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An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts August 3 – 14, 2026, and Subsequently Posted on the New York Appellate Digest Website. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Cick 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 3 – 14, 2026

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APPEALS.

ALTHOUGH CPLR 8301(A)(6) REFERS TO "REASONABLE EXPENSES OF PRINTING THE PAPERS" FOR AN APPEAL, THE STATUTE IS INTERPRETED TO INCLUDE THE EXPENSES FOR PREPARATION OF A DIGITAL RECORD AND BRIEFS; A PARTY TO WHOM COSTS ARE AWARDED ON APPEAL CAN RECOVER THE COSTS OF CREATING THE DIGITAL RECORD AND BRIEFS (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, in a full-fledged opinion by Justice Wan, determined the party to whom costs are awarded on appeal are entitled pursuant to CPLR 8301(a)(6) to expenses for assembly and submission of a digital record and briefs on appeal. The statute refers to "reasonable expenses of printing the paper" which the court interpreted to include the preparation of a digital record and briefs:

… [W]e hold that the plaintiff's use of an appellate printer to prepare "electronic bookmarks," "electronic links," "digital file conversion(s)," and "uploads" for its prior appeal constituted "reasonable expenses of printing the papers for a hearing, when required," within the meaning of CPLR 8301(a)(6) and was "reasonable and necessary within the context of the litigation" … . Underhill Venture, LLC v Sarang, 2026 NY Slip Op 04976, Second Dept 8-12-26

August 12, 2026

CIVIL PROCEDURE, ATTORNEYS, JUDGES.

IN THE FACE OF EVIDENCE PLAINTIFF DID NOT INTEND TO ABANDON THE ACTION, IT WAS AN ABUSE OF DISCRETION TO DISMISS THE COMPLAINT FOR FAILURE TO MEET THE DEADLINE FOR FILING A NOTE OF ISSUE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the dismissal of the complaint because plaintiff failed to timely file a note of issue was an abuse of discretion. Plaintiff had communicated with defendant within the 90-day period about discovery owed plaintiff. If defendant had complied with the discovery requests, plaintiff could have timely filed:

"[A] plaintiff [who] has been served with a 90-day notice pursuant to CPLR 3216(b)(3) . . . must comply with the notice by filing a note of issue or by moving, before the default date, either to vacate the 90-day notice or to extend the 90-day period" … . "In general, if a plaintiff fails to comply with the demand, to avoid the sanction of dismissal, the plaintiff is required to demonstrate a justifiable excuse for the delay and the existence of a potentially meritorious cause of action" … . However, CPLR 3216 is "extremely forgiving, and, [w]hile the statute prohibits the Supreme Court from dismissing an action based on neglect to proceed whenever the plaintiff has shown a justifiable excuse for his or her delay, and a meritorious cause of action[,] such a dual showing is not strictly necessary in order for the plaintiff to escape such a dismissal" … .

Here, there was no evidence that the defendant was prejudiced by the plaintiff's delay in filing the note of issue after expiration of the 90-day period, that there was a pattern of persistent neglect and delay in prosecuting the action, or that there was any intent by the plaintiff to decline to proceed with discovery or otherwise abandon the action … . * * *

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Had the defendant complied with either of the plaintiff's first two emailed requests for outstanding discovery, the plaintiff could have timely filed the note of issue. This evidence negated any inference that the plaintiff intended to abandon the action and, inasmuch as the defendant contributed to the plaintiff's inability to timely file a note of issue, the defendant's assertion of prejudice from the delay was disingenuous … . Salik v Atlantis Operating, LLC, 2026 NY Slip Op 04970, Seccond Dept 8-12-26

Practice Point: CPLR 3216 is "extremely forgiving." Here it was an abuse of discretion to dismiss the complaint for failure to meet the deadline for filing a note of issue.

August 12, 2026

CIVIL PROCEDURE, CONSTITUTIONAL LAW, MUNICIPAL LAW.

THE TOWN PLACED A $24,000 LIEN ON PLAINTIFF'S PROPERTY FOR REPAIR WORK DONE BY THE TOWN BEFORE THE PROPERTY WAS TRANSFERRED TO PLAINTIFF; PLAINTIFF BROUGHT A PROCEDURAL-DUE-PROCESS ACTION AGAINST THE TOWN (42 USC 1983); THE ACTION FAILED BECAUSE OF THE AVAILABILITY OF A CPLR ARTICLE 78 PROCEEDING (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the town was entitled to summary judgment dismissing plaintiff's 42 USC 1983 action alleging a violation of procedural due process. Plaintiff, after purchasing the property, was assessed over $24,000 for repairs to the property paid for by the town and necessitated by the prior owner's failure to maintain the property. The procedural due process claim failed because plaintiff had the option of bringing an Article 78 proceeding:

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment" … . "'Due process is flexible and calls for such procedural protections as the particular situation demands'" … . In determining what due process requires in a specific context, courts consider "(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail" … .

