# NEW YORK APPELLATE DIGEST, INC.

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts August 17 – 21, 2026, and Posted on the New York Appellate Courts on Tuesday August 25, 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. 

Weekly Reversal Report
August 17 – 21, 2026

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## ATTORNEYS, FRAUD, JUDICIARY LAW, NEGLIGENCE.

## THE COMPLAINT ALLEGING A VIOLATION OF JUDICIARY LAW 487 WAS DISMISSED; IT WAS ALLEGED AN ATTORNEY WAS AWARE HIS CLIENT'S SLIP AND FALL WAS STAGED; THERE WAS A TWO-JUSTICE DISSENT (FIRST DEPT).

The First Department, dismissing the complaint, over a two-justice dissent, determined the allegations of a Judiciary Law violation and fraud against an attorney were insufficient. It was alleged the attorney proceeded with a slip and fall action despite knowledge that the accident was staged:

Defendants/third-party plaintiffs failed to demonstrate "a showing of egregious conduct or a chronic and extreme pattern of behavior on the part of" [attorney]

Roytblat, or demonstrate that deliberate misrepresentations necessary to sustain a Judiciary Law § 487 claim were made to defendants and the court… .

**From the dissent:**

The third-party complaint adequately meets the heightened pleading standard for a claim under Judiciary Law § 487. It alleges that video evidence appears to show Wilson Pena, a third-party defendant who concededly performs investigative services for Roytblat, deliberately creating the sidewalk defect at issue in the underlying personal injury action. Plaintiff also appears in the video to feign a trip-and-fall accident caused by the defect. The video evidence, links to which were included in the third party complaint, supports this allegation. The complaint further alleges that defendants' attorney informed Roytblat … that the underlying personal injury claim that Roytblat was pursuing was fraudulent, and that video evidence existed showing fabrication of the sidewalk defect and staging of the accident. Despite having knowledge of the fraud, Roytblat continued to pursue the litigation over the following months and sought to discontinue the action only when informed that a news report concerning the fraud was about to air. Salas v 711-715 E 231st St., LLC, 2026 NY Slip Op 05064, First Dept 8-20-26

Practice Point: Here is a rare example of a Judiciary Law section 487 cause of action alleging an attorney proceeded with a slip and fall case knowing the accident was staged. Those allegations were deemed insufficient and the complaint was dismissed.

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## CIVIL PROCEDURE, ATTORNEYS, NEGLIGENCE.

## HERE THE COMPLAINT WAS DISMISSED BECAUSE COUNSEL REFUSED TO PROCEED WITH THE TRIAL ON A PARTICULAR DAY; THAT SINGLE INCIDENT DID NOT AMOUNT TO "NEGLECT TO PROSECUTE;" THEREFORE PLAINTIFF WAS ENTITLED TO THE SIX-MONTH EXTENSION FOR FILING A NEW COMPLAINT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined that the timely-commenced slip and fall case was not dismissed for failure to prosecute and the default did not constitute a determination on the merits. Therefore plaintiff's filing of a new complaint within six months of the dismissal was timely:

When a prior action was timely commenced and dismissed on grounds other than voluntarily discontinuance, lack of personal jurisdiction, neglect to prosecute, or the entry of a final judgment on the merits, "CPLR 205(a) effectively tolls the running of a statutory period to permit refiling within six months" of the termination of the prior action … . Here, it is not disputed that the first action was timely commenced and that this action was commenced within six months of its termination.

… [T]he first action was not dismissed for "neglect to prosecute" within the meaning of CPLR 205(a). Where the dismissal of a prior action was for neglect to prosecute, in order to serve as a bar to the savings provision of CPLR 205(a), the court must have "set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation" … . Although the Supreme Court here set forth on the record that the plaintiff's counsel had refused to proceed with the trial on one particular day, such conduct did not demonstrate a general "pattern" of delay in proceeding with the litigation so as to preclude application of CPLR 205(a) … .

Moreover, also contrary to the defendant's contention, "dismissal of an action for a default pursuant to 22 NYCRR 202.27 does not constitute a determination on the merits" … . Thus, the six-month extension afforded by CPLR 205(a) was applicable, and the instant action was timely commenced. Rivera v Waterview Towers, Inc., 2026 NY Slip Op 05041, Second Dept 8-19-26

Practice Point: To constitute a dismissal for failure to prosecute, the judge must place on the record the specific conduct demonstrating a general pattern of delay. Here the complaint was dismissed because counsel refused to proceed to trial on a particular day. That was not a dismissal for "failure to prosecute" and the six-month extension for filing a new complaint was available.

