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Weekly Reversal Report August 31 - September 11, 2026

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IN THIS RENT RESET ARBITRATION, THE UMPIRE COMMUNICATED DIRECTLY WITH LANDLORD'S COUNSEL, CREATING THE APPEARANCE OF IMPROPRIETY; THE AWARD WAS THEREFORE VACATED (FIRST DEPT).

The First Department, reversing Supreme Court, determined communications between an umpire and the landlord's counsel created the appearance of impropriety requiring the vacation of the arbitration award in the rent reset proceeding:

… [T]he tenants exercised their second extension option under the lease … . The parties attempted to negotiate a new annual net rent, but upon reaching an impasse, they proceeded to arbitration before the American Arbitration Association (the AAA). That arbitration concluded with a one-week hearing that resulted in a final award largely in the landlord's favor. * * *

… [T]he umpire created an appearance of impropriety when he directly communicated with the landlord's counsel about a paid offer to serve as a neutral umpire in the [another arbitration] and did so without including the tenants in the conversation. Further, the umpire's subsequent attempt to remedy this issue with a disclosure to the tenants failed to cure his misconduct. Indeed, the disclosure was incomplete as it was the landlord's counsel, not the umpire, who informed the tenants of the direct communication with the landlord's counsel. To compound matters, the umpire then attempted to bargain with the tenants — offering to trade his rejection of the offer in exchange for the cooperative withdrawing its recusal application. Ultimately, although he did eventually decline the offer, the umpire's actions irreversibly and improperly implicated the "integrity of the process" … . Matter of 57th & 6th Ground LLC v Carnegie House Tenants Corp., 2026 NY Slip Op 05230, First Dept 9-3-26

Practice Point: In this arbitration of a rent reset, the umpire communicated directly with landlord's counsel, creating the appearance of impropriety. The award was therefore vacated.

September 3, 2026

CIVIL PROCEDURE, EVIDENCE, JUDGES.

THE DEFENSE MOTION TO SET ASIDE THE JURY VERDICT AND REINSTATE COUNTERCLAIMS SHOULD NOT HAVE BEEN GRANTED, CRITERIA EXPLAINED (FIRST DEPT).

The First Department, reversing Supreme Court, determined Supreme Court should not have reinstated defendants' counterclaims which were rejected by the jury after a lengthy trial. The First Department explained the criteria for setting aside a jury verdict pursuant to CPLR 4404(a):

Defendants are not entitled to reinstatement of their counterclaims, which were each unequivocally rejected by the jury after a lengthy trial. Pursuant to CPLR 4404(a), a court may set aside a jury verdict, or order a new trial, where "the verdict is contrary to the weight of the evidence," or "in the interest of justice." In making this determination, the court must proceed with caution, because "in the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict" … . Thus, a verdict should only be set aside if the evidence is so in favor of the moving party that the verdict "could not have been reached on any fair interpretation of the evidence" … , or in the interests of justice due to "errors in the trial court's rulings on the admissibility of evidence, mistakes in the charge, misconduct, newly discovered evidence, and surprise" … . Beach v Touradji Capital Mgt., LP, 2026 NY Slip Op 05231, First Dept 9-3-26

Practice Point: Consult this decision for insight into the criteria for setting aside a jury verdict. Here the jury's rejection of defendants' counterclaims should not have been disturbed.

September 3, 2026

CONSTITUTIONAL LAW, CRIMINAL LAW, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

THE SUFFOLK COUNTY CODE PROVISIONS WHICH ALLOW THE SEIZURE AND FORFEITURE OF VEHICLES USED BY DRUNK DRIVERS IS CONSTITUTIONAL (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice McCormack, determined the provisions of the Suffolk County Code which provide for the seizure and forfeiture of vehicles used by drunk drivers is constitutional:

On this appeal, we are called upon to consider the validity of Suffolk County's civil forfeiture statute, codified in chapter 420, article II (hereinafter chapter 420) of the Code of Suffolk County (hereinafter the Code), pursuant to which a vehicle being operated by the defendant Hassan Qamar (hereinafter the defendant) was seized at the time of his arrest for driving while intoxicated. The defendant challenges the validity of chapter 420 of the Code on three bases: (1) that the procedures relating to the post-seizure hearings conducted pursuant thereto violate article VI of the New York State Constitution, and deprived him of due process of law, (2) that the provisions of chapter 420 of the Code are preempted by State law, and (3) that the forfeiture of his vehicle constitutes an excessive fine prohibited by the State and Federal Constitutions. For the reasons that follow, we hold that the defendant's challenges to the procedures involving the post-seizure hearing have been rendered academic, and that there is no merit to his remaining challenges. Accordingly, we affirm the judgment. * * *

