets. He viewed his recent history of full-time employment as a significant contributor to a reduced risk of reoffense, characterizing his past crimes as being "financially motivated." In further support of this proposed mitigating factor, defendant cited to statistics documenting the difficulties faced by many formerly incarcerated people, especially sex offenders, in obtaining employment, as well as a publication concerning the importance of structured, full-time employment in preventing recidivism. To establish his alleged strong family support network, defendant referenced his committed relationship with the mother of his young child, and submitted brief letters from four family members and a former landlord asserting

that he was a family-oriented man who had been rehabilitated. He also cited to Appellate Division caselaw treating strong family support as a mitigating factor. Defendant maintained that a departure to risk level one would provide adequate supervision and community notification, without overestimating his likelihood of reoffense. * * *

The potentially risk-reducing effects of … steady employment in an appropriate setting or housing with, or in close proximity to, supportive family or friends …can be asserted as mitigating circumstances … so long as the offender can establish that those circumstances are present to a degree not adequately accounted for by the Guidelines … . * * *

The Appellate Division did not err or abuse its discretion in denying defendant's request for a downward departure. Significantly, the Court did not expressly reject defendant's proposed mitigating factors as a matter of law, but went on to conclude that he failed to meet his burden of establishing that the proposed mitigating factors existed in this case. … [T]he Court … concluded … defendant failed * * * to demonstrate how "his support system" would reduce his risk of reoffense … . People v Green, 2026 NY Slip Op 03378, CtApp 5-28-26

Practice Point: A defendant's "release environment" (gainful employment, family support, etc.) can be considered by a SORA court as a mitigating factor supporting a downward departure. Here the SORA court properly considered defendant's "release environment" but determined his environment was adequately taken into account by the guidelines and defendant did not demonstrate how his "release environment" would make his reoffending less likely.

May 28, 2026

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

HERE THE SORA RISK-LEVEL GUIDELINES DID NOT ADEQUATELY TAKE INTO ACCOUNT DEFENDANT'S ATYPICAL CRIMINAL HISTORY; THEREFORE AN UPWARD DEPARTURE FROM LEVEL ONE TO LEVEL TWO WAS APPROPRIATE (CT APP).

The Court of Appeals, affirming the SORA court and the Appellate Division, determined the SORA risk-level guidelines did not adequately take into account the defendant's criminal history which supported an upward departure to a level two sex offender:

… [A]n offender's prior criminal history can warrant an upward SORA departure in an appropriate case. Although such history is plainly a factor "of a kind" contemplated by the Guidelines under risk factors 9 and 10, an offender's atypical prior criminal history may be an aggravating factor "to a degree" for which the Guidelines inadequately account … .

This case proves the point. The timing, nature, and extent of defendant's three sex offenses and violent felony supply record support for the affirmed finding that defendant's prior criminal history was indeed atypical. Risk factor 9 relevantly assesses the maximum 30 points for a prior "violent felony, . . . misdemeanor sex crime, or endangering the welfare of a child, or any . . . sex offense" (Guidelines, risk factor 9 [emphasis added]). Defendant's prior conviction of attempted first-degree robbery, or either of his two prior convictions of forcible touching, would thus have each independently yielded 30 points under this factor. Defendant stood convicted of all three crimes, yet he was assessed the same number of points under this factor as a defendant previously convicted of just one of them. Likewise, risk factor 10 assesses the maximum 10 points for committing the instant offense within three years at liberty after committing a felony or sex crime. Here, defendant committed the instant offense after eight months at liberty following his commission of a prior felony, yet he was assessed the same number of points under this factor as a defendant who abstains from reoffending for more than four times as long. Given these facts, the lower courts did not err in concluding that risk factors 9 and 10 inadequately accounted for defendant's prior criminal history as

an aggravating factor. People v Townsend, 2026 NY Slip Op 03377, CtApp 5-28-26

Practice Point: Where the SORA risk-level guidelines do not adequately take into account a defendant's atypical criminal history, an upward departure is appropriate.

