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An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts October 12 – 16, 2026, and Posted on the New York Appellate Digest Website on Friday, October 23, 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
October 12 – 16,
2026

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ATTORNEYS, CONTRACT LAW, DEBTOR-CREDITOR.

ALTHOUGH PLAINTIFF WAS ENTITLED TO ATTORNEY'S FEES IN THE ORIGINAL SUIT ON THE NOTE, PLAINTIFF WAS NOT ENTITLED TO "FEES ON FEES" INCURRED DEFENDING DEFENDANTS' APPEAL OF THE ORIGINAL JUDGMENT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff (Davidoff) was not entitled to an award of "fees on fees." Defendants (the Hershfields) had appealed a judgment on a note which included an award of attorney's fees to Davidoff. Davidoff then sued the Hershfields for the attorney's fees incurred in defending the appeal, so-called "fees on fees." The Second Department held that the language of the note did not support a "fees on fees" award:

Davidoff commenced the instant action against the Hershfields, alleging that under the terms of the note, he was entitled to recover attorneys' fees and costs in connection with the prior appeal and in bringing this action. ...

... Supreme Court granted Davidoff's cross-motion for summary judgment on the issue of liability The court determined that Davidoff was entitled to recover his attorneys' fees in connection with the prior appeal and the instant action under the clear terms of the note. ...

... Supreme Court should have denied Davidoff's cross-motion for summary judgment on the issue of liability and should have granted the Hershfields' motion pursuant to CPLR 3211(a) to dismiss the complaint. "The construction and interpretation of an unambiguous written contract is an issue of law within the province of the court, as is the inquiry of whether the writing is ambiguous in the first instance. If the language is free from ambiguity, its meaning may be determined as a matter of law on the basis of the writing alone without resort to extrinsic evidence" "[A]n award of attorneys' fees for the costs incurred in prosecuting a claim for an award of attorneys' fees, so called 'fees on fees,' must be based upon a specific contractual provision or statute" "Consequently, where a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed"

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... Davidoff failed to establish his prima facie entitlement to judgment as a matter of law on the issue of liability for breach of contract. The note did not contain clear language expressly providing for the prevailing party to recover fees on fees or any reference to fees incurred to recover attorneys' fees "Given the absence of unmistakably clear intent regarding the recovery of fees on fees, a right to recover those fees should not be implied" [Davidoff v Hershfield, 2026 NY Slip Op 05931, Second Dept 10-14-26](#)

Practice Point: To recover "fees on fees" the relevant contract must explicitly refer to fees incurred to recover attorney's fees.

October 14, 2026

CIVIL PROCEDURE, CORPORATION LAW, FIDUCIARY DUTY, FRAUD, NEGLIGENCE.

A FEDERAL COURT APPOINTED PLAINTIFF-RECEIVER TO TAKE OVER A BUSINESS RUNNING A PONZI SCHEME; THE PLAINTIFF-RECEIVER SUED THE BROKER TO WHICH THE PONZI-SCHEME FUNDS WERE TRANSFERRED; BECAUSE PLAINTIFF-RECEIVER STEPPED INTO THE SHOES OF A WRONGDOER (THE PONZI SCHEME OPERATOR) TO SUE ANOTHER WRONGDOER (THE BROKER), THE "IN PARI DELICTO" ("IN EQUAL FAULT") DOCTRINE APPLIED TO PROHIBIT THE SUIT (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Michael, over a comprehensive dissenting opinion, determined the plaintiff-receiver (appointed by the federal court to takeover a business running a Ponzi scheme) was prohibited from suing the broker to which the Ponzi scheme funds were transferred by the doctrine of "in pari delicto" ("in equal fault"). Under the doctrine, the courts will not get involved in a suit between two wrongdoers. The issue in this case is whether the court-appointed receiver steps into the shoes of the "Ponzi scheme" wrongdoer. The First Department held that the doctrine applies to the receiver, over an extensive dissent:

