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Weekly Reversal
Report
June 22 – 26,
2026

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THE JUDGE SHOULD NOT HAVE GRANTED A DEFAULT JUDGMENT, SUA SPONTE, AGAINST A DEFENDANT NOT NAMED IN PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT; THE PHRASE IN PLAINTIFF’S SUMMARY JUDGMENT MOTION REQUESTING “SUCH OTHER RELIEF” AS IS DEEMED APPROPRIATE CANNOT BE THE BASIS FOR DISPOSITIVE RELIEF (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the judge should not have, sua sponte, granted a default judgment against defendant Molina in this foreclosure action. There were two defendants, Pena and Molina. Pena answered the complaint but Molina did not. The notice of motion seeking summary judgment did not mention Molina. Therefore the judge should not have granted relief not demanded by the plaintiff:

“Among the statutory requirements [set forth in CPLR 2214(a) and (b)] is that notices of motion set forth ‘the relief demanded and the grounds therefor.’ The failure to give a party proper notice of a motion deprives the court of jurisdiction to entertain the motion and renders a resulting order void” In other words, “[a] court lacks jurisdiction to grant relief against a defaulting party where that relief is not requested in the moving papers”

Here, since the plaintiff did not move for leave to enter a default judgment against Molina, the Supreme Court should not have, sua sponte, granted that relief As the court lacked jurisdiction to grant such relief ... , so much of the order ... , as, sua sponte, granted leave to enter a default judgment against Molina was rendered

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void ... , “warranting vacatur pursuant to CPLR 5015(a)(4)” As to the court’s reliance on the language in the notice of motion seeking “such other and further relief that this Court deems just and proper,” this Court has explicitly held that courts may not “rely upon general relief clauses in noticed motions—’for such other and further relief the court deems just and proper’—to justify the sua sponte [granting of dispositive relief]” [Citimortgage, Inc. v Pena, 2026 NY Slip Op 03940, Second Dept 6-24-26](#)

Practice Point: The phrase in motion papers requesting “such other relief as is deemed appropriate” cannot be the basis for dispositive relief.

June 24, 2026

CIVIL RIGHTS LAW, CONSTITUTIONAL LAW, MUNICIPAL LAW.

THE NYS AND NYC “RIGHT TO RECORD ACTS,” WHICH GIVE CITIZENS THE RIGHT TO RECORD POLICE ACTIVITIES, DO NOT ALLOW RECORDING IN PUBLICLY ACCESSIBLE POLICE-STATION LOBBIES (CT APP).

The Court of Appeals, answering a certified question from the Second Circuit, determined that the NYS and NYC Right to Record Acts (RTRA’s), which allow citizens to record police activities, do not allow recording inside police stations:

We ... do not opine as to the full scope of the RTRAs’ application or any other places where the RTRAs may apply. We reformulate the question as follows:

“Does either N.Y. Civil Rights Law § 79-p or Administrative Code of the City of New York §§ 14-189 afford individuals such as plaintiff Reyes the right to video record law enforcement activities inside the publicly accessible lobbies of police stationhouses?”

We answer that question in the negative. [Reyes v City of New York, 2026 NY Slip Op 03914, CtApp 6-23-26](#)

June 23, 2026

CONSTITUTIONAL LAW.

PLAINTIFF SOCIAL MEDIA PLATFORMS BROUGHT SUIT IN FEDERAL COURT CLAIMING CERTAIN PROVISIONS OF NEW YORK’S “HATEFUL CONDUCT LAW” (HCL) VIOLATE THE FIRST AMENDMENT; THE SECOND CIRCUIT CERTIFIED THREE NARROW QUESTIONS ABOUT THE MEANING AND APPLICABILITY OF THE STATUTE TO THE COURT OF APPEALS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Cannataro, over a three-judge dissent, answering narrow certified questions from the Second Circuit, determined the meaning of certain provisions of the Hateful Conduct Law (HCL) which is codified in General Business Law section 394-ccc: The law seeks to address “hateful conduct” on social media platforms:

In response to increasing violence fueled by hateful rhetoric on social media, the legislature enacted General Business Law § 394-ccc (hereinafter the “Hateful Conduct Law” or “HCL”) with the aim of “requiring social media networks to provide and maintain mechanisms for reporting hateful conduct on their platform[s]” Before the law became effective, the social media network plaintiffs obtained a stay of its enforcement from the federal district court, claiming that its provisions would effectively compel them to speak out against hateful conduct and otherwise chill the publication of qualifying content in violation of the First Amendment.