… [A] Suffolk County Police Department (hereinafter the SCPD) police officer observed the defendant operating a Nissan Altima (hereinafter the vehicle) on Pulaski Road in Huntington at a speed of 100 miles per hour in a 35-mile-per-hour zone and passing a steady red traffic control light. According to the felony complaint, the defendant, inter alia, had a strong odor of alcohol on his breath and admitted having “a few beers and a few shots of J[a]m[e]son[ ] W[h]iskey.” The defendant purportedly displayed “clues indicative of intoxication upon submitting to standardized field sobriety test” and submitted to a chemical breath test that resulted in a .20% blood alcohol content. The defendant was arrested and charged with aggravated driving while intoxicated per se pursuant to VTL § 1192(2-a)(a) and driving while intoxicated pursuant to VTL § 1192(3). The defendant had previously been convicted of driving while intoxicated pursuant to VTL § 1192(3) on April 1, 2015. The vehicle was seized and impounded by the SCPD pursuant to chapter 420 of the Code. * * *

… [T]he defendant pleaded guilty to aggravated driving while intoxicated per se pursuant to VTL § 1192(2-a)(a), with one prior conviction. …

… [T]he plaintiff commenced this civil forfeiture action pursuant to chapter 420 of the Code, seeking forfeiture of the defendant’s vehicle. Cohen v A 2019 Nissan, 2026 NY Slip Op 05158, Second Dept 9-2-26

September 2, 2026

CRIMINAL LAW, APPEALS.

THE DENIAL WITHOUT PREJUDICE OF A REQUEST TO APPLY FOR RESENTENCING PURSUANT TO THE DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT (DVSJA) DOES NOT IMPLICATE THE MERITS OF RESENTENCING AND IS NOT APPEALABLE (THIRD DEPT).

The Third Department, over a detailed dissent, determined the dismissal-without-prejudice of the pro se defendant’s request for permission to apply for resentencing pursuant to the Domestic Violence Survivors Justice Act (DVSJA) (CPL 440.47) was not appealable:

CPL 440.47 is a procedural vehicle that allows “presently incarcerated persons serving sentences of at least eight years . . . to apply for resentencing pursuant to the framework established in Penal Law § 60.12 (1)” … . CPL 440.47 (1) details the pre-application phase, which is step one of the resentencing process. At step one, the defendant must request permission to apply for resentencing in accordance with Penal Law § 60.12 and demonstrate his or her eligibility for same. To do so, there are two simple criteria: such person "[(1)] must include in his or her request documentation proving that she or he is confined in an institution operated by the [D]epartment of [C]orrections and [C]ommunity [S]upervision serving a sentence with a minimum or determinate term of eight years or more for an offense committed prior to [August 12, 2019] and [(2)] that she or he is serving such sentence for any offense eligible for an alternative sentence under section 60.12 of the [P]enal [L]aw" ,,, . If the court finds that the defendant satisfies these criteria, it must notify the defendant that he or she may submit an application for resentencing (see CPL 440.47 [1] [c]). After the court notifies the defendant, he or she can request the appointment of an attorney to assist with the next steps … . However, if the court finds that the defendant has not met the requirements to apply for resentencing, it must notify the defendant of same and dismiss the request without prejudice … . It is evident from the plain language contained herein that such dismissal cannot constitute "an order denying resentencing" (CPL 440.47 [3] [a]). Of note, step one, as far as we can tell, is completely unique to the DVSJA as it asks that a defendant request permission to make the CPL 440.47 … . To that end, at step one, the defendant is merely considered a "person" rather than an "applicant" and, as such, has not actually asked the court to grant resentencing … . By virtue of this simple distinction, it is apparent that the pre-application procedure does not implicate the merits of resentencing … .. People v Shawn A., 2026 NY Slip Op 05216, Third Dept 9-3-26

September 3, 2026

CRIMINAL LAW, ATTORNEYS, CONSTITUTIONAL LAW.

PURSUANT TO CPL 30.30(2)(A), THE 90-DAY SPEEDY TRIAL CLOCK DOES NOT COUNT DAYS WHEN DEFENDANT IS NOT IN CUSTODY; HERE DEFENDANT WAS INITIALLY INCARCERATED, RELASED ON BAIL, AND THEN INCARCERATED AGAIN; THE DAYS DURING WHICH DEFENDANT WAS OUT ON BAIL ARE NOT PART OF THE 90-DAY CALCULATION (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Duffy, in a matter of first impression, determined the 90-day clock for a speedy trial violation pursuant to CPL 30.30(2)(a) includes only the days during which defendant was incarcerated. Here defendant was initially incarcerated, then released on bail when his girlfriend posted bail, and then incarcerated again when his girlfriend withdrew as the surety. Defendant's total number of incarcerated days before the People were ready for trial was 80 days:

Counsel for the defendant contended, among other things, that the 31 days between September 9, 2024, and October 11, 2024, when the defendant was no longer in custody as he had posted bail did not qualify under CPL 30.30(3) or (4) as an exception to the 90-day readiness requirement and that, therefore, 117 days were chargeable to the People for the purposes of CPL 30.30(2)(a). According to counsel, since the People were not ready for trial within 90 days after the defendant was first in custody, the defendant was entitled to be released under CPL 30.30(2)(a). Counsel argued that there was no statutory basis for two different CPL 30.30 clocks or for resetting the clock to exclude the 31 days when he was out on bail.