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The common law doctrine of in pari delicto “mandates that the courts will not intercede to resolve a dispute between two wrongdoers” In other words, the doctrine bars a corporation engaged in wrongdoing from suing its co-conspirators on the grounds of negligence or fraud “The justice of the in pari delicto rule is most obvious where a willful wrongdoer is suing someone who is alleged to be merely negligent” The notion that “a wrongdoer should not profit from his own misconduct is so strong in New York that we have said the defense applies even in difficult cases and should not be weakened by exceptions”

The wrongdoer’s misconduct is not only imputed to the corporation through the bad acts of its officers ... , but also to the corporation’s successors

Plaintiff [receiver] argues, and the dissent agrees, that the in pari delicto doctrine does not apply to plaintiff because he is not a derivative shareholder plaintiff or a bankruptcy trustee appointed pursuant to 11 USC § 541, but rather a receiver appointed pursuant to 28 USC § 3103. It is true that plaintiff, as a receiver, is not subject to section 541 of the Bankruptcy Code. Nevertheless, there is no significant difference between bankruptcy trustees and nonbankruptcy receivers for purposes of in pari delicto [Castleman v Interactive Brokers LLC, 2026 NY Slip Op 05904, First Dept 10-13-26](#)

Practice Point: Here the “in pari delicto” (“in equal fault”) doctrine was applied to prohibit a suit by a court-appointed receiver which had taken over a business running a Ponzi scheme. The receiver sued the broker to which the Ponzi-scheme funds had been transferred. Under the “in pari delicto” doctrine, a court will not get involved in a dispute between wrongdoers. The doctrine applies to a wrongdoer’s successor, even a court-appointed receiver.

October 13, 2026

CIVIL PROCEDURE, EVIDENCE, MEDICAL MALPRACTICE, NEGLIGENCE.

NEW GROUNDS OR EVIDENCE IN SUPPORT OF PLAINTIFFS' MOTION TO DISMISS RAISED IN REPLY SHOULD NOT HAVE BEEN CONSIDERED (SECOND DEPT).

The Second Department, reversing Supreme Court, noted that new arguments or evidence presented in the reply papers should not have been considered:

... [P]laintiffs failed to establish that the defendant's affirmative defense alleging the expiration of the statute of limitations was without merit as a matter of law. The plaintiffs' moving papers did not support their conclusory allegations that the defendant's treatment of the injured plaintiff beginning on May 11, 2021, and continuing through July 15, 2022, made their action timely based on the continuous treatment doctrine The plaintiffs' attempt to remedy this deficiency by submitting portions of a purported medical chart through their counsel's reply affirmation was improper. The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new grounds or evidence in support of the motion [Malone v Spaliviero, 2026 NY Slip Op 05948, Second Dept 10-14-26](#)

Practice Point: Here new evidence submitted in reply papers should not have been considered by the court.

October 14, 2026

CIVIL PROCEDURE, JUDGES.

DENIAL OF DEFENDANT'S MOTION TO SERVE A LATE ANSWER WAS AN ABUSE OF DISCRETION; THE DELAY WAS SHORT (18 DAYS), CREATED NO PREJUDICE, AND THE LAW OFFICE FAILURE WAS REASONABLE (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendant's (Husain's) motion to serve a late answer should have been granted:

The 18-day delay in answering the complaint was relatively short and plaintiff suffered no prejudice from the delay; indeed, Husain has already been deposed by the wife’s counsel In addition, the law office failure that occasioned the delay was reasonable, and there is no evidence that it was due to willfulness. Husain’s counsel explained that he inadvertently missed the deadline for answering the amended complaint because of work obligations related to this action — namely, preparing for and participating in an April 10, 2025 arbitration hearing concerning related claims, as well as preparing for a June 2025 trial in this action — and because of a break for a religious holiday Given the surrounding circumstances, Supreme Court should have granted the motion, especially in light of the strong public policy in favor of resolving cases on the merits . . .

[.Dalessandro v Dalessandro, 2026 NY Slip Op 06000, First Dept 10-15-26](#)

Practice Point: Consult this decision for insight into the factors a court should consider when ruling on a motion to serve a late answer.