Here, although the plaintiff's property interest was affected by the special assessment and lien, the risk of erroneous deprivation was remedied by the availability of a proceeding pursuant to CPLR article 78 … . Accordingly, the Town demonstrated, prima facie, that it did not deprive the plaintiff of due process … . First Sovereign Equity Group, Inc. v Town of Smithtown, 2026 NY Slip Op 04928, Second Dept 8-12-26

Practice Point: Here the risk of erroneous deprivation of plaintiff's property by the town was remedied by the availability of a CPLR article 78 proceeding. Therefore the criteria for a viable procedural-due-process action against the town were not met.

August 12, 2026

CIVIL PROCEDURE, CONTRACT LAW.

ONCE THE PARTIES ENTERED A STIPULATION OF DISCONTINUANCE, SUPREME COURT WAS DIVESTED OF JURISDICTION; THEREFORE SUPREME COURT DID NOT HAVE JURISDICTION TO CONSIDER THE SUBSEQUENT MOTION TO VACATE THE STIPULATION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined Supreme Court had been divested of jurisdiction over the case when the parties entered a stipulation of discontinuance. Therefore Supreme Court did not have jurisdiction to consider the motion to vacate the stipulation of discontinuance:

"'A motion must be addressed to a pending action'" … . A court lacks jurisdiction to entertain a motion after the action has been unequivocally terminated by the execution of an express, unconditional stipulation of discontinuance … "or actual entry of judgment in accordance with the terms of the settlement" … .

Here, the Supreme Court lacked jurisdiction to entertain the plaintiff's motion, among other things, to vacate the stipulation of discontinuance and to restore the action to the court's active calendar. The action was unconditionally discontinued by the stipulation of discontinuance executed by the plaintiff and the defendant and filed with the court, in which the plaintiff withdrew the complaint and discontinued all claims interposed in the action, and the stipulation was silent as to the court's retention of jurisdiction for any purpose … . Accordingly, under the circumstances, the plaintiff's requested relief was not available by way of a motion and could only be obtained by commencing a plenary action … . HSBC Bank USA, N.A. v Rini, 2026 NY Slip Op 04845, Second Dept 8-5-26

Practice Point: Here the parties entered a stipulation of discontinuance, thereby divesting the Supreme Court of jurisdiction over the case. Supreme Court therefore could not consider the subsequent motion to vacate the stipulation.

August 5, 2026

CIVIL PROCEDURE, CORPORATION LAW, NEGLIGENCE.

PLAINTIFF'S MOTION TO AMEND THE COMPLAINT TO ADD A CORPORATE DEFENDANT ALLEGED TO BE "UNITED IN INTEREST" WITH A NAMED CORPORATE DEFENDANT SHOULD HAVE BEEN GRANTED; ALTHOUGH THE STATUTE OF LIMITATIONS HAD PASSED, THE RELATION-BACK DOCTRINE APPLIED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the relation-back doctrine applied to allow adding a defendant after the statute of limitations had run. Plaintiff slipped and fell on some wires in her office and sued a company called Blackbox Corporation (apparently alleging responsibility for the presence of wires). Plaintiff sought to amend the complaint to add another company, Nu-Vision, alleging it was "united in interest" with Blackbox:

In order to establish the applicability of the relation-back doctrine, a plaintiff must demonstrate that: “(1) the causes of action arose out of the same conduct, transaction, or occurrence; (2) the new party is united in interest with one or more of the original defendants, and by reason of that relationship can be charged with such notice of the institution of the action that he or she will not be prejudiced in maintaining his or her defense on the merits; and (3) the new defendant 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 commenced against him or her as well” … .. “The ‘linchpin’ of the relation-back doctrine is whether the new defendant had notice within the applicable limitations period” … .

Contrary to the Supreme Court’s determination, the plaintiff demonstrated the applicability of the relation-back doctrine. As to the first prong, there is no dispute that the plaintiff sought to allege causes of action against Nu-Vision arising out of the same occurrence as the causes of action asserted in the amended complaint. The plaintiff also established the second prong, that Nu-Vision and Black Box Corporation of Pennsylvania were “united in interest,” by demonstrating that, under the particular circumstances presented, Nu-Vision and Black Box Corporation of Pennsylvania “intentionally or not, often blurred the distinction between them” … . As to the third prong, the plaintiff sufficiently established that Nu-Vision knew or should have known that, but for a mistake, it would have been named as a defendant … . Tomlinson v City of New York, 2026 NY Slip Op 04973, Second Dept 8-12-26

Practice Point: Here plaintiff was allowed to amend the complaint to add a corporate defendant after the statute of limitations had passed pursuant to the relation-back doctrine. The added defendant was deemed to be “united in interest” with a named corporate defendant.

August 12, 2026

CIVIL PROCEDURE, EMPLOYMENT LAW, MUNICIPAL LAW.