In opposition, the People contended that the 31 days when the defendant was out on bail should be excluded from the calculation of time under CPL 30.30(2)(a). They contended, in sum and substance, that, upon the defendant's return to custody in this case, the 90-day time clock under CPL 30.30(2)(a) for the People to be ready for trial reset and began again. The People argued, in the alternative, that the 31 days that the defendant was out on bail should be excluded from the 90-day calculation of readiness under CPL 30.30(2)(a). Thus, they contended that the time chargeable to the People was 80 days, plus 4 days that the Supreme Court charged to the People with respect to a challenge the defendant had made to the validity of the People's COC, but that, since only 84 days were chargeable under CPL 30.30(2)(a), the People had declared their readiness for trial within the statute's permissible time frame. * * *

Supreme Court correctly determined that the defendant was not unlawfully detained in violation of CPL 30.30(2)(a). Under the appropriate calculation, here, 20 days was chargeable to the People before the defendant was released on bail from his original custody. Thereafter, an additional 60 days were chargeable to the People for the time period preceding the People's filing of the COC and the SOR, during which the defendant was again incarcerated. Thus, for the purposes of CPL 30.30(2)(a), 80 days were chargeable to the People under CPL 30.30(2). People ex rel. Liles v Richards, 2026 NY Slip Op 05191, Second Dept 9-2-26

Practice Point: Pursuant to CPL 30.30(a)(2), the 90-day speedy trial clock does not include days when defendant is not in custody. Here defendant was initially incarcerated, released on bail, then incarcerated again. Because the days when defendant was out on bail are not part of the calculation, the speedy trial statute was not violated.

September 2, 2026

CRIMINAL LAW, FAMILY LAW, JUDGES, APPEALS.

ALTHOUGH SUPREME COURT DID NOT ABUSE ITS DISCRETION WHEN IT GRANTED THE PEOPLE'S MOTION TO PREVENT THE TRANSFER OF THE ADOLESCENT OFFENDER'S CASE TO FAMILY COURT, MITIGATING FACTS AND THE LEGISLATIVE PURPOSE UNDERLYING THE "RAISE THE AGE" LEGISLATION WARRANTED INVOCATION OF THE COURT'S "INTEREST OF JUSTICE" JURISDICTION AND DENIAL OF THE PEOPLE'S MOTION (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Chan, reversing Supreme Court, over a two-justice dissent, held that Supreme Court did not abuse its discretion when it granted the People's motion to prevent the transfer of the adolescent offender's case to Family Court. On the "no abuse of discretion" question, the majority and the dissenters agreed. The majority, however, went on to invoke its "interest of justice" jurisdiction, based on mitigating facts and the underlying purpose of the "Raise the Age (RTA)" legislation, to deny the People's motion and allow the transfer to Family Court:

… [D]efendant, then 17 years old, chased a young woman across a basketball court, grabbed her from the back while placing his arm around her neck, and eventually brought her to the ground…. As a result, the young woman suffered minor injuries. At no point, including at the time of his arrest, did defendant take out, display, use, or fire [the] gun [found in his fanny pack]. Nor did he otherwise threaten to do so. * * *

Under the RTA, prosecutions of adolescent offenders — defined as 16 or 17 year olds charged with a felony — are presumptively removable from the Youth Part of Supreme Court to Family Court (see CPL 722.10[1]; CPL 722.23[1], [2] …). The People can rebut that presumption if a defendant is charged with a class A nondrug felony or a violent felony, and the People prove, "by a preponderance of the evidence," that defendant (1) "caused significant physical injury" during the commission of the offense, (2) "displayed a firearm, shotgun, rifle or deadly weapon" in "furtherance of" the offense, or (3) committed a sex offense (see CPL 722.23[2][c] …). "Otherwise, the case is removed to Family Court unless, upon a motion by the People, the [Y]outh [P]art determines that 'extraordinary circumstances exist that should prevent the transfer of the action to' Family Court" … . * * *

… [D]efendant shouldered caretaker responsibilities for his family, including assisting his mother during a difficult pregnancy and being a source of mentorship and support for his younger siblings. He participated avidly in sports teams and lessons. His maturity was importantly manifested by his demonstrated amenability to Family Court's services. For example, defendant highlighted his improved school performance during the COVID-19 pandemic, his interest in pursuing vocational studies, and his successful graduation from the Exalt Youth program with perfect attendance and outstanding participation. …

In our view, these are precisely the types of facts that the legislators contemplated would support removal to Family Court … . People v Key, 2026 NY Slip Op 05234, First Dept 9-3-26

Practice Point: Consult this opinion for an in depth discussion of the purpose and implementation of the "Raise the Age" legislation which allows the transfer of adolescent offender's felony prosecutions to Family Court.

Practice Point: Here the majority and the dissenters agreed Supreme Court did not abuse its discretion when it granted the People's motion to deny the transfer of the adolescent's case to Family Court, but the majority went on to invoke its "interest of justice" jurisdiction to reverse, something the Court of Appeals would not have the power to do.

September 3, 2026

CRIMINAL LAW, MENTAL HYGIENE LAW, CONTEMPT.

NEW YORK STATE OFFICE OF MENTAL HEALTH (OMH) WAS PROPERLY HELD IN CONTEMPT AND FINED $100-A-DAY FOR THE DELAY IN TRANSFERRING THE MENTALLY ILL DEFENDANT FROM RIKERS ISLAND TO A SECURE PSYCHIATRIC FACILITY (FIRST DEPT).

