

NEW YORK APPELLATE DIGEST, INC.

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts July 27 – August 1, 2026, and Posted on the New York Appellate Digest Website on Thursday, August 6, 2026. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report. Copyright 2026 New York Appellate Digest, Inc.

Weekly Reversal
Report
July 27 – August
1, 2026

Contents

CIVIL PROCEDURE, CONTRACT LAW, INSURANCE LAW, NEGLIGENCE.....	2
PLAINTIFFS PROPERLY ALLOWED TO AMEND THE COMPLAINT TO ADD THE INSURER (WHICH PAID PLAINTIFFS FOR THEIR LOSSES) AS A PLAINTIFF UNDER THE RELATION- BACK DOCTRINE (AFTER THE STATUTE OF LIMITATIONS HAD RUN FOR AN INDEPENDENT SUBROGATION ACTION) (FIRST DEPT).....	2
CIVIL PROCEDURE, JUDGES.	3
THE JUDGE SHOULD NOT HAVE, SUA SPONTE, DISMISSED THE COMPLAINT WHEN PLAINTIFF FAILED TO MEET A DEADLINE FOR A DEPOSITION (SECOND DEPT).....	3
CRIMINAL LAW, ATTORNEYS, JUDGES.....	4
A CONSIDERABLE NUMBER OF DAYS DEVOTED TO MOTION PRACTICE SHOULD NOT HAVE BEEN CHARGED TO THE PEOPLE; DEFENDANT’S 30.30 SPEEDY-TRIAL MOTION SHOULD HAVE BEEN DISMISSED (FIRST DEPT).....	4
EMPLOYMENT LAW, MUNICIPAL LAW.....	5
THE THIRD DEPARTMENT CONFIRMED THE PUBLIC EMPLOYMENT RELATIONS BOARD’S (PERB’S) RULING THAT THE VILLAGE IMPROPERLY COERCED A VILLAGE EMPLOYEE TO RESIGN FROM THE UNION AND ACCEPT A LOWER SALARY (THIRD DEPT).	5
FORECLOSURE, EVIDENCE, CIVIL PROCEDURE.....	6
THE REFEREE’S REPORT REFERRED TO UNPRODUCED DOCUMENTS RENDERING IT INADMISSIBLE HEARSAY (SECOND DEPT).	6
FORECLOSURE, TRUSTS AND ESTATES, CIVIL PROCEDURE.	7
WHERE THE PROPERTY OWNER DIES INTESTATE, AND THE PLAINTIFF IS NOT SEEKING A DEFICIENCY JUDGMENT, THE FORECLOSURE ACTION MAY BE BROUGHT DIRECTLY AGAINST THE HEIRS OF THE PROPERTY OWNER; THE ESTATE IS NOT A NECESSARY PARTY (SECOND DEPT).	7
LABOR LAW-CONSTRUCTION LAW, APPEALS.....	8
A STAIRWAY MAY CONSTITUTE A “SAFETY DEVICE” WITHIN THE MEANING OF LABOR LAW 240(1) AND A STAIRWAY NEED NOT BE DEFECTIVE TO TRIGGER LABOR LAW 240(1) LIABILITY; HERE IT WAS ALLEGED THE STAIRWAY WAS INADEQUATELY ILLUMINATED AND WAS OBSTRUCTED BY A CABLE WHICH CAUSED PLAINTIFF TO TRIP AND FALL (FIRST DEPT).	8

Table of Contents

NEGLIGENCE, EVIDENCE, VEHICLE AND TRAFFIC LAW.	9
THE SOLE PROXIMATE CAUSE OF DEFENDANT DRIVER’S STRIKING A 12-YEAR-OLD PEDESTRIAN WAS THE PEDESTRIAN’S SUDDENLY RUNNING ONTO THE HIGHWAY (FIRST DEPT).	9

CIVIL PROCEDURE, CONTRACT LAW, INSURANCE LAW, NEGLIGENCE. PLAINTIFFS PROPERLY ALLOWED TO AMEND THE COMPLAINT TO ADD THE INSURER (WHICH PAID PLAINTIFFS FOR THEIR LOSSES) AS A PLAINTIFF UNDER THE RELATION-BACK DOCTRINE (AFTER THE STATUTE OF LIMITATIONS HAD RUN FOR AN INDEPENDENT SUBROGATION ACTION) (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Friedman, determined Supreme Court properly allowed plaintiffs to amend the complaint to add the insurer which paid plaintiffs’ losses as a plaintiff. The statute of limitations had passed for a separate subrogation action:

