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Weekly Reversal Report
October 19 – 23, 2026

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts October 19 – 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.

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ARBITRATION, CIVIL PROCEDURE, INSURANCE LAW.

HERE THE ARBITRATOR'S AWARD BECAME DORMANT WHEN DE NOVO PROCEEDINGS WERE STARTED BUT WAS REVIVED WHEN THE DE NOVO PROCEEDINGS WERE DISMISSED FOR FAILURE TO COMPLY WITH DISCOVERY DEMANDS (SECOND DEPT).

The Second Department, reversing Supreme Court, determined that the arbitration award remained dormant when the de novo proceedings were brought but revived when the de novo proceedings were dismissed for failure to comply with discovery demands:

… [T]he commencement of the de novo action did not eliminate the master arbitration award but only placed it in a dormant state. An award by an arbitrator shall be binding, except for the grounds for review set forth in CPLR article 75, and except where a de novo review is sought (see Insurance Law § 5106[c]). Under certain circumstances, an arbitration award is presumed to be dormant while the de novo action is pending … . An arbitration award is revived when that action is dismissed for failure to prosecute or other similar basis not on the merits … . Here, the dismissal of the complaint in the instant action due to the plaintiff's failure to comply with discovery demands revived the master arbitration award and made it binding on the parties. Thus, under the circumstances, the Supreme Court should have granted that branch of the defendant's motion which was to confirm the master arbitration award … . American Tr. Ins. Co. v Bliss Acupuncture, P.C., 2026 NY Slip Op 06081, Second Dept 10-21-26

Practice Point: Here the arbitrator's award became dormant when de novo proceedings were brought but was revived when the de novo proceedings were dismissed for failure to comply with discovery demands.

October 21, 2026

CRIMINAL LAW, EVIDENCE.

A POLICE OFFICER SHOULD NOT HAVE BEEN ALLOWED TO GIVE HIS OPINION ABOUT WHAT WAS DEPICTED IN SURVEILLANCE VIDEOS, NEW TRIAL ORDERED (SECOND DEPT).

The Second Department, reversing the judgment of conviction and ordering a new trial, determined a police officer should not have been allowed to offer an opinion about what was depicted in surveillance videos:

Supreme Court should have precluded the testimony of a police detective regarding his opinion as to what was depicted on various surveillance videos. "It is, of course, the role of the jury to determine the facts of the case tried before it" … . "Generally, lay witnesses must testify only to the facts and not to their opinions and conclusions drawn from the facts, as it is the jury's province to draw the appropriate inferences arising from the facts" … . Here, considerable portions of the detective's testimony improperly usurped the jury's function by interpreting the evidence and was improperly admitted into evidence as relevant to the detective's investigation … . Rather than aiding the jury in understanding the investigation, the detective improperly narrated the video, and the detective's interpretation of the video improperly "instruct[ed] the jury on the existence of the facts needed to satisfy the elements of the charged offense" … . The error cannot be deemed harmless since the evidence of the defendant's guilt, without reference to the error, was not overwhelming, and it cannot be said that there is no significant probability that the jury would have acquitted the defendant had it not been for the error … . People v Vincent, 2026 NY Slip Op 06149, Second Dept 10-21-26

Practice Point: Here, allowing a police officer to give his opinion about what was depicted in surveillance videos usurped the jury's function.

October 21, 2026

CRIMINAL LAW, EVIDENCE.

DEFENDANT WAS CHARGED WITH CRIMINAL TRESPASS FOR ENTERING A WORKSHOP OWNED BY DECEDENT; DEFENDANT SOUGHT TO TESTIFY THE DECEDENT HAD GIVEN HIM PERMISSION TO ENTER THE WORKSHOP; THE TESTIMONY WAS PRECLUDED AS HEARSAY; BUT THE HEARSAY WAS ADMISSIBLE TO DEMONSTRATE DEFENDANT'S STATE OF MIND WHEN ENTERING THE WORKSHOP; NEW TRIAL ORDERED (THIRD DEPT).

The Third Department, reversing the criminal trespass conviction and ordering a new trial on that charge, determined the judge should not have precluded the defendant from testifying that the decedent had granted defendant permission to enter decedent's workshop. The testimony but precluded as inadmissible hearsay. But the testimony was offered to demonstrate defendant's state of mind, a nonhearsay purpose:

… [A] new trial is required in connection with this charge due to County Court's erroneous preclusion of evidence. Prior to trial, the People sought to preclude defendant from testifying that he had been granted permission by decedent to enter his workshop. Defendant opposed, and the court granted the motion on the ground that such evidence would constitute inadmissible hearsay. However, this proof would have been relevant and admissible for a nonhearsay purpose, i.e., to establish defendant's state of mind when he entered the workshop … . Recognizing that the question of whether defendant believed he had decedent's permission to enter bore directly upon whether he did so knowingly and unlawfully that is, without license or privilege (see Penal Law §§ 140.00 [5]; 140.10 [a]) as required to establish this crime, the court's ruling effectively prevented him from exercising his constitutional right to present a defense, and this error cannot be said to be harmless … . People v Bombard, 2026 NY Slip Op 06175, Second Dept 10-22-26

Practice Point: Hearsay can be admissible to demonstrate a person's state of mind. Here evidence the decedent gave the defendant permission to enter decedent's workshop constituted a defense to the criminal trespass charge. To exclude the testimony deprived defendant of his constitutional right to put on a defense.

