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Weekly Reversal
Report
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18, 2026

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CIVIL PROCEDURE, EVIDENCE.

A “CONCLUSORY AND UNSUBSTANTIATED” AFFIDAVIT DENYING DEFENDANT RESIDED AT THE ADDRESS WHERE SERVICE WAS MADE WAS NOT SUFFICIENT TO REBUT THE PRESUMPTION OF PROPER SERVICE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the defendant’s affidavit denying she resided at the address where service was made was insufficient to rebut the presumption of proper service:

“‘Ordinarily, a process server’s affidavit of service constitutes prima facie evidence of proper service and, therefore, gives rise to a presumption of proper service. Where, however, there is a sworn, nonconclusory denial of service by a defendant, the affidavit of service is rebutted and the plaintiff must establish jurisdiction by a preponderance of the evidence at a hearing” “‘While bare and unsubstantiated denials are insufficient to rebut the presumption of service, a sworn denial containing a detailed and specific contradiction of the allegations in the process server’s affidavit will defeat the presumption of proper service”

Here, a process server’s affidavit constituted prima facie evidence of proper service pursuant to CPLR 308(2) upon the defendant Contrary to the defendant’s contention, her affidavit denying that she resided at the address where service allegedly was effectuated was conclusory and unsubstantiated and, therefore, was

insufficient to rebut the presumption of proper service [Cole v Shorter, 2026 NY Slip Op 05273, Second Dept 9-16-26](#)

Practice Point: Here a “conclusory and unsubstantiated” affidavit denying that defendant resided at the address where service was made was deemed insufficient to rebut the presumption of proper service.

September 16, 2026

CIVIL PROCEDURE, FORECLOSURE, JUDGES.

PLAINTIFF BANK’S FAILURE TO MOVE FOR A JUDGMENT OF FORECLOSURE AND SALE AS DIRECTED IN A 2017 ORDER WAS NOT SUFFICIENT GROUNDS FOR THE COURT, SUA SPONTE, TO DISMISS THE COMPLAINT (SECOND DEPT).

The Second Department, reversing Supreme Court in this foreclosure action, determined plaintiff bank’s failure to move for a judgment of foreclosure and sale as directed by a 2017 order was not sufficient grounds for the court, sua sponte, to dismiss the complaint:

“A court’s power to dismiss a complaint, sua sponte, is to be used sparingly and only when extraordinary circumstances exist to warrant dismissal” Here, the plaintiff’s failure to move for a judgment of foreclosure and sale as directed by the March 2017 order was not a sufficient ground upon which to, sua sponte, direct dismissal of the complaint Accordingly, the Supreme Court should have granted those branches of the plaintiff’s motion which were to vacate the August 2017 order and to restore the action to the active calendar. [U.S. Bank, N.A. v Morrison, 2026 NY Slip Op 05346, Second Dept 9-16-26](#)

Practice Point: Appellate courts don’t like sua sponte dismissals of complaints.

Similar issue and result in [Wilmington Sav. Fund Socy., FSB v Hilario, 2026 NY Slip Op 05351, Second Dept 9-16-26](#)

September 16, 2026

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

A MOTION TO RENEW A SUMMARY JUDGMENT MOTION IS THE APPROPRIATE VEHICLE FOR ADDRESSING A CHANGE IN THE LAW; HERE THE FORECLOSURE ABUSE PREVENTION ACT, EFFECTIVE DECEMBER 30, 2022, WARRANTED VACATING THE MAY 15, 2019, ORDER, GRANTING THE MOTION TO RENEW AND DISMISSING THE COMPLAINT AS UNTIMELY (SECOND DEPT).

The Second Department, reversing Supreme Court, determined a motion to renew a prior summary judgment motion was the proper vehicle for asserting the Foreclosure Abuse Prevention Act (FAPA) which became effective December 30, 2022. The motion for summary judgment was denied May 15, 2019:

35 Pleasure moved for leave to renew its prior cross-motion for summary judgment dismissing the complaint insofar as asserted against it and on its counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage. In support of its motion, 35 Pleasure argued that the plaintiff's commencement and voluntary discontinuance of the 2011 action rendered this action untimely under FAPA, which constituted a change in the law. The plaintiff opposed 35 Pleasure's motion, contending, inter alia, that FAPA should not be given retroactive application, and cross-moved, among other things, to confirm the referee's report and for a judgment of foreclosure and sale. * * *