While an application to amend a pleading pursuant to CPLR 3025 lies within the court’s sound discretion, “there is no sound basis in law to grant amendment pursuant to CPLR 3025(c) to add an untimely claim” Thus, a pleading cannot be amended to assert a new claim for which the statute of limitations has expired unless the assertion of the new claim is deemed to relate back to an earlier operative pleading that was filed while the new claim still would have been timely (see *id.*). Whether a new claim relates back to the time of the filing of the earlier pleading is governed by CPLR 203(f), which provides:

“A claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading.”

Table of Contents

In determining whether the original pleading provides the requisite notice of the transactions or occurrences underlying the proposed new claim, a court “should not . . . look[] beyond the four corners of the original pleading” . . . * * *

... [T]he “transactions, occurrences, or series of transactions or occurrences” referenced in CPLR 203(f), and to be proved in support of the subrogation claim interposed in the proposed [amended complaint] — defendants’ management of the renovation project — are precisely the same “transactions, occurrences, or series of transactions or occurrences” alleged in the earlier complaints. As plaintiffs point out, the only effect of the assertion of the subrogation claim is to shift the claim for a portion of the damages allegedly caused by defendants’ alleged wrongdoing from the ... plaintiffs to ... their insurer. [217 Trust v VIR Constr., Inc, 2026 NY Slip Op 04824, First Dept 7-30-26](#)

Practice Point: Here plaintiffs’ insurer, which paid plaintiffs for losses which are the subject of the complaint, was properly added to the complaint as a plaintiff, after the statute of limitations for a separate subrogation action had passed, pursuant to the relation-back doctrine.

July 30, 2026

CIVIL PROCEDURE, JUDGES.

THE JUDGE SHOULD NOT HAVE, SUA SPONTE, DISMISSED THE COMPLAINT WHEN PLAINTIFF FAILED TO MEET A DEADLINE FOR A DEPOSITION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the judge should not have, sua sponte, dismissed the complaint when plaintiff failed to meet a deadline for a deposition:

“Pursuant to CPLR 3126, a court may impose discovery sanctions, including the striking of a pleading . . . , where a party refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed” “[T]he drastic remedy of striking a pleading . . . pursuant to CPLR 3126 should not be imposed absent a clear showing that the failure to comply with

discovery demands or orders was willful and contumacious” Further, due process generally requires “notice and an opportunity to be heard before a court may impose such drastic remedies for discovery noncompliance”

Here, the plaintiff was not given adequate notice and opportunity to be heard prior to imposition of the drastic sanction of dismissal of the complaint, “including on facts relevant to whether the plaintiff’s noncompliance was willful and contumacious” The defendants did not move for sanctions pursuant to CPLR 3126 due to the plaintiff’s failure to appear for his deposition, nor did the Supreme Court make its own motion or include language in any prior order warning that noncompliance would result in sanctions [Winchcombe v Ridgeline Constr. Corp., 2026 NY Slip Op 04794, Second Dept 7-29-26](#)

Practice Point: The appellate courts do not like sua sponte dismissals of complaints without notice or an opportunity to be heard.

July 29, 2026

CRIMINAL LAW, ATTORNEYS, JUDGES.

A CONSIDERABLE NUMBER OF DAYS DEVOTED TO MOTION PRACTICE SHOULD NOT HAVE BEEN CHARGED TO THE PEOPLE; DEFENDANT’S 30.30 SPEEDY-TRIAL MOTION SHOULD HAVE BEEN DISMISSED (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendant’s speedy trial (CPL 30.30) motion should have been denied because considerable time-periods should not have been charged to the People:

The court should have denied defendant’s CPL 30.30 motion to dismiss the indictment. The court should not have charged the People for the 98-day period during which codefendant delayed serving a copy of his omnibus motion on the People. This time is excludable as time attributed to “pretrial motions,” including “the period during which such matters are under consideration by the court” (CPL 30.30[4][a] ...).

The court likewise should have excluded the 42-day period between the date of its decision on codefendant’s omnibus motion and the date on which the matter was adjourned for the People to file their certificate of compliance (COC) The People were entitled to “reasonable time to prepare for hearings and trial after the court’s rulings on [the co]defendant’s omnibus motion” [People v Page, 2026 NY Slip Op 04823, First Dept 7-30-26](#)

Practice Point: Here days related to defense motion practice and preparation for hearings precipitated by rulings on defense motions should not have been charged to the People in a “speedy trial” analysis.

