No. 7
February 18, 2026

NEW YORK OFFICIAL REPORTS

ADVANCE SHEETS

Law Reporting Bureau

No. 7
February 18, 2026

NEW YORK OFFICIAL REPORTS

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COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed by the Court of Appeals Clerk's Office 1/16/26-1/22/26

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rules of the Court of Appeals (22 NYCRR) § 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rules of the Court of Appeals (22 NYCRR) § 500.23 and direct any questions to the Clerk's Office.

For January 16, 2026 through January 22, 2026, the following preliminary appeal statements were filed:

NELSON v NYC TRANSIT AUTHORITY (2025 NY Slip Op 81088[U]):

APL-2026-00002

3rd Dept. App. Div. order of 11/20/25; denial of motion; sua sponte examination of whether a substantial constitutional question is directly involved in the order appealed from; **Unemployment Insurance—Whether the Unemployment Insurance Appeal Board decision, ruling that claimant was disqualified from receiving benefits, was properly affirmed; alleged constitutional violations;** App. Div. affirmed decision of the Unemployment Insurance Appeal Board, filed February 22, 2023, which ruled that claimant was disqualified from receiving unemployment insurance benefits because his employment was terminated due to misconduct; App. Div. denied motion for reargument or leave to appeal.

PEOPLE v WILLIAMS (JAMARLY) (241 AD3d 1106):

APL-2025-00207

1st Dept. App. Div. order of 9/18/25; affirmance; leave to appeal granted by Gesmer, J., 11/20/25; **Crimes—Identification of Defendant—Whether defendant's motion to suppress the eyewitness's identification was properly denied; Whether the trial court abused its discretion in permitting the eyewitness to identify defendant in surveillance video footage; Whether the eyewitness's testimony was incredible as a matter of law; Crimes—Right to Counsel—Whether trial counsel was ineffective for failing to move to renew the motion to dismiss the indictment and for failing to object to statements made by the prosecutor;** Supreme Court, Bronx County, denied defendant's motion to vacate the judgment of

conviction pursuant to CPL 440.10; Supreme Court, Bronx County, convicted defendant, after a jury trial, of murder in the second degree, and sentenced him to a term of 22 years to life; App. Div. affirmed, with two Justices dissenting.

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ARBITRATION.

CONFIRMING OR VACATING AWARD.

No-Fault Arbitration — Attorney's Fees.—Petitioner provider was entitled to attorney's fees in its proceeding to confirm a master arbitration award which respondent insurer failed to timely pay. The No-Fault Law under Insurance Law article 51 was implemented with the legislative aim of curtailing delay and reducing expense in the adjustment of motor vehicle accident claims, and the regulations were written to encourage the prompt payment of claims and to penalize delays. Consequently, where an insurer fails to timely pay the amounts set forth in a master arbitration award and the provider commences a proceeding pursuant to CPLR 7510 to confirm the master arbitration award so that it can be reduced to a judgment, the provider is entitled to an award of attorney's fees, fixed by the court, for the proceeding as well as for fees incurred on the appeal.— *New York Recovery PT, P.C. v American Tr. Ins. Co.*, 88 Misc 3d 1.

ATTORNEY AND CLIENT.

DISCIPLINARY PROCEEDINGS.

Resignation.—Inasmuch as resignor's proffered resignation complied with the requirements of 22 NYCRR 1240.10 in that her affidavit attested that the resignation was submitted voluntarily, without coercion or duress, and with full awareness of the consequences, and she acknowledged that the Court's approval of the application would result in the entry of an order disbarring respondent, and that she could not successfully defend herself against charges of professional misconduct if they were predicated upon the matters under investigation, including a commercial matter that was dismissed at least in part due to respondent's failure to appear in court, and respondent's commencement of an action, subsequently advising the client that she could no longer provide representation, then failing to formally withdraw as counsel, resignor's resignation was accepted and she was immediately disbarred.— *Matter of Darby*, 244 AD3d 133.

Suspension.—Pursuant to the reciprocal disciplinary provision of 22 NYCRR 1240.13, respondent was suspended from the practice of law for a period of one year based upon similar discipline imposed by the Supreme Court of Tennessee, which differed in permitting three months to be served as an active suspension and the remainder to be served on probation, for the mishandling of levied funds in a commercial landlord and tenant matter and dishonest conduct before that court related to those funds. As the Appellate Division does not have a policy of staying suspensions to impose a probationary period, a one-year suspension was appropriate. Moreover, there was no evidence of good cause to grant nunc pro tunc relief. Respondent notified the Attorney Grievance Committee (AGC) of his suspension fairly close to the time he was suspended; he was reinstated on a probationary basis to the Tennessee bar; and the AGC did not substantially delay in seeking reciprocal discipline, nor did respondent voluntarily cease practicing law in New

INSURANCE—Cont'd

Any scenario wherein an insured is assigning its claims against its insurer to a plaintiff, in exchange for a covenant not to execute, necessarily takes place when the insured has been abandoned by its insurer. In New York, an insurer that breaches its duty to defend a claim for loss that is covered under its policy will be held liable for the insured's reasonable settlement of that claim, regardless of whether the insurer consented to such settlement. Thus where, like here, the insurance provider is the one potentially in breach of the insurance contract, the insured is justified in taking affirmative steps to limit its own liability by assigning its claims against its insurer to the plaintiff in exchange for a covenant not to execute on the consented to judgment, as long as the insured has acted reasonably and in good faith.— *Geiger v Hudson Excess Ins. Co.*, 244 AD3d 104.

EXCLUSIONS.

Knowing Violation of Rights.—Supreme Court properly found that the exclusions for the "knowing violation" of the rights of another and for material published with knowledge of falsity in the insurance policy issued by defendant insurer to a night club/restaurant operator did not relieve defendant of its duty to defend its insured in an underlying action in which plaintiff professional models and social media influencers alleged that the insured improperly and knowingly used their images and likenesses in advertising without their consent and without payment. A duty to defend is triggered by the allegations contained in the underlying complaint, and it is immaterial that the complaint against the insured asserts additional claims which fall outside the policy's general coverage or within its exclusory provisions. In addition to alleging that the insured knowingly violated their rights, plaintiffs also alleged that their images were used negligently and, as defendant acknowledged, the policy provided coverage for at least two of the instances alleged in the underlying action. Thus, based on these allegations, the complaint did not discharge defendant's duty to defend.— *Geiger v Hudson Excess Ins. Co.*, 244 AD3d 104.

NO-FAULT AUTOMOBILE INSURANCE.

Recovery of Assigned First-Party Benefits—Post-Examination under Oath Verification Request—Timeliness.— *Pedro Torres-Jimenez, MD PC v Nationwide Affinity Ins. Co. of Am.*, 88 Misc 3d 1210(A), 2026 NY Slip Op 50073(U).

REPRESENTATIONS BY INSURED.

Material Misrepresentations.—Defendant insurer was entitled to summary judgment dismissing plaintiffs claims against it based upon a settlement agreement and consent judgment in an underlying action pursuant to which a night club/restaurant operator assigned to plaintiffs its right to prosecute its coverage claims, where the commercial insurance policy issued to the operator was void ab initio as a matter of law due to material misrepresentations made in its insurance application. A fact is material so as to void ab initio an insurance contract if, had it been revealed, the insurer or reinsurer would either not have issued the policy or would have only at a higher premium. Contrary to its application representations, the operator advertised its establishment on social media as opening "at 10PM with an open bar between 11PM and 1AM," offering "$150 bottles of alcohol until 4AM," and featuring exotic dancing, DJs, a hookah bar/lounge, and drink specials. Additionally, defendant's senior underwriter affirmed that but for the operator's concealments and misrepresentations, defendant would not have issued the policies because its underwriting guidelines prohibited doing so.— *Geiger v Hudson Excess Ins. Co.*, 244 AD3d 104.

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Fall from Scaffold—Worker Instructed Not to Use Rope/Lanyard and Provided Jackhammer for Task.— *Ali v 645 Barretto St. Hous. Dev. Fund Corp.*, 88 Misc 3d 1211(A), 2025 NY Slip Op 52153(U).

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Disclosure—Ample Need.— *175-177 E. 3rd St Owner LLC v Linn*, 88 Misc 3d 1211(A), 2026 NY Slip Op 50076(U).

Illegal Lockout Proceeding — Lawful Occupant.—Petitioner, who lived in an apartment for several years with permission of the tenants of record until respondent landlord changed the locks to the premises upon the death of one of the tenants and surrender by the sister of the other tenant pursuant to a power of attorney, was a "lawful occupant" and therefore had standing to bring an RPAPL 713 (10) illegal lockout proceeding. As of the enactment of the Housing Stability and Tenant Protection Act of 2019, "[n]o tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding" (RPAPL 711). Thus, a "lawful occupant" is statutorily among those considered to be "in possession" of the premises for purposes of removal therefrom in a summary proceeding pursuant to RPAPL article 7, and such person cannot be removed from possession by self-help. The only type of occupant specifically excluded from the protections of RPAPL 711 is a squatter—an unlawful occupant. It follows that a "lawful occupant" must be permitted to maintain a summary proceeding under RPAPL 713 (10).— *Rodriguez v HUB BK, LLC*, 88 Misc 3d 5.

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DECIDED IN THE

COURT OF APPEALS

OF THE

STATE OF NEW YORK

THOMAS J.K. SMITH
State Reporter
Law Reporting Bureau

Volume 44
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3d Series

2026

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Decided January 8, 2026

A. DD., Matter of, v B. EE.	3d Dept: 238 AD3d 1282	denied
Amy K., Matter of, v Jeffrey L.	3d Dept: 241 AD3d 1632	denied
Ansbro, Matter of, v Nigro	1st Dept: 235 AD3d 525	denied
A.T., Matter of (D.T.)	3d Dept: 240 AD3d 950	denied
Ayden G., Matter of (Justin G.)	4th Dept: 240 AD3d 1389	denied
Golden Nugget Atl. City LLC v Chan	1st Dept: 233 AD3d 583	denied
Osorio, Matter of, v New York State Div. of Human Rights	4th Dept: 236 AD3d 1472	denied
Paul F., Matter of, v State of New York	4th Dept: 239 AD3d 1365	denied*
People v Gonzalez	2d Dept: 238 AD3d 914	denied
Riverdale Jewish Ctr. v Consolidated Edison Co. of N.Y., Inc.	1st Dept: 233 AD3d 554	denied
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Sardino v Scholet Family Irrevocable Trust	3d Dept: 238 AD3d 1289	denied
Shainiska D., Matter of, v Gage D.	1st Dept: 242 AD3d 411	denied
State of New York, Matter of, v A.A.	1st Dept: 238 AD3d 651	denied
Sullivan, Matter of, v New York State Div. of Human Rights	1st Dept: 235 AD3d 549	denied

* Motion for financial relief dismissed as academic or denied.

Thomas, Matter of, v Osinski	4th Dept: 239 AD3d 1328	denied
Osinski, Matter of, v Thomas	4th Dept: 239 AD3d 1328	denied

Decided January 13, 2026

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HSBC Bank, USA, N.A. v Bresler	3d Dept: 239 AD3d 1051	denied
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People v Ross	4th Dept: 240 AD3d 1374	denied*
People v Storch	2d Dept: 240 AD3d 626	denied
People v Wallace	2d Dept: 240 AD3d 527	denied*
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Persaud, Matter of (City of New York—Commissioner of Labor)	3d Dept: 237 AD3d 1437	denied
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Malkin, Matter of, v Shasha	1st Dept: 236 AD3d 502	denied
Tandian, Matter of (Commissioner of Labor)	3d Dept: 239 AD3d 1105	denied
Williams, Matter of, v Martuscello	3d Dept: 239 AD3d 1220	denied

* Motion for financial relief dismissed as academic or denied.

Kevin Askari et al., Appellants, v McDermott Will & Emery LLP et al., Respondents.

Submitted June 23, 2025; decided January 8, 2026

Reported below, 238 AD3d 824.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

BML Properties Ltd., Respondent, v China Construction America, Inc., Now Known as CCA Construction Inc., et al., Appellants, et al., Defendants.

Submitted June 16, 2025; decided January 8, 2026

Reported below, 237 AD3d 461.

Motion by Ethan J. Lieb for leave to appear amicus curiae on the motion for leave to appeal herein dismissed as academic.

BML Properties Ltd., Respondent, v China Construction America, Inc., Now Known as CCA Construction Inc., et al., Appellants, et al., Defendants.

Submitted June 16, 2025; decided January 8, 2026

Reported below, 237 AD3d 461.

Motion by Building Trades Employers Association of New York for leave to appear amicus curiae on the motion for leave to appeal herein dismissed as academic.

BML Properties Ltd., Respondent, v China Construction America, Inc., Now Known as CCA Construction Inc., et al., Appellants, et al., Defendants.

Submitted June 16, 2025; decided January 8, 2026

Reported below, 237 AD3d 461.

Motion by Business Council of New York State, Inc. for leave to appear amicus curiae on the motion for leave to appeal herein dismissed as academic.

Concepcion T. Conway, Respondent, v Eugene C. Conway, Deceased, Defendant, and Nicole Lunder, Appellant.

Submitted September 29, 2025; decided January 8, 2026

Reported below, 240 AD3d 1314; 240 AD3d 1317.

Motion for leave to appeal dismissed upon the ground that the orders sought to be appealed from do not finally determine the action within the meaning of the Constitution. Motion for a stay dismissed as academic.

The People of the State of New York, Respondent, v Joshua Cheristin, Appellant.

Submitted January 5, 2026; decided January 8, 2026

Reported below, 239 AD3d 670.

Motion for assignment of counsel granted and Patricia Pazner, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v EUGENE CURRY, Appellant.

Submitted January 5, 2026; decided January 8, 2026

Reported below, 233 AD3d 1487.

Motion by Daniel Rosero for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v ANTRELL DAVIS, Appellant.

Submitted December 22, 2025; decided January 8, 2026

Reported below, 234 AD3d 1356.

Motion for assignment of counsel granted and Julie A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v LUKE J. GAFFNEY, Appellant.

Submitted January 5, 2026; decided January 8, 2026

Reported below, 232 AD3d 1228.

Motion by District Attorneys Association of the State of New York for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v RAHMEL HOWARD, Appellant.

Submitted January 5, 2026; decided January 8, 2026

Reported below, 240 AD3d 513.

Motion for assignment of counsel granted and Patricia Pazner, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v TYSHAWN MORRIS, Appellant.

Submitted December 15, 2025; decided January 8, 2026

Reported below, 238 AD3d 680.

Motion for assignment of counsel granted and Caprice R. Jenerson, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v JAMARLY WILLIAMS, Appellant.

Submitted December 15, 2025; decided January 8, 2026

Reported below, 241 AD3d 1106.

Motion for assignment of counsel granted and Jenay Nurse Guilford, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

THE PEOPLE OF THE STATE OF NEW YORK ex rel. GIUSEPPE LUBRANO, Appellant, v EKATERINA LUBRANO et al., Respondents.

Submitted August 4, 2025; decided January 8, 2026

Reported below, 2025 NY Slip Op 72311(U).

Motion for leave to appeal denied. Motion for financial relief dismissed as academic. Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3).

THE PEOPLE OF THE STATE OF NEW YORK ex rel. MAURICE PRATT, Appellant, v MICHAEL CAPRA, Respondent.

Submitted July 28, 2025; decided January 8, 2026

Reported below, 235 AD3d 888.

Motion for leave to appeal dismissed upon the ground that this Court does not have jurisdiction to entertain it.

ONCO360 HOLDINGS 1, INC., et al., Appellants, v MCDERMOTT WILL & EMERY LLP et al., Respondents.

Submitted June 23, 2025; decided January 8, 2026

Reported below, 238 AD3d 890.

Motion, insofar as it seeks leave to appeal from that portion of the Appellate Division order that affirmed Supreme Court's denial of plaintiffs' cross-motion for leave to serve and file a second amended complaint, dismissed upon the ground that such portion of the order does not finally determine the action within the meaning of the Constitution; motion for leave to appeal otherwise denied.

In the Matter of LEONARD ROBINSON, Appellant, v DANIEL F. MARTUSCELLO III, as Commissioner of Corrections and Community Supervision, Respondent.

Submitted June 9, 2025; decided January 8, 2026

Reported below, 236 AD3d 1173.

Motion for leave to appeal denied. Motion for financial relief dismissed as academic. Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3).

SECOND CHILD et al., Appellants, v EDGE AUTO, INC., et al., Respondents.

Submitted December 15, 2025; decided January 8, 2026

Reported below, 236 AD3d 499.

Motion by American Financial Services Association for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served, an original and nine copies filed, and the brief submitted in digital format within seven days.

SECOND CHILD et al., Appellants, v EDGE AUTO, INC., et al., Respondents.

Submitted December 15, 2025; decided January 8, 2026

Reported below, 236 AD3d 499.

Motion by Allstate Fire and Casualty Insurance Company et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

SECOND CHILD et al., Appellants, v EDGE AUTO, INC., et al., Respondents.

Submitted December 15, 2025; decided January 8, 2026

Reported below, 236 AD3d 499.

Motion by American Car Rental Association et al. for leave to file a brief amici curiae on the appeal herein granted and the proposed brief is accepted as filed. The brief must be submitted in digital format within seven days.

ROBERT WILSON, Appellant, v UNIQUE LOGISTICS INTERNATIONAL, INC., Respondent.