PETITIONER POLICE OFFICER WAS TERMINATED FOR MISCONDUCT AND SOUGHT TO BRING A CPLR ARTICLE 78 PROCEEDING; THE CITY CHARTER REQUIRED THE FILING OF A NOTICE OF CLAIM AS A CONDITION PRECEDENT FOR ANY NONTORT ACTION AGAINST THE CITY; PETITIONER FAILED TO TIMELY FILE A NOTICE OF CLAIM; BECAUSE THE CHARTER MAKES NO PROVISION FOR SERVING A LATE NOTICE OF CLAIM IN NONTORT ACTIONS, SUPREME COURT DID NOT HAVE AUTHORITY TO GRANT PETITONER'S REQUEST FOR PERMISSION TO SERVE A LATE NOTICE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the court did not have the authority to grant the petitioner, a police officer terminated for misconduct, an extension of time to file a late notice of claim against the city. The city charter did not have a provision for service of a late notice for nontort actions. Petitioner was attempting to bring a CPLR article 78 proceeding contesting his termination:

Section C6.47(A) of the City Charter for the City of Newburgh provides that, for nontort claims, no action or special proceeding shall be maintained against the City unless "a written verified claim . . . was served on the City . . . within three months after the accrual of such claim." The service of a notice of claim is thus a condition precedent to maintaining an action or proceeding against the City … . "[S]tatutory requirements conditioning suit against a governmental entity must be strictly construed" … .

Here, it is undisputed that the petitioner failed to serve a notice of claim within three months after his claim accrued, as required by section C6.47 of the City Charter for the City of Newburgh. Moreover, unlike other notice statutes, section C6.47 of the City Charter for the City of Newburgh does not provide courts with the authority to extend the time for the service of a notice of claim arising upon nontort claims … . Consequently, since this proceeding is not founded upon tort, the Supreme Court was without authority to grant the petitioner's motion for leave to serve a late notice of claim … . Matter of Canario v City of Newburgh, 2026 NY Slip Op 04945, Second Dept 6-12-26

Practice Point: If the controlling legislation, here a city charter, makes no provision allowing a party to seek permission to serve of a late notice of claim, a court cannot grant such permission. Here the city charter did not include a "late notice" provision for nontort actions against the city.

August 12, 2026

CIVIL PROCEDURE, FORECLOSURE, JUDGES, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), TRUSTS AND ESTATES.

APPARENTLY THE MORTGAGOR WAS DECEASED AT THE TIME THE FORECLOSURE ACTION WAS COMMENCED RENDERING THE FORECLOSURE ACTION A NULLITY; SUPREME COURT DID NOT HAVE JURISDICTION, SO AMENDING THE CAPTION TO ADD THE EXECUTOR DID NOT EFFECTUATE JURISDICTION OVER THE ESTATE; ECHO BAY PURCHASED THE PROPERTY FROM THE MORTGAGOR'S SUCCESSORS FOUR YEARS LATER; ECHO BAY HAD THE RIGHT TO INTERVENE, MOVE TO VACATE THE JUDGMENT OF FORECLOSURE AND SALE, AND MOVE TO DISMISS THE COMPLAINT (SECOND DEPT).

The Second Department, reversing Supreme Court, granting the motion to intervene and dismissing the foreclosure complaint, apparently determined the mortgagor was deceased at the time the foreclosure action was brought rendering the action a nullity. Therefore Supreme Court did not have jurisdiction to amend the caption to add the mortgagor's executor. For years later, Echo Bay purchased the property from the mortgagor's successors and properly moved to intervene, to vacate the judgment of foreclosure and sale and to dismiss the complaint:

"'A party may not commence a legal action or proceeding against a dead person'" … , and an action to foreclose a mortgage is a legal nullity insofar as asserted against a deceased mortgagor … . "A judgment or order issued without subject matter jurisdiction is void, and that defect may be raised at any time and may not be waived" … . * * *

… [T]he fact that Echo Ray obtained its interest in the property after the action was commenced and the notice of pendency was filed does not bar intervention … , and that branch of the plaintiff's prior motion which was for leave to amend the caption to substitute the executor of [mortgagor's] estate as a defendant in this action did not effectuate jurisdiction over her estate … . * * *

… Supreme Court should have granted those branches of the motion of Echo Ray which were pursuant to CPLR 5015(a)(4) to vacate the order and judgment of foreclosure and sale and to dismiss the complaint, as the action was a legal nullity insofar as asserted against [the mortgagor], the sole borrower and property owner as alleged in the complaint … . The owner of the property is an indispensable party to a foreclosure action (see RPAPL 1311[1] …). "The absence of an indispensable party mandates dismissal of the action, and the plaintiff cannot maintain the action as against the other defendants" … . Federal Natl. Mtge. Assn. v Jackson, 2026 NY Slip Op 04927, Second Dept 8-12-26

Practice Point: If the mortgagor is deceased when the foreclosure action is commenced, the action is a nullity and the judgment of foreclosure and sale is void. A subsequent purchaser of the property can successfully move to intervene, vacate the judgment and dismiss the foreclosure complaint.

August 12, 2026

CIVIL PROCEDURE, FORECLOSURE.