The First Department determined the New York State Office of Mental Health (OMH) was properly held in contempt based on a delay in transferring the mentally ill defendant from Rikers Island to a secure psychiatric facility. $100-a-day damages were assessed:

Defendant was charged with assault in the second degree based on the complaint that he pushed his mother to the ground causing her to twist and injure her toe. He was remanded to the custody of the Department of Corrections and held at Rikers Island. The charge was later elevated from a misdemeanor to a felony based on his mother's age. After defendant was evaluated for competency a second time in January 2025, both evaluators concluded that defendant was unfit to proceed. Supreme Court agreed, and on February 24, 2025, it ordered defendant remanded to the custody of OMH for restorative treatment. The order of commitment required that the defendant “be transferred into the custody of the Office of Mental Health no later than March 24, 2025” and warned that a failure to do so would result in a finding of contempt. It is uncontested that the transfer was delayed until July 25, 2025. * * *

OMH argues that defendant failed to prove that OMH’s delay caused his mental health to deteriorate. However, the relevant issue is not whether defendant deteriorated while he was in custody but whether OMH provided the requisite restorative care. In any event, Supreme Court was entitled to credit Dr. Goldsmith’s testimony that defendant’s condition did deteriorate at Rikers. OMH’s attempt to blame defendant for his loss because he is mentally ill and refuses treatment is risible. The purpose of a transfer to a secure psychiatric facility is so that a mentally ill defendant can receive statutorily mandated restorative care and treatment. To attribute defendant’s loss or injury to defendant’s preexisting mental illness, which causes defendant to refuse treatment, turns Criminal Procedure Law article 730 on its head. People v G.O., 2026 NY Slip Op 05242, First Dept 9-10-26

September 10, 2026

CRIMINAL LAW, REAL PROPERTY LAW.

PURUSANT TO CPL 420.25, SUPREME COURT PROPERLY DECLARED A DEED WHICH WAS THE SUBJECT OF AN OFFERING-A-FALSE-INSTRUMENT-FOR-FILING CONVICTION VOID AB INITIO; THE ARGUMENT THE PEOPLE MUST PROVE THE SIGNATURES ON THE DEED ARE FORGED WAS REJECTED (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Quirk, determined the Criminal Procedure Law allows the court to declare a deed void ab initio where a deed is the subject of a offering-a-false-instrument-for-filing conviction. The argument the People were required to prove the signatures on the deed were forged was rejected:

This appeal presents issues with respect to CPL 420.45, a statute enacted in 2019 that permits a court, upon motion and after a hearing, to order that an instrument affecting real property be declared void ab initio when, as relevant here, a defendant has been convicted of offering a false instrument for filing in the first degree and the instrument is material to the encumbrance, transfer, or purchase of real property. Nonparty Bil-Man Asset Management, LLC (hereinafter the appellant), contends that CPL 420.45 applies only to deeds containing forged signatures and that the People failed to establish that the deed at issue here was forged. The appellant further contends that it rebutted the presumption under CPL 420.45 that the deed at issue was void ab initio. … Supreme Court properly granted the People's motion, in effect, pursuant to CPL 420.45 to declare the deed void ab initio. * * *

Each guilty plea arose out of a scheme by the defendant and the codefendant to defraud the defendant's mother, Marta Merino, out of certain real property that she owned in Brooklyn (hereinafter the property). Specifically, the defendant admitted … she recorded a deed (hereinafter the fraudulent deed) with the Office of the City Register of New York that purported to transfer title to the property from her mother to herself. She also admitted … she recorded a second deed, transferring title to the property from herself to 523 73rd Street, LLC, of which she was a member, and that there was never any agreement between the defendant and her mother that the defendant would hold title to the property. The defendant and the codefendant admitted that they stole loan proceeds from the appellant by means of a fraudulent mortgage on the property. * * *

… [T]he plain language of CPL 420.45 does not limit its application to deeds containing forged signatures. People v Merino, 2026 NY Slip Op 05196, Second Dept 9-2-26

Practice Point: Consult this opinion for an in-depth discussion of when a real-property-related instrument which is the subject of an offering-a-false-instrument-for-filing conviction can be declared void ab initio by the court. The People need not prove the signatures on the instrument are forged.

September 2, 2026

ENVIRONMENTAL LAW, CIVIL PROCEDURE, MUNICIPAL LAW.

THE PETITIONERS DID NOT HAVE STANDING TO CHALLENGE THE VILLAGE'S SEQRA NEGATIVE DECLARATION WHICH ALLOWED THE CONSTRUCTION OF 98 APARTMENTS, CRITERIA EXPLAINED (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the petitioners did not have standing to challenge the negative declaration issued by the village respondents pursuant to the State Environmental Quality Review Act (SEQRA). The village thereby approved the construction 98 apartment units. The Second Department explained the criteria for standing in this context:

"Standing to bring a SEQRA challenge is a threshold issue, and the burden of establishing standing is on the party seeking review of governmental action on the basis of alleged procedural and substantive SEQRA violations" … . "To establish standing under SEQRA, a petitioner must show (1) an environmental injury that is in some way different from that of the public at large, and (2) that the alleged injury falls within the zone of interests sought to be protected or promoted by SEQRA" … . "Economic injury is not by itself within the zone of interests which SEQRA seeks to protect" … .