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" (CPLR 2221[e][2]). "Therefore, a motion for leave to renew is the appropriate vehicle for seeking relief from a prior order based on a change in the law * * *

The six-year statute of limitations for this action began to run in December 2011, when the plaintiff commenced the 2011 action and elected in the complaint to call due the entire amount secured by the mortgage In light of the statutory amendments enacted by FAPA, the voluntary discontinuance of the 2011 action did not de-accelerate the mortgage debt, and, thus, the applicable limitations period

expired in December 2017. This action, which was commenced in May 2018, therefore, was untimely Moreover, the plaintiff’s contentions challenging FAPA’s retroactive application and constitutionality are without merit [Bank of N.Y. Mellon v Conforti, 2026 NY Slip Op 05262, Second Dept 9-16-26](#)

Practice Point: A motion to renew is the appropriate vehicle for addressing a change in the law, here the Foreclosure Abuse Prevention Act (FAPA). The cross-motion for summary judgment was denied in 2019. The FAPA became effective December 20, 2022. The motion to renew the cross-motion for summary judgment was denied by Supreme Court in 2024, reversed in 2026.

Similar issues and results in [Pryce v Nationstar Mtge., LLC, 2026 NY Slip Op 05331, Second Dept 9-16-26](#)

September 16, 2026

CIVIL PROCEDURE, FORECLOSURE.

DEFENDANTS’ PARTICIPATION IN FORECLOSURE SETTLEMENT CONFERENCES DID NOT CONSTITUTE AN “APPEARANCE” IN THE FORECLOSURE ACTION; THEREFORE DEFENDANTS COULD MOVE TO DISMISS THE ACTION AS ABANDONED WHERE PLAINTIFF FAILED TO TAKE A TIMELY DEFAULT JUDGMENT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendants in this foreclosure action did not waive their right to seek dismissal pursuant to CPLR 3215(c) by participating in settlement conferences. Pursuant to CPLR 3215(c) a defendant who has not appeared in an action may move to dismiss the action as abandoned where plaintiff has not obtained a default judgment within six years:

... [T]he defendants did not waive their right to seek dismissal pursuant to CPLR 3215(c). A defendant may waive the right to seek dismissal pursuant to CPLR 3215(c) by serving an answer or taking “any other steps which may be viewed as a formal or informal appearance” Here, the defendants did not serve an answer or participate in the action on the merits prior to cross-moving in July 2018, inter alia, pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against

them as abandoned The defendants' participation in settlement conferences pursuant to CPLR 3408 "did not demonstrate a clear intent to participate in the lawsuit on the merits" and thus, did not constitute a formal or informal appearance in the action [Wilmington Sav. Fund Socy., FSB v Dresdner, 2026 NY Slip Op 05350, Second Dept 9-16-26](#)

Practice Point: Participation in foreclosure settlement conferences does not constitute an "appearance" in a foreclosure action.

September 16, 2026

CIVIL PROCEDURE, JUDGES.

FALURE TO COMPLY WITH THE MODE OF SERVICE SPECIFIED IN AN ORDER TO SHOW CAUSE DEPRIVES THE COURT OF JURISDICTION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff did not comply with the mode of service specified in the order to show cause and did not give proper notice of the motion. Therefore, Supreme Court was without jurisdiction to hear it:

The Supreme Court erred in granting the plaintiff's motion for a preliminary injunction and to restore the action to the active calendar. The mode of service provided for in an order to show cause is jurisdictional in nature and must be literally followed The failure to give proper notice of a motion deprives the court of jurisdiction to hear the motion Here, since the plaintiff failed to comply with the directives in the order to show cause, the court was without jurisdiction to entertain the motion [Sosa v Gonzaga, 2026 NY Slip Op 05337, Second Dept 9-16-26](#)

Practice Point: A party's failure to comply with the mode of service specified in an order to show cause deprives the court of jurisdiction to hear the motion.

September 16, 2026

CIVIL PROCEDURE, JUDGES.