PLAINTIFF WAIVED THE OBJECTION TO A LATE ANSWER BY FAILING TO REJECT THE ANSWER WITHIN 15 DAYS OF RECEIPT; DEFENDANTS MOTION TO COMPEL ACCEPTANCE OF THE ANSWER SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff waived any objection to the defendants' late answer by failing to reject the answer within 15 days of receipt:

Pursuant to CPLR 2101(f), "[t]he party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within fifteen days after the receipt thereof, the party on whom the paper is served returns the paper to the party serving it with a statement of particular objections." Here, the plaintiff's undisputed failure to reject the defendants' answer within the 15-day statutory time frame constituted a waiver of the late service and the default … . Accordingly, the Supreme Court should have granted the defendants' motion to compel the plaintiff to accept their late answer and denied the plaintiff's cross-motion for leave to enter a default judgment against the defendants … . PNC Bank, N.A. v Kane, 2026 NY Slip Op 04967, Second Dept 8-12-26

Practice Point: If plaintiff wishes to object to receipt of a late answer, plaintiff must reject the answer within 15 days or the objection is waived and the defendant can move to compel acceptance.

August 12, 2026

CIVIL PROCEDURE, JUDGES.

HERE DEFENDANT'S ANSWER WAS STRICKEN FOR DISCOVERY VIOLATIONS; AT THE INQUEST THE JUDGE SHOULD HAVE CONSIDERED ONLY DAMAGES; THE JUDGE ERRED BY CONSIDERING AN ISSUE WHICH WAS "ADMITTED" BY THE DEFENDANT BECAUSE THE ANSWER WAS STRICKEN (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the court should not have considered any substantive issues in this inquest to determine damages after the answer was stricken for failure to comply with discovery orders. Because the answer was stricken, defendant admitted all the traversable allegations in the complaint, including the issue the judge erroneously considered:

"'A defendant whose answer is stricken as a result of a default admits all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiff's conclusion as to damages'" … . "The sole issue to be determined at the inquest is the extent of the damages sustained by the plaintiff, and the court may not consider the question of whether the defendant caused the damages sustained by the plaintiff' … . At an inquest, the plaintiff bears the burden of setting forth a prima facie case as to damages … .

Here, the Supreme Court erred in considering the question of whether the plaintiff signed a satisfaction of mortgage under duress. The defendant's answer was stricken and as a result, the defendant admitted all traversable allegations in the amended complaint, including the allegation that the satisfaction of mortgage was signed under an implied threat of physical harm. The sole issue to be determined at the inquest was the extent of damages sustained by the plaintiff (see CPLR 3215[a] …). Sabella v Keora Realty, LLC, 2026 NY Slip Op 04884, Second Dept 8-5-26

Practice Point: When an answer is stricken every traversable allegation in the complaint is admitted by the defendant and the only remaining issue is damages.

August 5, 2026

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

IN THIS LABOR LAW ARTICLE 6 AND BREACH OF CONTRACT ACTION FOR UNPAID COMMISSIONS, PLAINTIFF, WHO SUED GAIA PRODUCE AS HIS EMPLOYER, SOUGHT TO AMEND THE COMPLAINT TO ADD ANOTHER PARTY AS HIS EMPLOYER; BASED UPON THE DEFINITION OF "EMPLOYER" IN THE LABOR LAW, THE PROPOSED AMENDMENT WAS PROPER AND SHOULD HAVE BEEN ALLOWED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff should have been allowed to amend the complaint to add a defendant, Nehoumovich. The suit against plaintiff's employer, Gaia Produce, alleged the failure to pay commissions in violation of Labor Law article 6. Plaintiff alleged Nehoumovich was also plaintiff's employer. Based on the definition of "employer" in the Labor Law, the Second Department held the proposed amendment was not palpably insufficient or patently devoid of merit:

"Article 6 of the Labor Law sets forth a comprehensive set of statutory provisions enacted to strengthen and clarify the rights of employees to the payment of wages" … . "Labor Law § 190(3) broadly defines an 'employer' as 'any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service'" … . "Under the 'economic reality' test, the relevant factors include whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records" … . The Supreme Court is "also free to consider any other factors it deems relevant to its assessment of the economic realities" … .

Here, the proposed amendment to add Nahoumovich as a defendant was not palpably insufficient or patently devoid of merit … . The proposed amended complaint alleged, inter alia, that Nahoumovich was "responsible for . . . hiring and firing," that he "supervised [the] [p]laintiff," "assign[ed] [the plaintiff] responsibilities concerning negotiating, pricing, and collecting," that he "was involved in determining the terms and conditions of [the plaintiff's] employment" and "how [the plaintiff's] commissions were calculated," and that he "overs[aw] commission reports." The plaintiff further submitted a transcript of his own deposition testimony regarding those allegations, and that of Nahoumovich, who acknowledged, among other things, that he made certain hiring recommendations, supervised the plaintiff, provided the plaintiff with directives, and set up the commission structure. The fact that Nahoumovich did not sign the plaintiff's paychecks is not dispositive … . Under the totality of the circumstances presented here, the plaintiff plausibly alleged that Nahoumovich was an "employer" within the meaning of Labor Law § 190(3) … . Sproule v Gaia Produce, LLC, 2026 NY Slip Op 04971, Second Dept 8-12-26

Practice Point: Consult this decision for insight into the criteria for determining whether a party is an "employer" within the meaning of the Labor Law in an action seeking unpaid commissions.

August 12, 2026

CIVIL PROCEDURE, MUNICIPAL LAW, NEGLIGENCE.