Here, the petitioners alleged environmental injuries that either were economic in nature … , were not different from those that would be suffered by the public at large … , or were too speculative and conjectural to demonstrate an actual injury-in-fact … . Such allegations are insufficient to confer standing to challenge the adequacy of the Cedarhurst respondents' environmental review of the overlay district under SEQRA. Contrary to the petitioners' contention, their property was not sufficiently close in proximity to the proposed development so as to confer a presumption of an injury-in-fact as an adjacent property owner … . Board of Educ. of the Lawrence Union Free Sch. Dist. v Incorporated Vil. of Cedarhurst, 2026 NY Slip Op 05154, Second Dept 9-2-26

Practice Point: Consult this decision for insight into the criteria for standing to challenge a municipality's SEQRA negative declaration. Here the village approved the construction of 98 apartments and the petitioners did not have standing to challenge the approval.

September 2, 2026

FORECLOSURE, CIVIL PROCEDURE, JUDGES.

HERE IN THIS FORECLOSURE ACTION, PLAINTIFF FILED A REQUEST FOR JUDICIAL INTERVENTION SEEKING A SETTLEMENT CONFERENCE WITHIN ONE YEAR OF DEFENDANT'S DEFAULT; THEREFORE PLAINTIFF NEED NOT PROVIDE A REASONABLE EXCUSE FOR THE DELAY OR DEMONSTRATE A MERITORIOUS CAUSE OF ACTION TO AVOID DISMISSAL FOR ABANDONMENT PURSUANT TO CPLR 3215(C); ANY FURTHER DELAYS AFTER THE REQUEST FOR JUDICIAL INTERVENTION ARE IRRELEVANT (SECOND DEPT).

The Second Department, reversing Supreme Court's sua sponte dismissal of the complaint in this foreclosure action, determined plaintiff did not abandon the action because it filed a request for judicial intervention seeking a settlement conference within one year of defendant's default:

Pursuant to CPLR 3215(c), "[i]f the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned . . . unless sufficient cause is shown why the complaint should not be dismissed." "To avoid dismissal pursuant to CPLR 3215(c), it is not necessary for a plaintiff to actually obtain a default judgment within one year of the default. Rather, as long as 'proceedings' are being taken, and these proceedings manifest an intent not to abandon the case but to seek a judgment, the case should not be subject to dismissal" … . The filing of a request for judicial intervention that seeks a residential mortgage foreclosure settlement conference as mandated by CPLR 3408 constitutes the taking of proceedings under CPLR 3215(c) … . * * *

Since the plaintiff demonstrated that it initiated proceedings for the entry of a judgment of foreclosure and sale within one year after [the] default, it was not required to proffer a reasonable excuse or demonstrate a potentially meritorious cause of action … . Furthermore, "once the plaintiff established that it had initiated proceedings for the entry of a judgment within one year after the defendants' default, it was in compliance with CPLR 3215(c) and it was not required, under the plain language of that subdivision, to account for any additional periods of delay that may have occurred subsequent to the initial one-year period contemplated by CPLR 3215(c)" … . Aurora Loan Servs., LLC v Miller, 2026 NY Slip Op 05153, Second Dept 9-2-26

Practice Point: If, in a foreclosure action, plaintiff files a request for judicial intervention and a settlement conference within one year of defendant's default, plaintiff need not provide an excuse for the delay or demonstrate a meritorious cause of action to avoid dismissal of the complaint as abandoned pursuant to CPLR 3215(c). Once proceedings have been taken within one year of default, any further delays after the taking of proceedings are irrelevant to any claim of abandonment.

September 2, 2026

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), APPEALS.

THE RPAPL 1304 NOTICE REQUIREMENTS WERE CHANGED BETWEEN THE TIME THE NOTICE WAS SENT TO THE DEFENDANTS AND WHEN THE FORECLOSURE PROCEEDINGS WERE BROUGHT; THEREFORE THE RPAPL 1304 NOTICE WAS DEFECTIVE (SECOND DEPT).

The Second Department, reversing Supreme Court in this foreclosure action, determined plaintiff's motion for summary judgment should not have been granted. The RPAPL 1304 notice requirements were changed between the time the notice was sent to defendants and when foreclosure action was commenced. Therefore the RPAPL 1304 notice, a condition precedent to any foreclosure action, was invalid:

Here, the plaintiff's RPAPL 1304 notice, dated July 15, 2016, contained the statutory language that was in effect at the time of the notice. However, RPAPL 1304 was amended effective December 20, 2016, and the amendment changed the language that the statute required the notice to contain … . Thus, the plaintiff's July 15, 2016 RPAPL 1304 notice did not satisfy the condition precedent to litigation for this action commenced in August 2017, after the effective date of the amendment … . Although this issue is raised for the first time on appeal, it may be reached as it involves a pure question of law that appears on the face of the record and could not have been avoided if brought to the court's attention at the proper juncture … . Wilmington Sav. Fund Socy., FSB v Fischman, 2026 NY Slip Op 05212, Second Dept 9-2-26

Practice Point: The RPAPL 1304 foreclosure notice provisions were changed by amendment between the time the notice was sent to defendants and the action was brought, rendering the notice defective. The issue was properly raised for the first time on appeal.