October 15, 2026

CONTRACT LAW.

DEFENDANTS REPUDIATED THE HOME-RENOVATION CONTRACT WHEN THEY SUBMITTED A PROPOSED CHANGE ORDER REQUESTING ADDITIONAL PAYMENTS AND THREATENED TO STOP WORK IF PLAINTIFFS DID NOT AGREE; THE REPUDIATION ENTITLED PLAINTIFFS TO DAMAGES FOR TOTAL BREACH (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendants (Star) repudiated the home-renovation contract when they submitted a proposed change order and threatened to stop work unless paid in accordance with the change order. The repudiation entitled plaintiffs to damages for a total breach:

On January 14, 2022, Star sent plaintiffs a proposed “Change Order 11,” which sought payment of \$117,200 for overhead allegedly incurred between September and December 2021 and additional monthly payments of \$29,300 starting in January 2022 through the project’s conclusion. Plaintiffs refused to approve

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Change Order 11 and, by January 24, 2022, Star substantially ceased performing on the project. * * *

Plaintiffs are entitled to summary judgment on their breach of contract claim because they proved as a matter of law that defendants repudiated the contract. “[W]hen a party repudiates contractual duties prior to the time designated for performance and before all of the consideration has been fulfilled, the repudiation entitles the nonrepudiating party to claim damages for total breach” ... Here, the record establishes that defendants repudiated the contract by issuing a change order requesting additional payments followed by a threat to not return to the job unless plaintiffs agreed to pay the initial amount demanded, which threat was fulfilled when they abandoned the project [Ho v Star Contrs., Inc., 2026 NY Slip Op 05908, First Dept 10-13-26](#)

Practice Point: Here the defendants, by demanding more payments and threatening to stop work if their demands were not met, repudiated the home-renovation contract entitling plaintiffs to damages for total breach.

October 13, 2026

CRIMINAL LAW, CONSTITUTIONAL LAW, JUDGES.

ONE PROSPECTIVE JUROR TESTIFIED THE DEFENDANT ATTEMPTED TO COMMUNICATE WITH HER; THE JUDGE GRANTED THE PEOPLE’S MOTION TO DISMISS THE ENTIRE JURY PANEL; BECAUSE THE JUDGE DID NOT FIRST QUESTION THE REMAINING JURORS ON THE PANEL ABOUT THEIR ABILITY TO BE FAIR AND IMPARTIAL BEFORE DISMISSING THEM, THE JUDGE EFFECTIVELY DEPRIVED DEFENDANT OF HIS CONSTITUTIONAL RIGHT TO A PARTICULAR JURY CHOSEN ACCORDING TO LAW (SECOND DEPT).

The Second Department, reversing the judgment of conviction and ordering a new trial, determined the judge should not have dismissed the entire jury panel without conducting an inquiry. One prospective juror on the panel alleged the defendant tried to communicate with her. The People moved to dismiss the panel which the

judge granted without questioning the remaining jurors about their ability to be fair and impartial:

“A defendant has a constitutional right to a trial by a particular jury chosen according to law, in whose selection [the defendant] has had a voice” ... Pursuant to Criminal Procedure Law article 270, the first 12 members of the jury panel who are not excluded as prescribed by the statute constitute the trial jury ... Where a jury panel is “properly drawn and sworn to answer questions truthfully, there must be legal cause or a peremptory challenge to exclude a [prospective] juror” (... see CPLR 270.15 ...). “A defendant ‘is ... entitled to insist that the jury shall be selected according to methods established with a view to secure a just and impartial administration of the jury system ... The court cannot arbitrarily, and without cause, set aside a competent juror. Neither the court nor the parties can select the jury, except in the way pointed out by the statute’” ... * * *

By dismissing the entire jury panel without questioning the ability of the individual prospective jurors to be fair and impartial ..., the court deprived defendant of a jury chosen “at random from a fair cross-section of the community” ... [People v Gaston, 2026 NY Slip Op 05971, Second Dept 10-14-26](#)

Practice Point: A judge cannot arbitrarily and without cause dismiss a competent juror. Here the judge dismissed an entire panel of prospective jurors because one prospective juror alleged the defendant tried to communicate with her. In that situation, the judge should have questioned the remaining prospective jurors about their ability to be fair and impartial to determine if there was cause for dismissal.