October 21, 2026

CRIMINAL LAW, EVIDENCE.

IN THIS STREET STOP, THE POLICE WERE JUSTIFIED IN FRISKING THE DEFENDANT BUT WERE NOT JUSTIFIED IN REACHING INSIDE A POCKET TO RETRIEVE THE ROBBERY VICTIM'S DRIVER'S LICENSE; BECAUSE THE DRIVER'S LICENSE CORROBORATED OTHER EVIDENCE, MAKING CONVICTION MORE LIKELY, A NEW TRIAL WAS ORDERED (SECOND DEPT).

The Second Department, reversing several convictions and ordering a new trial on the relevant counts, determined the police were justified in frisking the defendant not in removing the robbery victim's driver's license from defendant's pocket. The driver's license corroborated other evidence making the robbery and possession of stolen property convictions more likely:

… Supreme Court properly determined that since the defendant fit the description heard over the radio and he was in close spatial and temporal proximity to the scene of the robbery, the police officers reasonably suspected that the defendant was the perpetrator of the robbery. Furthermore, the police officers were justified in performing a protective frisk since they had reasonable suspicion that the defendant was armed and dangerous since he had a box cutter in his hand, and the police officers had concerns for safety, entitling them to conduct a protective frisk … . However, here, there was no justification for searching the defendant's pants pocket, reaching into it, and removing the driver license … , as there was no evidence presented at the suppression hearing that, during his frisk of the defendant, Officer Mancuso felt anything in the defendant's pocket that seemed to be a weapon or that could have posed a further danger to the police officers at the scene. In the course of conducting a protective pat-down based upon reasonable

suspicion, "[o]nce an officer has concluded that no weapon is present, the search is over and there is no authority for further intrusion" … . Thus, there was no lawful basis for removing the driver license from the defendant's pocket … . Accordingly, the People failed to satisfy their burden of going forward to establish the legality of police conduct in the first instance, and thus, the driver license should have been suppressed. People v Sanchez, 2026 NY Slip Op 06146, Second Dept 10-21-26

Practice Point: Here the police were justified in frisking the defendant for weapons. But, because the frisk did not indicate the presence of a weapon, the police were not justified in reaching inside defendant's pocket and seizing the robbery victim's driver's license.

October 21, 2026

CRIMINAL LAW, JUDGES, APPEALS.

THE JUDGE ENGAGED IN EXCESSIVE AND PREJUDICIAL QUESTIONING OF TRIAL WITNESSES DEPRIVING DEFENDANT OF A FAIR TRIAL; THE "ERROR" WAS NOT PRESERVED; THE COURT EXERCISED ITS "INTEREST OF JUSTICE" JURISDICTION TO CONSIDER THE ISSUE AND REVERSE (SECOND DEPT).

The Second Department, reversing the judgments of conviction and ordering a new trial, determined the judge engaged in excessive and prejudicial questioning of witness depriving defendant of a fair trial. The "error" was not preserved but the Second Department exercised their interest of justice jurisdiction:

… [T]here must be a new trial, before a different Justice, because the Supreme Court conducted excessive and prejudicial questioning of trial witnesses. Here, the court interjected itself into the questioning of multiple witnesses and generally created the impression that it was an advocate for the People … . Although the defendant failed to preserve his claim that he was deprived of a fair trial because the court interfered with the questioning of witnesses (see CPL 470.05[2]), based on the circumstances of this case, we reach this contention in the exercise of our

interest of justice jurisdiction … . People v Chimborazo, 2026 NY Slip Op 06132, Second Dept 10-21-26

Practice Point: Appellate courts will reverse a conviction if the judge intervenes too much with prejudicial questioning of witnesses, even where the issue is not preserved.

October 21, 2026

CRIMINAL LAW, JUDGES, ATTORNEYS.

THE JUDGE RESPONDED TO A NOTE FROM ONE OF THE JURORS WHO EXPRESSED FRUSTRATION WITH ANOTHER JUROR; THE JUDGE SPOKE TO HER ALONE AND APPARENTLY REVIEWED THE INSTRUCTIONS HE HAD GIVEN THE JURY ABOUT MEANINGFUL AND GOOD FAITH DELIBERATIONS; THAT WAS A MODE OF PROCEEDINGS ERROR REQUIRING REVERSAL AND A NEW TRIAL (THIRD DEPT).