September 2, 2026

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

ELECTRONIC FILING OF A MOTION TO CONFIRM A REFEREE'S REPORT AND FOR LEAVE TO ENTER A DEFICIENCY JUDGMENT IS NOT IN ACCORDANCE THE SERVICE METHOD CODIFIED IN RPAPL 1371(2); HERE THE IMPROPER SERVICE WAS A BAR TO ENTRY OF THE DEFICIENCY JUDGMENT (SECOND DEPT).

The Second Department, reversing Supreme Court in this foreclosure action, determined the electronic filing of the motion to confirm the referee's report and for leave to file a deficiency judgment was not proper service pursuant to RPAPL 1371(2). The improper service constituted a complete bar to the entry of a deficiency judgment:

The plaintiff … moved to confirm a referee's report of sale and for leave to enter a deficiency judgment against Newman in the sum of $1,222,732.14. … Supreme Court granted the plaintiff's motion. A judgment was entered … in favor of the plaintiff … . …

RPAPL 1371(2) specifies the manner in which notice of such motions shall be served, and upon whom the notice shall be served, as follows: "Simultaneously with the making of a motion for an order confirming the sale, . . . the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct."

Here, the plaintiff's electronic filing of the motion papers on the New York State Courts Electronic Filing System did not constitute proper service in accordance with RPAPL 1371(2) … Consequently, "'this constitutes a complete bar to the entry of a deficiency judgment'" … . 11-36 31st Ave. Lender, LLC v RM Newman, LLC, 2026 NY Slip Op 05151, Second Dept 902026

Practice Point: Electronic filing of a motion to confirm a referee's report and for leave to enter a default judgment is improper service. The correct method of service is codified in RPAPL 1371(2).

September 2, 2026

LABOR LAW-CONSTRUCTION LAW.

HERE THE PERMANENT STAIRWAY WHERE PLAINTIFF WAS INJURED, THE SOLE VIABLE MEANS OF ACCESS TO THE WORK SITE, CONSTITUTED A "SAFETY DEVICE" WITHIN THE MEANING OF LABOR LAW 240(1); PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined the permanent stairway where plaintiff was injured, which had worn or missing treads, was the sole viable means of access to the floors where plaintiff was working. Although another stairway was available, plaintiff was told not to use it because it was used by COVID patients. Therefore plaintiff was entitled to summary judgment on the Labor Law 240(1) cause of action. The First Department rejected the argument that Labor Law liability was not available because plaintiff was not working on the stairway itself. The First Department also rejected the argument that a permanent stairway is not a statutory safety device:

The statute protects a worker from gravity-related hazards posed by a permanent stairway that "provided the sole means of access to the floors of the building" where the worker was working … . However, the issue of whether a stairway is the sole means of access should not be construed so strictly as to "preclude recovery merely because plaintiff had an alternative means to descend from his work area, especially when that alternative route may have seemed more dangerous than the stairs plaintiff did utilize" … . Here, the only other staircase available to plaintiff at the worksite would have required him to access a stairway used by hospital patients during the height of the COVID-19 pandemic, which he was instructed not to use. As a result, under these facts, the purported alternative staircase did not present a viable means of egress for plaintiff, and the staircase plaintiff used was his sole means of access to his work area … . Moreover, the stairs were defective in that the treads were worn out or missing.

We have considered and rejected … the argument that the statute does not cover permanent staircases … . As we recently explained, "permanent staircases are not categorically excluded from Labor Law 240(1) coverage," and will qualify as a safety device under the Labor Law where the staircase is the sole means accessing the plaintiff's work area … .

… Supreme Court improperly concluded that this principle applies only in situations where the plaintiff was required to work on the staircase upon which he fell … .

Supreme Court's … conclusion that a plaintiff using a permanent staircase as a "passageway" will not give rise to Labor Law 240(1) liability is also misplaced … . Riley v Memorial Sloan-Kettering Cancer Ctr., 2026 NY Slip Op 05241, First Dept 9-10-26

Practice Point: A permanent stairway which is the sole viable means of access to a work site is a "safety device" within the meaning of Labor Law 240(1).

September 10, 2026

MEDICAL MALPRACTICE, NEGLIGENCE, MUNICIPAL LAW, CIVIL PROCEDURE.