THE CONDITIONAL ORDER OF DISMISSAL DID NOT MEET THE REQUIREMENTS OF A VALID 90-DAY NOTICE PURSUANT TO CPLR 3216(A); THEREFORE THE JUDGE COULD NOT, SUA SPONTE, DISMISS THE COMPLAINT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the conditional order of dismissal did not serve as a 90-day notice because it did not state that failure to comply with the notice will serve as a basis for dismissal for failure to prosecute. Therefore the judge did not have the authority, sua sponte, to dismiss the complaint:

“CPLR 3216 permits a court, on its own initiative, to dismiss an action for want of prosecution where certain conditions precedent have been complied with” As relevant here, an action cannot be dismissed pursuant to CPLR 3216(a) ““unless a written demand is served upon the party against whom such relief is sought in accordance with the statutory requirements, along with a statement that the default by the party upon whom such notice is served in complying with such demand within said ninety day period will serve as a basis for a motion by the party serving said demand for dismissal as against him [or her] for unreasonably neglecting to proceed”” “While a conditional order of dismissal may have the same effect as a valid 90-day notice pursuant to CPLR 3216” ... , here, the conditional order of dismissal was defective in that it did not state that the plaintiff’s failure to comply with the notice will serve as a basis for a motion by the court to dismiss the complaint for failure to prosecute “In the absence of proper notice, the court was without power to dismiss the action for the plaintiff’s failure to comply with the conditional order of dismissal” Under these circumstances, the action should have been restored to the active calendar. [Nationstar Mtge., LLC v Adekoje, 2026 NY Slip Op 05315. Second Dept 9-16-26](#)

Practice Point: Although a conditional order of dismissal can serve as a valid 90-day notice pursuant to CPLR 3216, to do so the conditional order of dismissal must meet all the content requirements mandated by CPLR 3216, including informing the plaintiff that the failure to comply will result in dismissal of the complaint.

September 20, 2026

CIVIL PROCEDURE, JUDGES.

THE CONDITIONAL ORDER OF DISMISSAL DID NOT MEET THE REQUIREMENTS OF A VALID 90-DAY NOTICE PURSUANT TO CPLR 3216(A); THEREFORE THE JUDGE COULD NOT, SUA SPONTE, DISMISS THE COMPLAINT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the conditional order of dismissal did not serve as a 90-day notice because it did not state that failure to comply with the notice will serve as a basis for dismissal for failure to prosecute. Therefore the judge did not have the authority, sua sponte, to dismiss the complaint:

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Practice Point: Although a conditional order of dismissal can serve as a valid 90-day notice pursuant to CPLR 3216, to do so the conditional order of dismissal must

meet all the content requirements mandated by CPLR 3216, including informing the plaintiff that the failure to comply will result in dismissal of the complaint.

September 16, 2026

CIVIL PROCEDURE, TRUSTS AND ESTATES.

THERE IS NO RESTRICTION ON THE NUMBER OF TIMES A PLAINTIFF MAY TAKE ADVANTAGE OF THE SIX-MONTH EXTENSION TO FILE A NEW ACTION (CPLR 205(A)) WHERE THE COMPLAINT IS DISMISSED BECAUSE PLAINTIFF HAS NOT YET OBTAINED LETTERS OF ADMINISTRATION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined that the dismissal of a complaint on behalf of a decedent because plaintiff has not yet obtained letters of administration is not on the merits. Therefore a plaintiff can take advantage of the six-month extension to file another action (CPLR 205(a)) every time the complaint is dismissed on that ground:

CPLR 205(a) provides that, “[i]f an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff . . . may commence a new action upon the same transaction or occurrence . . . within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action.” “Dismissal of an action for lack of capacity to sue is not a dismissal on the merits and, therefore, does not preclude the applicability of the six-month savings period under CPLR 205(a)” Where a complaint is dismissed pursuant to CPLR 3211(a)(3) for lack of capacity to sue because the plaintiff has not yet obtained letters to administer the decedent’s estate, “there is no restriction on the number of times that a plaintiff may qualify for a six-month statutory grace period” under CPLR 205(a)

Here, the Supreme Court directed dismissal of the complaint pursuant to CPLR 3211(a)(3) for lack of capacity to sue because the plaintiff had not yet obtained

letters to administer the decedent's estate. Under these circumstances, there is no restriction on the number of times that the plaintiff may qualify for a six-month statutory grace period under CPLR 205(a) [Greene v Five Towns Premier Rehabilitation & Nursing Ctr., 2026 NY Slip Op 05286, Second Dept 9-16-26](#)

Practice Point: Where a complaint is dismissed because plaintiff has not yet obtained letters of administration there is no restriction on the number of times plaintiff can take advantage of the six-month extension to file a new action pursuant to CPLR 205(a).