The Third Department, reversing the judgment of conviction and ordering a new trial, on writ of error coram nobis alleging ineffective appellate counsel, determined the trial judge committed a mode of proceedings error by instructing a single juror in the absence of the remaining jurors:

On the fifth day of deliberations, the trial judge placed on the record that he had received a note from one of the jurors asking to speak with him and that, "with the consent of the attorneys," he engaged in an off-the-record discussion with the juror in his chambers. Although the discussion was not transcribed, the trial judge explained that the juror had vented her frustration about the manner in which another juror was deliberating with her, revealing that "she was taking her role as a juror seriously" and that she was "being confronted" by another juror "when she voiced an opinion on issues" and "ask[ed] specific questions." In response, the trial judge informed the juror that she "ha[d] a right to ask questions, and [the other jurors] ha[d] an obligation to deliberate with her and to respond to her in a civil manner." The trial judge further revealed that, during the discussion with this juror, he "substantially reviewed with her the instructions that [he had given] to all the

jurors regarding the requirement of meaningful and in-good-faith deliberations." After the trial judge placed such exchange on the record, defendant's counsel revealed that he was contemplating requesting that the court charge the entire jury on civility. However, he ultimately declined to do so.

… [W]e disagree with the People's assertion that County Court's off-the-record discussion with the juror was ministerial in nature. Although the juror's note was ambiguous and the discussion in chambers was not transcribed — making it impossible to know the precise nature of the conversation — County Court revealed that it had "substantially reviewed" with the juror the instructions it had previously provided to the entire jury panel regarding meaningful and good faith deliberations. As noted by the Court of Appeals, " 'there are few moments in a criminal trial more critical to its outcome than when the court responds to a deliberating jury's request for clarification of the law or further guidance on the process of deliberations'" … . Under the circumstances presented, we conclude that the court's conversation with the juror — which included providing a substantive instruction on the jurors' obligations during the deliberative process — was not ministerial in nature, violated defendant's right to be present at all material stages of the trial and constituted a mode of proceedings error … . People v Anderson, 2026 NY Slip Op 06169, Third Dept 1-22-26

Practice Point: Here the judge's meeting with a juror alone and reviewing some of the jury instructions outside the presence of the other jurors was deemed a mode of proceedings error requiring reversal.

October 22, 2026

FORECLOSURE, CIVIL PROCEDURE, EVIDENCE.

THE BANK DID NOT DEMONSTRATE IT HAD STANDING TO FORECLOSE; THE PROOF OF POSSESSION OF THE NOTE AND MORTGAGE DOCUMENTS AT THE TIME THE ACTION WAS BROUGHT WAS DEFICIENT; CRITERIA EXPLAINED (THIRD DEPT).

The Third Department, reversing Supreme Court, determined the bank in this foreclosure proceeding was not entitled to summary judgment because it did not establish standing to foreclose:

Although plaintiff attached a copy of the underlying note to the complaint and affirmed therein that it was in possession of the note prior to commencement of the action, the copy of the note attached to the complaint was not endorsed in blank, specially endorsed to plaintiff or accompanied by an allonge containing the required endorsements … . "[W]here there is no allonge or note that is either endorsed in blank or specially endorsed to the plaintiff, mere physical possession of a note at the commencement of a foreclosure action is insufficient to confer standing or to make a plaintiff the lawful holder of a negotiable instrument for the purposes of enforcing the note" … .

Plaintiff's evidence in support of its summary judgment motion also did not establish its standing to foreclose the mortgage. In that regard, plaintiff submitted with its motion papers, among other things, a copy of the underlying note and two undated allonges, one of which contained a special endorsement that made the note payable to the order of plaintiff. However, mere possession of such allonges was insufficient to establish standing without evidence that they were "so firmly affixed" to the note "as to become a part thereof" at the time the action was commenced (UCC § 3-202 [2] …). U.S. Bank N.A. v Sukljian, 2026 NY Slip Op 06191, Third Dept 10-22-26

Practice Point: Consult this decision for a detailed description of the documents the bank must possess to have standing to bring a foreclosure action.

October 22, 2026

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

ALTHOUGH "ALICE" DID NOT SIGN THE NOTE, SHE WAS NAMED AS A "BORROWER" IN THE MORTGAGE DOCUMENT AND WAS THEREFORE ENTITLED TO THE RPAPL 1304 NOTICE OF FORECLOSURE (SECOND DEPT).