Submitted October 20, 2025; decided January 8, 2026

Reported below, 2025 NY Slip Op 76845(U).

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution. Motion for a stay dismissed as academic. Motion for ancillary relief dismissed upon the ground that this Court does not have jurisdiction to entertain it (*see* NY Const, art VI, § 3).

1995 CAM LLC, Respondent, v WEST SIDE ADVISORS, LLC, et al., Appellants.

Submitted December 8, 2025; decided January 13, 2026

Reported below, 221 AD3d 420.

Motion, insofar as it seeks reargument, denied, motion insofar as it seeks to amend remittitur granted [*see* — NY3d —, 2025 NY Slip Op 05782 (2025)]. Return of remittitur requested and when returned it will be amended to read as follows: Judgment insofar as appealed from and so much of the Appellate Division order sought to be reviewed reversed, with costs, and plaintiff's motion for judgment under CPLR 3211 (c) and for summary judgment as against Gary Lieberman for post-vacatur damages denied.

MARCOS BERRONES, Respondent, v 130 E. 18 OWNERS CORP. et al., Respondents. INTER RENOVATION INC., Third-Party Plaintiff-Respondent, v UNIBUD RESTORATION CORP., Third-Party Defendant-Appellant, and BRENMAC CORP., Third-Party Defendant-Respondent.

Submitted August 25, 2025; decided January 13, 2026

Reported below, 239 AD3d 500.

Motion, insofar as it seeks leave to appeal as against Marcos Berrones and Brenmac Corp., dismissed as untimely (*see* CPLR 5513 [b]); motion, insofar as it seeks leave to appeal as against Inter Renovation Inc., dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

SHMUEL ZVI GENZLER, Respondent, v JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, et al., Defendants. U.S. BANK TRUST, N.A., etc., Nonparty Appellant.

Submitted June 30, 2025; decided January 13, 2026

Reported below, 228 AD3d 838.

Motion for reargument of motion for leave to appeal denied [*see* 43 NY3d 984 (2025)].

ROBERT JACOBS, Respondent, v JACK JOSEPH GRAY, Also Known as JACK GRAY, et al., Appellants.

Submitted October 27, 2025; decided January 13, 2026

Reported below, 234 AD3d 1030.

Motion for reargument of motion for leave to appeal denied [*see* 44 NY3d 988 (2025)].

KAMCO SUPPLY CORP., Plaintiff/Third-Party Defendant-Respondent, v ON THE RIGHT TRACK, LLC, Defendant/Third-Party Plaintiff-Appellant. SOUTHEASTERN METAL, INC., Additional Third-Party Plaintiff-Appellant; KAMCO SUPPLY CORP. OF BOSTON et al., Third-Party Defendants-Respondents, et al., Third-Party Defendant.

Submitted August 4, 2025; decided January 13, 2026

Reported below, 149 AD3d 275.

Motion for leave to appeal dismissed upon the ground that it does not lie, appellants having previously moved for leave to appeal to this Court from the Appellate Division order from which leave to appeal is currently sought (30 NY3d 1036 [2017]).

EMILIO MORA NAVARRO, Respondent, v JOY CONSTRUCTION CORPORATION et al., Appellants.

Submitted October 14, 2025; decided January 13, 2026

Reported below, 241 AD3d 446.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v ELROY ROBINSON, Appellant.

Submitted July 7, 2025; decided January 13, 2026

Reported below, 234 AD3d 444.

Motion for reargument of motion for leave to appeal denied [*see* 43 NY3d 905 (2025)]. Motion for financial relief dismissed as academic.

THE PEOPLE OF THE STATE OF NEW YORK ex rel. DANIELLE WELCH, on Behalf of SYLVESTER GOODE, Appellant, v LYNELLE MAGINLEY-LIDDIE, etc., Respondent.

Submitted November 3, 2025; decided January 13, 2026

Reported below, 241 AD3d 953.

Motion for leave to appeal dismissed upon the ground that relator has been released from custody and, therefore, his liberty is no longer restrained to such a degree as to entitle him to the extraordinary writ of habeas corpus (*see People ex rel. Wilder v Markley*, 26 NY2d 648 [1970]). Motion for financial relief dismissed as academic.

LEORA L. SCHIFFMAN, Respondent, v MARC WEISS, Appellant.

Submitted October 14, 2025; decided January 13, 2026

Reported below, 78 Misc 3d 129(A), 2023 NY Slip Op 50286(U).

Motion for leave to appeal dismissed upon the ground that this Court does not have jurisdiction to entertain the motion from the order of the Appellate Term (*see* CPLR 5602 [a]). Motion for financial relief dismissed as academic.

US Bank National Association, as Legal Title Trustee for Truman 2012 SC2 Title Trust, Appellant, v William Calhoun, Also Known as William E. Calhoun, Respondent, et al., Defendants.

Submitted August 18, 2025; decided January 13, 2026

Reported below, 236 AD3d 557.

Motion for reargument of motion for leave to appeal dismissed as untimely (*see* Rules of Ct of Appeals [22 NYCRR] § 500.24 [b]) [*see* 43 NY3d 907 (2025)].

Daniel Wang, Appellant, v Golden Source Capital, Inc., Respondent.

Submitted October 27, 2025; decided January 13, 2026

Reported below, 87 Misc 3d 41.

Motion for leave to appeal dismissed upon the ground that this Court does not have jurisdiction to entertain the motion from the order of the Appellate Term (*see* CPLR 5602 [a]).

James I. Wynn, Sr., Appellant, v Cora Bradford et al., Respondents.

Submitted October 14, 2025; decided January 13, 2026

Reported below, 2025 NY Slip Op 75300(U).

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

REPORTS OF CASES

DECIDED IN THE

APPELLATE DIVISION

OF THE

SUPREME COURT

OF THE

STATE OF NEW YORK

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[241 NYS3d 4]

Brenda Geiger et al., Appellants-Respondents, v Hudson Excess Insurance Company, Respondent, and Lancer Indemnity Company, Respondent-Appellant.

First Department, August 7, 2025

PROCEDURAL SUMMARY

Cross-appeals from an order and judgment (one paper) of the Supreme Court, New York County (Gerald Lebovits, J.), entered on or about August 30, 2023. The order and judgment, insofar as appealed from as limited by the briefs, denied plaintiffs' motion for summary judgment insofar as it sought a declaration that defendant Hudson Excess Insurance Company owed a duty to defend and indemnify in the underlying action and insofar as it sought a declaration that defendant Lancer Indemnity Company owed a duty to indemnify in the underlying action, and granted the motion insofar as it sought a declaration that Lancer owed a duty to defend; denied Lancer's cross-motion for summary judgment dismissing plaintiffs' claims with respect to the duty to defend; granted the cross-motion dismissing plaintiffs' claims with respect to the duty to indemnify; granted the cross-motion insofar as it sought dismissal of Hudson's cross-claim as against it; and granted Hudson's motion for summary judgment dismissing plaintiffs' claims as against it.

Geiger v Hudson Excess Ins. Co., 80 Misc 3d 1202(A), modified.

HEADNOTES

Insurance — Representations by Insured — Material Misrepresentations

1. Defendant insurer was entitled to summary judgment dismissing plaintiffs claims against it based upon a settlement agreement and consent judgment in an underlying action pursuant to which a night club/restaurant operator assigned to plaintiffs its right to prosecute its coverage claims, where the commercial insurance policy issued to the operator was void ab initio as a matter of law due to material misrepresentations made in its insurance application. A fact is material so as to void ab initio an insurance contract if, had it been revealed, the insurer or reinsurer would either not have issued the policy or would have only at a higher premium. Contrary to its application representations, the operator advertised its establishment on social media as opening "at 10PM with an open bar between 11PM and 1AM," offering "$150 bottles of alcohol until 4AM," and featuring exotic dancing, DJs, a hookah bar/lounge, and drink specials. Additionally, defendant's senior underwriter affirmed that but for the operator's concealments and misrepresentations, defendant would not have issued the policies because its underwriting guidelines prohibited doing so.

Insurance — Exclusions — Knowing Violation of Rights

2. Supreme Court properly found that the exclusions for the "knowing violation" of the rights of another and for material published with knowledge of falsity in the insurance policy issued by defendant insurer to a night club/restaurant operator did not relieve defendant of its duty to defend its insured in an underlying action in which plaintiff professional models and social media influencers alleged that the insured improperly and knowingly used their images and likenesses in advertising without their consent and without payment. A duty to defend is triggered by the allegations contained in the underlying complaint, and it is immaterial that the complaint against the insured asserts additional claims which fall outside the policy's general coverage or within its exclusory provisions. In addition to alleging that the insured knowingly violated their rights, plaintiffs also alleged that their images were used negligently and, as defendant acknowledged, the policy provided coverage for at least two of the instances alleged in the underlying action. Thus, based on these allegations, the complaint did not discharge defendant's duty to defend.

Insurance — Duty to Defend and Indemnify — Insured's Assignment of Claims in Exchange for Covenant Not to Execute

3. An insurer's liability is maintained where, in settlement, a consent judgment is entered that incorporates an assignment of the insured's rights against the insurer coupled with a covenant not to execute on the judgment. Accordingly, a "Settlement Agreement and Release" including a consent judgment, by which plaintiffs agreed to forgo execution of the judgment in an underlying action against defendant's insured in consideration for the insured's assignment of its rights against its insurers to plaintiffs, did not extinguish defendant insurer's duty to indemnify. Any scenario wherein an insured is assigning its claims against its insurer to a plaintiff, in exchange for a covenant not to execute, necessarily takes place when the insured has been abandoned by its insurer. In New York, an insurer that breaches its duty to defend a claim for loss that is covered under its policy will be held liable for the insured's reasonable settlement of that claim, regardless of whether the insurer consented to such settlement. Thus where, like here, the insurance provider is the one potentially in breach of the insurance contract, the insured is justified in taking affirmative steps to limit its own liability by assigning its claims against its insurer to the plaintiff in exchange for a covenant not to execute on the consented to judgment, as long as the insured has acted reasonably and in good faith.

RESEARCH REFERENCES

By the Publisher's Editorial Staff

AM JUR 2d Insurance §§ 633, 679, 971–975, 1342, 1353, 1358, 1367, 1602.

CARMODY-WAIT 2d Declaratory Judgments § 147:93.

COUCH ON INSURANCE (3d ed) §§ 82:9–82:10, 82:13, 82:16, 200:26, 201:18, 202:8, 206:3.

NY JUR 2d Insurance §§ 1023–1024, 1230–1231, 1416, 1706, 2111, 2122, 2129, 2135, 2139.

ANNOTATION REFERENCES

Refusal of liability insurer to defend action against

insured involving both claims within coverage of policy and claims not covered. 41 ALR2d 434.

Consequences of liability insurer's refusal to assume defense of action against insured upon ground that claim upon which action is based is not within coverage of policy. 49 ALR2d 694.

Allegations in third person's action against insured as determining liability insurer's duty to defend. 50 ALR2d 458.

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Query: (insurance /p application /p (represent! or misrepresent! /5 material)) & (void or resc! /5 "ab initio") & (restaurant or bar or nightclub)

APPEARANCES OF COUNSEL

The Casas Law Firm, P.C., New York City (*John V. Golaszewski* of counsel), for appellants-respondents.

Gerber, Ciano, Kelly & Brady, LLP, Buffalo (*Brendan T. Fitzpatrick* and *Daniel W. Gerber* of counsel), for respondent-appellant.

Melito & Adolfsen, P.C., New York City (*Steven I. Lewbel* of counsel) for respondent.

OPINION OF THE COURT

KAPNICK, J.

This appeal stems from separate commercial insurance policies issued by Hudson Excess Insurance Company and Lancer Indemnity Company, each covering different periods, to nonparty Vola Corp., which operated a night club/restaurant under the name Sorry Not Sorry in Forest Hills, Queens. In the underlying federal action (the Vola action), plaintiffs, all professional models and social media influencers, allege that Vola improperly and knowingly used their images and likenesses in advertising without their consent and without payment. Vola tendered the defense of the Vola action to each insurer and sought indemnity, but both companies denied Vola's request for defense and indemnification. Plaintiffs and Vola eventually entered into a settlement agreement and consent judgment in the Vola action, pursuant to which Vola assigned to plaintiffs its right to prosecute its coverage claims against Hudson and Lancer and to recover the amount of the judgment

and defense costs. Plaintiffs then commenced this action against Hudson and Lancer seeking, among other things, a declaration that Hudson and Lancer had a duty to defend and indemnify Vola in the underlying federal action.

I.

We first examine plaintiffs' appeal regarding their claims against Hudson. On the issue of whether Hudson had a duty to defend and indemnify Vola in the Vola action, Supreme Court agreed with Hudson that its policy was void ab initio due to material misrepresentations made by Vola in its insurance application, thereby granting summary judgment declaring that Hudson had no duty to defend or indemnify (80 Misc 3d 1202[A], 2023 NY Slip Op 50904[U] [Sup Ct, NY County 2023]).

[1] For an insurer to be entitled to rescind a policy ab initio, it must show that the applicant made a material misrepresentation (*see Dwyer v First Unum Life Ins. Co.*, 41 AD3d 115, 116 [1st Dept 2007]). "No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract" (Insurance Law § 3105 [b] [1]). While the materiality of a misrepresentation is ordinarily a question for the trier of fact, it becomes a matter of law for the court's determination when the evidence concerning materiality is clear and substantially uncontradicted (*see Process Plants Corp. v Beneficial Natl. Life Ins. Co.*, 53 AD2d 214, 216-217 [1st Dept 1976], *affd* 42 NY2d 928 [1977]).

Here, the evidence proffered by Hudson was sufficient to meet its burden on a motion for summary judgment. Hudson's submissions establish that in its insurance application Vola asserted that the insured premises was a restaurant and bar with 70% of its income derived from food sales and 30% from the sale of alcoholic beverages; had restaurant operating hours of 12 p.m. to 9 p.m.; did not provide entertainment or have a stage or dance floor; did not involve hookahs or other communal smoking devices; lacked consumption promotions such as "happy hour" and "ladies night"; and did not close later than 2 a.m. On its application, Vola left the boxes for DJ, exotic/go-go dancers/adult entertainment, live bands, stage/floor show or contests unchecked.

However, the evidence submitted by Hudson establishes that, contrary to its application representations, Vola advertised Sorry Not Sorry on social media as opening "at 10PM with an

open bar between 11PM and 1AM," offering "$150 bottles of alcohol until 4AM," and featuring exotic dancing, DJs, a hookah bar/lounge, and drink specials. Additionally, in Hudson's senior underwriter's affidavit, he affirmed that "[b]ut for Vola's concealments and misrepresentations, Hudson Excess would not have issued the Policies to Vola because Hudson Excess' underwriting guidelines prohibited doing so." "A fact is material so as to [void] *ab initio* an insurance contract if, had it been revealed, the insurer or reinsurer would either not have issued the policy or would have only at a higher premium" (*Interested Underwriters at Lloyd's v H.D.I. III Assoc.*, 213 AD2d 246, 247 [1st Dept 1995] [internal quotation marks omitted]; *see also Arch Specialty Ins. Co. v Kam Cheung Constr., Inc.*, 104 AD3d 599, 599 [1st Dept 2013] [holding that the defendant's misrepresentation on its insurance application was material as a matter of law because "had the insurer known the true facts, it would have refused to make such contract either by not issuing the policy or by charging a higher premium" (citations and internal quotation marks omitted)]. Thus, Hudson demonstrated prima facie that Vola's insurance application contained material misrepresentations as a matter of law, thereby shifting the burden to plaintiffs to establish the existence of a triable issue of fact (*see e.g. Bleecker St. Health & Beauty Aids, Inc. v Granite State Ins. Co.*, 38 AD3d 231, 232 [1st Dept 2007]).

Plaintiffs failed to meet their burden. To counter Hudson's evidence that Sorry Not Sorry was a nightclub/adult entertainment establishment, instead of a restaurant or restaurant and bar, plaintiffs submitted an affidavit from George Aspiotis, Vola's owner, in which he alleges that Sorry Not Sorry was precisely what Vola represented in its insurance application, i.e., a bar and restaurant that at no point in time was an "adult entertainment lounge and strip club with exotic dancers." Yet the same affidavit also stated that "Sorry Not Sorry was primarily a bar, that also served food," conflicting with Vola's insurance applications executed by Aspiotis that describe Sorry Not Sorry as primarily a restaurant with 70% food sales and 30% alcohol consumption sales. Under the circumstances, the affidavit presents a feigned attempt to create an issue of fact, insufficient to defeat a motion for summary judgment (*see Dixon v Sum Realty, Co.*, 190 AD3d 584, 585 [1st Dept 2021]). Thus, the motion court properly granted Hudson's motion for summary judgment dismissing plaintiffs' claims as against it.

II.

We next examine the respective appeals by defendant Lancer and plaintiffs regarding Lancer's duty to defend and/or indemnify Vola. On the issue of whether Lancer had a duty to defend in the Vola action, Supreme Court agreed with plaintiffs, thereby granting them summary judgment declaring that Lancer had a duty to defend. On the issue of whether Lancer had a duty to indemnify in the Vola action, however, Supreme Court granted summary judgment to Lancer declaring that it had no duty to indemnify.