October 14, 2026

CRIMINAL LAW, EVIDENCE.

THE PROOF OF PHYSICAL INJURY WAS NOT SUFFICIENT TO SUPPORT THE STRANGULATION AND ASSAULT CONVICTIONS (SECOND DEPT).

The Second Department reversed strangulation and assault convictions because the proof of physical injury was insufficient:

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The injuries to the victim's neck, described as "redness," "small black and blue marks," and "little scratches" are insufficient to establish physical injury * * *

The object was described by the victim as "something that was like metal," which caused tiny red marks on the victim's stomach. This evidence was insufficient to prove that the object was a dangerous instrument ... capable of causing serious physical injury [People v Guzman, 2026 NY Slip Op 05972, Second Dept 10-14-26](#)

Practice Point: Strangulation and assault require proof of physical injury. The minor injuries proven in this case did not support the convictions.

October 14, 2026

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

HERE THE BORROWER DIED AND DEFENDANT INHERITED THE PROPERTY SUBJECT TO THE BORROWER'S MORTGAGE; THE BANK'S FAILURE TO COMPLY WITH THE NOTICE OF FORECLOSURE REQUIRMENTS IN RPAPL 1304 IS A DEFENSE WHICH IS PERSONAL TO THE BORROWER; IT IS NOT AVAILABLE TO THE DEFENDANT, A "STRANGER TO THE NOTE AND MORTGAGE" (FIRST DEPT).

The First Department, reversing Supreme Court, determined the bank's failure to comply with RPAP 1304 (notice of foreclosure) is a personal defense to the borrower and does not apply to a stranger to the note and mortgage. Here the borrower died and defendant inherited the property:

Supreme Court should have granted plaintiff's motion for summary judgment and an order of reference because defendant lacks standing to raise a defense based on plaintiff's failure to comply with RPAPL 1304. Plaintiff does not dispute that the loan was a home loan subject to the statute and that, therefore, Wells Fargo needed to comply with it as a condition precedent to bringing this action. However, "[n]oncompliance with RPAPL 1304 . . . in a mortgage agreement [is a] personal

defense[] that may not be raised by parties who are strangers to the subject note and mortgage” ... Here, once plaintiff discontinued the action as against the father’s estate, the case continued against defendant solely in his individual capacity as current owner of the property. Even though defendant remains an obligor in the sense that he acquired the property subject to his father’s mortgage, he is no different from any other transferee of property subject to a mortgage, and thus he is a stranger to the note and mortgage instruments and lacks standing to raise an RPAPL 1304 defense, which is personal to the borrower [Wilmington Sav. Fund Socy. v Lopez, 2026 NY Slip Op 06037, First Dept 10-15-26](#)

Practice Point: A bank’s failure to comply with the notice of foreclosure requirements in RPAPL 1304 is a defense which is personal to the borrower. Here the defense could not be raised by defendant who inherited the property from the borrower. Defendant was a “stranger to the note and mortgage.”

October 15, 2026

HUMAN RIGHTS LAW, EMPLOYMENT LAW, ADMINISTRATIVE LAW, MUNICIPAL LAW.