In reviewing that order on appeal, the United States Court of Appeals for the Second Circuit has certified three questions to us concerning the scope of the statute. The first two questions essentially ask whether a social media network can comply with the HCL without explicitly referencing its definition of hateful conduct. Applying our ordinary canons of statutory construction, we answer those questions in the affirmative. The third certified question essentially asks whether the statute requires a social media network to respond to a user report of hateful conduct. We answer that question in the negative. [Volokh v James, 2026 NY Slip Op 03913, CtApp 6-23-26](#)

June 23, 2026

COURT OF CLAIMS, CIVIL PROCEDURE, EMINENT DOMAIN, REAL PROPERTY LAW.

THERE IS AN EXCEPTION TO THE PERSONAL-SERVICE-OF-A-CLAIM REQUIREMENT IN THE COURT OF CLAIMS ACT FOR ACTIONS SEEKING DAMAGES FOR THE STATE’S APPROPRIATION OF PROPERTY; HERE SERVICE BY REGULAR FIRST-CLASS MAIL WAS NOT A JURIDICTIONAL DEFECT (SECOND DEPT).

The Second Department, reversing the Court of Claims in the property-appropriation-by-the-state action, determined an exception to the usual service requirements applies. Failure to serve the State with a copy of the claim by personal service or by certified mail is not a jurisdictional defect. Therefore the State’s motion for summary judgment should not have been granted:

The claimants served the claim upon the Office of the Attorney General by regular first-class mail. * * *

... [W]here the claim sought only to recover damages for the State’s appropriation of the claimants’ property, service upon the Attorney General by personal service or certified mail was not required

Court of Claims Act § 10 reflects a similar unique exception for appropriation claims. While most types of claims must be both “filed and served upon the attorney general” to be properly commenced within the time prescribed by the statute ... , a “claim for the appropriation by the state of lands” does not require service upon the Attorney General within the statutory time limit [Port Grove Assoc. v State of New York, 2026 NY Slip Op 03990, Second Dept 6-24-26](#)

Practice Point: Consult this decision for a detailed discussion of the service requirements for a Court of Claims action seeking damages for the State’s appropriation of claimant’s property. Failure to effect personal service on the Attorney General is not a jurisdictional defect.

June 24, 2026

CRIMINAL LAW, ATTORNEYS, CONSTITUTIONAL LAW.

DEFENSE COUNSEL PURSUED A REASONABLE ALTERNATIVE STRATEGY IN MOVING TO SUPPRESS DEFENDANT'S STATEMENTS THAT DID NOT REQUIRE AN INVESTIGATION INTO DEFENDANT'S MENTAL HEALTH AND SUBSTANCE ABUSE; THEREFORE DEFENSE COUNSEL'S PURPORTED FAILURE TO INVESTIGATE DID NOT CONSTITUTE INEFFECTIVE ASSISTANCE (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Troutman, over an extensive dissenting opinion, determined defense counsel's purported failure to investigate defendant's mental health and substance abuse history in order to challenge the voluntariness of defendant's statements to police did not constitute ineffective assistance of counsel. Counsel's decision to employ an alternative strategy was reasonable:

Defendant's assigned counsel later moved to suppress defendant's statements. At a pretrial hearing, counsel argued that defendant provided those statements while operating under a reasonable belief that he would be given immunity in exchange for his information, and therefore the statements were involuntary. Counsel supported that argument with a variety of evidence, including, among other things, defendant's refusal to offer any statements until he could speak with an assistant district attorney (ADA), an unrecorded conversation with an ADA, and a note in the police file in defendant's handwriting stating that he would need immunity and payment in exchange for his information. Counsel also relied upon defendant's Miranda waiver form, on which he crossed out "defendant" and wrote in "C.I.," for confidential informant. Defendant also testified at the suppression hearing that he had been offered immunity by the ADA during the unrecorded conversation. * * *

In 2019, while his direct appeal was still pending, defendant moved to vacate the judgment pursuant to CPL 440.10. He argued that his trial counsel was ineffective for failing to investigate his history of mental health disorders and substance abuse. The court ordered a hearing, at which defendant's trial counsel testified. Counsel asserted that although he was aware of defendant's mental health and substance

abuse history, defendant “had given [counsel] such a clear picture” of what happened that “was supported by documentary evidence” and that in counsel’s “50 years of practicing [he had] never had a case where [he had] seen, or known of a case where [he had] seen that a person” who shared defendant’s mental health diagnosis successfully suppress a statement on that ground. [People v Fernandez, 2026 NY Slip Op 03915, CtApp 6-23-26](#)

Practice Point: Although defendant’s mental health and substance abuse history may have been used to argue his statements to police were not voluntary, defense counsel felt that argument would fail and pursued a reasonable alternative strategy which did not require a mental-health and substance-abuse investigation. Defense counsel was therefore not “ineffective.”