The Second Department, reversing Supreme Court, determined "Alice," who was named as a "borrower" in the mortgage document, was entitled to the RPAPL 1304 notice of foreclosure notwithstanding that she did not sign the note:

Alice was entitled to notice pursuant to RPAPL 1304 as a "borrower" within the meaning of that statute. Although Alice did not sign the subject note, she executed the mortgage as "Borrower," she was identified as a borrower on the first page of the mortgage agreement, and she agreed in the mortgage agreement to pay the amounts due under the note. "'Where, as here, a homeowner defendant is referred to as a "borrower" in the mortgage instrument and, in that capacity, agrees to pay amounts due under the note, that defendant is a "borrower" for the purposes of RPAPL 1304, notwithstanding . . . any ambiguity created by a provision in the mortgage instrument to the effect that parties who did not sign the underlying note are not personally obligated to pay the sums secured'" … . Bank of Am., N.A. v Maddox, 2026 NY Slip Op 06084, Second Dept 10-21-26

Practice Point: Here "Alice" was named as a "borrower" in the mortgage document but she did not sign the note. She was still entitled to the RPAPL 1304 notice of foreclosure.

October 21, 2026

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

THE REQUIREMENTS FOR AN RPAPL 1304 NOTICE OF FORECLOSURE ARE STRICTLY CONSTRUED; HERE THE OMISSION OF A WEBSITE ADDRESS FROM THE NOTICE RESULTED IN DISMISSAL OF THE FORECLOSURE ACTION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the omission of a website address from the RPAPL 1304 foreclosure notice required dismissal of the foreclosure action:

The RPAPL 1304 notices purportedly sent to the defendant failed to include the website address for the NYS Office of the Attorney General's Homeowner Protection Program, http://www.aghomehelp.com/—a piece of information specifically required by the version of RPAPL 1304 in effect at the time the notices were sent—and thus, the notices were facially defective … . * * * Accordingly, the court should have granted that branch of the defendant's cross-motion which was for summary judgment dismissing the complaint insofar as asserted against him. Bethpage Fed. Credit Union v Pepe, 2026 NY Slip Op 06085, Second Dept 10-21-26

Practice Point: Any omission from the statutorily required contents of an RPAPL 1304 notice will result in dismissal of the foreclosure action. Here a website address was missing and the complaint was dismissed.

October 21, 2026

INSURANCE, CONTRACT LAW, MEDICAL MALPRACTICE, NEGLIGENCE.

IN THIS DECLARATORY JUDGMENT ACTION, THE COURT OF APPEALS AFFIRMED THE FINDING THAT THE PHYSICIAN SUED BY A PATIENT FOR MEDICAL MALPRACTICE WAS COVERED BY THE DEFENDANT-INSURER'S POLICY (CT APP).

The Court of Appeals, affirming the Appellate Division in this action for a declaratory judgment, determined the physician, Dr. Kolli, who was sued by a patient, was covered by defendant insurance carrier, Kaleida Health:

We agree with the lower courts that Dr. Kolli is covered pursuant to the unambiguous terms of Kaleida's self-insurance plan (SIP) and Kaleida's employment agreement with Dr. Kolli. Kaleida's SIP expressly stated that physicians employed by Kaleida for the purpose of providing patient care are "covered persons" while "acting on behalf of, or at the direction of" Kaleida. And section 6 (a) of Dr. Kolli's employment agreement with Kaleida unambiguously provided that he would be covered by Kaleida's SIP when acting pursuant to the employment agreement, as he was when he treated the patient at a Kaleida facility pursuant to his duties as a Kaleida on-call physician. We agree with the lower courts that Kaleida's proposed reading of section 6 (b) (ii) of the employment agreement is not reasonable because it would render other provisions of the employment agreement a nullity. Specifically, Kaleida's proposed interpretation would mean that Dr. Kolli was never covered under the SIP, despite the unambiguous terms to the contrary in section 6 (a) of the employment agreement. Instead, we agree with the Appellate Division that the only reasonable interpretation of section 6 (b) (ii) is that it applied when Dr. Kolli treated his private practice patients at a Kaleida facility, as opposed to patients he treated for the first time while performing his on-call duties for Kaleida. Kolli v Kaleida Health, 2026 NY Slip Op 06167, Ct App 10-22-26

October 22, 2026

LABOR LAW-CONSTRUCTION LAW.