September 16, 2026

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

HERE PLAINTIFF BANK FAILED TO PROVE THAT THE RPAPL 1304 NOTICE INCLUDED A LIST OF AT LEAST FIVE HOUSING COUNSELING AGENCIES IN THE REGION WHERE DEFENDANT LIVED; FAILURE TO DEMONSTRATE STRICT COMPLIANCE WITH THE RPAPL 1304 NOTICE REQUIREMENTS REQUIRED DENIAL OF THE BANK'S MOTION FOR SUMMARY JUDGMENT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the bank's failure to strictly comply with the content requirements of the RPAPL 1304 notice of foreclosure precluded summary judgment:

... [I]n support of its motion ... for summary judgment on the complaint, the plaintiff submitted ... an affidavit of Shae Smith, a vice president of loan documentation for the plaintiff, who averred therein that a 90-day notice was mailed to the defendant on April 14, 2010. Smith annexed to the affidavit a copy of the notice, which included a list of 17 "HUD Approved Housing Counseling Agencies." However, the plaintiff failed to establish, prima facie, that, of the 17 agencies listed in the RPAPL 1304 notice to the defendant, at least 5 of those agencies served the region where the defendant resided Contrary to the plaintiff's contention, the failure to provide a list of five housing counseling

agencies as required by the statute is not a defect that may be disregarded pursuant to CPLR 2001

Since the plaintiff failed to establish its strict compliance with RPAPL 1304, the Supreme Court should have denied those branches of the plaintiff's motion which were for summary judgment on the complaint and for an order of reference without regard to the sufficiency of the defendant's opposition papers [Wells Fargo Bank, N.A. v Curtis, 2026 NY Slip Op 05348, Second Dept 9-16-26](#)

Practice Point: Proof of strict compliance with the content-requirements of an RPAPL 1304 notice of foreclosure is a prerequisite for summary judgment.

September 16, 2026

LABOR LAW-CONSTRUCTION LAW, JUDGES.

IF THE LADDER DOESN'T MOVE AND PLAINTIFF LOSES HIS BALANCE AND FALLS, THERE IS NO LIABILITY UNDER LABOR LAW 240(1); BUT IF THE LADDER MOVES FOR NO APPARENT REASON LIABILITY ATTACHES (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff in this ladder-fall case was entitled to summary judgment on the Labor Law 240(1) cause of action. The court clearly explained when Labor Law 240(1) liability is triggered by a fall from a ladder. Even if the ladder moves for no apparent reason, liability attaches:

"To establish a violation under Labor Law § 240(1), '[t]here must be evidence that the ladder was defective or inadequately secured and that the defect, or the failure to secure the ladder, was a substantial factor in causing the plaintiff's injuries'"

"The collapse of a scaffold or ladder for no apparent reason while a plaintiff is engaged in an activity enumerated under the statute creates a presumption that the ladder or scaffold did not afford proper protection" "Where, for instance, the plaintiff falls from a ladder because the plaintiff lost his or her balance, and there is no evidence that the ladder was defective or inadequate, liability pursuant to Labor Law § 240(1) does not attach" "By contrast, where a ladder slides, shifts, tips

over, or otherwise collapses for no apparent reason, the plaintiff has established a violation” [Nunez v Trustees of Columbia Univ., 2026 NY Slip Op 05319, Second Dept 9-16-26](#)

Practice Point: Consult this decision for a clear explanation of when Labor Liability 240(1) liability is triggered by a fall from a ladder.

September 16, 2026

NEGLIGENCE, EVIDENCE, JUDGES.

THE DESTRUCTION OF VIDEO EVIDENCE OF THE SLIP AND FALL WARRANTED A SANCTION; HOWEVER, IT WAS AN ABUSE OF DISCRETION TO PRECLUDE THE DEFENSE FROM PRESENTING ANY EVIDENCE RE: LIABILITY; AN ADVERSE INFERENCE CHARGE WITH RESPECT TO THE VIDEO EVIDENCE IS AN APPROPRIATE SANCTION (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the appropriate sanction for the destruction of the video which depicted the slip and fall was an adverse inference charge with respect to the video evidence, not the preclusion of all defense evidence re: liability:

During discovery, the defendants produced a video that was one minute and seven seconds in length and which depicted the moments shortly after the plaintiff’s fall. The premises’s superintendent testified that he recorded the video on his cell phone from the building’s surveillance footage on the day of the incident. The portion of the surveillance video that the superintendent recorded does not capture the moment of the fall itself or any time prior to the fall. * * *