June 23, 2026

CRIMINAL LAW, CIVIL PROCEDURE, EVIDENCE, JUDGES, APPEALS.

HERE THE DISTRICT ATTORNEY BROUGHT A PETITION FOR A WRIT OF PROHIBITION TO PROHIBIT THE ENFORCEMENT OF AN ORDER PRECLUDING EVIDENCE BECAUSE THE PEOPLE’S PRODUCTION OF DISCOVERY WAS DEEMED UNTIMELY; A WRIT OF PROHIBITION DOES NOT LIE FOR THIS PURPOSE (SECOND DEPT).

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice Quirk, determined that the trial judge’s preclusion of evidence based upon the district attorney’s untimely production of discovery was not subject to the extraordinary remedy of prohibition. The petition for a writ of prohibition was brought by the then district attorney:

Granting prohibition here would constitute improper collateral interlocutory review. This point is underscored by the Legislature’s amendment of CPL 450.20 to permit the People to appeal as of right from the portion of an order dismissing an accusatory instrument or some of its counts pursuant to CPL 245.80(2). In enacting this amendment, the Legislature chose to limit the types of appeals available to the People and did not permit the People to appeal from orders

granting other remedies or sanctions under CPL 245.80(2), including orders precluding evidence, regardless of whether such orders would prevent the People from prosecuting a case. Contrary to the petitioner’s contentions, although the nonappealability of an order may be considered as a factor in favor of prohibition as part of the second step of the two-tiered analysis, “nonreviewability by way of appeal alone, does not provide a basis for reviewing error by collateral proceeding in the nature . . . of prohibition”

Since a writ of prohibition does not lie, the Supreme Court should have denied that branch of the petition which was to prohibit the enforcement of the order of preclusion. [Matter of Rocah v McCarthy, 2026 NY Slip Op 03967, Second Dept 6-24-26](#)

Practice Point: A writ of prohibition does not lie to prohibit the enforcement of an order precluding evidence because the production of discovery by the People was deemed untimely.

June 24, 2026

CRIMINAL LAW, APPEALS, JUDGES.

IN THESE TWO DISTINCT CASES, THE DEFENDANTS CHALLENGED THE CONSENT-TO-SEARCH CONDITION OF THEIR PROBATION; IN “BRAZEAL” THE COURT HELD THE CONDITION WAS NOT WARRANTED BY DEFENDANT’S CRIMINAL HISTORY; IN “LORA” THE COURT REFUSED TO CONSIDER THE ARGUMENT BECAUSE IT WAS NOT RAISED BEFORE THE SENTENCING COURT (CT APP).

The Court of Appeals, reviewing two decisions, with multiple concurring and dissenting opinions, determined (1) in *People v Brazeal* the probation condition allowing searches by probation officers was deemed inappropriate given defendant’s criminal history, and (2) in *People v Lora* the defendant made the same challenge to the consent-to-search probation condition, but since the issue was not preserved, merits were not reached:

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We conclude that the sentencing court abused its discretion in imposing the consent-to-search condition on Brazeal. Although his conviction was for a crime of violence, at no point was Brazeal shown to otherwise possess firearms or illegal weapons, and the knife used in his crime was an ordinary kitchen knife. The Appellate Division referenced his “history of violence” ... , but that characterization overstates the defendant’s relatively remote criminal history. He had a previous conviction for property destruction in Las Vegas, a harassment conviction with “physical contact” in the Bronx, and a youthful offender adjudication for assault in Yonkers, the most recent of which was almost a decade before the present offense. The 2007 youthful offender adjudication is the only other incident that references the use of an unspecified “weapon/instrument,” and only the 2007 and 2009 proceedings included assault charges. None of Brazeal’s arrests in Georgia resulted in further prosecution apart from an outstanding warrant for failure to appear. Aside from these facts, the record reflects no basis for the imposition of the condition. Brazeal has not been assessed as being in need of alcohol or substance abuse treatment, the People concede that substance abuse is not implicated in his case, and his admission of occasional marijuana use in the past does not support further supervision. On this record, the sentencing court abused its discretion by imposing a condition that was not “individually tailored in relation to the offense[]” or to Brazeal’s “rehabilitation”

Because she did not object to the consent-to-search condition before the sentencing court, Lora’s statutory and constitutional challenges are unpreserved for our review [People v Brazeal, 2026 NY Slip Op 03910, CtApp 6-23-26](#)

Practice Point: To appeal a consent-to-search condition of probation (to the Court of Appeals), the issue must be preserved by raising it in the sentencing court.