PLAINTIFF FELL FROM GROUND LEVEL TO A BELOW-GROUND-LEVEL ENTRANCEWAY; HE THEREFORE FELL FROM AN ELEVATED WORK SITE IN THE ABSENCE OF AN ADEQUATE SAFETY DEVICE AND WAS ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined plaintiff, who fell from ground level to a below-ground-level entranceway was entitled to summary judgment on the Labor Law 240(1) cause of action:

Plaintiff, employed as a plumber's assistant, was injured when he fell over a barrier from the sidewalk level into a below-ground entranceway while attempting to retrieve a pipe at the bottom of the entranceway. Plaintiff was instructed to work near the barrier or "fence" above the underground entranceway to set up a winch, and as such was required to lean over the barrier to perform his work. Thus, even if plaintiff was working on the ground level, he was working on an elevated work site and was not provided with adequate safety devices to protect him from falling over the barrier … . Nunez v Hispanic Socy. of Am., 2026 NY Slip Op 06206, First Dept 10-22-26

Practice Point: Falling from ground level to below ground level in the absence of an adequate safety device warrants summary judgment on a Labor Law 240(1) cause of action.

October 22, 2026

LANDLORD-TENANT, CONTRACT LAW, ADMINISTRATIVE LAW, CONSTITUTIONAL LAW.

THE "GUARANTY LAW," ENACTED BY THE NYC COUNCIL DURING COVID, DID NOT VIOLATE THE CONTRACTS CLAUSE OF THE U.S. CONSTITUTION (DISAGREEING WITH THE SOUTHERN DISTRICT); THE GUARANTY LAW PRECLUDED THE ENFORCEMENT OF PERSONAL LIABILITY GUARANTIES OF CERTAIN COMMERCIAL LEASES FOR 16 MONTHS (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Rosado, over a dissenting opinion, determined the "guaranty law," enacted during COVID, did not violate the Contracts Clause of the US Constitution:

This case calls on us to determine the constitutionality of New York City Administrative Code § 22-1005, commonly referred to as the "guaranty law." Enacted by the New York City Council in the early stages of the COVID-19 pandemic, the guaranty law precluded the enforcement of personal liability guaranties of certain commercial leases for a statutorily prescribed 16-month period. Principally, we are asked to decide whether this law, which the City Council passed as a means of mitigating the economic fallout of the public health crisis and to help small business owners avoid personal bankruptcy, impermissibly impairs existing contractual obligations in violation of the Contracts Clause of article I, section 10 of the United States Constitution. … [W]e conclude that the guaranty law does not violate the Contracts Clause.

[Overview of the facts:]

… [T]he landlord entered into a lease agreement with the tenant to rent the lower level of its building … for a 10-year term expiring on August 31, 2025. As principal of the tenant, a gallery that conducts shows for artists and sells artwork, the guarantor signed a "good guy" guaranty, agreeing to personally guaranty the tenant's obligations under the lease. …

In March 2020, the tenant stopped paying rent, and by email dated November 1, 2020, the guarantor informed the landlord that the tenant intended to surrender the

space back to the landlord on November 30, 2020. The tenant agreed to forfeit the security deposit to "settle up," and by email dated December 7, 2020, the guarantor informed the landlord that the tenant had closed the gallery and returned the keys that day.

The landlord commenced this action against the tenant and the guarantor, asserting causes of action for (1) breach of lease, (2) breach of guaranty, (3) attorneys' fees under the guaranty, and (4) attorneys' fees under the lease. The landlord sought to enforce the lease and personal guaranty … . 513 W. 26th Realty LLC v George Billis Galleries, Inc., 2026 NY Slip Op 06058, First Dept 10-20-26

October 20, 2026

LANDLORD-TENANT, CONTRACT LAW, REAL PROPERTY LAW.

HERE PLAINTIFF ADEQUATELY ALLEGED A RELETTING FEE (TWO MONTHS RENT) IN A LEASE BUYOUT AGREEMENT VIOLATED REAL PROPERTY LAW SECTION 227 WHICH PROVIDES THAT IF THE LANDLORD EXPEDITIOUSLY RELETS THE PROPERTY THE OUTGOING TENANT MAY OWE NOTHING AT ALL; PLAINTIFF SUCCESSFULLY ALLEGED THE RELETTING-FEE CLAUSE VIOLATED THE COVENANT OF GOOD FAITH AND FAIR DEALING (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined plaintiff adequately alleged the reletting fee (two months rent) in a lease buyout agreement violated the Real Property Law and thereby violated the covenant of good faith and fair dealing:

… Real Property Law § 227-e expressly provides, "Any provision in a lease that exempts a landlord's duty to mitigate damages under this section shall be void as contrary to public policy." Under Real Property Law § 227-e, if a landlord's reletting efforts succeed expeditiously, a tenant may not owe anything at all, as plaintiff alleges should have been the case here.