DEFENDANT EMPLOYER’S FAILURE TO ENGAGE IN COOPERATIVE DIALOGUE REGARDING ACCOMMODATION FOR THE DISABLED PLAINTIFF WARRANTED SUMMARY JUDGMENT ON PLAINTIFF’S NYC HUMAN RIGHTS LAW CLAIM (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined the disabled plaintiff was intitled to summary judgment on his NYC Human Rights Law claim because defendant-employer failed to engage in a cooperative dialogue regarding accommodation for his disability:

... [P]laintiff is entitled to summary judgment on his City HRL claim based on defendant’s failure to engage, within a reasonable time, in a cooperative dialogue regarding his accommodation, as the record presents no issues of fact as to defendant’s failure to engage plaintiff in a cooperative dialogue once defendant became aware of his condition (see Administrative Code of City of NY §§ 8-102;

8-107[28][a] ...). Contrary to defendant’s contention, an employer’s failure “to engage in a good faith interactive process is . . . independently actionable under the [City] HRL” [Kocher v Mount Sinai Hosp., 2026 NY Slip Op 06007, First Dept 10-15-26](#)

Practice Point: An employer’s failure to engage in cooperative dialogue with a disabled worker about accommodation for the disability violates the NYC Human Rights Law.

October 15, 2026

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

WHETHER PLAINTIFF FELL FROM THE SIXTH STEP OF AN UNSECURED A-FRAME LADDER OR THE SECOND STEP WAS IRRELEVANT; BOTH ARE COVERED UNDER LABOR LAW 240(1) (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff was entitled to summary judgment on the Labor law 240(1) cause of action in this ladder-fall case. Whether plaintiff fell from the sixth step of the A-frame ladder or the second step was irrelevant:

Plaintiff “established prima facie entitlement to summary judgment on his Labor Law § 240(1) claim by submitting proof, including an expert affidavit, that he fell from an unsecured [eight]-foot A-frame ladder that suddenly moved” as he was removing plywood sheets from the ceiling above him Plaintiff’s testimony that he fell from the ladder after it was struck by a falling piece of plywood is uncontroverted. It is irrelevant whether plaintiff was on the sixth step of the ladder when the plywood fell, as he testified, or on the second step of the ladder, as his coworker averred, because a fall from a height of two feet can constitute the type of elevation-related risk that is covered by the protections of Labor Law § 240(1)

Defendants’ argument that plaintiff was the sole proximate cause of his accident is unavailing. Even if plaintiff was negligent, it is “conceptually impossible” for a plaintiff’s negligence to be the sole proximate cause where it is shown that

defendants' violation of Labor Law § 240(1) was also a proximate cause of the accident In any event, plaintiff was not solely liable for the accident, because he followed his employer's instruction in performing the work [De Souza v 4720 Third Ave LLC, 2026 NY Slip Op 05905, First Dept 10-13-26](#)

Practice Point: A fall from the second step of an unsecured A-frame ladder is covered under Labor Law 240(1) (two feet in height).

October 13, 2026

LABOR LAW-CONSTRUCTION LAW.

LABOR LAW 240(1) APPLIES TO INJURIES INCURRED WHILE ENGAGED IN CONSTRUCTION WORK AS DEFINED BY THE STATUTE; THE REACH OF LABOR LAW 200 IS NOT CONFINED TO CONSTRUCTION WORK; PLAINTIFF, WHO WAS STRUCK BY LOOSE PIECES OF PLYWOOD, WAS NOT ENGAGED IN CONSTRUCTION WORK WHEN INJURED; THE MOTION TO AMEND THE COMPLAINT TO ADD A LABOR LAW 240(1) CAUSE OF ACTION WAS THEREFORE PROPERLY DENIED; BUT THE MOTION TO AMEND THE COMPLAINT TO ADD A LABOR LAW 200 CAUSE OF ACTION SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined plaintiff's motion to amend the complaint to add a Labor Law section 200 cause of action should have been granted. Plaintiff was injured when struck by loose pieces of plywood. The motion to amend the complaint to add a Labor Law 240(1) cause of action was properly denied because the statute applies only to injuries incurred in construction activities (for which plaintiff was not employed). However Labor Law 200 deals with the duty to maintain a safe workplace and is not confined to construction work. Therefore the motion to add the Labor Law 200 cause of action should have been granted:

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While the reach of Labor Law § 240(1) is not limited to work performed on actual construction sites, the task in which an injured employee was engaged must have been performed during “the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure” This definition excludes routine maintenance The plaintiff’s deposition testimony demonstrated that he was employed as a porter and not in the erection, demolition, repairing, altering, painting, cleaning, or pointing of a building or structure within the meaning of Labor Law § 240(1) when he put his hand on the unsecured plywood

Accordingly, the Supreme Court providently exercised its discretion in denying that branch of the plaintiff’s motion which was pursuant to CPLR 3025(b) for leave to amend the complaint to add a cause of action alleging a violation of Labor Law § 240(1).