May 28, 2026

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

THE SORA RISK-LEVEL GUIDELINES CONSIDER A SEX OFFENDER'S YOUTH (UNDER 20) AS AN AGGRAVATING FACTOR WARRANTING AN ASSESSMENT OF TEN POINTS; HERE DEFENDANTS ARGUED THEIR YOUTH SHOULD BE CONSIDERED A MITIGATING FACTOR; THAT ISSUE CAN ONLY BE ADDRESSED BY THE LEGISLATURE, NOT THE COURTS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Garcia, over a three-judge concurrence, determined the defendants' young age at the time of the offenses (below 20) was adequately taken into account by the SORA risk-level guidelines in that the guidelines assess additional points based on an offender's youth. In other words, the guidelines consider the offender's youth as an aggravating factor for which 10 points is assessed. The defendants' argument that their youth should be a mitigating factor can only be addressed by the legislature, not the courts:

Defendants' argument that scientific research suggests that young age at the time of offense lowers the risk of reoffense and so is a mitigating factor meriting a downward departure amounts to a policy dispute with the legislature's instruction to the Board to consider that factor, and with the Board's corresponding decision to include age below 20 at the time of first offense as a basis for the assessment of ten points in the RAI [risk assessment instrument]—not an argument that the RAI does not "fully capture the nuances of [their] case" … . It is the Board that has a "legislative mandate to promulgate" the Guidelines … , and disagreement with the basis on which a factor is premised or with the manner in which the Board implements that mandate is "for the legislature and the Board to consider, and not

within the scope of this Court's authority" … . Indeed, " '[t]he constitutional principle of separation of powers . . . requires that the Legislature make the critical policy decisions' " … . Here, the legislature did that by instructing the Board to consider as "indicative of a high risk of repeat offense" "the age of the sex offender at the time of the commission of the first sex offense" (Correction Law § 168-l [5] [a] [v], [d]). The Board, based on its expertise and experience and within the exercise of its discretion, in turn implemented this legislative directive by requiring the assessment of points under risk factor 8 where an offender committed a first sex offense before the age of 20 … . There is no legal basis for reaching the opposite conclusion in the guise of a judicially-fashioned "mitigating" factor. The legislature, and in turn the Board, may of course reconsider this approach to age as an indicator of likelihood of reoffense. People v Carnegie, 2026 NY Slip Op 03379, CtApp 5-28-26

Practice Point: A defendant seeking a downward departure from the SORA risk-level assessment cannot argue the defendant's youth as a mitigating factor. The guidelines consider a defendant's youth as an aggravating factor requiring the assessment of ten points. Only the legislature can change the guidelines.

May 28, 2026

HUMAN RIGHTS LAW, EMPLOYMENT LAW, CIVIL PROCEDURE, CONSTITUTIONAL LAW, CORPORATION LAW, MUNICIPAL LAW.

ALTHOUGH PLAINTIFF IS A NEW JERSEY RESIDENT WORKING FOR A NONDOMICILIARY EMPLOYER, SHE WAS REQUIRED TO MAKE REGULAR VISITS TO HER EMPLOYER'S CLIENT IN NEW YORK CITY; PLAINTIFF ALLEGED SHE WAS SEXUALLY HARASSED, IN NEW YORK CITY, BY THE CLIENT'S EMPLOYEE; BECAUSE THE ALLEGED DISCRIMINATORY CONDUCT "HAD AN IMPACT IN NEW YORK," NEW YORK HAD SUBJECT MATTER JURISDICTION FOR THE HUMAN RIGHTS LAW CAUSES OF ACTION (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Shulman, reversing Supreme Court, determined New York had jurisdiction over this employment discrimination action brought under the NYS Human Rights Law and the NYC Human Rights Law. The plaintiff is a New Jersey resident and Ethicon, alleged to be her employer, is a New Jersey corporation. Plaintiff alleged she was assigned to a sales account for Mount Sinai Health System, Inc. which required her to meet regularly with an manager at Mount Sinai in New York City. Plaintiff alleged Ethicon knew that she would be subject to sexual harassment by the Mount Sinai manager. The First Department held that the term "employer" in the Human Rights Law included the nondomiciliary Ethicon because the discriminatory conduct at issue "had an impact in New York."