July 30, 2026

EMPLOYMENT LAW, MUNICIPAL LAW.

THE THIRD DEPARTMENT CONFIRMED THE PUBLIC EMPLOYMENT RELATIONS BOARD’S (PERB’S) RULING THAT THE VILLAGE IMPROPERLY COERCED A VILLAGE EMPLOYEE TO RESIGN FROM THE UNION AND ACCEPT A LOWER SALARY (THIRD DEPT).

The Third Department, confirming the rulings of the Public Employment Relations Board (PERB), in a full-fledged opinion by Justice Fisher, determined the village improperly coerced a village employee to resign from the union and accept a lower salary. The opinion is too detailed and complex to fairly summarize here. The opinion is will-worth reading to gain an understanding of the issues which arise in an employment dispute between a union and a municipality, the application of the Taylor Law, and the jurisdiction and role of the PERB. [Matter of Village of Monticello v AFSCME Local 750-9, Council 66, AFL-CIO, 2026 NY Slip Op 04805, Third Dept 7-30-26](#)

July 30, 2026

FORECLOSURE, EVIDENCE, CIVIL PROCEDURE.

THE REFEREE’S REPORT REFERRED TO UNPRODUCED DOCUMENTS RENDERING IT INADMISSIBLE HEARSAY (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the referee’s report in this foreclosure action should not have been confirmed. The documents upon which the report was based were not produced, rendering the report inadmissible hearsay:

... [T]he plaintiff’s motion which were to confirm the referee’s report and for a judgment of foreclosure and sale should have been denied. “The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility” However, computations based upon a review of unidentified and unproduced business records constitute inadmissible hearsay and lack probative value

Here, the referee’s report indicates, among other things, that “[t]he information contained herein was obtained from the books and records of plaintiff pertaining to the defendants’ loan and payment history.” However, the record does not reflect that those books and records were annexed to an affidavit of an another officer of the plaintiff’s former loan servicer. As the defendants contended in opposition to the plaintiff’s motion, inter alia, to confirm the referee’s report and in support of their cross-motion, among other things, pursuant to CPLR 4403 to reject the referee’s report, and as they contend on appeal, the referee’s computations as to the amounts due to the plaintiff for advances of taxes and insurance were based on unidentified and unproduced business records, and therefore, the referee’s assertions in those regards constituted inadmissible hearsay and lacked probative value [Bank of N.Y. Mellon v Prestia, 2026 NY Slip Op 04735, Second Dept 7-29-26](#)

July 29, 2026

FORECLOSURE, TRUSTS AND ESTATES, CIVIL PROCEDURE.

WHERE THE PROPERTY OWNER DIES INTESTATE, AND THE PLAINTIFF IS NOT SEEKING A DEFICIENCY JUDGMENT, THE FORECLOSURE ACTION MAY BE BROUGHT DIRECTLY AGAINST THE HEIRS OF THE PROPERTY OWNER; THE ESTATE IS NOT A NECESSARY PARTY (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the foreclosure action against the heir of the decedent property owner should not have been dismissed. Where the property owner dies intestate, and plaintiff is not seeking a deficiency judgment, the foreclosure action can proceed directly against the heirs of the property owner. The estate is not a necessary party:

... [Where] “a property owner dies intestate, title to real property is automatically vested in his or her distributees” “Thus, where a mortgagor/property owner dies intestate and the mortgagee does not seek a deficiency judgment, generally a foreclosure action may be commenced directly against the distributees” Here, because the decedent died intestate, and because the plaintiff no longer seeks a deficiency judgment, the decedent’s estate was not a necessary party, and the plaintiff could proceed directly against the distributees of the decedent’s estate [Deutsche Bank Natl. Trust Co. v Unknown Heirs to the Estate of Jacinto Ortiz](#), 2026 NY Slip Op 04745, Second Dept 7-29-26

Practice Point: Where the property owner dies intestate, and plaintiff is not seeking a deficiency judgment, the foreclosure action may proceed directly against the distributees, the estate is not a necessary party.

July 29, 2026

LABOR LAW-CONSTRUCTION LAW, APPEALS.