However, the Supreme Court improvidently exercised its discretion in denying that branch of the plaintiff’s motion which was pursuant to CPLR 3025(b) for leave to amend the complaint to add a cause of action alleging a violation of Labor Law § 200. Labor Law § 200 codifies the common-law duty of an owner or general contractor to maintain a safe workplace Contrary to the defendants’ contention, the protection of Labor Law § 200 is not confined to construction work but covers all places to which the Labor Law applies [Neil v Areeba, Inc., 2026 NY Slip Op 05963, Second Dept 10-14-26](#)

Practice Point: The reach of Labor Law 240(1) is confined to construction work. The reach of Labor Law 200 is not so confined.

October 14, 2026

NEGLIGENCE, TRUSTS AND ESTATES.

PLAINTIFF’S HUSBAND ALLEGEDLY BECAME INTOXICATED AT DEFENDANT’S RESTAURANT, FELL DOWN A STAIRCASE AND DIED FROM HIS INJURIES; PURSUANT TO THE DRAM SHOP ACT, PLAINTIFF WIFE SUED THE RESTAURANT BOTH INDIVIDUALLY AND AS EXECUTOR OF DECEDENT’S ESTATE; HER INDIVIDUAL SUIT SURVIVED DISMISSAL; BUT THE SUIT ON BEHALF OF DECEDENT’S ESTATE WAS DISMISSED; AN INTOXICATED PERSON, OR THE ESTATE OF AN INTOXICATED PERSON, CAN NOT SUE UNDER THE DRAM SHOP ACT FOR INJURIES RESULTING FROM INTOXICATION (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined Vera, the widow of the allegedly intoxicated decedent, could sue under the Dram Shop Act individually, but not as a representative of the decedent’s estate. Decedent fell down a staircase at defendant restaurant (Shuko):

In this Dram Shop Act action, plaintiffs allege that defendant Shuko, a restaurant, repeatedly served alcoholic beverages to the decedent, causing his intoxication and subsequent fall down a staircase inside the restaurant. The decedent sustained severe injuries which, according to plaintiffs, later resulted in his death. Vera, who is the decedent’s widow, is suing both in her individual capacity and as executor of the decedent’s estate, and is seeking damages, inter alia, for loss of support. * * *

...Vera’s allegations that Shuko sold alcohol to the decedent despite his being visibly intoxicated, and that she was personally injured by the loss of means of support is sufficient to survive a motion to dismiss

However, while “[t]he Dram Shop Act creates a cause of action in favor of a third party injured or killed by an intoxicated person, [] it does not create a cause of action in favor of the intoxicated person” Accordingly, “an intoxicated person or his or her estate cannot maintain a cause of action under the Dram Shop Act for injuries sustained as a result of that person’s own intoxication” The second cause of action against defendant Shuko therefore fails to state a cause of action

insofar as it is asserted on behalf anyone other than plaintiff Vera individually. [Vera v BH Broadway Owner LLC, 2026 NY Slip Op 05921, First Dept 10-13-26](#)

Practice Point: Here the Dram Shop Act was applied where an intoxicated restaurant patron fell down a restaurant staircase and subsequently died from his injuries. Decedent's wife could sue the restaurant under the Dram Shop Act in her individual capacity for loss of support. However, decedent's wife could not sue under the Dram Shop Act on behalf of the decedent's estate. ... "[A]n intoxicated person or his or her estate cannot maintain a cause of action under the Dram Shop Act for injuries sustained as a result of that person's own intoxication"

October 13, 2026

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