At this stage the allegations are sufficient to sustain plaintiff's claim that the lease's reletting fee and the lease buyout agreement violate Real Property Law § 227-e, which, if established, would constitute a breach of the covenant of good faith and fair dealing. The covenant, implied in all New York contracts, requires the parties to avoid doing "anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract" and includes all "promises which a reasonable person in the position of the promisee would be justified in understanding were included" … . As the amended complaint adequately alleges, a promise not to charge amounts barred by Real Property Law § 227-e is among those promises. Desai v Ninety Five Wall St. LLC, 2026 NY Slip Op 06198, First Dept 10-22-26

Practice Point: Real Property Law section 227 provides that if a landlord successfully relets the premises expeditiously, the outgoing tenant may owe the landlord nothing. Therefore a lease buyout agreement which requires a reletting fee (two months rent) may impose a charge barred by Real Property Law 227 and thereby violate the covenant of good faith and fair dealing.

October 22, 2026

NEGLIGENCE, MUNICIPAL LAW.

THE CITY'S PROOF IT DID NOT HAVE PRIOR WRITTEN NOTIFICATION OF THE CONDITION WHICH CAUSED PLAINTIFF TO FALL WAS INSUFFICIENT; THE CITY'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the city did not prove it did not have prior written notice of the defective boardwalk board which caused plaintiff to fall. Therefore the city's motion for summary judgment should have been denied:

"'Where a locality has enacted a prior notification law and is alleged to be liable for personal injuries sustained as a result of a defective condition, the locality establishes a defense as a matter of law by demonstrating that it did not receive prior written notice of the defective condition'" … . "Administrative Code of the

City of New York § 7-201(c) limits the City's duty of care over municipal streets and sidewalks by imposing liability only for those defects or hazardous conditions which its officials have been actually notified exist at a specified location" … .

Here, the defendants failed to demonstrate, prima facie, that they did not receive prior written notice of the alleged defect. In support of their motion, the defendants submitted, inter alia, the affidavit of the Legal Liaison for the Parks Department, who indicated that she conducted a search of the relevant records related to the subject boardwalk over a period of two years prior to the date of the accident. However, the affidavit did not unequivocally assert that the search failed to reveal any prior written notice of the alleged defect on the boardwalk … . Moreover, the searched records apparently were not attached to the affidavit and, under the circumstances, the defendants otherwise failed to show that all of the relevant records were searched … . Accordingly, the Supreme Court should have denied the defendants' motion for summary judgment dismissing the complaint regardless of the sufficiency of the plaintiff's opposition papers … . Young v City of New York, 2026 NY Slip Op 06166, Second Dept 10-21-26

Practice Point: Consult this decision for insight into the proof a municipality must submit to demonstrate a lack of written notice of a dangerous condition which cause a plaintiff's injury. Here the evidence fell short.

October 21, 2026

NEGLIGENCE, VEHICLE AND TRAFFIC LAW, CIVIL PROCEDURE, EVIDENCE.

EVEN THOUGH DEFENDANT HAD THE RIGHT OF WAY, A JURY COULD FIND THAT PLAINTIFF'S VEHICLE WAS ALREADY IN THE INTERSECTION AND DEFENDANT FAILED TO USE REASONABLE CARE TO AVOID THE COLLISION; DEFENDANTS' MOTION FOR A JUDGMENT AS A MATTER OF LAW DISMISSING THE COMPLAINT SHOULD NOT HAVE BEEN GRANTED; EVIDENCE OF DAMAGE TO THE VEHICLES SHOULD NOT HAVE BEEN PRECLUDED IN THE LIABLITY PORTION OF THE TRIAL BECAUSE THE NATURE OF THE DAMAGE HAD SOME RELEVANCE TO LIABILITY (SECOND DEPT).

The Second Department, reversing Supreme Court and ordering a new trial in this intersection traffic-accident case, determined defendants were not entitled to a judgment as a matter of law dismissing the complaint at the close of plaintiff's case. The Second Department held that a jury could find that, although defendant (Capobianco) had the right of way, plaintiff was already in the intersection and Capobianco failed to exercise reasonable care to avoid the collision. In addition, the Second Department found that Supreme Court should not have excluded evidence of the damage to the vehicles because the damage was relevant to liability for failure to see what should have been seen:

Pursuant to Vehicle and Traffic Law § 1142(a), a driver entering an intersection controlled by a stop sign must yield the right-of-way to any other vehicle that is already in the intersection or that is approaching so closely as to constitute an immediate hazard … , and a driver with the right-of-way is entitled to assume that other drivers will obey the traffic law requiring them to yield … . A driver also has a common-law duty to see that which should have been seen through the proper use of the driver's senses … . Thus, while a driver with the right-of-way who has only seconds to react to a vehicle that has failed to yield is not comparatively negligent for failing to avoid the collision … , he or she still has a duty to exercise reasonable care to avoid a collision with another vehicle already in the intersection … .

Here, affording the plaintiff every inference which may properly be drawn from the facts presented, and considering the facts in the light most favorable to the plaintiff, there is a rational process by which the jury could have found that even if Capobianco had the right-of-way, the plaintiff's vehicle was already in the intersection, and that Capobianco failed to exercise reasonable care to avoid the collision … . Accordingly, the Supreme Court should have denied the defendants' motion pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint.