PETITIONERS DID NOT LEARN OF THE BABY'S MEDICAL CONDITION UNTIL SIX MONTHS AFTER THE INDUCED LABOR; PETITIONERS REQUESTED LEAVE TO FILE A LATE NOTICE OF CLAIM FOR MEDICAL MALPRACTICE; ALTHOUGH THE HOSPITAL DID NOT HAVE TIMELY KNOWLEDGE OF THE ESSENCE OF THE CLAIM, THE HOSPITAL DID NOT DEMONSTRATE ANY PREJUDICE FROM THE DELAY BECAUSE THE MEDICAL ISSUES WERE FULLY DOCUMENTED; THE REQUEST TO FILE A LATE NOTICE SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined petitioners' request for leave to file a late notice of claim in this medical malpractice action should have been granted. Petitioner mother did not learn of her child's medical condition until six months after her discharge from the hospital after labor was induced. Mother therefore had a reasonable excuse for failure to timely file a notice of claim. Although the hospital did not have timely knowledge of the nature of the claim, the hospital did not demonstrate any prejudice from the delay because the relevant issues were fully documented:

… [T]he court, in its discretion, must consider all relevant facts and circumstances, including, but not limited to, whether (1) the claimant demonstrated a reasonable excuse for the failure to serve a timely notice of claim, (2) the public corporation acquired actual knowledge of the essential facts constituting the claim within 90 days after the claim arose or a reasonable time thereafter, and (3) the delay would substantially prejudice the public corporation in its defense" … . Another factor to consider is whether the claimant was an infant at the time the claim arose and whether there is a nexus between infancy and delay in service … , which was the case here. "'[T]he presence or absence of any one factor is not determinative'" … .

Here, the petitioners established a reasonable excuse for the delay, to wit, the serious medical condition of the infant petitioner, which required numerous medical appointments while the condition of the infant petitioner was being assessed … . The petitioners failed to demonstrate that NYCHHC had actual knowledge of the facts underlying the claim within 90 days after the claim arose or a reasonable time thereafter, since the hospital's records did not evidence that the medical staff, by its acts or omissions, inflicted an injury attributable to malpractice … . However, "[s]ince the conduct at issue was fully documented in the medical records, the petitioner[s] made an initial showing that NYCHHC was not prejudiced by the delay in serving the notice of claim … , and, in response, the NYCHHC made no showing of prejudice" … . Matter of Caceres v NYC Health & Hosps., 2026 NY Slip Op 05182, Second Dept 9-2-26

Practice Point: Here the request to file a late notice of claim was granted despite the fact that the hospital did not have timely notice of the essence of the medical malpractice claim. Petitioners had a reasonable excuse for the delay and the hospital did not demonstrate any prejudice caused by the delay.

September 2, 2026

MEDICAL MALPRACTICE, NEGLIGENCE, MUNICIPAL LAW, CIVIL PROCEDURE, EVIDENCE.

HERE THE MEDICAL RECORDS SUGGESTED INJURY ATTRIBUTABLE TO MEDICAL MALPRACTICE SO THE HOSPITAL WAS DEEMED TO HAVE HAD TIMELY NOTICE OF THE NATURE OF THE MALPRACTICE CLAIM; PLAINTIFF'S MOTION TO DEEM THE LATE NOTICE OF CLAIM TIMELY SERVED NUNC PRO TUNC SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff's motion to deem the late notice of claim timely served nunc pro tunc should have been granted in this medical malpractice action:

On August 31, 2015, the plaintiff, Estefani Tenezaca, gave birth to the infant A.J.L. (hereinafter the infant) at Elmhurst Hospital Center (hereinafter Elmhurst), a facility controlled by the defendant. The infant was born prematurely at 30 weeks gestation and was treated at Elmhurst until September 16, 2015, when she was transferred to another hospital.

In July 2016, the plaintiff, as parent and natural guardian of the infant, served a notice of claim on the defendant, alleging, among other things, medical malpractice in the defendant's treatment of the infant. * * *

The plaintiff's experts opined that the infant suffered a massive bilateral parenchymal hemorrhage as a result of the treatment documented in Elmhurst's records. * * *

Inasmuch as the Elmhurst records, upon independent review, suggested injury attributable to medical malpractice, those records provided the defendant with actual knowledge of the essential facts constituting the claim … . Additionally, the plaintiff made an initial showing that the defendant would not suffer any prejudice by the delay in serving a notice of claim, and the defendant failed to rebut that showing with particularized indicia of prejudice … . The plaintiff also established a reasonable excuse for her failure to timely serve a notice of claim … . Tenezaca v New York City Health & Hosps. Corp., 2026 NY Slip Op 05208, Second Dept 9-2-25

Practice Point: In this medical malpractice action plaintiff moved to deem the late notice of claim timely served. The medical records suggested injury attributable to malpractice. Therefore the hospital was deemed to have had timely notice of the nature of the claim.

September 2, 2026

NEGLIGENCE, CIVIL PROCEDURE, APPEALS.

THE JURY VERDICT IN THIS REAR-END COLLISION TRIAL WAS IRREVOCABLY INCONSISTENT AND SHOULD HAVE BEEN SET ASIDE; THE ISSUE NEED NOT BE PRESERVED FOR APPEAL (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the jury verdict in this rear-end collision case was "irrevocably inconsistent" and must be set aside. The only nonnegligent explanation offered by the defendant was that he suffered a medical emergency just before the collision. On the verdict form the jury answered "no" to the question whether defendant suffered a medical emergency. But the jury also answered "no" to the question whether defendant was negligent in the operation the vehicle:

Supreme Court should have granted that branch of the plaintiff's motion which was pursuant to CPLR 4404(a) to set aside the verdict as against the weight of the evidence and for a new trial. "Where, as here, the jury verdict 'is irreconcilably inconsistent, that verdict must be set aside as contrary to the weight of the evidence'" … . Although the plaintiff did not object to the jury verdict as inconsistent prior to the discharge of the jury, thus failing to preserve an issue of law … "'there is no preservation requirement for weight of the evidence review'" … .