IN THIS PUBLIC-BEACH SWIMMING-ACCIDENT CASE, THE PETITIONER SHOULD NOT HAVE BEEN GRANTED PERMISSION TO FILE A LATE NOTICE OF CLAIM; THE TOWN DID NOT HAVE TIMELY KNOWLEDGE OF THE ESSENTIAL FACTS OF THE CLAIM; THE PETITIONER DID NOT HAVE A GOOD EXCUSE; THE TOWN MADE A PARTICULARIZED SHOWING OF PREJUDICE; AND THE CLAIM WAS CLOSE TO MERITLESS (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the petition to serve a late notice of claim against the town in this swimming-injury case should not have been granted. Petitioner was floating 100 yards beyond the designated swimming area at a town beach with the back of his head toward the ocean when a wave crashed over him, forcing him to the ocean floor and causing a severe spinal cord injury. The Second Department went through all the criteria for allowing late notice and found that the facts fell short:

… [T]he petitioner failed to establish that the Town had actual knowledge of the essential facts constituting the claim within 90 days of its accrual or a reasonable time thereafter. "'[K]nowledge of the accident itself and the seriousness of the injury does not satisfy this enumerated factor where those facts do not also provide the public corporation with knowledge of the essential facts constituting the claim'" … . "Generally, the phrase 'facts constituting the claim' is understood to mean the facts which demonstrate a connection between the happening of the accident and any negligence on the part of the public corporation" … . * * *

… [I]n light of the fact that members of his family appeared to be considering the making of a claim when they returned to the accident scene one week after the accident and interviewed lifeguards, the petitioner failed to demonstrate a reasonable excuse for failing to serve a timely notice of claim, or for failing to serve a notice of claim until 67 days after meeting with attorneys … . * * *

… [T]he Town made a "particularized evidentiary showing that [it] will be substantially prejudiced if the late notice is allowed" … . The Town submitted, among other things, an affirmation of its lifeguard captain, who stated that he spoke to the petitioner and his companions immediately after the accident and recalled the petitioner telling him that the petitioner had consumed alcohol, but he no longer recalled what the petitioner said about his alcohol use or other details about the accident. * * *

… [T]he petitioner's claim that the lifeguards had a duty to warn him that he was beyond the designating swimming area and to warn him that it was dangerous to float with his back to the ocean borders on being patently meritless … . Matter of Cataldo v Town of E. Hampton, 2026 NY Slip Op 04946, Second Dept 8-12-26

Practice Point: Consult this decision for a concise factual explanation for the denial of permission to file a late notice of claim.

August 12, 2026

CIVIL PROCEDURE, NEGLIGENCE, ATTORNEYS.

DEFENDANTS' RELIANCE ON THEIR ATTORNEY'S STATEMENT HE WOULD HANDLE THE MATTER, THE FACT THAT THE SEVERELY INJURED INFANT PLAINTIFF, FOR WHOM DEFENDANTS WERE CARING, REQUIRED EXTRAORDINARY MEDICAL CARE AND FUNDRAISING, AND THE EXISTENCE OF A MERITORIOUS DEFENSE, WARRANTED GRANTING THE MOTION TO VACATE THE DEFAULT JUDGMENT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the defendants' motion to vacate the default judgment (CPLR 5015(a)(1)) should have been granted. Defendants were under the impression their attorney was handling the case, they had a valid reason for failing to be more proactive in dealing with their attorney, and they had a meritorious affirmative defense:

Here, the defendants claimed that, upon receiving notice of the action in August 2023, they each contacted their family attorney, with whom the grandmother and the family had an 18-year relationship, and who was representing the mother in a child support proceeding against the plaintiff. The family attorney agreed to handle this matter. In a series of text messages to the defendants, the family attorney gave the impression that he was handling the matter and again indicated that such was the case when he met the defendants in person in reference to the child support proceeding. …

During these proceedings, the defendants were caring for the infant, who had suffered a brain injury and had been in the intensive care unit for approximately two months and required machines to help her breathe. The infant's care involved hyberbaric and stem cell treatments from doctors in Louisiana and Arizona and fundraising to pay for her care.

The defendants each hired their current attorneys and promptly moved to vacate the March 2024 [default] order, alleging that the defendants' reliance upon the representations of the family attorney constituted a reasonable excuse for their default and further alleging … an affirmative defense … .

… [U]nder the particular circumstances of this case, the defendants' conduct in relying upon the representations of the family attorney did not constitute willful default or neglect … . Further, the defendants' responsibilities in caring for the infant provided a reasonable explanation for their failure to be more proactive in their dealings with the family attorney and in the management of this action … . Cross v Lee, 2026 NY Slip Op 04924, Second Dept 8-12-26

Practice Point: Here defendants' reliance on their attorney's assurances he was handling the matter, the severity of the infant plaintiff's injuries (the defendants were caring for the infant), and the existence of a meritorious defense, warranted granting defendants' motion to vacate the default judgment (CPLR 5051(a)(1)).

August 12, 2026

CIVIL PROCEDURE.