June 23, 2026

CRIMINAL LAW, EVIDENCE, JUDGES.

ALTHOUGH THE BIPOLAR-DISORDER DIAGNOSIS WAS MADE “POST-CRIME,” THE EVIDENCE WAS RELEVANT TO DEFENDANT’S “MENTAL DISEASE OR DEFECT” AFFIRMATIVE DEFENSE AND SHOULD NOT HAVE BEEN PRECLUDED; NEW TRIAL ORDERED (FOURTH DEPT).

The Fourth Department, reversing defendant’s conviction and ordering a new trial, determined the psychiatric evidence regarding defendant’s “post-crime” mental health (bipolar disorder) was relevant to defendant’s “mental disease or defect” affirmative defense and should not have been precluded. The psychiatrist could not testify defendant suffered from “bipolar disorder” at the time of offense, but could testify that the disorder takes years to develop, which meets the flexible “relevancy” test:

Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”

We conclude that “[i]nasmuch as the psychiatrist’s [prospective] testimony that defendant was suffering from [bipolar disorder, type 1, most recent episode manic with psychotic features] would render a finding of lack of criminal responsibility more probable than it would be without such evidence, the [psychiatrist’s] diagnosis [was] . . . relevant”

Here, although the psychiatrist did not evaluate defendant prior to the crimes and thus could not render a medical opinion that defendant had bipolar disorder on the date of the crimes, “there were indications in [his] testimony that the mental disease from which defendant was suffering could take [years] to develop [before diagnosis] and [that] . . . the [prior medical] records . . . suggest[ed] the existence of some mental disorder a considerable time before the crime[s]”

Finally, we conclude that the error is not harmless The preclusion of the psychiatrist’s testimony effectively prevented defendant from mounting his affirmative defense (see Penal Law § 40.15) and severely undermined his ability to separately argue that he lacked the requisite mental state to commit the charged offenses Inasmuch as ” ‘it cannot be said that there is no reasonable possibility

that the error contributed to the verdict, the error cannot be deemed harmless beyond a reasonable doubt and reversal therefore is required’ ” [People v Williams, 2026 NY Slip Op 04095, Fourth Dept 6-26-26](#)

Practice Point: Consult this decision for insight into the relevancy of evidence. Here a post-crime bipolar disorder diagnosis was deemed relevant to defendant’s “mental disease or defect” affirmative defense.

June 26, 2026

CRIMINAL LAW, EVIDENCE.

DEFENDANT WAS OBSERVED WALKING UP AND DOWN DRIVEWAYS IN A RESIDENTIAL NEIGHBORHOOD; WHEN THE POLICE ASKED HIM TO STOP, HE RAN AND THE POLICE PURSUED; THE POLICE DID NOT HAVE “REASONABLE SUSPICION” JUSTIFYING PURSUIT; THE SUPPRESSION MOTION SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing the conviction by plea, determined the police did not have “reasonable suspicion” defendant was committing a crime at the time the defendant ran from them. The police were justified in exercising the “common law right of inquiry” because defendant was seen walking in different yards in a residential neighborhood. But the police were not justified in pursuing the defendant when he ran. The gun defendant discarded that the statements made to the police should have been suppressed:

... [T]he encounter began as a level two intrusion, with the officers parking and exiting their vehicle, stating “police,” and asking the defendant to stop The officers’ pursuit of the defendant constituted a level three intrusion, requiring a reasonable suspicion that the defendant was involved in a felony or misdemeanor Here, however, the circumstances, which included the defendant’s actions of walking up and down the driveways of 105-31 and 105-33 Farmers Boulevard and across a lawn and toward the rear of a residence on 109th Avenue, “although not inconsistent with culpable [conduct,] are also susceptible of many innocent

interpretations” ... , and were, “[a]t most . . . equivocal and suspicious” Importantly, the officers did not observe the defendant looking into any houses or backyards, and did not observe him carrying or attempting to conceal any tools or weapons. Therefore, the defendant’s actions preceding his interaction with the officers and his flight therefrom did not support a reasonable suspicion of particularized criminal action [People v Bryant, 2026 NY Slip Op 03976, Second Dept 6-24-25](#)

Practice Point: Walking up and down residential driveways, carrying nothing and not looking into houses, justified exercise of the common law right of inquiry by the police. But defendant’s immediate flight from the police did not justify pursuit.