As an initial matter, we reject Lancer's procedural argument for denying plaintiffs' motion for summary judgment. Although plaintiffs did not submit all of the pleadings with their motion, the motion court providently exercised its discretion when it declined to deny plaintiffs' motion as procedurally defective. It is within a court's discretion to "overlook the procedural defect of missing pleadings when the record is sufficiently complete" (*Washington Realty Owners, LLC v 260 Wash. St., LLC*, 105 AD3d 675, 675 [1st Dept 2013] [internal quotation marks omitted]).

[2] On the merits, Supreme Court properly found that Lancer had a duty to defend in the Vola action. "A duty to defend is triggered by the allegations contained in the underlying complaint" (*BP A.C. Corp. v One Beacon Ins. Group*, 8 NY3d 708, 714 [2007]), and "it is immaterial that the complaint against the insured asserts additional claims which fall outside the policy's general coverage or within its exclusory provisions" (*Town of Massena v Healthcare Underwriters Mut. Ins. Co.*, 98 NY2d 435, 444 [2002] [internal quotation marks and brackets omitted]). "If any of the claims against [an] insured arguably arise from covered events, the insurer is required to defend the entire action" (*id.* at 443, quoting *Frontier Insulation Contrs. v Merchants Mut. Ins. Co.*, 91 NY2d 169, 175 [1997]).

Here, Lancer argues that the policy exclusions for the "knowing violation" of the rights of another and for material published with knowledge of falsity relieve it of any duty to defend where the Vola action alleged that Vola knowingly violated the rights of plaintiffs. However, plaintiffs also alleged that their images were used negligently and, as Lancer acknowledges, Lancer's policy provided coverage for at least two of the instances alleged in the Vola action. Thus, based on these allegations, the complaint did not discharge Lancer's duty to defend, as the motion court correctly found (*see Mendes*

& Mount v American Home Assur. Co., 97 AD2d 384, 385 [1st Dept 1983]).

However, the motion court should have denied Lancer's motion for summary judgment dismissing the duty to indemnify claim. As previously indicated, the underlying Vola action was resolved by a settlement agreement including a consent judgment, by which plaintiffs agreed to forgo execution of the judgment in consideration for Vola's assignment of its rights against its insurers to plaintiffs. Lancer argues that because the language of the settlement agreement contains a "release," it relieves its insured (Vola) of any liability, thereby extinguishing any duty Lancer had to indemnify. Plaintiffs, however, argue that the agreement not to execute the judgment in exchange for the assignment of the rights of the insured did not constitute a "release" and did not mean that Vola was not still "legally obligated" to pay the judgment, and therefore Lancer still had a duty to indemnify (*see Intelligent Digital Sys., LLC v Beazley Ins. Co., Inc.*, 207 F Supp 3d 242, 246 [ED NY 2016]).

A release is an executed agreement that requires no further performance, effecting an outright cancellation or discharge of the entire obligation (*see Wilder v Penn. R.R. Co.*, 245 NY 36, 39 [1927]; *McMahan & Co. v Bass*, 250 AD2d 460, 461 [1st Dept 1998], *lv dismissed & denied* 92 NY2d 1013 [1998]). "[A] valid release [generally] constitutes a complete bar to an action on a claim which is the subject of the release" (*Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011] [internal quotation marks omitted]). On the other hand, a covenant not to execute a judgment is not a complete release from liability. Rather, a covenant not to execute constitutes an agreement to exercise forbearance from asserting any claim which either exists or which may accrue regardless of any potential liability (*see Wilder*, 245 NY at 39 [covenant not to sue found where no liability existed at the time of the parties' agreement]; *see also Stone v National Bank & Trust Co.*, 188 AD2d 865, 867 [3d Dept 1992]; *Colton v New York Hosp.*, 53 AD2d 588, 589 [1st Dept 1976]). Thus,

> "[a] covenant not to execute is distinguishable from a release, since a release eliminates or destroys liability while the covenant . . . does not relinquish a right or claim or extinguish a cause of action, but recognizes the *continuation* of the obligation or liability, and the party making the covenant agrees

> only not to assert any right or claim based upon the obligation" (76 CJS, Release § 3 [emphasis added]).

Contrary to Lancer's allegations, we do not read the settlement agreement as constituting a general release. The settlement agreement, with its assignment and covenant not to execute, was intended to be read and interpreted together with the consent judgment (*see Matter of Oak Hill Capital Partners, L.P. v Cuti*, 148 AD3d 504, 504 [1st Dept 2017] ["In the absence of anything to indicate a contrary intention, instruments executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction will be read and interpreted together, it being said that they are, in the eye of the law, one instrument"]). The consent judgment, so ordered in the Vola action on January 22, 2020, incorporated the settlement agreement by reference and, therefore, these documents must be read together. Although the document is entitled "Settlement Agreement and Release," in our view, it cannot be read as a release, but rather should be considered as a covenant not to execute. Unlike a release,

> "[a] covenant not to [execute] is not a present abandonment or relinquishment of a right or claim . . . but is an agreement whereby an injured party promises not to assert a claim against others in exchange for some consideration; [and] unless the consideration given fully satisfies the injured party's claim, the covenant not to [execute] does not release the others from liability" (76 CJS, Release § 3).

In New York, the legal ramifications of a general release in the context of an insured/insurer relationship are clear; a general release in favor of an insured abolishes any present or future duty of indemnification on the part of the insurer (*see e.g. McDonough v Dryden Mut. Ins. Co.*, 276 AD2d 817, 818 [3d Dept 2000]; *Westervelt v Dryden Mut. Ins. Co.*, 252 AD2d 877, 879 [3d Dept 1998]). However, it appears that no New York precedent exists on the issue presented here: whether the insurer's liability is maintained where, in settlement, a consent judgment is entered that incorporates an assignment of the insured's rights against the insurer coupled with a covenant not to execute on the judgment.

Most jurisdictions that have considered this type of settlement arrangement have held that a plaintiff's promise not to

execute on the judgment in exchange for the assignment of the rights of the insured does not extinguish either the insured's responsibility for the plaintiff's damages or the underlying tort liability (*see e.g. Intelligent Digital Sys.*, 207 F Supp 3d at 246-247 ["The Court has identified cases in other jurisdictions that have also recognized the right of assignees, such as the Plaintiffs, to pursue coverage on behalf of insureds even when the assignment is coupled with a covenant not to execute judgment against the insureds"]; *see also* Justin A. Harris, Note, *Judicial Approaches to Stipulated Judgments, Assignments of Rights, and Covenants Not to Execute in Insurance Litigation*, 47 Drake L Rev 853, 856-857 [1999]; Chris Wood, Note, *Assignments of Rights and Covenants Not to Execute in Insurance Litigation*, 75 Tex L Rev 1373 [1997]). As Judge Spatt went on to say in *Intelligent Digital Sys.* (207 F Supp 3d at 247):

> "[I]t appears that New York courts and a majority of courts in other jurisdictions have held that an insurance company remains 'legally obligated' to pay a claim under a policy even where, as here, the claim was assigned to a third party, and the third party agreed not to execute a judgment against the insured's personal assets" (*id.*).

In contrast, although the minority view, some courts have held that a plaintiff's promise not to execute on a consent judgment against the insured operates as a general release, and the release of the insured relieves the insurer of liability (*see e.g. United States Fire Ins. Co. v Mikes*, 576 F Supp 2d 1303 [MD Fla 2007], *affd* 279 Fed Appx 879 [11th Cir 2008]; *Rosen v Florida Ins. Guar. Assn.*, 802 So 2d 291 [Fla 2001]).

[3] We conclude that the majority view represents the sounder position—that a stipulated judgment, accompanied by a covenant not to execute and an assignment of claims, can be enforced against an insurer. It is not difficult to find justification for the prevailing view when we consider that any scenario wherein an insured is assigning its claims against its insurer to a plaintiff, in exchange for a covenant not to execute, necessarily takes place when the insured has been abandoned by its insurer. In New York, an insurer that breaches its duty to defend a claim for loss that is covered under its policy will be held liable for the insured's reasonable settlement of that claim, regardless of whether the insurer consented to such settlement (*see Isadore Rosen & Sons v Security Mut. Ins. Co. of N.Y.*, 31 NY2d 342, 343, 347 [1972];

Atlantic Cement Co. v Fidelity & Cas. Co. of N.Y., 91 AD2d 412, 419-420 [1st Dept 1983], *affd* 63 NY2d 798 [1984]). Thus where, like here, the insurance provider is the one potentially in breach of the insurance contract, the insured is justified in taking affirmative steps to limit its own liability by assigning its claims against its insurer to the plaintiff in exchange for a covenant not to execute on the consented to judgment, as long as the insured has acted reasonably and in good faith (which is not in dispute here).

McDonough, relied on by the motion court, does not warrant a different result. In *McDonough*, there was neither a consent judgment nor an assignment. Instead, the subject release discharged the insured from "all liability" (276 AD2d at 818). In this case, plaintiffs and Vola consented to entry of a judgment, which plaintiffs agreed not to enforce *in exchange for* the assignment of Vola's right to seek indemnification from its insurers, thereby leaving Lancer's obligation to pay to the extent available under Vola's policy undisturbed. This case is precisely like *Intelligent Digital Sys.*:

> "The Individual Insureds agreed to consent judgments on the Plaintiffs' claims in the underlying action, which they were legally obligated to pay. As part of those judgments, the Insureds assigned their rights to coverage under the Policy to the Plaintiffs in exchange for a covenant not to enforce the unpaid portions of those judgments against the Insureds personally. . . the term 'legally obligated to pay' [in the Policy] encompasses the consent judgments against the Individual Insureds, irrespective of the covenants not to enforce those judgments" (207 F Supp 3d at 247).

In sum, since the settlement and consent judgment did not relieve Lancer from legal liability, they did not preclude a finding that Lancer had a duty to defend and indemnify, limited to those instances which occurred during the policy period (Mar. 31, 2015, through Mar. 31, 2016). Accordingly, Supreme Court should not have found that Lancer had no duty to indemnify. However, contrary to plaintiffs' contention, neither the settlement agreement nor the consent judgment constituted an admission of liability against the insurer, only the right to attempt to enforce the judgment against Lancer. Thus, the issue of whether Lancer has a duty to indemnify is denied at this time pending the resolution of liability (*see Mendes & Mount v American Home Assur. Co.*, 97 AD2d 384, 385 [1st Dept 1983]).

Finally, Lancer's cross-motion to dismiss Hudson's cross-claim for contribution was properly granted, as the voiding of Hudson's insurance policy renders the cross-claim moot.

Accordingly, the order and judgment (one paper) of the Supreme Court, New York County (Gerald Lebovits, J.), entered on or about August 30, 2023, which, insofar as appealed from as limited by the briefs, denied plaintiffs' motion for summary judgment insofar as it sought a declaration that defendant Hudson Excess Insurance Company owed a duty to defend and indemnify in the underlying action and insofar as it sought a declaration that defendant Lancer Indemnity Company owed a duty to indemnify in the underlying action, and granted the motion insofar as it sought a declaration that Lancer owed a duty to defend; denied Lancer's cross-motion for summary judgment dismissing plaintiffs' claims with respect to the duty to defend; granted the cross-motion dismissing plaintiffs' claims with respect to the duty to indemnify; granted the cross-motion insofar as it sought dismissal of Hudson's cross-claim as against it; and granted Hudson's motion for summary judgment dismissing plaintiffs' claims as against it, should be modified, on the law, to deny Lancer's cross-motion insofar as it sought dismissal of plaintiffs' claims as against it with respect to the duty to indemnify, and otherwise affirmed, without costs.

MOULTON, J.P., SCARPULLA, RODRIGUEZ III and HIGGITT, JJ., concur.

Order and judgment (one paper) Supreme Court, New York County, entered on or about August 30, 2023, modified, on the law, to deny Lancer's cross-motion insofar as it sought dismissal of plaintiffs' claims as against it with respect to the duty to indemnify, and otherwise affirmed, without costs.

[240 NYS3d 246]

In the Matter of Steven W. Stutman (Admitted as Steven William Stutman), an Attorney, Respondent. Grievance Committee for the Tenth Judicial District, Petitioner.

Second Department, August 13, 2025

PROCEDURAL SUMMARY

Disciplinary proceeding instituted by the Grievance Committee for the Tenth Judicial District. Respondent was admitted to the bar on April 24, 1974, at a term of the Appellate Division of the Supreme Court in the Second Judicial Department as Steven William Stutman.

HEADNOTE

Attorney and Client — Disciplinary Proceedings — Suspension

Respondent attorney's escrow account balance routinely fell below what was required to be on deposit for the relevant client matters and these defalcations occurred in large part due to respondent over-disbursing funds, failing to properly reconcile his escrow account, and failing to verify that client funds were on deposit prior to disbursing funds on the matter, thereby causing the invasion of other client funds (Rules of Prof Conduct [22 NYCRR 1200.0] rules 1.15 [a], [b] [2]; 8.4 [h]). Respondent's prior disciplinary history, the remedial measures implemented, and the substantial character evidence presented were considered. Under the totality of the circumstances, respondent was suspended from the practice of law for a period of six months.

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Attorneys at Law §§ 62–63, 65, 68–69.

Carmody-Wait 2d Officers of Court §§ 3:284, 3:287, 3:325, 3:330, 3:333.

22 NYCRR 1200.0, rules 1.15 (a), (b) (2); 8.4 (h).

NY Jur 2d Attorneys at Law §§ 437–438, 441–444, 518, 525, 527.

ANNOTATION REFERENCE

See ALR Index under Attorneys; Discipline and Disciplinary Actions; Escrow.

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Query: suspen! & (escrow /s balance or disburs! or reconcil!) & (inva*! /s client /s fund) & (prior /s disciplin!) or "remedial measures" or "character evidence"

APPEARANCES OF COUNSEL

Catherine A. Sheridan, Hauppauge (*Rachel Merker* of counsel), for petitioner.

Traub, Lieberman, Straus & Shrewsberry, LLP, Hawthorne (*Hillary J. Raimondi* of counsel), for respondent.

OPINION OF THE COURT

Per Curiam.

The Grievance Committee for the Tenth Judicial District served the respondent with a notice of petition and verified petition dated June 9, 2023, containing four charges of professional misconduct. The respondent served and filed an answer dated July 28, 2023, admitting some factual allegations contained in the petition but denying that he violated the Rules of Professional Conduct (22 NYCRR 1200.0) cited therein. The Grievance Committee thereafter served and filed a statement of disputed and undisputed facts, and the respondent served and filed a statement of disputed and undisputed facts. By decision and order on application dated October 19, 2023, this Court referred the matter to the Honorable David I. Ferber, as Special Referee, to hear and report. A preliminary conference was held on November 28, 2023, and a hearing was conducted on January 11, 2024. By report received on March 25, 2024, the Special Referee sustained all four charges in the petition. The Grievance Committee now moves to confirm the Special Referee's report and impose such discipline upon the respondent as this Court deems just and proper. The respondent, through counsel, submits an affirmation, which does not oppose the motion to confirm, but submits that the appropriate sanction is a reprimand, probation, or public censure.

The Petition

The petition contains four charges of professional misconduct. At all times relevant herein, the respondent maintained an attorney escrow account at TD Bank entitled "STEVEN W STUTMAN, PLLC, IOLA TRUST ACCOUNT," with an account number ending in 9574 (hereinafter the TD Bank escrow account).

Between September 1, 2018, and December 19, 2019, the respondent repeatedly overdisbursed funds from the TD Bank escrow account on behalf of multiple client matters, causing misappropriation of other client funds and a shortage in the TD Bank escrow account ranging from $25 to $2,724.03.

On December 19, 2019, the respondent was required to maintain $43,346.30 of fiduciary funds for 13 clients in the TD Bank escrow account; however, on that date, the balance of the TD Bank escrow account was $42,018.76, reflecting a shortage of $1,327.54.

Between December 20, 2019, and December 24, 2019, three checks issued by the respondent in the RH to Ross matter totaling $13,950 were paid against the TD Bank escrow account. During the relevant period, there were no correlating funds on deposit in the TD Bank escrow account in connection with the RH to Ross matter, resulting in those funds being paid against other fiduciary funds present in the TD Bank escrow account.

On December 26, 2019, the respondent was required to maintain $34,191.30 of fiduciary funds for 11 clients in the TD Bank escrow account; however, on that date, the balance of the escrow account was $18,913.76, reflecting a shortage of $15,277.54.

Based on the factual allegations above, charge one alleges that the respondent misappropriated funds entrusted to him as a fiduciary incident to his practice of law in violation of rule 1.15 (a) of the Rules of Professional Conduct (22 NYCRR 1200.0). Charge two alleges that the respondent failed to properly title his attorney escrow account in violation of rule 1.15 (b) (2) of the Rules of Professional Conduct. Charge three alleges that the respondent engaged in conduct adversely reflecting on his fitness as a lawyer by failing to reconcile his escrow account between September 2018 and December 2019 in violation of rule 8.4 (h) of the Rules of Professional Conduct. Based upon the aforementioned charges, charge four alleges that the respondent engaged in conduct that adversely reflects on his fitness as a lawyer in violation of rule 8.4 (h) of the Rules of Professional Conduct.

The Hearing and Hearing Record

According to the respondent's testimony, the respondent maintained two escrow accounts, the TD Bank escrow account and a Capital One escrow account. After the respondent received notice from TD Bank of a dishonored check related to the down payment of a client matter, he deposited funds into the TD Bank escrow account to cover the deficit and reissued a new check. The respondent testified that he mistakenly thought that a check for $13,950 for the RH to Ross matter was deposited into the TD Bank escrow account, when it was actu-

ally deposited into the Capital One escrow account. The respondent thereafter erroneously issued a check for that matter from the TD Bank escrow account, as opposed to the Capital One escrow account, causing a deficit in the TD Bank escrow account. Upon a reconciliation of both of his escrow accounts, the respondent found several errors dating back to 2018, including, inter alia, overdisbursements for several client matters. The respondent did not transfer the funds from his Capital One escrow account to the TD Bank escrow account until almost one year later on October 15, 2020.