Supreme Court properly determined that an imposition of spoliation sanctions against the defendants was warranted, as the defendants had an obligation to preserve the subject surveillance videos and were at least negligent in failing to preserve them, and the destroyed evidence was relevant to the plaintiff’s claim However, the court improvidently exercised its discretion in precluding the defendants from presenting any testimony, evidence, or defense as to their liability

at trial. Instead, under the circumstances, the court should have directed that an adverse inference charge be given against the defendants at trial with respect to the video surveillance footage of the incident [Alvarez v 100-10 67th Rd. Condominium, 2026 NY Slip Op 05261, Second Dept 9-16-26](#)

Practice Point: Here video evidence of the slip and fall was destroyed warranting a sanction. Preclusion of all defense evidence re: liability was an abuse of discretion. An adverse inference jury instruction was appropriate.

Similar issues and results in [Houghton v Piperaro, 2026 NY Slip Op 05290, Second Dept 9-16-26](#).

September 16, 2026

NEGLIGENCE, EVIDENCE.

ALTHOUGH PLAINTIFF FELL DURING A SNOWSTORM, THE DEFENDANTS DID NOT DEMONSTRATE THE SLIPPERY CONDITION WAS NOT THE RESULT OF A PRIOR STORM; SUMMARY JUDGMENT PURSUANT TO THE STORM IN PROGRESS RULE SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court in this ice and snow slip and fall case, determined defendants did demonstrate entitlement to summary judgment based on the storm in progress rule. Although defendants proved a snowstorm was in progress when plaintiff fell, they did not demonstrate the slippery condition was not the result of a prior storm:

“Under the storm in progress rule, ‘[a] property owner will not be held liable in negligence for a plaintiff’s injuries sustained as the result of an icy condition occurring during an ongoing storm or for a reasonable time thereafter’”

Here, the defendants failed to demonstrate their prima facie entitlement to judgment as a matter of law dismissing the complaint based on the storm in progress rule. Although the evidence submitted by the defendants in support of their motion established that a snowstorm was in progress at the time of the

plaintiff's fall, it failed to eliminate triable issues of fact as to whether the slippery condition upon which the plaintiff fell was the result of a prior storm, rather than the storm that was then in progress, and whether the defendants had constructive notice of the pre-existing condition [Batista v Allerton Ave Estates, LLC, 2026 NY Slip Op 05265, Second Dept 9-16-26](#)

Practice Point: Plaintiff fell during a snowstorm and Supreme Court granted summary judgment to defendants under the storm in progress rule. The Second Department reversed because the defendants did not demonstrate the slippery condition was not the result of a prior storm.

September 16, 2026

NEGLIGENCE, MUNICIPAL LAW, APPEALS.

IT WAS THE MUNICIPALITY'S, NOT THE CLAIMANT'S, OBLIGATION TO RESCHEDULE THE 50-H EXAMINATION AFTER CLAIMANT'S COUNSEL WITHDREW; THEREFORE THE COMPLAINT SHOULD NOT HAVE BEEN DISMISSED BASED ON CLAIMANT'S FAILURE TO APPEAR AT THE EXAMINATION (SECOND DEPT).

The Second Department, reversing Supreme Court on an issue first raised on appeal, determined claimant's failure to appear at an oral examination pursuant to General Municipal Law section 50-h did not warrant dismissal of the complaint. The scheduled examination did not take place because claimant's counsel withdrew. Pursuant to the statute, it was the municipality's, not the claimant's, obligation to reschedule the examination:

Although [plaintiff's] contention is raised for the first time on appeal, we reach the contention because it presents a pure question of law appearing on the face of the record which could not have been avoided if raised at the proper juncture

“The purpose of General Municipal Law § 50-h is to enable a municipality to make a prompt investigation of the circumstances of a claim by examining the claimant about the facts of the claim” “The oral examination of a claimant pursuant to General Municipal Law § 50-h serves to supplement the notice of

claim and provides an investigatory tool to the municipality, with a view toward settlement” Generally, such examination must be conducted within 90 days of the service of the demand (see General Municipal Law § 50-h[5]). ““Compliance with a demand for an oral examination pursuant to General Municipal Law § 50-h and Public Housing Law § 157(2) is a condition precedent to the commencement of an action against the defendant New York City Housing Authority” . . . , and a plaintiff’s failure to so comply warrants dismissal of the action