June 24, 2026

CRIMINAL LAW, EVIDENCE.

THE POLICE DID NOT HAVE INFORMATION DEMONSTRATING THE TEMPORARY TEXAS REGISTRATION WAS INVALID AT THE TIME THEY IMPOUNDED THE CAR; THE INVENTORY SEARCH WAS IMPROPER AND THE HANDGUNS SHOULD HAVE BEEN SUPPRESSED (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined the officers who stopped defendant’s vehicle did not have any information that the temporary Texas registration was invalid at the time the vehicle was impounded. Therefore the inventory search was invalid and the handguns should have been suppressed:

“An inventory search is exactly what its name suggests, a search designed to properly catalogue the contents of the item searched” Inventory searches may not be used as “a ruse for a general rummaging in order to discover incriminating evidence” ... and, unlike a traffic stop, “will be constitutionally invalid where the search was merely a pretext to search for evidence of a crime” “Only a lawfully impounded vehicle may be subjected to an inventory search” ... , and “[t]he People bear the threshold burden of demonstrating that the subject vehicle

was lawfully impounded at the time of the inventory search” [People v Boatwright, 2026 NY Slip Op 04071, Fourth Dept 6-26-26](#)

Practice Point: Without a valid reason to impound a car, an inventory search of the car is not justified.

June 26, 2026

FAMILY LAW, CRIMINAL LAW, CIVIL PROCEDURE.

THE REFEREE DID NOT HAVE JURISDICTION TO DISMISS THE FAMILY OFFENSE PETITION; NEITHER MOTHER NOR THE RESPONDENT HUSBAND (WHO DID NOT APPEAR) CONSENTED TO THE REFEREE’S HEARING THE MATTER; THE POWERS OF A REFEREE ARE EXPLAINED (FOURTH DEPT).

The Fourth Department, reversal the order by the referee dismissing the family offense proceeding, determined the referee was without jurisdiction to decide the matter because neither mother nor respondent husband (who did not appear) consented the referee hearing the matter:

“A referee derives authority from an order of reference by the court (see CPLR 4311), which can be made only upon consent of the parties, except in limited circumstances” “Absent the parties’ consent to the reference, the . . . [r]eferee ha[s] the power only to hear and report [their] findings” An appropriate order of reference is thus an “essential jurisdictional predicate” to the authority of the referee to act ... , and a referee “who attempts to determine matters not referred to [them] by the order of reference acts beyond and in excess of [their] jurisdiction”

Here, as noted, petitioner never consented to the Referee hearing the matter. Although CPLR 4317 (b) permits a referee to hear and determine an issue without the consent of the parties where the trial of the issue “will require the examination of a long account,” where the issue is one “of damages separately triable and not requiring a trial by jury,” or “where otherwise authorized by law,” none of those exceptions to the consent requirement applies here. Thus, the Referee “lacked

jurisdiction to dismiss the petition” ... , even without prejudice. We note in any event that, absent a fact-finding hearing, which did not take place, the Referee had no grounds to dismiss the petition based on insufficient evidence. [Matter of Fournier v Perez, 2026 NY Slip Op 04063, Fourth Dept 6-26-26](#)

Practice Point: Consult this decision for a concise explanation of the powers of a Family Court referee.

June 26, 2026

FAMILY LAW, ATTORNEYS, JUDGES.

MOTHER’S BEHAVIOR DID NOT AMOUNT TO A FORFEITURE OF HER RIGHT TO COUNSEL IN THIS VISITATION PROCEEDING (THIRD DEPT).

The Third Department, reversing the order of Family Court in this visitation proceeding, determined mother was denied her right to counsel. After attempts to assign counsel failed, the judge essentially forced mother to proceed without an attorney:

Pursuant to Family Ct Act § 262 (a), respondents in visitation proceedings have a right to be represented by counsel and, if they are financially unable to obtain counsel, have the right to have counsel assigned by the court ... * * *

“Here, the record is clear that the mother did not wish to proceed pro se, but was forced to do so” ... ; as such, “the record ... does not indicate that [she] made a knowing and intelligent waiver of [her] rights to be represented by counsel” It appears from the record that Family Court determined that the mother had forfeited her right to counsel. Indeed, “[a] litigant may forfeit the right to assigned counsel through a persistent pattern of threatening, abusive, obstreperous, and uncooperative behavior with successive assigned counsel” However, such a forfeiture is an “extreme, last-resort” based upon “egregious conduct by a [respondent]” Simply put, while we are certainly mindful of the difficult position Family Court was in, “the record fails to clearly reflect that the mother engaged in the sort of egregious conduct that would justify a finding that she forfeited her right to assigned counsel” [Matter of Carlene R. v Heather A., 2026 NY Slip Op 04015, Third Dept 6-25-24](#)

Practice Point: In a Family Court visitation proceeding a party's waiver of the right to counsel must be explicit. Here it was clear mother did not wish to go forward pro se.