August 19, 2026

## CRIMINAL LAW, EVIDENCE.

## DEFENDANT WAS DRIVING AT MORE THAN TWICE THE POSTED SPEED LIMIT IN A RESIDENTIAL NEIGHBORHOOD WHEN HE COLLIDED WITH ANOTHER CAR, KILLING THE DRIVER; USUALLY EXCESSIVE SPEED ALONE WILL NOT SUPPORT A CRIMINALLY NEGLIGENT HOMICIDE CHARGE; HERE, HOWEVER, THE EXCESSIVE SPEED IN COMBINATION WITH OTHER FACTORS, INCLUDING THE CHARACTER OF THE NEIGHBORHOOD, WAS SUFFICIENT TO SUPPORT THE CHARGE (SECOND DEPT).

The Second Department, reversing Supreme Court's dismissal of the indictment, over a dissent, determined the evidence presented to the grand jury was legally sufficient for criminally negligent homicide. The defendant was driving at twice the speed limit in a residential neighborhood when he collided with another vehicle at an intersection, killing the driver. Generally driving in excess of the speed limit, alone, will not support a criminally negligent homicide charge. However, here, the excessive speed, in combination with other factors, was deemed sufficient:

[T]he culpable risk-creating conduct necessary to support a finding of recklessness or criminal negligence generally requires 'some additional affirmative act' aside from 'driving faster than the posted speed limit'" … , which transforms speeding into dangerous speeding, by engaging in some other "risk-creating" behavior such as disregarding traffic signals … . However, there is no per se rule that speeding alone is insufficient … . There are circumstances where excessive speed "absent proof of any other contributing factors" is sufficient … . The extent of the violation of the posted speed limit and the surrounding circumstances must be considered … .

“[I]n order to sustain a conviction for criminally negligent homicide in a case in which the principal item of evidence consists of proof of the defendant’s use of excessive speed, [the law does not require that] the prosecution must always prove some other traffic law violation unrelated to the defendant’s rate of speed. While it may be accurate to say that an infraction of the posted speed limit does not ipso facto establish criminal negligence, it would not be accurate to say that a trier of fact may never conclude that in light of the time, the place, the weather conditions, and in light of any number of other factors which might be established at the trial, the defendant’s use of excessive speed was criminally negligent” … .

Here, … [t]he evidence, if accepted as true, demonstrated that the defendant disregarded road conditions, i.e., the fact that he was traveling in a residential neighborhood with a playground on the corner of the intersection, when he decided to drive his vehicle through the intersection at well above twice the posted speed limit … . The evidence further indicated that he was showing off to his friend how the vehicle “drives,” which, considering the fact that he accelerated the vehicle’s speed while allegedly doing so, indicated that he was showing off how the vehicle operated at a high speed. The evidence further indicated that he ignored a traffic control sign directing motorists to exercise additional caution … . People v Lee, 2026 NY Slip Op 05038, Second Dept 8-19-26

Practice Point: Here in the fatal-vehicle-accident case, defendant’s excessive speed, in combination with the nature of the neighborhood and other factors, supported the criminally negligent homicide charge.

August 19, 2026

## FAMILY LAW, CIVIL PROCEDURE, EVIDENCE, JUDGES.

## THE JUDGE DISMISSED FATHER'S NEW YORK CUSTODY PETITION BECAUSE MOTHER HAD PREVIOUSLY COMMENCED A CUSTODY PROCEEDING IN FLORIDA; BECAUSE THE JUDGE DID NOT FOLLOW THE PROCEDURE MANDATED BY THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT, THE MATTER WAS REMITTED (SECOND DEPT).

The Second Department, reversed Family Court and remitted the matter. The Family Court judge dismissed the father's New York custody petition on the ground mother had previously commenced a custody proceeding in Florida where she and the child resided. The judge, however, did not follow the procedures mandated by the Uniform Child Custody Jurisdiction and Enforcement Act which must precede a ruling that one of the two courts is the most appropriate forum:

Pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (see Domestic Relations Law article 5-A), a New York court "may not exercise its jurisdiction" in a child custody proceeding "if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with [Domestic Relations Law article 5-A], unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum" (Domestic Relations Law § 76-e[1] …). "If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with [Domestic Relations Law article 5-A], the court of this state shall stay its proceeding and communicate with the court of the other state" (Domestic Relations Law § 76-e[2]; see Domestic Relations Law § 77-f …). "If the court of the state having jurisdiction substantially in accordance with [Domestic Relations Law article 5-A] does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding" (Domestic Relations Law § 76-e[2] …).

A court, acting pursuant to these provisions, must make a record of its communications with a court of another state on substantive matters, must promptly inform the parties of the communication, and grant the parties access to the record (see Domestic Relations Law § 75-i[4] …). The court may, in its discretion, allow the parties to participate in the communication, but "[i]f the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made" (Domestic Relations Law § 75-i[2] …). Matter of Adames v Digangi, 2026 NY Slip Op 05022, Second Dept 8-19-26

Practice Point: Consult this decision for an explanation of the statutory procedure mandated when a judge must decide which of two forums is appropriate for a custody proceeding. Here mother commenced a custody proceeding in Florida and father subsequently commenced a custody proceeding in New York.