DEFENDANT'S MOTION TO VACATE PURSUANT TO CPLR 5015(A) FOR LACK OF PERSONAL JURISDICTION SHOULD HAVE BEEN DENIED; DEFENDANT WAIVED THE LACK-OF-JURISDICTION DEFENSE BY SUBMITTING A LETTER TO SUPREME COURT ADDRESSING THE MERITS (SECOND DEPT).

The Second Department, reversing the grant of defendant's motion to vacate pursuant to CPLR 5015(a) for lack of personal jurisdiction, determined defendant waived the lack-of-jurisdiction defense by submitting a letter to Supreme Court addressing the merits of the action and stating he would represent himself:

"A defendant may waive the issue of . . . personal jurisdiction by appearing in an action, either formally or informally, without raising the defense of lack of personal jurisdiction in an answer or pre-answer motion to dismiss" … . "A defendant may appear informally by actively litigating the action before the court" … . "When a party becomes 'an actor in a suit' is often a question of degree and of evaluation of the particular facts … . By participating in a lawsuit on the merits, a party "indicates an intention to submit to the court's jurisdiction over the action, and by appearing informally in this manner, the defendant confers in personam jurisdiction on the court" … .

Here, the defendant waived the defense of lack of personal jurisdiction by submitting a letter to the Supreme Court addressing the merits of the action and stating that he would represent himself in the action, all without objecting to the court's jurisdiction … . Moreover, more than four years after the commencement of this action, the defendant successfully moved to restore the action to the active calendar and sought further affirmative relief without moving to dismiss the complaint for lack of personal jurisdiction … . Foote v Foote, 2026 NY Slip Op 04842, Second Dept 8-5-26

Practice Point: There is no time limit for a motion to vacate pursuant to CPLR 5015(a) for lack of personal jurisdiction. Here, however, defendant waived the defense by participating in the action.

August 5, 2026

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CRIMINAL LAW, JUDGES, SEX OFFENDER REGISTRATION ACT (SORA).

A SORA COURT JUDGE HAS THE INHERENT POWER TO, SUA SPONTE, REOPEN A SORA HEARING TO CORRECT AN ERROR (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Dowling, joining the First and Fourth Departments, determined a judge has the authority to, sua sponte, reopen a SORA hearing to correct a mistake:

Given the Supreme Court's error, and considering the inherent power of a court to reconsider its own intermediate determinations, together with the overriding purposes and objectives of SORA, we find no wrong in the Supreme Court's sua sponte correction of its initial failure to assess points under risk factors 3 and 5. There is no benefit to a defendant, the People, or the public in prohibiting a SORA court tasked with determining an offender's presumptive risk level from, sua sponte, correcting its own erroneous determination … . People v Allen, 2026 NY Slip Op 04880, Second Dept 8-5-26

August 5, 2026

CRIMINAL LAW, JUDGES.

THIS MATTER WAS SENT BACK FOR CONSIDERATION OF DEFENDANT'S YOUTHFUL OFFENDER STATUS; THE RULING ON REMAND DEMONSTRATED THE JUDGE WAS NOT AT ALL FAMILIAR WITH DEFENDANT'S CRIMINAL HISTORY AND WAS IN FACT MISTAKEN ABOUT IT; MATTER REMANDED AGAIN (FIRST DEPT).

he First Department, reversing Supreme Court's ruling on remand to consider defendant's youthful offender (YO) status, determined the judge was confused about defendant's criminal history and in fact was mistaken about it The case was remanded again:

In making a YO treatment determination, sentencing courts may consider "the gravity of the crime and manner in which it was committed, mitigating circumstances, defendant's prior criminal record, prior acts of violence, recommendations in the presentence reports, defendant's reputation, the level of cooperation with authorities, defendant's attitude toward society and respect for the law, and the prospects for rehabilitation and hope for a future constructive life" … . While courts are not required to place their reasons for denying YO treatment on the record … , at minimum, YO consideration requires the court to have familiarity with the relevant facts and circumstances of the case before it (see CPL 720.20[1][a]).

Here, the sentencing court tracked the statutory language in denying defendant YO treatment. However, it is unclear whether the court was cognizant of the relevant facts and circumstances of defendant's case to appropriately consider YO treatment, much less the Cruickshank factors (105 AD2d at 334).

At the very least, this record calls into question whether defendant was appropriately considered for YO treatment. The sentencing court's confusion exposes that it was so unaware of the facts of the underlying offense that we cannot be sure it considered the mitigating factors specific to this defendant that might warrant YO treatment, i.e. that the instant offense is defendant's first conviction, signaling that he is not a hardened criminal; defendant's expressed remorse, despite acting in self-defense; the overt steps he has taken to lead a law-abiding life; or the lack of serious injuries to the victim. People v Marcus T., 2026 NY Slip Op 04913, First Dept 8-6-26

Practice Point: Courts need not place the reasons for denial of YO status on the record. But the court must be aware of the relevant facts and circumstance of the case. Here the judge demonstrated he did not know the defendant's criminal history, requiring reversal.

August 6, 2026

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FAMILY LAW, CRIMINAL LAW.