June 25, 2026

FAMILY LAW, SOCIAL SERVICES LAW, EVIDENCE.

THE PETITIONER DID NOT DEMONSTRATE IT MADE DILIGENT EFFORTS TO STRENGTHEN THE PARENT-CHILD RELATIONSHIP IN THIS TERMINATION-OF-PARENTAL-RIGHTS PROCEEDING; PERMANENT NEGLECT FINDING VACATED; CRITERIA EXPLAINED (SECOND DEPT).

The Second Department, reversing Family Court, determined petitioner in this termination-of-parental-rights proceeding, did not demonstrate make a diligent effort to encourage and strengthen the parent-child relationship. The permanent neglect finding was vacated:

“When a foster care agency brings a proceeding to terminate parental rights on the ground of permanent neglect, it must, as a threshold matter, prove by clear and convincing evidence that it has fulfilled its statutory duty to exercise diligent efforts to encourage and strengthen the parent-child relationship” (... see Social Services Law § 384-b[7][a]). “Those efforts must include counseling, making suitable arrangements for parental access, providing assistance to the parents to resolve the problems preventing the child’s discharge, and advising the parents of the child’s progress and development” “An agency must always determine the particular problems facing a parent with respect to the return of his or her child and make affirmative, repeated, and meaningful efforts to assist the parent in overcoming these handicaps”

Here, the petitioner failed to meet its initial burden of establishing by clear and convincing evidence that it exercised diligent efforts to strengthen the parental relationship between the father and the children The evidence adduced at the fact-finding hearing failed to establish that the petitioner arranged any parental access between the father and the children, referred the father to any services, or

assisted the father with obtaining suitable housing. [Matter of Elijah L. Jr. \(Elijah L.\), 2026 NY Slip Op 03963, Second Dept 6-24-26](#)

Practice Point: In a termination-of-parental-rights proceeding the agency must demonstrate that diligent efforts to strengthen the parent-child relationship were made. Here the proof of diligent efforts was lacking.

June 24, 2026

FAMILY LAW.

A RARE SITUATION WHERE SUSPENSION OF THE NONCUSTODIAL PARENT'S CHILD SUPPORT OBLIGATION WAS WARRANTED (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Gesmer, over an extensive dissent, affirmed Supreme Court's denial of mother's motion for pendente lite child support in the amount of \$25,000/month and \$10,000/month travel allowance. It was determined mother deliberately and actively alienated the child from the father:

Based on clear and convincing evidence presented at the 35-day custody trial, the court determined that the mother had deliberately and actively alienated the child from the father in "one of the most clear-cut and disturbing examples of parental alienation that this court has observed through thousands of custody cases over many years." Accordingly, the court reasonably determined that this is one of the unfortunate and rare situations where suspension of the noncustodial parent's child support obligation was warranted. Specifically, the court decided the pendente lite motion by directing the father to pay 90% of the child's unreimbursed medical and mental health expenses and otherwise suspended the father's child support obligation until the child's visitation with the father was "meaningfully resumed" or "there is otherwise good cause to resume the support" * * *

As the motion court found, the child's reasonable and appropriate needs are being met It is undisputed that the mother and child continue to reside in a 1,500 square foot luxury apartment with views of Central Park and that the father

continues to pay all of the child's expenses for private school, extracurricular activities and tutoring, in addition to 90% of her unreimbursed medical and mental health expenses. [Rosenfeld v Rosenfeld, 2026 NY Slip Op 04048, First Dept 6-25-26](#)

June 25, 2026

LABOR LAW, CONSTITUTIONAL LAW, CONTRACT LAW, EMPLOYMENT LAW, CIVIL PROCEDURE.