However, pursuant to General Municipal Law § 50-h(5), “[i]f the claimant requests an adjournment or postponement beyond the ninety day period, the [municipality] shall reschedule the [examination] for the earliest possible date available.” Thus, “[w]hen . . . the [examination] has been postponed indefinitely beyond 90 days after service of the demand and the municipality does not reschedule the [examination], a plaintiff’s failure to appear for a[n examination] will not warrant dismissal of the complaint” [Jones v New York City Hous. Auth., 2026 NY Slip Op 05293, Second Dept 9-16-26](#)

Practice Point: Pursuant to General Municipal Law 50-h, if a claimant requests an adjournment or a postponement of a 50-h examination, it is the municipality’s, not the claimant’s, obligation to reschedule.

September 16, 2026

NEGLIGENCE, VEHICLE AND TRAFFIC LAW.

IN THIS REAR-END COLLISION CASE, DEFENDANT’S AFFIRMATION THAT PLAINTIFF STOPPED IN THE HIGHWAY LANE FOR NO APPARENT REASON RAISED A QUESTION OF FACT (SECOND DEPT).

The Second Department, reversing Supreme Court in this rear-end collision case, determined defendant’s affirmation that plaintiff stopped for no apparent reason raised and question of fact:

... [T]he plaintiffs established their prima facie entitlement to judgment as a matter of law on the issue of liability through the submission of the plaintiff driver’s affidavit, in which he averred that his vehicle was struck in the rear by the

defendants' vehicle (see Vehicle and Traffic Law § 1129[a] ...). However, an affirmation of the defendant driver, submitted in opposition to the motion, raised triable issues of fact as to whether the defendant driver had a nonnegligent explanation for the defendants' vehicle striking the rear of the plaintiffs' vehicle. According to the defendant driver, the plaintiff driver was solely at fault for causing the accident by making a sudden stop for no apparent reason in the middle of their lane of traffic on the highway [Ramirez v Red Cloud Trucking, Inc., 2026 NY Slip Op 05332, Second Dept 9-16-26](#)

Practice Point: In this rear-end collision case, defendant's affirmation that plaintiff stopped in the highway lane for no apparent reason raised a question of fact whether there was a nonnegligent explanation for striking the back of plaintiff's vehicle.

September 16, 2026

NEGLIGENCE.

LENDING A KNIFE TO AN ACQUAINTANCE, WITHOUT INQUIRING AS TO ITS USE, DID NOT CREATE A DUTY OWED TO THE PERSON STABBED BY THE ACQUAINTANCE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the action against defendant store owners (F & S LLC) who gave defendant a knife which defendant used to stab the plaintiff should have been dismissed. The store owners did not owe a duty to plaintiff:

The plaintiff allegedly sustained personal injuries when the defendant William Volkes stabbed him with a knife. The incident allegedly occurred after the plaintiff attempted to retrieve his girlfriend's cell phone from Volkes, with whom the plaintiff's girlfriend was acquainted. After the plaintiff recovered the cell phone from Volkes, Volkes allegedly fled approximately one block to the defendant Frank and Sal, LLC (hereinafter F & S), a grocery market where he was a regular customer.

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Once inside F & S, Volkes approached the deli section and allegedly asked an employee, who recognized Volkes, for a knife. Without inquiring into the purpose of Volkes's request, but knowing him as a regular customer, the employee allegedly provided Volkes with a boning knife kept behind the deli counter. Volkes then allegedly exited F & S with the knife, returned to the plaintiff, and stabbed him. * *

F & S established, prima facie, that it did not owe a duty to the plaintiff. F & S's submissions established that it did not have sufficient authority and ability to control Volkes after he exited the premises and that it did not have a special relationship with the plaintiff In opposition, the plaintiff failed to raise a triable issue of fact. Accordingly, the Supreme Court should have granted F & S's motion for summary judgment dismissing the complaint insofar as asserted against it ...

. [Torres v Frank & Sal, LLC, 2026 NY Slip Op 05340, Second Dept 9-16-26](#)

Practice Point: Consult this decision for a rare discussion of a "duty" in the context of a negligence action. Here the defendants who gave an acquaintance a knife without inquiring as to its use did not owe a duty to the person stabbed by the acquaintance.

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