In addition, the Supreme Court improvidently exercised its discretion in precluding photographs depicting the nature and extent of damage to the parties' vehicles after the accident. Even where a trial is bifurcated, some evidence of damages may nevertheless be admitted, in the trial court's discretion, to establish liability at the liability phase of the trial, so long as such evidence is probative of liability and accompanied by an appropriate limiting instruction … . Pruessen v Richard Capobianco, Inc., 2026 NY Slip Op 06155, Second Dept 10-21-26

Practice Point: A driver who had the right of way may still be liable in an intersection traffic accident if the other driver was already in the intersection and the driver who had the right of way did not exercise reasonable care to avoid the collision.

Practice Point: In a bifurcated traffic-accident trial, evidence of the nature of the damage to the vehicles may have relevance to liability and, if so, should be admitted.

October 21, 2026

NEGLIGENCE, VEHICLE AND TRAFFIC LAW.

DEFENDANT IN THIS INTERSECTION TRAFFIC ACCIDENT CASE HAD THE GREEN LIGHT AND WAS GOING STRAIGHT; PLAINTIFF WAS IN THE INTERSECTION MAKING A LEFT TURN FROM THE ONCOMING LANE; THERE WAS A QUESTION OF FACT ABOUT WHO HAD THE RIGHT OF WAY UNDER THE VEHICLE AND TRAFFIC LAW (FIRST DEPT).

The First Department, reversing Supreme Court, determined there was a question of fact concerning which of the two vehicles which collided had the right of way. Defendant had the green light and was driving straight. Plaintiff was making a left turn across defendant's lane. Pursuant to Vehicle and Traffic Law section 1141, if plaintiff was in the process of turning when the light turned green, plaintiff would have had the right of way:

Plaintiff argues that defendant was required under Vehicle and Traffic Law § 1111 to yield the right-of-way because plaintiff's vehicle was in the intersection before defendant's vehicle … . Vehicle and Traffic Law § 1111 provides, in relevant part, that traffic facing a steady green signal — here defendant — may proceed straight but shall yield the right of way to other traffic lawfully within the intersection at the time the signal is exhibited. Plaintiff testified that he almost completed his left turn through the intersection when he first saw defendant. The evidence does not conclusively establish which vehicle was required to yield. Moreover, both parties testified that the truck blocked the intersection and prevented them from being able to observe oncoming traffic.

Additionally, under Vehicle and Traffic Law § 1143, a driver "about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed." Plaintiff contends that defendant was required to yield because defendant attempted to enter the roadway from the bicycle and parking lanes to get around the truck. However, the record does not provide conclusive evidence of each vehicle's location leading up to the accident and which party ultimately had a duty to yield. Accordingly, there are questions of fact precluding summary dismissal of plaintiff's complaint. Sanchez-Rodriguez v Bruce, 2026 NY Slip Op 06077, First Dept 10-20-26

Practice Point: In an intersection accident case where one vehicle is traveling straight through the intersection on green and the oncoming vehicle is in the intersection making a left turn when the light changed, the vehicle which is in the intersection first has the right of way (Vehicle and Traffic Law 1141).

October 20, 2026

PRODUCTS LIABILITY, NEGLIGENCE, JUDGES.

HERE THE JURY WAS PRESENTED WITH SEPARATE INTERROGATORIES FOR "STRICT PRODUCTS LIABILITY" AND "NEGLIGENT DESIGN" RESULTING IN AN INCONSISTENT VERDICT; THE JURY FOUND THE DESIGN DEFECTIVE AND NOT REASONABLY SAFE BUT ALSO FOUND THE DEFENDANT WAS NOT NEGLIGENT IN SELECTING THE DESIGN; NEW TRIAL ORDERED (THIRD DEPT).

The Third Department, reversing the judgment and ordering a new trial, determined the jury interrogatories in this products liability case led to an inconsistent verdict. Based on the interrogatories, the jury found the product (an automobile air bag system) was negligently designed and not safe but further found defendant (BMW) was not negligent in selecting that design:

… BMW contends that the verdict sheet is internally inconsistent and fatally flawed because it failed to combine plaintiff's three causes of action into a single set of interrogatories, despite each cause of action being legally synonymous with the others. We find this contention to have merit. Under CPLR 4111 (c), "when the answers on a verdict sheet 'are inconsistent with each other and one or more is inconsistent with the general verdict, the court shall require the jury to further consider its answers and verdict or it shall order a new trial' " … . An inconsistency occurs "only when a verdict on one claim necessarily negates an element of another cause of action" … . Where, like here, a plaintiff "has pleaded both strict liability and negligent design causes of action, the standards set forth" for resolving a strict products liability claim "apply to both" … — and a verdict sheet which purports to inquire separately into whether a design was "negligent" or "not reasonably safe" is essentially "redundant" … . …