THE LABOR LAW PREVAILING-WAGE PROVISIONS APPLY TO PUBLIC WORKS CONTRACTS; ANY CONTRACTUAL ATTEMPT TO SHORTEN THE STATUTE OF LIMITATIONS IS UNENFORCEABLE (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Singas, answering two certified questions from the Second Circuit, determined (1) the Labor Law provisions requiring that workers receive the prevailing wage for public works projects apply irrespective of the language in a contract, and (2) any provisions purporting to shorten the statute of limitation periods in public works contracts are unenforceable:

We have accepted two certified questions from the United States Court of Appeals for the Second Circuit concerning third-party beneficiary breach of contract claims to enforce the right of a public works project employee to receive a prevailing wage under the Labor Law. We hold that Labor Law § 220 makes such claims available regardless of the underlying contract's language and that given the unique status of the constitutional and statutory right to a prevailing wage, agreements to shorten limitation periods in public works contracts are unenforceable against such claims. [Walton v Comfort Sys. USA \(Syracuse\), Inc., 2026 NY Slip Op 03911, CtApp 6-23-26](#)

June 23, 2026

LABOR LAW-CONSTRUCTION LAW. EVIDENCE.

PLAINTIFF'S STATEMENT THE LADDER MOVED SIDE TO SIDE CAUSING HIM TO FALL AND PLAINTIFF'S STATEMENT HE LOST HIS BALANCE ARE NOT INCONSISTENT; PLAINTIFF ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff in this ladder-fall case was entitled to summary judgment on the Labor Law 240(1) cause of action. Plaintiff testified the ladder moved side to side. A medical report indicated plaintiff said he lost his balance. The two statements were not inconsistent:

Plaintiff, who fell from an eight-foot A-frame ladder while installing sheetrock, established his prima facie entitlement to summary judgment on his Labor Law § 240(1) cause of action through his testimony that the ladder moved from side to side and caused him to fall

... [Even] if plaintiff's hearsay statement contained in his post-accident medical report and post-accident investigation report that he lost his balance may be considered, it is not inconsistent with his testimony that the ladder moved and caused him to fall [Gomez v Brookfield Props. One WFC Co., LLC, 2026 NY Slip Op 03921, First Dept 6-23-26](#)

Practice Point: The statement that a ladder-fall resulted from movement of the ladder from side to sided and the statement that the ladder-fall resulted from plaintiff's losing his balance are not inconsistent and do not create a question of fact.

June 23, 2026

NEGLIGENCE, CIVIL PROCEDURE, EMPLOYMENT LAW.

FOR PURPOSES OF THE “RELATION-BACK DOCTRINE,” A DEFENDANT CAN BE VICARIOUSLY LIABLE FOR THE WORK OF AN INDEPENDENT CONTRACTOR IF THE WORK IS “INHERENTLY DANGEROUS;” THE EXCAVATION WORK WAS “INHERENTLY DANGEROUS;” THE PLAINTIFF’S MOTION TO AMEND THE COMPLAINT TO ADD THE INDEPENDENT CONTRACTORS AFTER THE STATUTE OF LIMITATIONS HAD RUN SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court., determined plaintiff’s motion to amend the complaint by adding independent contractors hired in connection with excavation work on adjacent property should have been granted. The excavation work caused plaintiff’s building to collapse. The statute of limitations for the negligence causes of action had run. A defendant can be vicariously liable for the actions of independent contractors if the work is “inherently dangerous.” Because this work was “inherently dangerous,” the defendants and the independent contractors are “united in interest” such that the relation-back doctrine applies:

... [T]he plaintiff satisfied the second prong of the relation-back test with respect to the causes of action sounding in negligence and gross negligence, as the plaintiff established that the proposed defendants and the original defendants were united in interest as to those causes of action. “As a general rule, ‘a party who retains an independent contractor, as distinguished from a mere employee or servant, is not liable for the independent contractor’s negligent acts’” However, this general rule is subject to various exceptions, including where the work performed is inherently dangerous In this case, the amended complaint and the proposed second amended complaint alleged sufficient facts demonstrating that the work being performed was inherently dangerous and, thus, the original defendants could be held vicariously liable for the negligent acts or omissions of the proposed defendants Further, the plaintiff satisfied the third prong of the relation-back test, as the plaintiff demonstrated that the proposed defendants knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been brought against them as well Accordingly,

the Supreme Court should have granted that branch of the plaintiff's motion which was pursuant to CPLR 3025(b) for leave to amend the amended complaint to add the proposed defendants as defendants with respect to the causes of action sounding in negligence and gross negligence [Crossbay Assoc., LLC v Singh, 2026 NY Slip Op 03941, Second Dept 6-24-26](#)

Practice Point: A party can be vicariously liable for the work done by an independent contractor if the work is "inherently dangerous." The excavation work at issue in this case was deemed inherently dangerous.

June 24, 2026

NEGLIGENCE, EVIDENCE.