… [T]he issue here is how we should interpret the State HRL's definition of an "employer" as used in the phrase "all employers within the state" for purposes of liability under the State HRL (Executive Law § 292 [5]). The motion court read this definition as requiring an employer to have a physical presence in New York and therefore found both the State HRL and the City HRL inapplicable to Ethicon, "a New Jersey employer of [plaintiff,] a New Jersey resident." * * *

… [T]he Court of Appeals in Hoffman v Parade Publs. (15 NY3d 285 [2010]), adopted an impact test for nonresidents who seek the protection of the City HRL and found that test "relatively simple for courts to apply and litigants to follow,

leads to predictable results, and confines the protections of the City HRL to those who are meant to be protected—those who work in the city" …. . * * *

Thus, the relevant inquiry is whether the alleged discriminatory conduct had an impact in New York regardless of the residency of the parties. Here, plaintiff, a New Jersey resident, alleges that Ethicon, her nondomiciliary employer, assigned her to service a New York-based account, requiring her regular presence at Mount Sinai's hospital where the alleged traumatic sexual harassment occurred. Plaintiff further alleges that Ethicon was aware of the harassment and nevertheless required her to continue the assignment because of the account's importance. At the pleading stage, plaintiff's allegations, among other discriminatory acts, that her Ethicon manager discouraged her from complaining and "coached her to 'lean into' the sexual harassment so Mount Sinai would continue using Ethicon's services" are more than sufficient to allege sexual discriminatory conduct having a concrete impact on plaintiff within New York to confer subject matter jurisdiction. Plaintiff's residency outside New York does not preclude application of the State HRL or City HRL where the alleged misconduct occurred in New York City and affected plaintiff while she was working there. Arizzo v Ethicon, Inc., 2026 NY Slip Op 03262, First Dept 5-26-26

Practice Point: Consult this opinion for insight into subject matter jurisdiction under the NYC and NYS Human Rights Law. If a nonresident employee of a nondomiciliary corporation, as part of her job, meets regularly with a client in New York City and is sexually harassed by the client, New York has subject matter jurisdiction over Human Rights Law causes of action.

May 26, 2026

LABOR LAW-CONSTRUCTION LAW, NEGLIGENCE.

THE CONTRACTOR RETAINED PLAINTIFF'S EMPLOYER TO INSTALL AN OIL TANK; THE CONTRACTOR DID NOT EXERCISE SUPERVISION AND CONTROL OVER PLAINTIFF'S WORK; PLAINTIFF WAS INJURED WHEN A PIECE OF THE TANK BROKE OFF AND STRUCK HIM; THE LABOR LAW 200 AND COMMON-LAW NEGLIGENCE CAUSES OF ACTION AGAINST THE CONTRACTOR WERE DISMISSED (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff's Labor Law 200 and common-law negligence causes of action against a contractor, Controlled Combustion, should have been dismissed. Plaintiff's employer was retained by Controlled Combustion to install an oil tank. A piece of the tank broke off and struck the plaintiff. Controlled Combustion did not exercise supervisory control over plaintiff's work:

Controlled Combustion is entitled to dismissal of plaintiff's Labor Law § 200 and common-law negligence claims because it established that it did not "actually exercise[] supervisory control over" plaintiff's work … . General oversight, regular inspections, and authority to stop unsafe work are insufficient to impose liability under Labor Law § 200 or common-law negligence … . Plaintiff testified that while installing an oil tank in the basement of a building owned by 2350 Broadway, he was struck by a base piece of the tank when the piece detached and fell from an electric chain hoist, which was owned by his employer. Controlled Combustion, a commercial heating company, was retained to perform work in the building, and it in turn retained plaintiff's employer to install the oil tank. Plaintiff also testified that his employer came up with the plan to move the base piece with a hoist and that all orders of how to do his job came from his employer, not Controlled Combustion. Rosario v C.C. Controlled Combustion Co., Inc., 2026 NY Slip Op 03279, First Dept 5-26-26

Practice Point: Consult this decision for insight into what constitutes "supervision and control" over a plaintiff's work such that the contractor which hired plaintiff's employer can be liable to plaintiff under Labor Law 200 and common-law negligence.

May 26, 2026

LABOR LAW-CONSTRUCTION LAW.

THE INDUSTRIAL CODE PROVISION WHICH GENERALLY PROHIBITS WORK IN AN AREA WHERE A WORKER CAN BE STRUCK BY EXCAVATION EQUIPMENT IS NOT SPECIFIC ENOUGH TO HOLD A CONSTRUCTION SITE OWNER VICARIOUSLY LIABLE PURSUANT TO LABOR LAW 241(6); PLAINTIFF WAS STRUCK BY AN EXCAVATOR WHICH ROTATED INTO HIM (CT APP).