The respondent admitted the allegations charged in the petition and attributed these errors to accounting errors and inadvertent mistakes. He expressed remorse for these accounting errors and testified that he had closed the two previously open escrow accounts and now maintains one escrow account, which is affixed with software to aid in monitoring his escrow account. He further testified that he reconciles his escrow account at least twice a month and has staff that both aids him in his reconciliations and oversight of his escrow account.

The Grievance Committee moves to confirm the report of the Special Referee, which sustained all charges against the respondent, and reports that the respondent's disciplinary history consists of a personally-delivered admonition in 2014 for similar misconduct, a letter of advisement in 2020, a letter of caution in 2009, and another admonition in 2008.

The respondent, through counsel, submits an affirmation, which does not oppose the motion to confirm but asserts that a suspension is not warranted and that the circumstances herein can be fairly addressed by a penalty of a reprimand, probation, or public censure.

Findings and Conclusion

In the instant matter, the respondent admittedly misappropriated client funds in several client matters. During the relevant period, the respondent's escrow account balance routinely fell below what was required to be on deposit for the relevant client matters. These defalcations occurred in large part due to the respondent over-disbursing funds, failing to properly reconcile his escrow account, and failing to verify that client funds were on deposit prior to disbursing funds on the matter, thereby causing the invasion of other client funds.

In view of the evidence adduced at the hearing, we find that the Special Referee properly sustained all charges. Accordingly,

the Grievance Committee's motion to confirm the report of the Special Referee is granted. In determining an appropriate measure of discipline, this Court considered, among other things, the respondent's prior disciplinary history, the remedial measures implemented, and the substantial character evidence presented.

Under the totality of the circumstances, we find that the respondent's conduct warrants his suspension from the practice of law for a period of six months.

LaSalle, P.J., Dillon, Duffy, Barros and Miller, JJ., concur.

Ordered that the Grievance Committee's motion to confirm the Special Referee's report is granted; and it is further,

Ordered that the respondent, Steven W. Stutman, admitted as Steven William Stutman, is suspended from the practice of law for a period of six months, commencing September 12, 2025, and continuing until further order of this Court. The respondent shall not apply for reinstatement earlier than February 11, 2026. In such application (*see* 22 NYCRR 1240.16), the respondent shall furnish satisfactory proof that during the period of suspension he (1) refrained from practicing or attempting to practice law, (2) fully complied with this opinion and order and with the terms and provisions of the written rules governing the conduct of disbarred or suspended attorneys (*see id.* § 1240.15), and (3) otherwise properly conducted himself; and it is further,

Ordered that the respondent, Steven W. Stutman, admitted as Steven William Stutman, shall comply with the rules governing the conduct of disbarred or suspended attorneys (*see id.*); and it is further,

Ordered that pursuant to Judiciary Law § 90, during the period of suspension and until the further order of this Court, the respondent, Steven W. Stutman, admitted as Steven William Stutman, shall desist and refrain from (1) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, judge, justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

Ordered that if the respondent, Steven W. Stutman, admitted as Steven William Stutman, has been issued a secure pass

by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 1240.15 (f).

[239 NYS3d 631]

In the Matter of Benjamin E. Thwaites (Admitted as Benjamin Emmanuel Thwaites), an Attorney, Respondent. Grievance Committee for the Ninth Judicial District, Petitioner.

Second Department, August 20, 2025

PROCEDURAL SUMMARY

Respondent was admitted to the bar on November 14, 2007, at a term of the Appellate Division of the Supreme Court in the Second Judicial Department as Benjamin Emmanuel Thwaites. By decision and order dated April 25, 2023, that Court, pursuant to 22 NYCRR 1240.12 (c) (3) (iii), directed respondent to show cause at a hearing before a Special Referee why a final order of suspension, censure, or disbarment should not be made based on his convictions on May 2, 2017, of aggravated driving while intoxicated, in violation of Vehicle and Traffic Law § 1192 (2-a) (a), an unclassified misdemeanor, and on July 13, 2017, of driving while intoxicated, in violation of Vehicle and Traffic Law § 1192 (3), an unclassified misdemeanor.

HEADNOTE

Attorney and Client — Disciplinary Proceedings — Suspension

Respondent attorney was convicted of aggravated driving while intoxicated (Vehicle and Traffic Law § 1192 [2-a] [a]) and driving while intoxicated (Vehicle and Traffic Law § 1192 [3]). Under the totality of the circumstances, including respondent's multiple convictions, violations of the terms of his probation, prior disciplinary history, and submission of evidence of his good character, respondent was suspended from the practice of law for a period of six months.

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Attorneys at Law §§ 86, 91; Am Jur 2d Automobiles and Highway Traffic § 335.

Carmody-Wait 2d Officers of Court §§ 3:273, 3:325, 3:330, 3:333–3:334.

McKinney's, Vehicle and Traffic Law §§ 1192 (2–a) (a); (3).

NY Jur 2d Attorneys at Law §§ 401, 511, 518, 525, 527; NY Jur 2d Automobiles and Other Vehicles §§ 879–880.

ANNOTATION REFERENCE

Misconduct involving intoxication as ground for disciplinary action against attorney. 1 ALR5th 874.

APPEARANCES OF COUNSEL

Courtny Osterling, White Plains (*Antonia Cipollone* of counsel), for petitioner.

OPINION OF THE COURT

Per Curiam.

By affirmation dated December 15, 2022, on notice to the respondent, the Grievance Committee for the Ninth Judicial District advised this Court that on December 19, 2014, the respondent was arrested in Bronx County and charged with three unclassified misdemeanors: (1) aggravated driving while intoxicated in violation of Vehicle and Traffic Law § 1192 (2-a) (a); (2) driving while intoxicated in violation of Vehicle and Traffic Law § 1192 (2); and (3) driving while intoxicated in violation of Vehicle and Traffic Law § 1192 (3). On May 2, 2017, the respondent entered a plea of guilty before Bronx County Criminal Court to aggravated driving while intoxicated, in violation of Vehicle and Traffic Law § 1192 (2-a) (a), in satisfaction of all charges. On or about October 6, 2017, the respondent was sentenced to a term of imprisonment of six days, placed on probation for three years, ordered to pay a $1,000 fine and a surcharge of $395, and had his driver's license revoked for one year. The Grievance Committee's affirmation also notified this Court that, on April 17, 2017, in an unrelated matter, the respondent was arrested in Mount Vernon and charged with driving while intoxicated in violation of Vehicle and Traffic Law § 1192 (3), driving in violation of a restricted license in violation of Vehicle and Traffic Law § 530 (6), and refusing to submit to a chemical test in violation of Vehicle and Traffic Law § 1194 (1). On July 13, 2017, the respondent entered a plea of guilty to driving while intoxicated, in violation of Vehicle and Traffic Law § 1192 (3), in satisfaction of those charges. On November 9, 2017, the respondent was sentenced by Mount Vernon City Court to a term of probation of three years, ordered to pay a $500 fine and a surcharge of

$395, and had his driver's license revoked for one year. Between April 23, 2019, and August 14, 2019, the Department of Probation made four reports to Mount Vernon City Court that the respondent violated the terms of his probation. The reports alleged that the respondent failed to report to probation as directed, failed to submit to alcohol and drug testing, failed to attend and remain at the required alcohol program at the treatment agency, failed to refrain from the consumption or possession of alcoholic beverages, and failed to submit to random alcohol or drug testing. Moreover, on July 15, 2019, a bench warrant was issued against the respondent for his failure to appear before Mount Vernon City Court as required. The respondent failed to timely report his criminal convictions to the Grievance Committee or to this Court as required by Judiciary Law § 90 (4) (c) and 22 NYCRR 1240.12 (a).

By order to show cause dated April 25, 2023, this Court, pursuant to 22 NYCRR 1240.12 (c) (3) (iii), directed the respondent to show cause at a hearing before the Honorable Arthur J. Cooperman, as Special Referee, why a final order of suspension, censure, or disbarment should not be made based on his convictions on May 2, 2017, of aggravated driving while intoxicated in violation of Vehicle and Traffic Law § 1192 (2-a) (a) and on July 13, 2017, of driving while intoxicated in violation of Vehicle and Traffic Law § 1192 (3).

After a hearing conducted on July 6, 2023, and September 13, 2023, the Special Referee filed a report dated December 12, 2023, setting forth his findings and concluding that the respondent had not demonstrated why a final order of suspension, censure, or disbarment should not be made. The Grievance Committee now moves to confirm the Special Referee's report and to impose such discipline upon the respondent as this Court deems just and proper.

As alleged in a criminal complaint, on or about December 19, 2014, the respondent was driving a 2003 Nissan Altima at approximately 11:00 p.m. on Baychester Avenue in Bronx County. Upon being stopped by the police, he was observed to have bloodshot eyes, slurred speech, a flushed face, and an unsteady gait, and a strong odor of alcohol emanated from his person. The respondent allegedly stated to the police that he had drunk two glasses of wine. The respondent's blood alcohol content (hereinafter BAC) reading on a breathalyzer test was 0.265%. The respondent testified at the hearing that he was leaving a Jamaican restaurant with his friends on his birthday and that

the police "troll" Baychester Avenue. The respondent was stopped for failing to have his headlights on, which he stated was not possible as "[m]odern" cars are equipped with automatic headlights. However, he entered a plea of guilty in that matter upon the advice of counsel.

Thereafter, on April 17, 2017, at approximately 2:16 a.m., while the Bronx County proceeding was still pending, the respondent was arrested in Mount Vernon. The respondent was observed by the police driving a 2012 Honda and to be "drifting back and forth on the roadway almost hitting a guard rail and parked cars." The respondent had a strong odor of alcohol, was unable to follow simple directions, and had poor coordination and bloodshot eyes. The respondent refused to take a breathalyzer test. The respondent informed the police that he was driving home from a friend's house. The respondent testified at the hearing that he was stopped by the police after dropping off his son and as such, he "would certainly have not been under the influence." He testified that he refused the breathalyzer test due to the "aggressiveness" of the police officer. Again, on the advice of counsel, the respondent entered a plea of guilty.

Between April 23, 2019, and August 14, 2019, the Department of Probation made four reports to the Mount Vernon City Court that the respondent violated the terms of his probation. As alleged by the respondent's probation officer, on March 25, 2019, the respondent returned from an approved trip to Jamaica; however, upon his return, the respondent failed to continue his required outpatient treatment and was discharged from the program. The respondent's probation officer further alleged that the respondent failed to appear for his scheduled probation appointments on March 27, 2019, and April 22, 2019. On August 15, 2019, the respondent admitted that he violated the terms of his probation and was referred to a driving while intoxicated monitoring program. In a report dated September 3, 2019, the respondent's probation officer alleged that the respondent was ordered to enter into an inpatient program on August 15, 2019, and was further ordered to wear a Secure Continuous Remote Alcohol Monitoring (hereinafter SCRAM) bracelet due to his refusal to be drug tested while on probation. As further alleged, when the respondent presented to be fitted for the SCRAM bracelet, he could not be fitted for the device because he had alcohol in his system, resulting in a BAC level of 0.135. Thereafter, on November 12, 2019, the respondent's probation was restored and extended to May 21, 2021.

On January 26, 2021, the respondent again admitted that he violated the terms of his probation by traveling to Jamaica despite the denial of two applications for court permission to travel there. The respondent was resentenced on that date in Mount Vernon City Court to a one-year conditional discharge and ordered to complete a substance abuse treatment program.

At the disciplinary hearing, despite admitting to violating the terms of his probation, the respondent testified that he cooperated in every way possible but that his probation officer was "proactively aggressive." The respondent also submitted evidence of his good character and his dedication to serving his community.

The Instant Motion

By notice of motion and affirmation dated March 28, 2024, the Grievance Committee moves to confirm the Special Referee's report and to impose such discipline upon the respondent as this Court deems just and proper. The Grievance Committee notes that the respondent has a prior disciplinary history consisting of a letter of caution, a public censure, a letter of advisement, and an admonition, personally delivered. Although the motion papers were duly served upon the respondent on March 28, 2024, he has neither opposed the motion nor interposed any response thereto.

Findings and Conclusion

We find that the Special Referee properly concluded that the respondent failed to meet his burden of establishing why this Court should not issue a final order of suspension, censure, or disbarment based on his convictions on May 2, 2017, and July 13, 2017. In view of the evidence adduced, the Grievance Committee's motion to confirm the Special Referee's report is granted.

Under the totality of the circumstances, including the respondent's multiple convictions, the violations of the terms of his probation, his prior disciplinary history, and his submission of evidence of his good character, we find that the respondent's conduct warrants his suspension from the practice of law for a period of six months.

LaSalle, P.J., Dillon, Barros, Connolly and Iannacci, JJ., concur.

Ordered that the Grievance Committee's motion to confirm the Special Referee's report is granted; and it is further,

Ordered that the respondent, Benjamin E. Thwaites, admitted as Benjamin Emmanuel Thwaites, is suspended from the practice of law for a period of six months, commencing September 19, 2025, and continuing until further order of this Court. The respondent shall not apply for reinstatement earlier than February 19, 2026. In such application (*see* 22 NYCRR 1240.16), the respondent shall furnish satisfactory proof that during the period of suspension he (1) refrained from practicing or attempting to practice law, (2) fully complied with this opinion and order and with the terms and provisions of the written rules governing the conduct of disbarred or suspended attorneys (*see id.* § 1240.15), and (3) otherwise properly conducted himself; and it is further,

Ordered that the respondent, Benjamin E. Thwaites, admitted as Benjamin Emmanuel Thwaites, shall comply with the rules governing the conduct of disbarred or suspended attorneys (*see id.*); and it is further,

Ordered that pursuant to Judiciary Law § 90, during the period of suspension and until the further order of this Court, the respondent, Benjamin E. Thwaites, admitted as Benjamin Emmanuel Thwaites, shall desist and refrain from (1) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, judge, justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

Ordered that if the respondent, Benjamin E. Thwaites, admitted as Benjamin Emmanuel Thwaites, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 1240.15 (f).

[240 NYS3d 9]

In the Matter of Matthew David Barocas, an Attorney, Respondent. Attorney Grievance Committee for the First Judicial Department, Petitioner.

First Department, August 21, 2025

PROCEDURAL SUMMARY

Disciplinary proceedings instituted by the Attorney Grievance Committee for the First Judicial Department. Respondent was admitted to the bar on January 31, 2011, at a term of the Appellate Division of the Supreme Court in the First Judicial Department.

HEADNOTE

Attorney and Client — Disciplinary Proceedings — Suspension

Pursuant to the reciprocal disciplinary provision of 22 NYCRR 1240.13, respondent was suspended from the practice of law for a period of one year based upon similar discipline imposed by the Supreme Court of Tennessee, which differed in permitting three months to be served as an active suspension and the remainder to be served on probation, for the mishandling of levied funds in a commercial landlord and tenant matter and dishonest conduct before that court related to those funds. As the Appellate Division does not have a policy of staying suspensions to impose a probationary period, a one-year suspension was appropriate. Moreover, there was no evidence of good cause to grant nunc pro tunc relief. Respondent notified the Attorney Grievance Committee (AGC) of his suspension fairly close to the time he was suspended; he was reinstated on a probationary basis to the Tennessee bar; and the AGC did not substantially delay in seeking reciprocal discipline, nor did respondent voluntarily cease practicing law in New York in anticipation of future discipline so that prospective suspension would be inequitable and unjust, and nunc pro tunc relief warranted.

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Attorneys at Law §§ 29, 32, 37–38, 44–45.

Carmody-Wait 2d Officers of Court §§ 3:244, 3:258, 3:260, 3:275, 3:291, 3:334, 3:336.

22 NYCRR 1240.13.

NY Jur 2d Attorneys at Law §§ 362, 369, 383, 437, 472.

ANNOTATION REFERENCE

Reciprocal Discipline of Attorneys—Commingling or Other Mishanding of Client Funds. 45 ALR6th 175.

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APPEARANCES OF COUNSEL

Jorge Dopico, Chief Attorney, Attorney Grievance Committee, New York City (*Louis J. Bara* of counsel), for petitioner.

Gene W. Rosen for respondent.

OPINION OF THE COURT

Per Curiam.

Respondent Matthew David Barocas was admitted to the practice of law in the State of New York by the First Judicial Department on January 31, 2011. Respondent's registered address is in Tennessee, but this Court retains jurisdiction over him as the admitting Judicial Department (Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [a] [2]).

By order dated January 18, 2024, the Supreme Court of Tennessee suspended respondent from the practice of law for one year, with three months to be served as an active suspension and the remainder to be served on probation, for the mishandling of levied funds in a commercial landlord and tenant matter and dishonest conduct before the court related to those funds.