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## FAMILY LAW.

## NONRESPONDENT MOTHER REPORTED DOMESTIC ABUSE BY HER HUSBAND; AT THE FIRST COURT APPEARANCE, MOTHER AND HER CHILDREN WERE PLACED UNDER THE SUPERVISION OF THE ADMINISTRATION FOR CHILDREN'S SERVICES (ACS); IN THE FACE OF NO EVIDENCE MOTHER'S HOME AND CHILDREN WERE NOT WELL-CARED-FOR, FOR 18 MONTHS, SHE AND HER CHILDREN WERE SUBJECTED TO FREQUENT HOME VISITS, SEARCHES, COMMUNICATIONS WITH THE CHILDREN'S SCHOOL, AND VISITS BY LAW ENFORCEMENT; FAMILY COURT ACT SECTION 1054 DOES NOT AFFORD ACS SUCH BROAD POWERS OF SUPERVISION (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Rosado, determined the order which placed nonrespondent mother (Sasha C) under the supervision of the Administration for Children's Services (ACS) was "unlawful and represented a broad overreach beyond the scope of power permitted by Family Court Act section

1054 and in contravention of its purpose." Nonrespondent mother reported domestic abuse by her husband. From that point on the court placed her under ACS supervision which, for 18 months, entailed frequent home visits and searches, frequent communication with her children's school, visits by law enforcement, and frequent court appearances, all in the face of no evidence the home and children were not well-cared for. The detailed description of the ACS's intrusion into mother's life is harrowing and well-worth reading:

Family Court erred when it placed the mother and her entire household under sweeping, overbroad, and unchecked "ACS supervision and household monitoring" in its May 31, 2024 order of fact-finding and disposition. The error was compounded by the issuance of the February 28, 2025 order extending the supervision despite the lack of good cause shown or a sound basis in the record. Such conditions of supervision run afoul of the power and purpose of Family Court Act § 1054. While the statute provides that a court may direct a nonrespondent parent to undertake certain actions with respect to the child released into their care to ensure their accessibility for services, appointments, visitation and the like, it is clear, based on the unambiguous language in the statute, that the court may not place a parent who has not been accused of any wrongdoing under ACS supervision at the postdispositional stage of the proceeding (id.; cf. Family Court Act § 1057). Even were we to accept ACS's argument that the mother acquiesced to its request for supervision at the May 30, 2024 disposition, her agreement is irrelevant. It bears noting that the supervision proposed by ACS on that date to conduct "video visits with the children," was a departure from the supervision that was exercised by ACS postdisposition.

To the extent that ACS argues that Family Court's temporary extension of supervision over the mother's household was reasonable given, among other things, the mother's history of "failing to report the father's neglect by domestic violence," we once again find that ACS's policy of pursuing supervision in such cases "reinforces the coercive control underpinning abusive relationships, turns survivors into suspects, and requires the nonrespondent parent to answer for the respondent parent's abusive behaviors" and that adhering to such a policy would permit ACS to continue surveillance of the mother simply because the child's father committed acts of domestic violence against her … . We reject this policy based on its faulty and unlawful premises … . Matter of L.M. (H.M.), 2026 NY Slip Op 05061, First Dept 8-20-26

Practice Point: This is an important opinion which places limits on the power of an agency, pursuant to Family Court Act section 1054, to subject a nonrespondent parent to supervision. Here nonrespondent mother reported domestic abuse by her husband. In the absence of any evidence her home and children were not well-cared-for, she was unlawfully subjected to home visits and searches, unwarranted communications with the children's school, even visits by law enforcement, for a period of 18 months.

August 20, 2026

## LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

## PLAINTIFF STEPPED BACKWARD TO ALLOW OTHERS TO EXIT THE ELEVATOR; THE FLOOR OF THE ELEVATOR WAS SIX TO TWELVE INCHES ABOVE THE BUILDING FLOOR AND PLAINTIFF SEVERELY INJURED HIS KNEE; THE SIX TO TWELVE INCH GAP WAS NOT THE TYPE OF "ELEVATION RISK" COVERED BY LABOR LAW 240(1) (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined the 6 to 12-inch gap between the floor of the elevator and the unfinished floor just outside the elevator door was not the type of "elevation risk" addressed by Labor Law 240(1). Defendants' motion to dismiss the Labor Law 240(1) action should have been dismissed. However, Supreme Court properly denied defendants' motion to dismiss the Labor Law 200 cause of action (unsafe condition):

Supreme Court should have granted defendants' motion for summary judgment to the extent it sought dismissal of the Labor Law § 240(1) cause of action. Not every fall results in the "extraordinary protections of Labor Law § 240(1)" … . The statute protects workers only from those falls stemming from the "extraordinary elevation risks" created by "the relative elevation at which the [work] must be performed" and not from "the usual and ordinary dangers of a construction site" … .