The Court of Appeals, affirming the Appellate Division, over a three-judge dissent, determined the Industrial Code provision at issue was not specific enough to support a Labor Law 241(6) cause of action for plaintiff's injury. Plaintiff was struck by the back corner of an excavator which rotated into him. Industrial Code 23-4.2 (k) provides "[p]ersons shall not be suffered or permitted to work in any area where they may be struck or endangered by any excavation equipment or by any material being dislodged by or falling from such equipment" … :

The references to "area" and "endangered" in section 23-4.2 (k) represent the type of "broad, nonspecific regulatory standard[s]" that this Court has held insufficient to support "an action against a non-supervising owner or general contractor" … . Section 23-4.2 (k) does not include a minimum distance that must be maintained between a worker and any excavation equipment, and its protections are not limited to any specific class of worker. The section also does not identify any protective measures or reasonable precautions that a site owner must take in order to comply with the section. Nor does section 23-4.2 (k) provide clear guidance about how owners and contractors should provide reasonable and adequate protection and safety for workers. It merely states a general prohibition with broad applicability, lacking any specific directions. While the safety of workers is a critical concern, the language of section 23-4.2 (k) does not meet the legal standard for specificity required to hold site owners vicariously liable under the Labor Law. Mann v Mezuyon, LLC, 2026 NY Slip Op 03257, CtApp 5-26-26

Practice Point: Consult this opinion for insight into the level of specificity required before an Industrial Code provision can be the basis for holding a construction site owner vicariously liable for a worker's injury pursuant to Labor Law 241(6). Here the Industrial Code's general prohibition against allowing workers in an area where they can be struck by excavation equipment was not specific enough to render the owner vicariously liable.

May 26, 2026

REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

REAL PROPERTY LAW. WHEN DOES A RESTRICTIVE COVENANT RUN WITH THE LAND? WHEN IS A RESTRICIVE COVENANT EXTINGUISHED BY MERGER? WHEN IS A RESTRICTIVE COVENANT RENDERED UNENFORCEABLE PURSUANT TO RPAPL 1951?

The Second Department, reversing (modifying) Supreme Court, determined a restrictive covenant prohibiting the development of land in a conservation district ran with the land, although there remains a question of fact whether the covenant was rendered unenforceable pursuant to RPAPL 1951. Plaintiff sought to build a home on the land:

"[A] restrictive covenant will run with the land and will be enforceable against a subsequent purchaser of the land when the following requirements are satisfied: (1) it must appear that grantor and grantee intended that the covenant should run with the land; (2) it must appear that the covenant is one touching or concerning the land with which it runs; [and] (3) it must appear that there is privity of estate between the promisee or party claiming the benefit of the covenant and the right to enforce it, and the promisor or party who rests under the burden of the covenant" … . The only one of these requirements at issue on this appeal is the intent of the parties, "which must be determined from the instrument and, if necessary, by looking also to the surrounding circumstances" … .

Here, the 2000 deed did not expressly recite that the restrictive covenant was to run with the land. Although that deed contained language providing that the County conveyed to BPC Holding, and to its "heirs or successors and assigns," the right to

have and to hold the property, subject to the restrictive covenant, the mere presence of that language was not sufficient, standing alone, to establish that the grantor and the grantee intended that the restrictive covenant run with the land … .

Nevertheless, the County defendants and the Town defendants established, prima facie, that the restrictive covenant was intended to run with the land based upon the surrounding circumstances…. . * * *

"In order to state a cause of action pursuant to RPAPL 1951, a plaintiff seeking a declaration that a restrictive covenant is unenforceable must allege that, upon a balancing of the equities, the restrictive covenant is of no actual and substantial benefit to the party seeking to enforce it" … . Here, the County defendants and the Town defendants failed to establish, prima facie, that the plaintiff's alleged hardships due to the restrictive covenant did not "tip the balance of equities in favor of extinguishing [the restrictive covenant]" pursuant to RPAPL 1951(2) … . U & Me Homes, LLC v County of Suffolk, 2026 NY Slip Op 03331, Second Dept 5-27-26

Practice Point: Consult this decision for an in-depth discussion of the criteria for a restrictive covenant which runs with the land, the criteria for extinguishing a restrictive covenant by merger, and the criteria for rendering a restrictive covenant unenforceable pursuant to RPAPL 1951 because of the hardship it imposes.

May 27, 2026

SOCIAL SERVICES LAW.