Respondent, who represented the landlord, obtained a default judgment totaling $130,091.62 in favor of his client in January of 2019 and received levied funds from two banks. In February of 2019, the first bank remitted $60,453.81 into the court which respondent retrieved from the clerk's office. In March of 2019, the second bank levied $130,091.62 in funds directly to respondent which he deposited into his escrow account. In total respondent collected approximately $190,545.43, which was $60,453.81 more than the judgment. In April of 2019, respondent remitted $117,703.22 to his client representing the amount of the judgment less $13,000 in fees and costs, and filed a satisfaction of judgment with the court. Respondent failed to obtain an order from the court authorizing the release and disbursement of the levied funds. As of April 19, 2019, the balance of respondent's attorney trust account was $60,405.81 representing the excess levied funds he received. After consulting with an attorney he had worked with on other cases, respondent chose to retain the excess levied funds. Respondent then consulted his client and returned the $13,000 represent-

ing his fees and expenses in exchange for an agreement to bring a second action against the same tenant with the excess levied funds used to satisfy his fees and expenses for both actions. Respondent commenced a second action on July 5, 2019, but it was voluntarily dismissed six days later.

On March 10, 2020, respondent was ordered to pay to the court in Tennessee $130,091.62 by March 13, 2020. After an unsuccessful appeal of that order, respondent paid to the court $60,405.81 on December 22, 2020. At a contempt hearing held on February 22, 2021, respondent testified that the $60,405.81 was borrowed from his father and he did not remit the entire $130,091.62 as directed by the court order because those funds had already been disbursed to his client. The court issued two orders one on July 17, 2021, and the other on February 15, 2022, finding that respondent's noncompliance with the March 10, 2020 order, and his conflicting testimony at the contempt hearing as to whether he maintained the funds in his escrow account and would pay the money to the court, were sufficient to hold respondent in both criminal and civil contempt. Respondent appealed and the appellate court in Tennessee dismissed the contempt proceedings with prejudice giving as reasons the lack of opposition by the tenant's successor in interest (a bankruptcy trustee) and that the district attorney declined to prosecute any charges.

On December 7, 2023, respondent entered into a conditional guilty plea, admitting all but one of the amended charges in the amended petition for discipline brought against him in Tennessee and agreed to a one year suspension, three months being an active suspension and the remainder to be served on probation with conditions. On January 18, 2024, the Supreme Court issued an order approving respondent's guilty plea and directing discipline in accordance with its terms. On May 14, 2024, the Supreme Court of Tennessee reinstated respondent and directed that the remainder of his suspension be served on probation.

The Attorney Grievance Committee (AGC) now seeks an order, pursuant to Judiciary Law § 90 (2), 22 NYCRR 1240.13, and the doctrine of reciprocal discipline, suspending respondent for a period of one year, based upon similar discipline imposed upon him by the Supreme Court of Tennessee, or, in the alternative, sanctioning him as this Court deems just and proper.

In a proceeding seeking reciprocal discipline pursuant to 22 NYCRR 1240.13, respondent may raise the following defenses:

(1) a lack of notice or opportunity to be heard in the foreign jurisdiction constituting a deprivation of due process; (2) an infirmity of proof establishing the misconduct; or (3) that the misconduct for which the attorney was disciplined in the foreign jurisdiction does not constitute misconduct in this state (*see Matter of Milara*, 194 AD3d 108, 110 [1st Dept 2021]).

Respondent states in his affidavit that he does not contest the facts. Respondent received notice of the charges asserted against him in Tennessee and freely and voluntarily pleaded guilty in response thereto. Respondent also admitted that the material facts underlying his reckless misappropriation were true and that he could not successfully defend himself against them. The misconduct for which respondent was disciplined in Tennessee also constitutes misconduct in New York in violation of the Rules of Professional Conduct (*see* 22 NYCRR 1240.13 [c]). Therefore, none of the enumerated defenses are available to respondent.

Respondent maintains that there are factors in mitigation, including that: he mistakenly believed his actions were not improper because he had cocounsel that supported his position; he took responsibility for his actions by borrowing money to reimburse the improperly collected funds; he promptly reported the discipline imposed in Tennessee to the New York Attorney Grievance Committee; he has no prior discipline and there are no pending complaints against him; and that he fully complied with the terms and conditions of his suspension in Tennessee and has since been fully reinstated to the practice of law in Tennessee, where he is currently in good standing.

With respect to the appropriate sanction, respondent does not oppose reciprocal discipline but asks that we impose a reciprocal one-year suspension nunc pro tunc that is retroactive to January 18, 2024, the date of his suspension in Tennessee; alternatively he seeks the imposition of only a three-month suspension consistent with the sanction imposed by the Supreme Court of Tennessee.

The AGC takes no position with respect to respondent's request for a one-year suspension retroactive to the date of his Tennessee suspension, but opposes his alternative request for a three-month suspension arguing that this Court does not have a policy of staying suspensions and the Tennessee suspension remained in place for one year.

This Court does not have a policy of staying suspensions to impose a probationary period nor do the Rules for Attorney

Disciplinary Matters provide for stayed probationary suspensions (*see Matter of Kort*, 235 AD3d 35, 39 [1st Dept 2025]). Misconduct comparable to that of respondent typically results in a one-year suspension (*see Matter of Feldman*, 230 AD3d 13, 17 [1st Dept 2024]; *Matter of Salo*, 77 AD3d 30, 38-39 [1st Dept 2010]; *Matter of Byler*, 274 AD2d 275, 279 [1st Dept 2000]).

As for the respondent's request that the one-year suspension be effective nunc pro tunc to the date of his suspension in Tennessee on January 18, 2024, there is no evidence that there is good cause to grant this relief. Respondent notified the AGC of his suspension on February 12, 2024, fairly close to the time he was suspended. He was reinstated on a probationary basis to the Tennessee bar on May 14, 2024. Here, the AGC did not substantially delay in seeking reciprocal discipline, nor did respondent voluntarily cease practicing law in New York in anticipation of future discipline so that prospective suspension would be inequitable and unjust, and nunc pro tunc relief warranted (*see Matter of Peters*, 127 AD3d 103, 109 [1st Dept 2015]; *Matter of Filosa*, 112 AD3d 162, 164 [1st Dept 2013]; *Matter of Gilly*, 110 AD3d 164 [1st Dept 2013]).

Accordingly, the AGC's motion should be granted and respondent suspended from the practice of law in the State of New York for a period of one year, effective 30 days from the date of this order, and until further order of this Court.

Moulton, J.P., Kennedy, Friedman, González and Mendez, JJ., concur.

Wherefore, it is ordered that the motion by the Attorney Grievance Committee for the First Judicial Department for reciprocal discipline, pursuant to Judiciary Law § 90 (2) and 22 NYCRR 1240.13, is granted, and respondent, Matthew David Barocas, is suspended from the practice of law for one year, effective 30 days from the date of this order, and until further order of the Court; and

It is further ordered that, pursuant to Judiciary Law § 90, during the period of suspension, respondent, Matthew David Barocas, is commanded to desist and refrain from (1) the practice of law in any form, either as principal or agent, clerk or employee of another, (2) appearing as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and

It is further ordered that, during the period of suspension, respondent, Matthew David Barocas, shall comply with the rules governing the conduct of disbarred or suspended attorneys (*see* 22 NYCRR 1240.15), which are made part hereof; and

It is further ordered that if respondent, Matthew David Barocas, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith.

[240 NYS3d 17]

In the Matter of Regina L. Darby, an Attorney, Respondent. Attorney Grievance Committee for the First Judicial Department, Petitioner.

First Department, August 21, 2025

PROCEDURAL SUMMARY

Application by respondent pursuant to 22 NYCRR 1240.10 to resign as an attorney and counselor-at-law. Respondent was admitted to the bar on July 7, 1977, at a term of the Appellate Division of the Supreme Court in the First Judicial Department.

HEADNOTE

Attorney and Client — Disciplinary Proceedings — Resignation

Inasmuch as resignor's proffered resignation complied with the requirements of 22 NYCRR 1240.10 in that her affidavit attested that the resignation was submitted voluntarily, without coercion or duress, and with full awareness of the consequences, and she acknowledged that the Court's approval of the application would result in the entry of an order disbarring respondent, and that she could not successfully defend herself against charges of professional misconduct if they were predicated upon the matters under investigation, including a commercial matter that was dismissed at least in part due to respondent's failure to appear in court, and respondent's commencement of an action, subsequently advising the client that she could no longer provide representation, then failing to formally withdraw as counsel, resignor's resignation was accepted and she was immediately disbarred.

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Attorneys at Law §§ 31, 66–67.

Carmody-Wait 2d Officers of Court §§ 3:257, 3:277, 3:312, 3:314.

22 NYCRR 1240.10.

NY Jur 2d Attorneys at Law §§ 402, 406, 495, 497.

ANNOTATION REFERENCE

Propriety of attorney's resignation from bar in light of pending or potential disciplinary action. 54 ALR4th 264.

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Query: 1240.10 /p resign! /s accept! & resign! /p affidavit acknowledg! /p voluntar! (no not absen! #without /6 duress

coerc!) & disbar! & (no not fail! neglect! /s appear! /p dismiss!) (no not fail! neglect! never /s withdr*w!)

APPEARANCES OF COUNSEL

Jorge Dopico, *Chief Attorney*, *Attorney Grievance Committee*, New York City (*Vitaly Lipkansky* of counsel), for petitioner.

Regina L. Darby, respondent pro se.

OPINION OF THE COURT

Per Curiam.

Respondent Regina L. Darby was admitted to the practice of law in the State of New York by the First Judicial Department on July 7, 1977. Respondent attests that she is also admitted to practice before the United States Supreme Court and U.S. District Courts for the Southern and Eastern Districts of New York. This Court maintains continuing jurisdiction over respondent as the admitting Judicial Department (Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.7 [a] [2]).

Respondent now seeks an order, pursuant to 22 NYCRR 1240.10, accepting her resignation as an attorney and counselor-at-law licensed to practice in the State of New York. In support of the relief sought respondent submitted her affidavit of resignation which conforms to the format set forth in 22 NYCRR part 1240, Appendix A (22 NYCRR 1240.25).

Respondent acknowledges that she is currently the subject of an investigation by the Attorney Grievance Committee (AGC) involving two allegations of professional misconduct. The first allegation concerns a commercial matter that was dismissed at least in part due to respondent's failure to appear in court. The second allegation involves respondent commencing an action, subsequently advising the client she could no longer provide representation, but then failing to formally withdraw as counsel.

Respondent accurately attests that the AGC's investigation does not allege that she willfully misappropriated or misapplied client money or property in the practice of law. Respondent attests that she cannot successfully defend against the allegations based upon the facts and circumstances of her professional conduct as described in the affidavit of resignation. Respondent attests that her resignation is freely and voluntarily rendered, without coercion or duress by anyone, and with full awareness of the consequences, including that the

Court's acceptance and approval shall result in the entry of an order of disbarment striking her name from the roll of attorneys and counselors-at-law.

Respondent acknowledges that her resignation is submitted subject to any application that may be made by a Committee to any Department of the Appellate Division for an order, pursuant to Judiciary Law § 90 (6-a), directing that she makes restitution or reimburse the Lawyers' Fund for Client Protection, and she consents to the continuing jurisdiction of the Appellate Division to make such an order.

Additionally, respondent acknowledges and agrees that pending issuance of an order accepting her resignation, she shall not undertake to represent any new clients or accept any retainers for future legal services to be rendered and that there will be no transactional activity in any fiduciary account to which she has access, other than for payment of funds held therein on behalf of clients or others entitled to receive them. She understands that in the event the Court accepts her resignation, the order resulting from this application and the records and documents filed in relation to the aforementioned allegations, including her affidavit, shall be deemed public records pursuant to Judiciary Law § 90 (10).

The AGC states that it does not oppose respondent's motion to resign while an investigation is pending. The AGC also does not oppose the relief sought in respondent's motion and recommends her resignation from the practice of law be granted.

As respondent's affidavit conforms with 22 NYCRR 1240.25, the Court accepts her resignation (*see e.g. Matter of Thomas*, 178 AD3d 58 [1st Dept 2019]; *Matter of Hock*, 171 AD3d 173 [1st Dept 2019]; *Matter of Wallen*, 149 AD3d 235 [1st Dept 2017]).

Accordingly, the motion should be granted, and respondent's name is stricken from the roll of attorneys and counselors-at-law in the State of New York, effective nunc pro tunc to May 30, 2025, the date of her affidavit.

Friedman, J.P., González, Mendez, O'Neill Levy and Michael, JJ., concur.

Wherefore, it is ordered that the application of respondent, Regina L. Darby, to resign as an attorney and counselor-at-law pursuant to 22 NYCRR 1240.10 is granted, and respondent is disbarred and her name stricken from the roll of attorneys and counselors-at-law in the State of New York, effective nunc pro

tunc to May 30, 2025, and until further order of this Court; and

It is further ordered that, pursuant to Judiciary Law § 90, respondent, Regina L. Darby, is commanded to desist and refrain from (1) the practice of law in any form, either as principal or agent, clerk or employee of another, (2) appearing as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding herself out in any way as an attorney and counselor-at-law; and

It is further ordered that respondent, Regina L. Darby, shall comply with the rules governing the conduct of disbarred or suspended attorneys (*see* 22 NYCRR 1240.15), which are made part hereof; and

It is further ordered that if respondent, Regina L. Darby, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith.

REPORTS OF SELECTED CASES

DECIDED IN THE

APPELLATE TERM

OF THE SUPREME COURT

AND OTHER COURTS

OF THE

STATE OF NEW YORK

OTHER THAN THE

COURT OF APPEALS AND THE APPELLATE DIVISION
OF THE SUPREME COURT

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SELECTED CASES DECIDED

IN THE

APPELLATE TERM

OF THE

SUPREME COURT

OF THE

STATE OF NEW YORK

[238 NYS3d 870]

NEW YORK RECOVERY PT, P.C., as Assignee of Thea Stewart, Appellant, v AMERICAN TRANSIT INSURANCE COMPANY, Respondent.

Supreme Court, Appellate Term, Second Department,
9th and 10th Judicial Districts, July 17, 2025

PROCEDURAL SUMMARY

APPEAL from an order of the District Court of Nassau County (Robert E. Pipia, J.), dated July 31, 2024. The order, insofar as appealed from, denied the branch of petitioner's motion seeking an award of attorney's fees.

HEADNOTES

Arbitration — Confirming or Vacating Award — No-Fault Arbitration — Attorney's Fees

Petitioner provider was entitled to attorney's fees in its proceeding to confirm a master arbitration award which respondent insurer failed to timely pay. The No-Fault Law under Insurance Law article 51 was implemented with the legislative aim of curtailing delay and reducing expense in the adjustment of motor vehicle accident claims, and the regulations were written to encourage the prompt payment of claims and to penalize delays. Consequently, where an insurer fails to timely pay the amounts set forth in a master arbitration award and the provider commences a proceeding pursuant to CPLR 7510 to confirm the master arbitration award so that it can be reduced to a judgment, the provider is entitled to an award of attorney's fees,

fixed by the court, for the proceeding as well as for fees incurred on the appeal.

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Alternative Dispute Resolution §§ 2, 30, 38, 41, 191, 199, 202, 208, 210, 230; Am Jur 2d Automobile Insurance §§ 554, 605–607; Am Jur 2d Insurance § 1.

Carmody-Wait 2d Arbitration §§ 141:1–141:2, 141:10, 141:216, 141:258, 141:287.

Couch on Insurance (3d ed) §§ 209:1, 210:1, 210:20, 213:15, 213:17, 213:24, 213:34, 213:53, 214:45, 214:47, 214:51.

McKinney's, CPLR 7510; Insurance Law art 51.

New York Contract Law (2d ed) §§ 27:14, 27:28.

NY Jur 2d Arbitration and Award §§ 1, 10, 239, 241, 244; NY Jur 2d Insurance §§ 1735, 1905, 1912, 1949, 1961–1963, 1966.

New York Law of Torts § 12:75.

Siegel, NY Prac (6th ed) §§ 600–602.

Williston on Contracts (4th ed) § 49:31.

ANNOTATION REFERENCE

See ALR Index under Alternative Dispute Resolution (ADR); Arbitration; Automobile Insurance; Automobiles and Highway Traffic; Contracts; Insurance.

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Query: attorney +2 fee /s 7510 or (arbitrat! /3 confirm!) & "no fault"

APPEARANCES OF COUNSEL

Roman Kravchenko (*Jason Tenenbaum* of counsel) for appellant.

Bruno, Gerbino, Soriano & Aitken, LLP (*Vince Gerbino* and *Alfred Polidore* of counsel) for respondent.

OPINION OF THE COURT

Memorandum.

Ordered that the order, insofar as appealed from, is reversed, without costs, the branch of petitioner's motion seeking an award of attorney's fees is granted and the matter is remitted

to the District Court to determine the amount of attorney's fees to which petitioner is entitled, in accordance with this decision and order.

After the provider's claims for assigned first-party no-fault benefits were denied, the parties proceeded to arbitration and the no-fault arbitrator made an award in favor of the provider, which award was upheld by a master arbitrator. As the insurer did not timely satisfy the award (*see* 11 NYCRR 65-4.10 [e] [4]), the provider commenced this proceeding to confirm the master arbitration award (*see* CPLR 7510). The provider moved to confirm the master arbitrator's award and, insofar as is relevant here, for an award of attorney's fees. Shortly thereafter, the insurer paid petitioner the amount of the master arbitration award. By order dated July 31, 2024, the District Court (Robert E. Pipia, J.) granted the branch of the motion seeking to confirm the master arbitration award but denied the branch of the motion seeking attorney's fees, finding that, notwithstanding 11 NYCRR 65-4.10 (j) (4), the provider was not entitled to an award of additional attorney's fees because "the instant proceeding is a special proceeding that was commenced for the sole purpose of confirming a master arbitration award. It was not commenced to resolve a dispute de novo, nor was it brought to appeal the underlying master arbitration award."