Here, plaintiff's strict products liability and negligent design claims were both premised upon BMW's use of an untethered, deflector-equipped driver-side airbag rather than a tethered design, and the same evidence concerning the risks and utility of that design and the feasibility of the proposed alternative was offered to support both theories. BMW objected to separate interrogatories, warning that they could produce inconsistent findings, and proposed a single interrogatory asking whether the airbag was "defectively or negligently designed." Plaintiff opposed that request, expressly stating that he was "willing to accept the risk of an inconsistent verdict." Supreme Court submitted the claims separately, resulting in a jury verdict finding that the airbag was defectively designed because it was not reasonably safe, but that BMW was not negligent in selecting that same design. Janof v Auto Warehouse, 2026 NY Slip Op 06189, Third Dept 10-22-26

Practice Point: Consult this decision for insight into the overlap between strict products liability and negligent design theories and how separate jury interrogatories for each can result in an inconsistent verdict requiring a new trial.

October 22, 2026

REAL PROPERTY LAW.

PLAINTIFF ACQUIRED TITLE TO THE DISPUTED PROPERTY BY ADVERSE POSSESSION; TWO JUDGES DISSENTED (CT APP).

The Court of Appeals, affirming the Appellate Division, determined the plaintiff had obtained title to the disputed property by adverse possession. There was an extensive two-judge dissent:

We agree with the courts below that, on the unique facts of this case, plaintiff was entitled to summary judgment. Plaintiff's proof on each of the required elements was sufficient to establish title by adverse possession … , and in response defendants raised no triable issue of fact. Among other evidence establishing hostile and exclusive possession of the road, plaintiff's submissions demonstrated that "it was only plaintiff that had plowed, patched, paved, repaired, and otherwise maintained the entire road for decades" … . Although adverse possession is "not a favored method of procuring title" … , it is a "necessary means of clearing

disputed titles" and serves an "important policy of repose" … . It is time for repose here. Genesee County Fish & Game Protective Assn., Inc. v Sullivan, 2026 NY Slip Op 06168, Ct App 10-22-26

October 22, 2026

TRUSTS AND ESTATES, ATTORNEYS, CIVIL PROCEDURE, FIDUCIARY DUTY.

THE PETITION RAISED THE QUESTION WHETHER THE APPELLANT'S DAUGHTER AND THE FAMILY ATTORNEY CAUSED THE APPELLANT TO MISS THE DEADLINES FOR FILING A SPOUSAL ELECTION; ALTHOUGH THE STATUTORY DEADLINES CANNOT BE EXTENDED, THE MATTER OF FIRST IMPRESSION HERE ASKS WHETHER APPELLANT'S DAUGHTER IS EQUITABLY ESTOPPED FROM INVOKING THE DEADLINES (FIRST DEPT).

The First Department, reversing Surrogate's Court, in a full-fledged opinion by Justice Shulman, in a matter of first impression, over an extensive dissenting opinion, determined the facts alleged, if proven, could support the application equitable estoppel to preclude respondent-daughter from invoking statutory deadlines preventing her mother (the appellant) from filing a spousal election. The petition raised the question whether respondent daughter and the family attorney caused appellant to miss the deadlines:

Appellant is the 88-year-old surviving spouse of the decedent, her husband of 64 years. Over the course of their marriage, they acquired, rehabilitated, and operated 14 East Village buildings forming the core of a family real estate enterprise ultimately valued at more than $45 million. Appellant handled day-to-day management while the decedent handled the financials. Their two children include respondent and a son, Carlo. * * *

Following the decedent's death, appellant experienced significant medical challenges and cognitive vulnerability leading to hospitalization and rehabilitation. During this period, the family's long-time attorney, nonparty Gregg Weiss,

prepared a broad, highly customized power of attorney naming respondent as attorney-in-fact. This document granted wide authority, with powers far beyond those typically granted in the statutory form, including the power to engage in trust related transactions. It was brought to appellant in the rehabilitation facility, where she signed it without any discussion or explanation of its consequences. * * *

Despite representing appellant and decedent's estate at the time, Weiss never provided appellant with any drafts beforehand, nor is there any indication Weiss reviewed drafts with her or discussed their legal significance. These are just some of the facts the petition alleges that were the product of fiduciary nondisclosure and conflict. Critically, a video recording in the record shows respondent presenting the documents to appellant, who mutely signs them while visibly medicated on Lorazepam and impaired, without reading or understanding their terms. Matter of Giurdanella, 2026 NY Slip Op 06234, First Dept 10-22-26

October 22, 2026

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