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It is true that “there is no bright-line minimum height differential that determines whether an elevation hazard exists” … . However, under the present circumstances, the 6-to-12 inch gap between the elevator doorway and the floor “was not a physically significant height elevation differential to trigger the protection of Labor Law § 240(1)” … . Also, neither the elevator nor the missing ramp was the “functional equivalent of a safety device enumerated in the statute” … . Instead, the record supports a conclusion that plaintiff’s injury arose from the type of “usual and ordinary” perils plaintiff could expect at his job site … . Ambrose v City Univ. Constr. Fund, 2026 NY Slip Op 05060, Second Dept 8-20-26

Practice Point: Here the six to twelve inch gap between the floor of the elevator and the building floor was not the type of “elevation risk” covered by Labor Law 240(1). Labor Law 200 (unsafe condition) may apply.

August 20, 2026

## LABOR LAW-CONSTRUCTION LAW.

## PLAINTIFF WAS INJURED WHEN A BEAM WHICH WAS BEING HOISTED STARTED SWINGING WHEN PLAINTIFF WAS HOLDING ON TO IT; THE BEAM STRUCK A PILE OF BEAMS ON THE GROUND AND PLAINTIFF WAS “JERKED … FORWARD;” BECAUSE THE BEAM SHOULD HAVE BEEN SECURED AND THE INJURY WAS RELATED TO THE FORCE OF GRAVITY PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff was entitled to summary judgment on the Labor Law 240(1) cause of action. Plaintiff was injured when a beam was being hoisted started swinging with plaintiff’s arm around it, and struck a pile beams, causing plaintiff to be “jerked … forward.”

“Labor Law § 240(1) imposes upon owners, contractors, and their agents a nondelegable duty to provide workers proper protection from elevation-related hazards” … . “Liability is contingent upon ‘the existence of a hazard contemplated in section 240(1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein'" … . In cases involving falling objects, the applicability of the statute does not "depend upon whether the object has hit the worker" but rather "whether the harm flows directly from the application of the force of gravity to the object" … . "In falling object cases, the plaintiff must demonstrate that at the time the object fell, it either was being hoisted or secured, or required securing for the purposes of the undertaking" … .

Here, the plaintiff established, prima facie, [defendants'] liability under Labor Law § 240(1) by submitting, among other things, transcripts of the plaintiff's deposition testimony and the crane operator's deposition testimony, which established that the beam being hoisted at the time of the incident was an object that required securing for purposes of the undertaking, and the harm flowed "directly from the application of the force of gravity to the" beam … . Sougstad v OLP Hauppauge, LLC, 2026 NY Slip Op 05050, Second Dept 8-19-26

Practice Point: Here a beam which started swinging when it was hoisted was deemed a "falling object." Although the "falling object" did not strike plaintiff, his injury was the result of the force of gravity upon the beam which should have been secured. He was therefore entitled to summary judgment on the Labor Law 240(1) cause of action.

August 19, 2026

## REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), LIMITED LIABILITY COMPANY LAW, TRUSTS AND ESTATES.

## PROPERTY OWNED BY A LIMITED LIABILITY COMPANY AND A TRUST IS NOT ENTITLED TO THE PROTECTIONS OF THE UNIFORM PARTITION OF HEIRS PROPERTY ACT (RPAPL 993); THOSE ENTITIES ARE NOT "INDIVIDUALS" WITHIN THE MEANING OF THE ACT (SECOND DEPT).

The Second Department, reversing Supreme Court in this partition action, in a full-fledged opinion by Justice Golla, determined a limited liability company and a trust are not "individuals" within the meaning of Real Property Actions and Proceedings Law (RPAPL) section 993:

In a case of first impression before this Court, we are asked to determine whether property owned wholly by a trust and a limited liability company may constitute "heirs property" pursuant to the Uniform Partition of Heirs Property Act (RPAPL 993). That question requires a determination as to whether a trust and a limited liability company are "individual[s]" within the meaning of RPAPL 993. … [W]e find that trusts and limited liability companies are not "individual[s]" under RPAPL 993. Property wholly owned by such entities, and not owned by individuals who acquired title from a relative, cannot be "heirs property" within the meaning of the statute. * * *

Here, the brothers, after owning the subject property themselves for more than half a century, put their interests in the subject property into these sophisticated legal entities. The owners' status as sophisticated legal entities provides its own protections from predatory parties. In any event, here, there is no outside third party who is seeking to invade a family's right to possess real property, further demonstrating that the owners are not entitled to the protections of RPAPL 993. Flouret v Sagland, LLC, 2026 NY Slip Op 05009, Second Dept 8-19-26

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