THE FEDERAL "SUPPLEMENTAL SECURITY INCOME (SSI)" PROGRAM PROPERLY USES AN SSI APPLICANT'S BENEFITS TO REIMBURSE NEW YORK FOR "SAFETY NET ASSISTANCE (SNA)" PAID BY NEW YORK TO THE APPLICANT DURING THE SSI APPLICATION PROCESS, WHICH CAN TAKE MONTHS OR YEARS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Cannataro, over a three-judge dissent, affirming the Appellate Division, determined New York's Safety Net Assistance program (SNA program) was entitled to reimbursement of the funds

provided to applicants awaiting the receipt of the federal Supplemental Security Income program (SSI program) benefits. It may take months or years before an SSI applicant starts receiving SSI payments. During the waiting period an SSI applicant may apply for New York's SNA program benefits. The applicant is required to work to receive the SNA payments which are based on the federal minimum wage. The SSI applicants, who are required to work for the SNA benefits during the waiting period, receive the same payments as SNA recipients who do not work. The SSI applicants (the petitioners in this case) argued that using an SSI applicant's federal SSI benefits to reimburse New York's SNA program violated the Fair Labor Standards Act (FLSA) by depriving them of the wages earned during the waiting period. The majority rejected that argument:

… 42 USC § 1383 (g) [SSI program] expressly authorizes the government to withhold benefits payable to an applicant in "an amount sufficient to reimburse the State (or political subdivision) for . . . assistance financed from State or local funds and furnished for meeting basic needs" … . Petitioners do not dispute that SNA generally qualifies as interim assistance, or that 42 USC § 1383 (g) authorizes states to be reimbursed for interim assistance from a retroactive SSI award … . Instead, petitioners effectively ask us to read an exception into 42 USC § 1383 (g) for interim assistance that is conditioned on participation in work activities. But the plain language of the statute does not distinguish between assistance that is conditioned on work activities and assistance that is not so conditioned (e.g., because the recipient is unable to work). Nor is there an obvious reason why Congress would have wished to distinguish between the two types of assistance. Both fulfill the same portion of an SSI applicant's basic needs during the relevant waiting period, which the federal government would otherwise be financially obligated to cover. Matter of Andersen v Hein, 2026 NY Slip Op 03259, CtApp 5-26-26

May 26, 2026

WORKERS' COMPENSATION.

CLAIMANT'S APPLICATION SHOULD NOT HAVE BEEN DENIED BECAUSE OF INADVERTENT OMISSIONS FROM THE FORM RB-89; CLAIMANT SHOULD HAVE BEEN NOTIFIED AND GIVEN 20 DAYS TO CURE THE OMISSIONS; OR THE OMISSIONS SHOULD HAVE BEEN IGNORED BY THE BOARD (THIRD DEPT).

The Third Department, reversing the Workers' Compensation Board, determined the Board should not have denied the application based on inadvertent omissions from the form RB-89:

… [T]he Legislature has made clear that "[n]otwithstanding anything contained in 12 NYCRR 300.13 (b)[,] . . . a mistake, omission, defect and/or other irregularity in a [form RB-89] accompanying an application for administrative review . . . shall not be grounds for denial of said application" (Workers' Compensation Law § 23-a [1] …). The Board is instead directed to either notify the party seeking review about such a problem in writing and give the party 20 days to correct it, or disregard the problem altogether if the substantial rights of the relevant parties are not impacted by it (see Workers' Compensation Law § 23-a [3]). There is no indication here that the Board notified claimant in writing of the deficiencies in her initial form RB-89 and, after the carrier pointed them out, claimant provided proof that the defects in the form were inadvertent and that the application had been filed and served in a timely manner. The carrier made no effort to challenge that proof, nor did it argue that it had been prejudiced in any way by the flaws in the initial form RB-89 submitted by claimant. To be sure, Workers' Compensation Law § 23-a "addresses technical defects in the contents of applications for Board review rather than the associated service requirements," and nothing prohibits the Board from denying applications where the latter are not satisfied … . This record shows that claimant did satisfy all filing and service requirements and only failed to note that fact on her initial form RB-89, however, and "the Board's regulations requiring that an application for Board review be filled out completely and/or correctly may not abdicate, contravene or be inconsistent" with the provisions of Workers' Compensation Law § 23-a … . Thus, as the Board's denial of claimant's application ran afoul of Workers' Compensation Law § 23-a and its underlying

goal of ensuring that "small mistake[s] on a cover sheet should not be cause for a full denial of an appeal," it constituted an abuse of discretion and cannot stand … . Matter of Price v Premium Brands Opco, LLC, 2026 NY Slip Op 03346, Third Dept 5-28-26

Practice Point: Workers' Compensation Law section 23-a prohibits the denial of an application based on inadvertent omissions from the Form RB-89.

May 28, 2026