"The attorney's fee for services rendered . . . in a court appeal from a master arbitration award and any further appeals, shall be fixed by the court adjudicating the matter" (11 NYCRR 65-4.10 [j] [4]). "The term 'court appeal' applies to a proceeding taken pursuant to CPLR article 75 to vacate or confirm a master arbitration award" (*Matter of Country-Wide Ins. Co. v TC Acupuncture P.C.*, 179 AD3d 414, 414 [1st Dept 2020]; *see Matter of GEICO Ins. Co. v AAAMG Leasing Corp.*, 148 AD3d 703, 705 [2d Dept 2017]). As the Court of Appeals has stated with regard to the No-Fault Law (*see* Insurance Law art 51), "[t]o implement [the] legislative aim of curtailing delay and reducing expense in the adjustment of motor vehicle accident claims, *the regulations are written to encourage prompt payment of claims*, to discourage investigation by insurers, *and to penalize delays*" (*Dermatossian v New York City Tr. Auth.*, 67 NY2d 219, 225 [1986] [emphasis added] [citation omitted]). Consequently, where, as here, the insurer failed to timely (*see* 11 NYCRR 65-4.10 [e] [4]) pay the amounts set forth in the master arbitration award and the provider commenced a proceeding pursuant to CPLR 7510 to confirm the master

arbitration award so that it could be reduced to a judgment, the provider is entitled to an award of attorney's fees, fixed by the court, for the District Court proceeding as well as for fees incurred on this appeal (*see* 11 NYCRR 65-4.10 [j] [4]; *Matter of Country-Wide Ins. Co. v TC Acupuncture P.C.*, 179 AD3d 414; *Acuhealth Acupuncture, P.C. v Country-Wide Ins. Co.*, 170 AD3d 1168, 1169 [2d Dept 2019]; *Matter of GEICO Ins. Co. v AAAMG Leasing Corp.*, 148 AD3d 703; *Matter of Metro Pain Specialist, P.C. v Country-Wide Ins. Co.*, 66 Misc 3d 135[A], 2020 NY Slip Op 50014[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2020]). In view of the foregoing, the matter is remitted to the District Court to determine the amount of reasonable attorney's fees to which the provider is entitled.

Accordingly, the order, insofar as appealed from, is reversed, the branch of petitioner's motion seeking an award of attorney's fees is granted and the matter is remitted to the District Court to determine the amount of attorney's fees to which petitioner is entitled, in accordance with this decision and order.

GARGUILO, P.J., DRISCOLL and GOLDBERG-VELAZQUEZ, JJ., concur.

[238 NYS3d 869]

Joan Rodriguez, Appellant, v HUB BK, LLC, Respondent.

Supreme Court, Appellate Term, Second Department,
2d, 11th and 13th Judicial Districts, July 18, 2025

PROCEDURAL SUMMARY

Appeal from a judgment of the Civil Court of the City of New York, Kings County (Kimberly Slade, J.), entered November 21, 2022. The judgment, after a nonjury trial, dismissed the petition in an illegal lockout summary proceeding.

HEADNOTES

Landlord and Tenant — Summary Proceedings — Illegal Lockout Proceeding — Lawful Occupant

Petitioner, who lived in an apartment for several years with permission of the tenants of record until respondent landlord changed the locks to the premises upon the death of one of the tenants and surrender by the sister of the other tenant pursuant to a power of attorney, was a "lawful occupant" and therefore had standing to bring an RPAPL 713 (10) illegal lockout proceeding. As of the enactment of the Housing Stability and Tenant Protection Act of 2019, "[n]o tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding" (RPAPL 711). Thus, a "lawful occupant" is statutorily among those considered to be "in possession" of the premises for purposes of removal therefrom in a summary proceeding pursuant to RPAPL article 7, and such person cannot be removed from possession by self-help. The only type of occupant specifically excluded from the protections of RPAPL 711 is a squatter—an unlawful occupant. It follows that a "lawful occupant" must be permitted to maintain a summary proceeding under RPAPL 713 (10).

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Landlord and Tenant §§ 798–799, 803, 806, 809, 813, 830, 832.

Carmody-Wait 2d Action to Recover Real Property §§ 89:1–89:2, 89:28, 89:46–89:47, 89:109; Carmody-Wait 2d Summary Proceedings to Recover Possession of Real Property §§ 90:5–90:6, 90:87, 90:96.

Dolan, Rasch's New York Landlord and Tenant, Including Summary Proceedings (5th ed) §§ 28:1, 28:6, 28:15–28:16, 28:77, 29:1, 29:3, 38:1, 38:5–38:6, 38:13.

McKinney's, RPAPL 711; 713 (10).

NY Jur 2d Landlord and Tenant §§ 311–314, 317–318, 321; NY Jur 2d Real Property—Possessory and Related Actions §§ 1–2, 113–115, 121, 123.

SIEGEL, NY PRAC (6th ed) § 572.

ANNOTATION REFERENCE

See ALR Index under Ejectment, Eviction, and Ouster; Landlord and Tenant; Possession; Summary Proceedings.

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Query: landlord & tenant & "lawful occupant" & (lockout OR (change! /3 lock!))

APPEARANCES OF COUNSEL

Brooklyn Legal Services (*Samar Katnani* of counsel) for appellant.

Belkin, Burden & Goldman, LLP (*Magda L. Cruz*, *Martin Meltzer*, *Michael Nesheiwat* and *Paul Alessandri* of counsel) for respondent.

OPINION OF THE COURT

MEMORANDUM.

Ordered that the final judgment is reversed, without costs, and the matter is remitted to the Civil Court for the entry of a final judgment of possession in favor of occupant.

Occupant commenced this illegal lockout proceeding (*see* RPAPL 713 [10]) after landlord changed the locks to the premises upon the death of one of the tenants of record and the surrender by the sister of the other tenant, pursuant to a power of attorney executed by that tenant. It is undisputed that occupant resided in the subject apartment for several years with the deceased tenant and up until occupant was locked out, although the parties do not agree regarding the relationship between occupant and the tenants. After a nonjury trial at which occupant appeared pro se and landlord appeared by counsel but did not produce any witnesses, the Civil Court found that it would be futile to restore occupant to possession, as she had not demonstrated any possessory rights to the subject premises, and dismissed the petition, citing *Andrews v Acacia Network* (59 Misc 3d 10 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2018]). Occupant appeals from a final judgment of the Civil Court (Kimberly Slade, J.) entered November 21, 2022, dismissing the petition.

As of the enactment of the Housing Stability and Tenant Protection Act of 2019 (HSTPA) (L 2019, ch 36), which applies

to this proceeding, "[n]o tenant or *lawful occupant* of a dwelling or housing accommodation shall be removed from possession except in a special proceeding" (RPAPL 711 [emphasis added]). Thus, a "lawful occupant" is statutorily among those considered to be "in possession" of the premises for purposes of removal therefrom in a summary proceeding pursuant to RPAPL article 7, and such person cannot be removed from possession by self-help. While "lawful occupant" is not defined, RPAPL 713 permits a special proceeding to be maintained against a number of categories of occupants under specified circumstances, including, but not limited to, a licensee (*see* RPAPL 713 [7]), where the entry into possession was lawful. The only type of occupant specifically excluded from the protections of RPAPL 711 is a squatter—an unlawful occupant. It follows that a "lawful occupant" must be permitted to maintain a summary proceeding under RPAPL 713 (10) (*cf.* RPAPL 768 [1] [b]). Contrary to the Civil Court's decision, futility is no longer a consideration in proceedings commenced pursuant to RPAPL 713 (10) because a lawful occupant is now entitled to the protections afforded by a summary proceeding before being evicted, even if the occupant is ultimately not entitled to possession. To the extent this court has held to the contrary, those cases should no longer be followed.

Here, it is undisputed that occupant lived in the subject apartment with the permission of the tenants of record. Therefore, she is a lawful occupant and has standing to bring this RPAPL 713 (10) proceeding. Further, as it is undisputed that she was locked out, she must be restored.

Accordingly, the final judgment is reversed and the matter is remitted to the Civil Court for entry of a final judgment of possession in favor of occupant.

TOUSSAINT, P.J., BUGGS and OTTLEY, JJ., concur.

8 People v Barrie (Mohamed), 2026 NY Slip Op 50060(U). (App Term, 1st Dept, Jan. 27, 2026)

[239 NYS3d 760]

The Commissioner of the New York City Department of Social Services, Plaintiff, v Buckeye Coach LLC et al., Defendants.

Supreme Court, New York County, July 29, 2024

HEADNOTES

Constitutional Law — Validity of Statute — Infringement of Right to Travel — Penalty for Bringing Needy Person into State under Social Services Law § 149

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Commerce §§ 1–2, 17–22, 25, 27–29, 31, 34–36, 41, 61, 72, 86, 90–91; Am Jur 2d Constitutional Law §§ 108, 128, 190, 657–659.

McKinney's, Social Services Law § 149.

NY Jur 2d Constitutional Law §§ 42, 46, 51, 65, 70–71, 86, 129–132, 134, 136, 147, 301; NY Jur 2d Public Welfare and Elder Assistance § 12.

ANNOTATION REFERENCE

See ALR Index under Business and Commerce; Congress; Constitutional Law; Poor Persons; Travel.

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Query: ((“interstate commerce” OR “interstate transportation”) /s regulat!) & (indigent OR (transport! /3 (indigent! OR people OR person!)))

APPEARANCES OF COUNSEL

Robert J. Hantman for Roadrunner Charters Inc., defendant.

Andrew Myers for Buckeye Coach LLC and others, defendants.

Steven Banks for plaintiff.

Beth Haroules for New York Civil Liberties Union and another, amicus curiae.

OPINION OF THE COURT

Mary V. Rosado, J.

After oral argument, which took place on September 23, 2024, where Steven Banks, Esq. and Jacob Kumerick, Esq. appeared for plaintiff the Commissioner of the New York City Department of Social Services (plaintiff); Nyall Cook, Esq. appeared for defendant Roadrunner Charters Inc.; Mark Levine, Esq., Elliot Kudisch, Esq., and Douglas Stevinson, Esq. appeared for all the other defendants (collectively defendants); and Beth Haroules, Esq. appeared as amicus curiae for the New York Civil Liberties Union and the ACLU of Texas, defendants' motion to dismiss plaintiff's complaint is granted. Plaintiff's cross-motion to lift the automatic stay of discovery is moot.

I. Background

Plaintiff commenced this case to prevent migrants from moving to New York City from Texas. Plaintiff relies on New York Social Services Law § 149, an antiquated and unconstitutional law, to achieve this goal. The statute has its origins in "anti-pauper" statutes passed after the War of 1812. The statute's title is "Penalty for bringing a needy person into the state." It is a penal statute and makes it a misdemeanor for anyone to bring knowingly an indigent person to New York "for the purpose of making him a public charge" (*see* Social Services Law § 149 [1]). Plaintiff also seeks indemnification from defendants for the costs of sheltering migrants.

Plaintiff previously sought to enjoin defendants from busing migrants in motion sequence 001. The court rejected the request for injunctive relief finding section 149 unconstitutional (NY St Cts Elec Filing [NYSCEF] Doc No. 128). This court specifically held that the issue of mass migration within the country "is an issue reserved by the Constitution for Congress, lest the United States fall to a regime of balkanization with each state setting forth a patchwork of inconsistent criteria for crossing state lines." Indeed, it is for this reason the U.S. Supreme Court ruled many decades ago an essentially identical California statute unconstitutional (*Edwards v California*, 314 US 160, 172 [1941]).

The court is cognizant of the financial burdens borne by the City of New York in providing shelter and services to the many migrants who have sought refuge and opportunity in this diverse and welcoming city. The City's budget, services, housing availability, and affordability have undoubtedly been taxed in part by ensuring its obligations under the recognized right to

shelter are not breached (*see e.g. Callahan v Carey*, 12 NY3d 496 [2009]). However, it is not the role of this court to create policy, be it immigration, budgetary, or social services. Rather, it is this court's role to ensure the law is upheld, including this nation's highest law, the United States Constitution.

The defendants move to dismiss plaintiff's complaint in its entirety on the grounds that New York Social Services Law § 149 is unconstitutional. They offer a plethora of doctrines under which section 149 may be deemed unconstitutional, not least of which is the impermissible infringement on interstate commerce. Plaintiff opposes and argues that under a facial challenge to the statute, defendants must show there is no set of circumstances under which the statute may be considered constitutional. Plaintiff argues that section 149 is narrowly tailored because it only addresses "bad actors" who transport indigent folks into New York for the purpose of making them public charges. She further argues that the burden on interstate commerce is only incidental. In reply, defendants argue that the burden on interstate commerce is not merely "incidental" because it severely hampers the transportation of individuals across state lines. They further argue that the statute infringes on a fundamental right and does not pass strict scrutiny as it is not narrowly tailored. Defendants argue that, in such circumstances, the law is per se invalid.

II. Discussion

As previously stated by this court, section 149 violates the Interstate Commerce Clause pursuant to the United States Supreme Court's decision in *Edwards v California* (314 US 160, 172 [1941]). Simply put, the states are not permitted to regulate the interstate transportation of individuals based on economic status (*see also Heart of Atlanta Motel, Inc. v United States*, 379 US 241, 279 [1964, Douglass, J., concurring] [the right of persons to move freely from state to state occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel, and coal across state lines]). This is an issue reserved by the Constitution for Congress.

However, section 149's violation of the Interstate Commerce Clause is not the only reason the statute is unconstitutional. The statute also violates a fundamental right—the right to travel—and is subject to strict scrutiny (*Attorney General of N. Y. v Soto-Lopez*, 476 US 898 [1986]; *see also Deide v Day*, 676 F Supp 3d 196 [SD NY 2023]). Under a strict scrutiny analysis of

a statute that impinges upon a fundamental right, the government must adopt the least restrictive means of achieving the compelling state interest (*Americans for Prosperity Foundation v Bonta*, 594 US 595 [2021]). "States . . . do not have any right to select their citizens" (*Saenz v Roe*, 526 US 489, 511 [1999]). The fundamental right to travel across state lines encompasses travel for the purpose of "temporary sojourn" or to become a permanent resident (*Edwards* at 183 [Jackson, J., concurring]). State law implicates the constitutional right to travel (a) when it actually deters such travel; (b) when impeding travel is its primary objective; or (c) when it uses any classification which it serves to penalize exercise of that right (*Soto-Lopez* at 904).

Here, section 149 implicates the constitutional right to travel on all three grounds. First, the record reflects that it has deterred interstate travel since defendants have stopped transporting migrants from Texas to New York due to the threat of legal liability. Second, deterring interstate travel is plainly a primary objective of section 149 since it expressly aims to prohibit individuals from transporting indigent folks into New York. Finally, section 149 expressly and impermissibly utilizes economic class to penalize the right of certain individuals from traveling into New York. Therefore, a strict scrutiny analysis of section 149 is appropriate (*see also Memorial Hospital v Maricopa County*, 415 US 250 [1974]; *Anonymous v City of Rochester*, 13 NY3d 35, 45 [2009] ["For an adult, there is no doubt that this right is fundamental and an ordinance interfering with the exercise of such a right would be subject to strict scrutiny"]).

Although the Commissioner's application of section 149 may conceivably serve compelling interests, the statute is not narrowly tailored to address those interests. Pursuant to the statute, individuals who transport indigent individuals with the knowledge they will seek social services in New York potentially face criminal charges. The same statute threatens civil liability and requires those who knowingly transport indigent individuals to either indemnify New York or arrange for the transported indigent individuals to be removed from New York. The statute in essence requires companies and individuals to conduct "due diligence" into a passenger's economic status prior to bringing them into the State of New York to avoid criminal and civil liability. This is a sweepingly overbroad statute, the likes of which has already been declared unconstitutional by the U.S.

Supreme Court in *Edwards v California* (314 US 160, 172 [1941]). Enforcement of a statute like section 149 foists legal uncertainty on anyone who transports someone to New York. This uncertainty undoubtedly chills individuals' fundamental right to interstate travel. Therefore, section 149 is not narrowly tailored and fails to pass the strict scrutiny test.

The proper forum to reach a solution to the issues presented in this lawsuit is the United States Congress. Instead of seeking resolution in Congress, the Commissioner asks this court to enforce an antiquated, unconstitutional statute to infringe on an individual's right to enter New York based on economic status.* Therefore, the Commissioner's complaint is dismissed. Because the case is dismissed, plaintiff's cross-motion seeking to lift the automatic stay of discovery is moot.

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* The court does not consider plaintiff's September 12, 2024 letter as it constitutes an impermissible surreply.

[239 NYS3d 804]

Jarrett Allen, Plaintiff, v City of New York et al., Defendants.

Supreme Court, New York County, July 3, 2025

HEADNOTES

Constitutional Law — Due Process of Law — Restraint of Defendant at Arraignment

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Constitutional Law §§ 933, 938, 1007; Am Jur 2d Criminal Law §§ 539, 908, 924–925, 1174.

Carmody-Wait 2d Conduct of Trial, in General §§ 190:150–190:151.

NY Jur 2d Criminal Law: Procedure §§ 2505, 2513, 2763.