THE FAMILY COURT ACT ALLOWS COMMITMENT TO JAIL FOR SIX MONTHS FOR EACH VIOLATION OF AN ORDER OF PROTECTION; HERE THE 42-MONTH COMMITMENT WAS AFFIRMED (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Ventura, determined father was properly committed to jail for 42 months for 10 violations of orders of protection: Father argued the commitment could not be more than 30 days per violation:

After a hearing on both violation petitions … the Family Court found that the father willfully violated the temporary orders of protection … on 10 separate occasions. In an order of commitment … , the court, inter alia, committed the father to the custody of the New York City Department of Correction for a period of 42 months. The court rejected the father's argument that, pursuant to Judiciary Law § 751, the court only had the authority to sentence him to 30 days in jail for each willful violation. The court determined that it had the authority to impose 10 consecutive six-month terms of incarceration based on its finding that the father committed 10 separate willful violations, which would amount to a maximum permissible sentence of 60 months in jail, and imposed the 42-month term of incarceration. The father appeals, asserting that the maximum permissible sentence was a total of 300 days in jail. * * *

Sections 846-a and 1072 of the Family Court Act provide a "specific punishment or other remedy" for a willful violation of an order of protection issued under article 10 of the Family Court Act (Family Ct Act § 156). Accordingly, Judiciary Law § 751 does not apply, and the Family Court was authorized to commit the father to jail for a period of 42 months upon the court's finding that, on 10 separate occasions, the father violated temporary orders of protection issued under article 10 of the Family Court Act … . Matter of Austin C. (Rasaan K.C.), 2026 NY Slip Op 04944, Second Dept 8-12-26

August 12, 2026

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LABOR LAW-CONSTRUCTION LAW, NEGLIGENCE.

THERE WAS A QUESTION OF FACT WHETHER THE CONSTRUCTION MANAGER WAS AN AGENT FOR THE GENERAL CONTRACTOR AND THEREFORE COULD BE LIABLE FOR A DANGEROUS CONDITION AT THE WORK SITE (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the defendants" (Petrocelli's) motion for summary judgment in this case stemming from an injury at a construction site. Petrocelli was the construction manager. There was a question of fact whether Petrocelli could be deemed an agent of the general contractor such that it could be liable for a dangerous condition at the site:

While a construction manager is generally not considered a contractor responsible for the safety of the workers at a construction site pursuant to Labor Law § 200, "it may nonetheless become responsible if it has been delegated the authority and duties of a general contractor, or if it functions as an agent of the owner of the premises" … . "A party is deemed to be an agent of an owner or general contractor under the Labor Law when it has supervisory control and authority over the work being done where a plaintiff is injured" … . A role of general supervision "is insufficient to impose liability under the Labor Law" … .

Here, the Petrocelli defendants failed to establish, prima facie, that they did not exercise a significant degree of control and supervision of the construction site such that it was not delegated the authority and duties of a general contractor … , and failed to establish that they lacked constructive notice of the allegedly dangerous condition because they did not submit any evidence to demonstrate that the "dangerous condition did not exist for a sufficient length of time to afford [them] a reasonable opportunity to discover and remedy it" … . Vasquez v 1719 27 ST, LLC, 2026 NY Slip Op 04894, Second Dept 8-5-26

Practice Point: If a construction manager acts as an agent for the general contractor and therefore exercises supervisory control over a work site, the construction manager may be liable for a dangerous condition at the work site.

August 5, 2026

LANDLORD-TENANT, MUNICIPAL LAW, FRAUD, EVIDENCE.

IN AN ACTION ALLEGING A FRAUDULENT SCHEME TO DEREGULATE APARTMENTS, TO MAKE OUT A PRIMA FACIE CASE SUCH THAT THE FOUR-YEAR LOOK-BACK DOES NOT APPLY, PLAINTIFF NEED NOT DEMONSTRATE EACH ELEMENT OF COMMON-LAW FRAUD; SUFFICIENT INDICIA OF FRAUD OR A COLORABLE CLAIM OF A FRAUDULENT SCHEME ARE WHAT MUST BE DEMONSTRATED (FIRST DEPT).

The First Department, reversing Supreme Court upon remittitur from the Court of Appeals, over a two-justice dissent, remitted the matter to Supreme Court for application of the recently clarified standard for the prima facie demonstration of fraud in an action alleging a fraudulent scheme to deregulate apartments. The issue is whether plaintiffs presented sufficient evidence of fraud to overcome the four-year look-back provision in the former Rent Stabilization Law:

… [T]he Court [of Appeals] refined the common-law standard applied to allegations of a fraudulent scheme to deregulate apartments subject to rent stabilization on a motion to dismiss under CPLR 3211 … . More specifically, [the Court of Appeals] "made clear that, for the fraud exception [to the four-year lookback period in the former Rent Stabilization Law § 26-516 (a)] to apply, a plaintiff need not demonstrate each element of common-law fraud and instead must put forth sufficient indicia of fraud or a colorable claim of a fraudulent scheme" … .