CIRCUMSTANTIAL EVIDENCE OF THE CAUSE OF PLAINTIFF'S SLIP AND FALL, INCLUDING A VIDEO AND PLAINTIFF'S DESCRIPTION OF THE FALL, WERE SUFFICIENT TO WITHSTAND A SUMMARY JUDGMENT MOTION (THRID DEPT).

The Third Department, reversing Supreme Court, determined the defendant grocery store's motion for summary judgment in this slip and fall action should not have been granted. A video depicted plaintiff coming around the corner of a bottled water display and falling. She testified cases of water protruded into the aisle. Although she she could not say exactly what caused her to trip, the circumstantial evidence of the cause of the fall was sufficient to create a question of fact:

... "[E]ven when a plaintiff is unable to identify the cause of a fall with certainty, a case of negligence based wholly on circumstantial evidence may be established if the plaintiff shows facts and conditions from which the negligence of the defendant and the causation of the accident by that negligence may be reasonably inferred" It is true that Grant never observed the actual item he tripped over, nor its precise location. However, given Grant's deposition testimony indicating that he tripped over something made of soft plastic, plaintiff's deposition testimony that there were cases of water hanging over the edge of the endcap and the video portraying a case being knocked off the display as Grant tripped and fell, defendant's negligence could reasonably be inferred.

Even if defendants had met their initial burden of showing entitlement to judgment as a matter of law, plaintiff raised a triable issue of fact as to whether the endcap display was inherently dangerous In opposition to the motion, plaintiff submitted the affidavit of a commercial space designer and retail safety expert who opined that the endcap display was hazardous, inasmuch as the bottom layers of water cases were stacked below a customer’s typical line of sight, which ranges between three to six feet from the ground. According to the expert, defendants failed to conform with certain industry standards concerning the proper height of floor displays and the need for endcap displays to be fully stocked to prevent tripping hazards. [Grant v Golub Corp., 2026 NY Slip Op 04013, Third Dept 6-24-26](#)

Practice Point: Consult this decision for an example of sufficient proof of causation of a slip and fall by circumstantial evidence. Usually the failure to pinpoint the exact cause of a slip and fall will be fatal to the action.

June 25, 2026

NEGLIGENCE, MUNICIPAL LAW, EVIDENCE.

HERE IN THIS SIDEWALK SLIP AND FALL CASE THE DEFENDANTS DID NOT DEMONSTRATE THE PROPERTY ADJACENT TO THE UNEVEN SIDEWALK WAS “OWNER OCCUPIED” SUCH THAT THE NYC ADMINISTRATIVE CODE EXCEPTION TO THE SIDEWALK-MAINTENANCE OBLIGATION APPLIED; CRITERIA EXPLAINED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the defendants’ motion for summary judgment in this sidewalk slip and fall case should not have been granted. The NYC Administrative Code creates an exception to the sidewalk-maintenance requirement for “owner occupied” properties. That term is undefined. Here the defendants did not submit sufficient proof that the “owner-occupied” exception applied:

“Section 7-210 of the Administrative Code of the City of New York unambiguously imposes a nondelegable duty on certain real property owners to maintain city sidewalks abutting their land in a reasonably safe condition” “However, this liability-shifting provision does not apply to ‘one-, two- or three-family residential real property that is (i) in whole or in part, owner occupied, and (ii) used exclusively for residential purposes” “The statute does not expressly contain a primary residence requirement as part of the owner-occupied exemption, but the term ‘owner occupied’ generally is used to mean that the owner regularly occupies the property as a residence” Although “owner occupied” is not defined in the statute, it is clearly a lower standard than that of a primary residence. Furthermore, “[t]he purpose of the exception in the Code is to recognize the inappropriateness of exposing small-property owners in residence, who have limited resources, to exclusive liability with respect to sidewalk maintenance and repair”

The Supreme Court should have denied that branch of the defendants’ motion which was for summary judgment dismissing the complaint insofar as asserted against them. The defendants failed to establish, *prima facie*, that they were entitled to the exemption from liability under Administrative Code § 7-210(b). Although the defendants submitted proof that they are the owners of the subject property, which is a one-family home, they failed to eliminate triable issues of fact as to whether the property was “owner occupied” within the meaning of the statute [Mantinaos v City of New York, 2026 NY Slip Op 03957, Second Dept 6-24-26](#)

Practice Point: Consult this decision for insight into the meaning of “owner occupied” in the NYC Administrative Code such that the sidewalk-maintenance obligation does not apply.

June 24, 2026

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