ANNOTATION REFERENCE

Propriety and prejudicial effect of gagging, shackling, or otherwise physically restraining accused during course of state criminal trial. 90 ALR3d 17.

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Query: (handcuff! /10 arraignment) or "prisoner restrains" or "prisoner restraints"

APPEARANCES OF COUNSEL

Legal Aid Society (*Elise Smith*, *Meghna Philip*, *Philip Desgranges* and *William Lesman* of counsel) for plaintiff.

Muriel Goode-Trufant, Corporation Counsel (*Belina Anderson* of counsel), for City of New York and others, defendants.

OPINION OF THE COURT

Hasa A. Kingo, J.

Plaintiff Jarrett Allen (plaintiff) moves for an order certifying the putative class (mot seq 001). Defendants the City of New York, Jessica Tisch, and Judith R. Harrison (collectively, the City) oppose and cross-move to stay the action pending determination on the City's separately filed motion to dismiss the complaint (mot seq 002). Plaintiff opposes the motion to dismiss

and cross-moves to convert the motion to a motion for summary judgment and moves for summary judgment on plaintiff's claims. For the reasons set forth herein, the motion to dismiss is granted and all other motions are denied.

Background

In this proposed class action, plaintiff seeks a declaratory judgment and permanent injunction against the New York City Police Department (NYPD) on behalf of himself and all others similarly situated. The proposed class consists of all people who are or will be handcuffed by the NYPD at their criminal court arraignment in New York City based on the NYPD's arraignment restraint policy (the Policy). The Policy is set forth in an NYPD document titled "Commanding Officer's Memo Criminal Justice Bureau," which bears the subject "Prisoner Restraints at Court Arraignments" (NY St Cts Elec Filing [NYSCEF] Doc No. 9). The stated purpose of the Policy is as follows:

> "Purpose: To guide members of service (MOS) on the use of prisoner restraints at court arraignments. Pursuant to Patrol Guide 210-01, Department policy provides that prisoners should be handcuffed with their hands behind their back, when practical. MOS may exercise discretion to apply or not to apply restraints at arraignment, depending on individual circumstances presented, including safety and/or security concerns" (*id*. at 1).

The Policy describes "Court Arraignments" as "Official court proceedings; the first time a defendant/prisoner appears in front of a judge after an arrest. At court arraignment, the defendant/prisoner is told what the charges are against them and what their rights are" (*id*.). The Policy states, in bold letters, that "**HANDCUFFS SHOULD ONLY BE REMOVED AT OR AFTER THE MOMENT A PRISONER APPEARS IN PERSON BEFORE THE JUDGE AND IS PRESENT AT THE ARRAIGNMENT TABLE/PODIUM, ABSENT EXCEPTIONAL CIRCUMSTANCES**" (*id*.).

The Policy lists 13 "Safety and Security Factors" that MOS may consider when exercising discretion regarding handcuffing, but emphasizes that, absent exceptional circumstances, "[p]risoners should always be handcuffed when moved within the detention areas," and that MOS may only exercise discretion "to remove handcuffs or keep them on during the court arraignment" once the criminal defendant reaches "the arraign-

ment table/podium to appear before the judge/court" (*id*.). Finally, the Policy lists six examples of arraignment scenarios and further instructions on proper application of the Policy (*id*. at 2).

Plaintiff alleges in the complaint that the Policy

> "is to handcuff each person's wrists behind their back when officers escort them to arraignment, from the moment the officers and the accused person enter the courtroom until they reach the arraignment podium or table before the judge . . . and to keep nearly all people handcuffed for the duration of the arraignment proceeding" (NYSCEF Doc No. 1, complaint ¶ 21).

The complaint further alleges that, in practice, this policy results in "near-universal handcuffing of people throughout their arraignments" (*id.* ¶ 31). Plaintiff asserts that the NYPD's failure to provide any individualized, on-the-record rationale to the court for keeping someone handcuffed throughout their arraignment or to obtain the court's approval to keep them handcuffed violates the due process rights of every person arraigned on criminal charges in New York City (*id*. ¶¶ 8, 29). The complaint interposes a single cause of action for violation of due process rights under article I, § 6 of the New York State Constitution.

Plaintiff's status as proposed class representative stems from his own arrest by the NYPD on October 30, 2024 (NYSCEF Doc No. 1, complaint ¶ 50). After he was arrested, plaintiff was transported by NYPD officers to New York County Criminal Court, where he was arraigned the next day. While waiting for his arraignment to begin, counsel commenced this action on his behalf by filing a summons and complaint on the court's electronic filing system at 4:55 p.m. (NYSCEF Doc No. 1, confirmation notice). Plaintiff alleges in the complaint that he "is awaiting arraignment where," due to NYPD policy, "he will imminently be escorted into the courtroom in handcuffs and appear handcuffed in front of the judge at the arraignment podium or table" (*id*. ¶ 9). With respect to his injuries, plaintiff alleges that being handcuffed was humiliating, hurt his wrists, and "felt like a show" (NYSCEF Doc No. 1, complaint ¶¶ 54, 60; NYSCEF Doc No. 44, Allen affirmation ¶ 4).

Plaintiff's arraignment was held shortly after the complaint was filed (NYSCEF Doc No. 43, statement of facts ¶ 33). Plaintiff was escorted from the holding area in the public area

of the courtroom and to the podium in front of a criminal court judge with his hands cuffed behind his back (*id*. ¶ 33). He remained handcuffed throughout the proceeding (*id*. ¶ 35). The New York County District Attorney made an offer to resolve all charges with a plea to one count of disorderly conduct, upon completion of three sessions of a community-based diversion program called Manhattan Justice Opportunities (*id*. ¶ 36). He accepted and entered a plea (*id*.). There is no indication that plaintiff or his counsel requested that the court order the NYPD to remove the handcuffs at any time during the arraignment proceeding.

On November 8, 2024, plaintiff moved to certify the putative class certification pursuant to CPLR article 9 (NYSCEF Doc No. 6). On February 5, 2025, the City filed the instant pre-answer motion to dismiss and separately filed an opposition and cross-motion to plaintiff's motion, seeking a stay of the motion for class certification pending a determination on the motion to dismiss (NYSCEF Doc Nos. 26, 37). Plaintiff opposes the motion to dismiss and cross-moves pursuant to CPLR 3211 (c) to convert the motion to a motion for summary judgment, where he seeks an order granting summary judgment in plaintiff's favor, as well as summary judgment in favor of the putative class upon resolution of the motion for class certification (NYSCEF Doc No. 41, notice of cross-mot).

Arguments

In the motion for class certification, plaintiff argues that the putative class should be certified because the CPLR article 9 prerequisites of numerosity, commonality, typicality, adequacy, and superiority are satisfied. In the opposition and cross-motion, the City argues that plaintiff's motion for class certification was automatically stayed by virtue of their motion to dismiss, or in the alternative, that the court should grant a stay as proper and just because a motion for class certification is fact intensive and requires discovery as well as an analysis of the facts and issues.

The City separately moves to dismiss the complaint pursuant to CPLR 3211 (a) (2), (7), and (10). The City first argues that plaintiff's claims are not ripe and plaintiff lacks standing to challenge the Policy because plaintiff's complaint was filed before his arraignment, in anticipation of the Policy being applied to him. The City contends that the complaint alleges only predictions of harm and that a constitutional injury does not

mature into a justiciable controversy until the plaintiff "receives direct, definitive notice that the defendant is repudiating his or her rights" (NYSCEF Doc No. 32, defendants' mem in support at 9-11). The City further argues that the complaint should be dismissed because plaintiff failed to include the Office of Court Administration (OCA) as a necessary party in this action, that the action should have been brought as a CPLR article 78 proceeding, and that it is time-barred because it was filed after the four-month statute of limitations. The City contends that even if these procedural defects were resolved, the complaint fails to state a cause of action under article I, § 6 of the New York State Constitution because a criminal defendant does not have a constitutional right to be free of restraints at arraignment and because plaintiff failed to allege that the jurist actually saw the handcuffs during plaintiff's arraignment, which is an essential element of the claim. Finally, the City argues that class certification is premature and unnecessary due to the "government operations" doctrine.

Plaintiff opposes the City's motion to dismiss and cross-moves to convert the motion to a motion for summary judgment and for summary judgment on his claims and those of the class. In support of the motion for summary judgment, plaintiff argues that conversion is appropriate because the case presents only a purely legal question that the court can resolve on summary judgment, and that plaintiff is entitled to summary judgment because the use of routine visible restraints absent case specific, on the record findings violates the due process rights of every criminal defendant brought for arraignment in New York City (NYSCEF Doc No. 42, plaintiff's mem in support at 6-13). Plaintiff argues that the relation back and mootness exception doctrines resolve any questions of ripeness and standing (*id*. at 8-12). Finally, plaintiff contends that he is not required to bring this action under article 78 and that CPLR 103 (c) forbids dismissal for filing an action under the wrong form (*id*. at 13-15).

Discussion

It is incumbent on the court to first consider the threshold issues raised by the parties. As an initial matter, the court declines to convert the pending motion to dismiss to a motion for summary judgment. Generally, motions for summary judgment are not permitted until issue has been joined (CPLR 3212 [a]). However, CPLR 3211 (c) authorizes the court to treat a

motion to dismiss as a motion for summary judgment "after adequate notice to the parties." Conversion is inappropriate where a motion for summary judgment would be premature (*Valentine Tr. v Kernizan*, 191 AD2d 159, 161 [1st Dept 1993]). Conversion is appropriate only where the parties' evidentiary submissions clearly indicate that they "deliberately charted a summary judgment course" (*Martinez v JRL Food Corp.*, 194 AD3d 488, 489 [1st Dept 2021] [brackets omitted]). Whether conversion is appropriate is left to the sound discretion of the trial court (*id.*). Conversion is not appropriate here because the notice requirement has not been satisfied and because the parties' submissions do not evidence that they "deliberately charted a summary judgment course." On the contrary, the City's objections at oral argument and expressed in its written submissions demonstrate that the parties were not charting such a course (*Wadiak v Pond Mgt., LLC*, 101 AD3d 474, 475 [1st Dept 2012] ["Plaintiff's counsel's objection at oral argument to converting defendants' motion is a significant indication that the parties were not charting such a course"]).

Moreover, the factual allegations as pleaded do not establish that the cause of action for declaratory relief is ripe and that plaintiff has standing to bring this action. "A cause of action for declaratory relief accrues when there is a bona fide, justiciable controversy between the parties" (*Zwarycz v Marnia Constr., Inc.*, 102 AD3d 774, 776 [2d Dept 2013]). "A dispute matures into a justiciable controversy when a plaintiff receives direct, definitive notice that the defendant is repudiating [their] rights" (*id.*).

"The doctrine of standing is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution" (*Security Pac. Natl. Bank v Evans*, 31 AD3d 278, 279 [1st Dept 2006]). "[A] court has no inherent power to right a wrong unless thereby the civil, property or personal rights of the plaintiff in the action or the petitioner in the proceeding are affected" (*Matter of Mental Hygiene Legal Serv. v Daniels*, 33 NY3d 44, 50 [2019], citing *Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 772 [1991]). The most fundamental requirement to establish standing is that a plaintiff has suffered an "injury in fact" (*Society of Plastics*, 77 NY2d at 772 [" 'injury in fact' has become the touchstone during recent decades"]). "The existence of an injury in fact—an actual legal

stake in the matter being adjudicated—ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute in a form traditionally capable of judicial resolution" (*id*. [internal quotation marks omitted]). Generally, "[a] threat of future harm is insufficient to impose liability against a defendant in a tort context" (*Caronia v Philip Morris USA, Inc.*, 22 NY3d 439, 446 [2013]).

Although the Court of Appeals has acknowledged that in some contexts, "proof of a likelihood of the occurrence of a threatened deprivation of constitutional rights is sufficient to justify prospective or preventive remedies . . . without awaiting actual injury" (*Matter of Swinton v Safir*, 93 NY2d 758, 765-766 [1999]), such cases are extraordinarily rare and typically arise in circumstances where a defendant has already undertaken an allegedly violative act, but the resultant harm has yet to occur (*see Matter of Swinton v Safir*, 93 NY2d 758 [1999] [stigmatizing material added to employees personnel file, with a likelihood of dissemination to future employers]; *Police Benevolent Assn. of N.Y. State Troopers, Inc. v Division of N.Y. State Police*, 29 AD3d 68 [3d Dept 2006] [State Troopers had standing to maintain a declaratory judgment action challenging the orders of their superiors directing them not to appear in response to subpoenas issued by local courts for certain pretrial proceedings, even though they had not yet been held in contempt]), or where statutory goals explicitly support prospective relief (*Lino v City of New York*, 101 AD3d 552, 556 [1st Dept 2012] [police department's failure to seal records as required by the Criminal Procedure Law put plaintiffs at imminent risk that their records would be disclosed]).

Plaintiff's complaint comes before the court from the unusual circumstance of having been filed while he was "awaiting arraignment in New York County Criminal Court," where he alleges he "will imminently be escorted into the courtroom in handcuffs and appear handcuffed in front of the judge at the arraignment podium or table" (NYSCEF Doc No. 1, complaint ¶ 9). In contrast to the examples cited above, the risk of potential harm alleged by plaintiff relies entirely on a prediction regarding whether and how the NYPD's Policy would be applied to him at arraignment. Furthermore, the scenario described by plaintiff is not one where he could benefit from a prospective or preventative remedy because the complaint was filed five minutes before the close of the court's business hours and the arraignment was completed before his case was as-

signed to a jurist. Therefore, as pleaded, plaintiff's claims are not ripe and he lacks standing under either the "injury in fact" standard or the exception suggested by the Court in *Swinton v Safir*. Given that plaintiff ultimately remained handcuffed at arraignment, these defects could potentially be resolved by amendment, but plaintiff has not moved to amend the complaint. Nevertheless, this does preclude conversion to a motion for summary judgment.

Assuming, arguendo, that the court were to consider the additional facts provided by the parties regarding plaintiff's arraignment, the complaint fails to state a cause of action. On a motion to dismiss brought under CPLR 3211, the court must also "accept the facts as alleged in the complaint as true, accord [the plaintiff] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citations omitted]). Ambiguous allegations must be resolved in the plaintiff's favor (*see JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). "The motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [internal quotation marks and citations omitted]). However, a pleading consisting of "bare legal conclusions" is insufficient to defeat a motion to dismiss (*Leder v Spiegel*, 31 AD3d 266, 267 [1st Dept 2006], *affd* 9 NY3d 836 [2007], *cert denied* 552 US 1257 [2008]) and "the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts" (*Robinson v Robinson*, 303 AD2d 234, 235 [1st Dept 2003]).

In *Deck v Missouri*, the United States Supreme Court held that "the Fifth and Fourteenth Amendments [to the United States Constitution] prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial" (544 US 622, 629 [2005]). The Court then considered whether this rule applied to the penalty phase of a capital case and what procedural steps a trial court must take prior to ordering restraint in order to ensure that the criminal defendant is afforded due process (*id*. at 629). The Court considered "three fundamental legal principles," includ-

ing the presumption of innocence, the defendant's right to a meaningful defense, and maintaining a dignified judicial process (*id*. at 630-632). The Court concluded in the affirmative, but qualified that the constitutional requirement "is not absolute," and "permits a judge, in the exercise of his or her discretion, to take account of special circumstances, including security concerns, that may call for shackling" (*id*. at 633-634).

The New York State Court of Appeals later confirmed that a criminal defendant during a jury trial "has the right to be free of visible shackles, unless there has been a case-specific, on-the-record finding of necessity" under both federal and New York state constitutional law, but that the court's failure to articulate a specific reason on the record constitutes a harmless evidentiary error "when, in light of the totality of the evidence, there is no reasonable possibility that the error affected the jury's verdict" (*People v Clyde*, 18 NY3d 145, 153-155 [2011] ["Consequently, the evidentiary error was harmless"]). After *Clyde*, the Court of Appeals reiterated in *People v Best* that "[a] trial court that restrains a defendant during criminal proceedings must state a particularized reason for doing so on the record," but again affirmed that failure to do so constitutes a harmless constitutional error "where evidence of guilt is overwhelming and there is no reasonable possibility that it affected the outcome of the trial" (*People v Best*, 19 NY3d 739, 743-744 [2012]). The Court also held that these principles apply "with equal force to nonjury trials" (*id*. at 742).

Following *Clyde* and *Best*, New York courts have held that the right to an individualized court determination regarding restraint is implicated during other guilt phases of a criminal prosecution, including when a criminal defendant testifies before a grand jury (*People v Cain*, 209 AD3d 124 [3d Dept 2022]), during reading of the verdict and polling of jurors (*People v Sanders*, 39 NY3d 216 [2023]), and during post-conviction hearings (*People v Campbell*, 106 AD3d 1507 [4th Dept 2013]), and probation revocation hearings (*People v Hoebich*, 42 Misc 3d 128[A], 2013 NY Slip Op 52151[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2013]). Courts are divided regarding whether it extends to pretrial suppression hearings (*see People v Goldston*, 126 AD3d 1175, 1178 [3d Dept 2015] ["Although this prohibition has been extended to bench trials . . . , we discern no basis upon which to afford a criminal defendant the same protection in the context of a pretrial hearing"]; *People v Ashline*, 124 AD3d 1258, 1260 [4th Dept 2015]

[*Best* standard applied to pretrial suppression hearing, but failure to state a particularized reason for denying defendant's request to remove handcuffs was harmless error because it "did not contribute to the court's decision on the suppression issue" (internal quotation marks and brackets omitted)]; *see also People v Gamble*, 137 AD3d 1053, 1055 [2d Dept 2016] ["Assuming, without deciding, that the right to be free of restraints absent a finding of necessity . . . applies, in some fashion, to a pretrial hearing, we discern no reversible error on the part of the hearing court"]).