Parallel to the Court of Appeals' development of the common law applicable to fraudulent deregulation claims, the legislature addressed the fraudulent deregulation standard by statute … . Under the legislature's statutory amendments, the relevant inquiry is whether the landlord " 'knowingly engaged in [a] fraudulent scheme [to deregulate] after a consideration of the totality of the circumstances' " … To date, the Court of Appeals has not had occasion to "address to what extent this legislation differs from [the] common-law rule, and, if there is any difference, the impact or applicability of that legislation" … . Aras v B-U Realty Corp., 2026 NY Slip Op 04983, First Dept 8-13-26

Practice Point; Consult this decision for insight into what a plaintiff must allege or demonstrate to survive a motion to dismiss or to warrant summary judgment in an action alleging a fraudulent scheme to deregulate apartments and seeking the "fraud exception" to the statutory four-year look-back for damages.

August 13, 2026

LANDLORD-TENANT, NEGLIGENCE.

IN THIS CEILING-COLLAPSE CASE, THE NEGLIGENCE PER SE CAUSE OF ACTION BASED ON THE MULTIPLE DWELLING LAW AND THE RES IPSA LOQUITUR CAUSE OF ACTION SHOULD HAVE BEEN DISMISSED (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the cause of action alleging negligence per se and the res ipsa loquitur cause of action in this ceiling-collapse case should have been dismissed. The negligence per se cause of action alleged a violation of Multiple Dwelling Las section 78(1) which does not impose a specific duty on the landlord. The res ipsa loquitur cause of action failed, in part, because the landlord did not have exclusive control of the plaintiff's bathroom and the leaking bathtub in the apartment above:

A cause of action alleging negligence per se predicated on a violation of Multiple Dwelling Law § 78(1) cannot lie, as the statute imposes only a general duty to maintain a multiple dwelling and does not impose a specific duty upon a landlord … .

"The doctrine of res ipsa loquitur is a rule of evidence that permits an inference of negligence to be drawn solely from the happening of an accident where the plaintiff can show that: (1) the event is of the kind that ordinarily does not occur in the absence of someone's negligence; (2) the instrumentality that caused the injury is within the defendant's exclusive control; and (3) the injury is not the result of any voluntary action by the plaintiff" … . Here, the plaintiff failed to establish that her bathroom ceiling and a bathtub in an upstairs apartment were within the defendants' exclusive control … . The plaintiff also failed to eliminate triable issues of fact as to her comparative fault, as she entered the bathroom to scrub the bathtub despite being concerned about the imminent collapse of the ceiling before it fell … . Williams v SI 1688 Realty, LLC, 2026 NY Slip Op 04896, Second Dept 8-5-26

Practice Point: Multiple Dwelling Law 78(1) imposes a general duty to maintain a multiple dwelling but does not impose a specific duty upon a landlord. Therefore it could not be the basis of a negligence per se cause of action against the landlord in this ceiling-collapse case.

Practice Point: The res ipsa loquitur cause of action did not lie in this ceiling collapse case because the landlord did not have exclusive control over the bathroom where the ceiling fell or the leaking bathtub in the apartment above.

August 5, 2026

MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE.

THERE WAS NO EVIDENCE DR. VELASQUEZ WAS NEGLIGENT; HIS SUMMARY JUDGMENT MOTION IN THE MEDICAL MALPRACTICE ACTION SHOULD HAVE BEEN GRANTED; THE OPINION IS FACT-SPECIFIC AND DETAILED (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, in a full-fledged opinion by Justice Mendez, determined this medical malpractice action against one of the defendants, Dr. Velasquez, should have been dismissed. The opinion is fact-specific and goes through the evidence in granular detail. Roth v Velasquez, 2026 NY Slip Op 04915, First Dept 8-6-26

August 6, 2026

NEGLIGENCE, EVIDENCE.

SELF-SERVING STATEMENTS OF AN INTERESTED PARTY (THE PLAINTIFF IN THIS SLIP AND FALL CASE) WHICH REFERRED TO MATTERS EXCLUSIVELY WITHIN THAT PARTY'S KNOWLEDGE CREATED AN ISSUE OF CREDIBILITY PRECLUDING SUMMARY JUDGMENT (SECOND DEPT).

The Second Department, reversing Supreme Court in this slip and fall case, determined inconsistencies in plaintiff's deposition testimony as well as the fact he was the only witness to the incident raised credibility issues which precluded summary judgment:

Here, the plaintiff failed to demonstrate his prima facie entitlement to judgment as a matter of law on the issue of liability. His deposition testimony, which included inconsistencies regarding the location of the alleged accident and was generally vague, in addition to a lack of other supporting evidence, placed his own credibility in issue and presented triable issues of fact regarding how the alleged accident occurred … . The plaintiff also testified at his deposition that he was the only witness to the alleged accident, which further raised credibility issues, since "[o]n a motion for summary judgment . . . , self-serving statements of an interested party which refer to matters exclusively within that party's knowledge create an issue of credibility which should not be decided by the court but should be left for the trier of facts" … . Espinal v 1760-1770, LLC, 2026 NY Slip Op 04926, Second Dept 8-12-26

Practice Point: On a summary judgment motion, statements by an interested party which refer to matters exclusively within that party's knowledge can create a credibility issue which precludes summary judgment.

August 12, 2026