Here, since the only nonnegligent explanation for the accident provided by the defendants was an alleged sudden medical emergency, it was irreconcilably inconsistent for the jury to answer "No" when asked whether the decedent "experience[d] a sudden, unforeseen medical emergency such as a seizure prior to the accident … , and was his operation of the vehicle reasonable under the circumstances," while also responding "No" when asked whether the decedent was "negligent in the operation of the vehicle." Accordingly, there must be a new trial on the issue of liability. Pitt v Rosenblatt, 2026 NY Slip Op 05200, Second Dept 9-2-26

Practice Point: Here the "irrevocably inconsistent" jury verdict was against the weight of the evidence and should have been set aside. The issue need not be preserved for appeal.

September 2, 2026

NEGLIGENCE, EMPLOYMENT LAW, CIVIL PROCEDURE.

HERE IN THIS BUS-TRAFFIC-ACCIDENT CASE, THE DEFENDANTS ADMITTED THE BUS DRIVER WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE ACCIDENT; A NEGLIGENT-HIRING-AND-RETENTION CAUSE OF ACTION, THEREFORE, WAS NOT AVAILABLE TO THE PLAINTIFFS; THE PLAINTIFFS WERE NOT ENTITLED TO DISCOVERY OF THE DRIVER'S PERSONNEL FILE OR THE POLICY MANUAL FOR DRIVER RETENTION AND TRAINING BECAUSE BECAUSE THOSE DOCUMENTS WERE NOT RELEVANT TO THE EMPLOYER'S LIABILITY UNDER RESPONDEAT SUPERIOR (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court in this bus-traffic-accident case, determined that neither the bus driver's personnel file nor the policy manual relating to the retention and training of the bus driver were discoverable. Those records would only be relevant to an action for negligent hiring and retention, which (generally) is not available when the suit against the driver's employer is based upon respondeat superior:

Generally, "where an employee is acting within the scope of his or her employment, the employer is liable for the employee's negligence under a theory of respondeat superior, and a plaintiff may not proceed with a cause of action to recover damages for negligent hiring and retention" … . Thus, since here, the defendants admit that [the driver] was acting within the scope of his employment at the time of the accident, neither his personnel file nor the portions of the defendants' policy manual relating to the retention or training of [the driver] are discoverable … . In addition, the plaintiff failed to show that any alleged remaining portions of the policy manual "would yield matter material and necessary to the prosecution or defense of the action" … . Lewis v New York City Tr. Auth., 2026 NY Slip Op 05175, Second Dept 9-2-26

Practice Point: Where the employer admits the employee was acting within the scope of his employment at the time of the accident, the employer is liable for the negligence of the employee under a theory of respondeat superior. Generally, in that circumstance a negligent hiring and retention cause of action is not available to the plaintiff.

September 2, 2026

NEGLIGENCE, EVIDENCE.

WHETHER A CONDITION IS "OPEN AND OBVIOUS" IS USUALLY A JURY QUESTION;IN THIS SLIP AND FALL CASE, PLAINTIFF TRIPPED AND FELL OVER THE FORK PART OF A FORKLIFT PARKED IN AN AISLE OF A HOME DEPOT STORE; THE ACTION SHOULD NOT HAVE BEEN DISMISSED (SECOND DEPT).

The Second Department, reversing Supreme Court, noted that whether a condition is "open and obvious" is usually a question of fact for the jury:

"A landowner has a duty to maintain its premises in a reasonably safe condition" … . "However, a landowner has no duty to protect or warn against conditions that are open and obvious and not inherently dangerous" … . "The determination of whether an asserted hazard is open and obvious cannot be divorced from the surrounding circumstances, and whether a condition is not inherently dangerous, or constitutes a reasonably safe environment, depends on the totality of the specific facts of each case" … .

Here, the defendants' submissions failed to eliminate all triable issues of fact as to whether the forklift was open and obvious and not inherently dangerous … . "Some hazards, although discernable, may be hazardous because of their nature and location" … . In particular, the plaintiff's deposition testimony raised a triable issue of fact as to whether the forklift's location, in relation to the five quarter decking the plaintiff was loading into his cart when the accident occurred, constituted an inherently dangerous condition … . The plaintiff testified, inter alia, that he could not put his cart right next to the location in the aisle where he was retrieving the five quarter decking because the forklift was in the way. Simon v Plainview Ave. Assoc., 2026 NY Slip Op 05205, Second Dept 9-2-26

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Practice Point: Here plaintiff tripped over the fork part of a forklift parked in an aisle of a Home Depot store. The complaint should not have been dismissed. Whether the condition was open and obvious and not inherently dangerous was a question of fact.

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