A STAIRWAY MAY CONSTITUTE A “SAFETY DEVICE” WITHIN THE MEANING OF LABOR LAW 240(1) AND A STAIRWAY NEED NOT BE DEFECTIVE TO TRIGGER LABOR LAW 240(1) LIABILITY; HERE IT WAS ALLEGED THE STAIRWAY WAS INADEQUATELY ILLUMINATED AND WAS OBSTRUCTED BY A CABLE WHICH CAUSED PLAINTIFF TO TRIP AND FALL (FIRST DEPT).

The First Department, affirming the denial of defendant’s (RBS’s) motion for summary judgment, over a two justice dissent, determined that a stairway need not be defective to fall under the coverage of Labor Law 240(1). Here plaintiff alleged the stairway was inadequately illuminated and was obstructed with a cable which caused plaintiff to trip and fall. The stairway can constitute a safety device within the meaning of Labor Law 240(1) and the majority concluded the stairway itself need not be defective to trigger Labor Law 240(1) liability:

Questions of fact exist as to whether the staircase constituted a Labor Law § 240(1) safety device

... [In] “the First Department, falls from permanent appurtenances which function as the only means of access are . . . entitled to Labor Law § 240(1) protection,” including “stairways . . . utilized . . . in the performance of the plaintiff’s work.” Consistent with this, RBS cites no controlling caselaw holding that Labor Law § 240(1) does not apply to injuries incurred on stairways that are not structurally defective.... . T]he dissent makes an argument ... that Labor Law § 240(1) claims can only be made as to injuries incurred on stairways that are structurally defective. The dissent cites three cases to support its claim that Labor Law § 240(1) claims involving stairways have been sustained only when the stairways involved were structurally defective. However, none of these cases sustained a Labor Law § 240(1) claim; rather, they affirmed denials of summary judgment, and in any event, did not turn on the structural soundness of the staircases at issue It is improper for us to decide an issue that appellant did not raise and that respondent was not given an opportunity to address [Mazzurco v Broadway 52nd L.P., 2026 NY Slip Op 04822, First Dept 7-30-26](#)

Practice Point: In the First Department, a stairway may constitute a safety device within the meaning of Labor Law 240(1) and the stairway itself need not be defective to trigger Labor Law 230(1) liability.

Practice Point: An appeal should not be decided on a ground not raised by the appellant.

July 30, 2026

NEGLIGENCE, EVIDENCE, VEHICLE AND TRAFFIC LAW.

THE SOLE PROXIMATE CAUSE OF DEFENDANT DRIVER'S STRIKING A 12-YEAR-OLD PEDESTRIAN WAS THE PEDESTRIAN'S SUDDENLY RUNNING ONTO THE HIGHWAY (FIRST DEPT).

The First Department, reversing Supreme Court, determined this traffic-accident action stemming from defendant's striking a 12-year-old pedestrian (J.W.) should have been dismissed. J.W. suddenly ran into defendant driver's (Li's) highway lane:

Li testified that he was driving south in the right lane of the Hutchinson River Parkway in the Bronx at about 45 miles per hour when he first saw J.W. standing 100 feet in front of him in a grassy area on the side of the highway to his right. Li testified that when the vehicle approached, J.W. made a "running gesture" and began to run towards the vehicle when it was approximately two car lengths away. Li did not brake or honk his horn, but did take his foot off the gas pedal and was in the process of moving into the left lane to move away from J.W. when J.W. entered the highway, at which point the front right side of the van struck him. Police conducted sobriety tests at the scene and allowed Li to drive the van from the scene. He did not receive a ticket, violation, or citation as a result of the collision. It is undisputed that pedestrians are prohibited from occupying the location where J.W. was traversing (Vehicle and Traffic Law § 1229-a).

Defendants established prima facie that J.W.'s act of running into the highway unlawfully was the sole proximate cause of the collision Li's testimony shows that he was confronted with a sudden and unforeseen situation in which he was

forced to make a split second decision and could not “weigh alternative courses of action” such that “he cannot reasonably be held to the same conduct as one who has had full opportunity to reflect” “While it is often a jury question whether a person’s reaction to an emergency was reasonable, summary resolution is possible when the individual presents sufficient evidence to support the reasonableness of his or her actions and there is no opposing evidentiary showing sufficient to raise a legitimate question of fact on the issue” [Danielle W. v Li, 2026 NY Slip Op 04821, First Dept 7-30-26](#)

July 30, 2026

Copyright 2026 New York Appellate Digest, Inc.