Despite this division, every stage of prosecution where New York courts have held that *Best* is implicated include, at a minimum, a fact-finding hearing. This is not coincidental or arbitrary. The presumption of innocence is, foundationally, evidence in favor of the accused (*Coffin v United States*, 156 US 432, 460 [1895] ["Concluding, then, that the presumption of innocence is evidence in favor of the accused introduced by the law in his behalf"]; *see also Deck v Missouri*, 544 US at 630, citing to *Coffin*, 156 US at 453). Visible shackling undermines the presumption of innocence because it "suggests to the jury that the justice system itself sees a need to separate a defendant from the community at large" (*Deck v Missouri*, 544 US at 630 [internal quotation marks omitted]). Thus, when a criminal defendant is restrained in view of the factfinder, it does harm to the evidence in favor of the accused. Thus, the court's failure to articulate a reason for the restraint is an evidentiary error (*People v Clyde*, 18 NY3d at 148-149 ["Here, defendant's shackling during trial was harmless, as was an evidentiary error committed by the trial court"]; *People v Best*, 19 NY3d at 744 ["A constitutional error may be harmless where evidence of guilt is overwhelming and there is no reasonable possibility that it affected the outcome of the trial"]).

This is consistent with the notion expressed by the United States Supreme Court in *Bell v Wolfish* that the "presumption of innocence is a doctrine that allocates the burden of proof in criminal trials . . . [that] has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun" (*Bell v Wolfish*, 441 US 520, 533 [1979]).[1] The presumption of innocence does not apply at the pretrial phase because it is not an evidentiary stage of the

1. Although *Bell v Wolfish* was decided under federal law, the Court of Appeals in *People v Clyde* also relied on the analysis of federal law set forth in *Deck v Missouri* with respect to the impact of the shackling on the

(n. cont'd)

proceeding and there is no factfinder. The United States Supreme Court analysis in *Deck v Missouri* begins with the premise that the limits on shackling in view of the factfinder "has deep roots in the common law" (544 US at 626). However, the Court also notes that "Blackstone and other English authorities recognized that the rule did not apply at 'the time of arraignment,' or like proceedings before the judge" (*id*.). Arraignment is unquestionably a critical stage of the criminal prosecution, which may necessitate some factual considerations on the part of the court, but it is not a factfinding proceeding and statements made at arraignment are generally not admissible at trial (*see People v L.D.*, 60 Misc 3d 729 [Sup Ct, Bronx County 2018]). For that reason, this court is not persuaded that the right to an individualized court determination regarding restraint is implicated at arraignment as a matter of course.

Moreover, plaintiff's complaint is erroneously premised on the notion that the NYPD's restraint Policy is solely responsible for handcuffing criminal defendants at arraignment. But criminal arraignments do not take place in a police precinct, they take place in a courthouse. In advocating to extend the procedural requirements articulated in *Best* and *Clyde* to members of the NYPD, the plaintiff decontextualizes the holdings of these cases and disregards the role of the court at the arraignment.[2] Plaintiff attempts to overcome this defect by asserting that the NYPD has an affirmative obligation to "seek an individualized judicial finding of necessity, or any court approval, to restrain defendants" during what plaintiff refers to as the "walk-up stage," where the NYPD escorts criminal defendants into the courtroom and to the podium or table for arraignment, and the "podium stage," where the criminal defend-

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presumption of innocence and the fairness of the factfinding process and reached the same conclusion under state law (*People v Clyde*, 18 NY3d at 153 ["Were we to decide this question under state constitutional law, the result would be the same"]).

2. Without reaching the non-dispositive question of whether the administrative arm of the New York State Unified Court System (OCA) is a necessary party to this action, the court acknowledges that the relief sought by plaintiff necessarily implicates courtroom security, which is also controlled by OCA policy and procedures (*see* New York State Unified Court System, OCA Support Units, https://ww2.nycourts.gov/Admin/supportunits.shtml#pa4 [last accessed June 24, 2025] ["The Department of Public Safety, headed by the Chief of Public Safety, is responsible for developing uniform guidelines, policies, and procedures for ensuring safety throughout the State Court System"]).

ant stands at the podium or table for the duration of the arraignment (NYSCEF Doc No. 42, plaintiff's mem in support at 3). Plaintiff has not provided, nor has this court found any precedent that imposes this affirmative obligation on a law enforcement agency.

As both parties concede, after arrest, a criminal defendant remains physically and legally in police custody before and during arraignment (*People v Russell*, 80 Misc 3d 1144, 1147 [Sup Ct, Queens County 2023] ["Upon a defendant's arrest, the defendant is in police custody"]; *see also* NYSCEF Doc No. 32, defendants' mem in support at 4; NYSCEF Doc No. 42, plaintiff's mem in support at 3).[3] Generally, law enforcement has discretion to determine when handcuffing a suspect or criminal defendant in its custody is required to maintain public safety (*see People v Allen*, 73 NY2d 378, 379-380 [1989] [officers permitted to take rational measures to assure their safety]). The Policy provides direction and guidance to police officers regarding when handcuffing of criminal defendants at arraignment is required to ensure the safety of "all persons, including MOS, court personnel, the public, other prisoners, or the arraigned prisoner" (NYSCEF Doc No. 9, Policy at 2). Courts have recognized that these are reasonable safety goals (*see e.g. Carzoglio v Paul*, 2024 WL 776031, *4, 2024 US Dist LEXIS 32635, *12 [SD NY, Feb. 26, 2024, No. 17 Civ 3651 (NSR)] [Acknowledging the "clear-cut safety rationale" of standard UCS safety protocol requires that *all* incarcerated persons, regardless of representation status, remain handcuffed while being transported within the courthouse]).

For a prosecution initiated by the arrest of a criminal defendant followed by arraignment, arraignment is the first stage of the criminal proceeding (*People v Meyer*, 11 NY2d 162, 164 [1962] ["An arraignment after an arrest must be deemed the first stage of a criminal proceeding"]; CPL 170.10, 180.10, 210.15). The arraignment is the criminal defendant's first appearance before the court and is where the court first acquires

3. *Russell* arises in the context of when a criminal defendant is deemed to be in the custody of the sheriff for speedy trial purposes pursuant to CPL 30.30 (2) (a). Following a thorough analysis of relevant law, the court held that a criminal defendant's commitment to the custody of the sheriff begins at arraignment when bail is fixed (*Russell*, 80 Misc 3d at 1148-1149). Whereas it was not relevant to the question presented, the decision contains no discussion regarding the presence of court officers in the employ of the New York State Unified Court System or the policy and procedures thereof as it relates to the custody or restraint of criminal defendants at arraignment.

and exercises jurisdiction over the criminal defendant (CPL 1.20 [9] ["Arraignment means the occasion upon which a defendant against whom an accusatory instrument has been filed appears before the court in which the criminal action is pending for the purpose of having such court acquire and exercise control over his person with respect to such accusatory instrument and of setting the course of further proceedings in the action" (internal quotation marks omitted)]). Legally, and in the most practical sense, arraignment is the first opportunity for the court to make an individualized determination regarding restraint because the Criminal Procedure Law does not provide any opportunity for "pre-arraignment" practice before the court following an arrest.

As applied to the "walk-up stage," plaintiff effectively argues that criminal defendants are entitled to an individualized court determination regarding restraint before arraignment begins and before the court has acquired jurisdiction over the criminal defendant. Balancing the need to ensure courtroom security and safety for all individuals in the courtroom with the lack of prejudice to the criminal defendant during the "walk-up,"[4] this court finds no compelling reason to expand the scope of *Best* to impose an affirmative duty on law enforcement officers transporting arrestees to arraignment. During the "podium stage," the court unquestionably controls the proceeding and bears responsibility for ensuring that the criminal defendant is afforded due process, not the NYPD. Nothing in the Policy supersedes the court's role or prevents the court from making an individualized determination regarding restraint. Plaintiff does not allege that he or his counsel asked the court to direct the NYPD to remove the handcuffs during his arraignment, nor does he allege that the court erred by failing to articulate individualized findings on the record. In any event, this court has no authority to adjudicate such claims. Any such challenge to the criminal court's actions must, of course, be brought on appeal in a court of appropriate jurisdiction.

The court has considered the remainder of arguments raised by the parties and finds them unpersuasive or moot in light of the determinations herein. Therefore, the motion to dismiss is granted.

Accordingly, it is ordered that plaintiff's motion for class certification (mot seq 001) and the cross-motion for a stay are

4. See discussion regarding presumption of innocence, supra at 236-237.

both denied as moot; and it is further ordered that the City's motion to dismiss (mot seq 002) is granted with prejudice, and the cross-motion for summary judgment is denied.

[240 NYS3d 670]

ANONYMOUS, Plaintiff, v WILLIAM COSBY et al., Defendants.

Supreme Court, New York County, July 11, 2025

HEADNOTES

Statutes — Validity of Statute — Claim-Revival Statutes — Due Process

Limitation of Actions — Revival of Time-Barred Claims — Adult Survivors Act — Due Process

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RESEARCH REFERENCES

By the Publisher's Editorial Staff

AM JUR 2d Constitutional Law §§ 685, 689, 710, 933, 938, 942; AM JUR 2d Limitation of Actions §§ 10, 28, 38, 40; AM JUR 2d Statutes §§ 1, 223.

CARMODY-WAIT 2d Limitation of Actions §§ 13:1, 13:8–13:10.

DOBBS LAW OF TORTS (2d ed) §§ 241, 247.

NY JUR 2d Constitutional Law §§ 307–308, 310, 412, 414; NY JUR 2d Limitations and Laches §§ 1, 11, 132; NY JUR 2d Statutes § 219.

NEW YORK LAW OF TORTS §§ 16:79, 19:2.

ANNOTATION REFERENCE

Power of legislature to revive a right of action barred by limitation or to revive an action which has abated by lapse of time. 133 ALR 384.

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APPEARANCES OF COUNSEL

Gabriella Orozco and *Kimberly Klein* for defendants.

Jordan Merson, *Jordan Rutsky* and *Manraj Sekhon* for plaintiff.

OPINION OF THE COURT

LESLIE A. STROTH, J.

Background

Plaintiff brings this action under the Adult Survivors Act

(ASA). (CPLR 214-j.) The allegations in this matter arise from events that allegedly occurred in the summer of 1984, during which time plaintiff was serving as an intern for NBC. (Complaint, NY St Cts Elec Filing [NYSCEF] Doc No. 2 ¶ 42.) According to the complaint, plaintiff was assigned by NBC to work on the set of *The Cosby Show*, where she reported directly to NBC employee Frank Scotti. (*Id.* ¶¶ 43-46.) It is further alleged that during the course of her internship, plaintiff met defendant Bill Cosby (Cosby), who cultivated what was described as a "mentoring and fatherly" relationship with her at the studio. (*Id.* ¶ 48.) Cosby purportedly instructed plaintiff to be present on set each day and regularly included her in meetings and interactions with other staff. (*Id.* ¶ 49.)

Following the taping of an episode of *The Cosby Show*, plaintiff attended a cast party at the studio, which was attended by employees of the defendants. (*Id.* ¶ 50.) In the week preceding the party, Cosby was accompanied on set by an unidentified male, estimated to be in his twenties or thirties. (*Id.* ¶ 52.) At the party, plaintiff complained of a headache, at which point Cosby offered her two pills that he represented to be aspirin. (*Id.* ¶ 53.)

Plaintiff alleges that the pills were not aspirin, but rather an intoxicant that rendered her incapacitated. (*Id.* ¶ 55.) She avers that after ingesting the pills, she lost consciousness and awoke on a couch in Cosby's dressing room, where Cosby was allegedly fondling her breasts underneath her shirt. (*Id.* ¶ 58.) The complaint states that she did not, and could not, consent to such contact. (*Id.* ¶ 59.)

After briefly awaking to find herself being sexually assaulted by Cosby, plaintiff again lost consciousness and subsequently awoke naked in a bed she believes to have been located in the apartment of the unidentified male who had accompanied Cosby to *The Cosby Show* set earlier that week. (*Id.* ¶¶ 60-61.) Plaintiff alleges that upon awakening she physically felt as though she had been vaginally penetrated while incapacitated. (*Id.* ¶ 62.)

Plaintiff asserts six causes of action: (1) battery, (2) assault, (3) intentional infliction of emotional distress, and (4) false imprisonment against defendant William Cosby. (*Id.* ¶¶ 64-106.)

Plaintiff's remaining causes of action for negligence and negligent hiring, retention and supervision are against NBC Universal Media, LLC, Kaufman Astoria Studios, Inc., Astoria

Studios Limited Partnership II, and The Carsey-Werner Company, LLC (Carsey-Werner). (*Id.* ¶¶ 107-145.) The parties have stipulated to discontinue the action as against NBC Universal Media, LLC. (NYSCEF Doc No. 56.) The parties have further stipulated to discontinue the action as against Kaufman Astoria Studios and Astoria Studios Limited Partnership II. (NYSCEF Doc No. 59.) Accordingly, plaintiff asserts causes of action for negligence and negligent hiring, retention and supervision against only the Carsey-Werner Company.

In motion sequence 002, defendant Cosby moves to dismiss plaintiff's complaint pursuant to CPLR 3211 (a) (5) and (7), arguing inter alia that plaintiff's claims lack factual specificity and that the Adult Survivors Act is unconstitutional under the United States and New York Constitutions for (1) allegedly violating defendant's due process rights and (2) violating the Ex Post Facto Clause.

In motion sequence 003, plaintiff moves to extend the deadline for service pursuant to CPLR 306-b on defendant Carsey-Werner.

Defendant Cosby's Motion to Dismiss

Motion to Dismiss Standard of Review

On a CPLR 3211 (a) (5) motion to dismiss, "a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff." (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011] [internal quotation marks and citation omitted].) Upon such a showing, "the burden shift[s] to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or was otherwise inapplicable, or whether it actually commenced the action or interposed the subject cause of action within the applicable limitations period." (*Bailey v Peerstate Equity Fund, L.P.*, 126 AD3d 738, 740 [2d Dept 2015] [citations omitted].) "[P]laintiff's submissions in response to the motion must be given their most favorable intendment." (*Benn*, 82 AD3d at 548 [internal quotation marks and citation omitted].)

Pursuant to CPLR 3211 (a) (7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the court must accept the facts alleged as true and determine simply whether plaintiff's facts fit within any cognizable legal theory. (*See* CPLR 3026; *Morone v*

Morone, 50 NY2d 481 [1980].) The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. (*See Leon v Martinez*, 84 NY2d 83, 87 [1994].)

Plaintiff's Claims are Sufficiently Pleaded

The ASA revives claims that allege "conduct which would constitute a sexual offense as defined in article [130] of the penal law." (CPLR 214-j.) Plaintiff alleges that she was drugged and sexually assaulted by Cosby at a cast party and raped later that night in 1985. Defendant argues that plaintiff's use of the word physically "felt" instead of something more definite like "knew" that she was drugged and raped shows that plaintiff's claims are not pleaded with required specificity to sustain a claim for battery.

Defendant relies on *O'Neill v Wilder* (2018 NY Misc LEXIS 26008, *9-10 [Sup Ct, Queens County, Oct. 25, 2018, No. 712235/2018]) for the proposition that plaintiff's complaint alleges mere speculation with respect to the incident, and it must therefore be dismissed. However, this case is distinguishable from *O'Neill*, where the court dismissed plaintiff's complaint in part for asserting that rape constituted battery, per se. In *O'Neill* the plaintiff's complaint was based on an alleged incident in which the plaintiff drank wine and then later woke up in a new location, alleging that the later development of a UTI indicated that she had been sexually assaulted, which constituted battery. Plaintiff's complaint herein sets forth a sequence of events in which plaintiff was allegedly handed drugs, purported to be aspirin, and woke up first to being sexually assaulted by defendant Cosby in his dressing room and later in another location where she physically felt that she had been vaginally penetrated while incapacitated. Such would constitute battery. Moreover, the court does not find a lack of specificity that is fatal to plaintiff's case at this early juncture. Plaintiff alleges a specific time and place of the alleged incident, and at the early stages of litigation, the court must afford a liberal construction of the pleadings provided. Therefore, the court finds that plaintiff's complaint is sufficiently pleaded at this juncture as to all claims, as any details not in the complaint are subject to further discovery.

Constitutionality of the Adult Survivors Act

Defendant moves to dismiss the complaint on the ground that the ASA is unconstitutional. Specifically, defendant contends that the ASA violates the Due Process Clauses of the

United States and New York State Constitutions, and the Ex Post Facto Clause of the United States Constitution. For the reasons set forth below, the motion is denied.

A. New York State Due Process Requirements

It is well settled that revival of a time-barred claim does not violate due process "if it was enacted as a reasonable response in order to remedy an injustice" (*Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 NY3d 377, 400 [2017]). Courts applying New York law assess revival statutes functionally, "weighing the defendant's interests in the availability of a statute of limitations defense with the need to correct an injustice." (*World Trade Ctr.*, 30 NY3d at 394.)

The ASA satisfies that standard. The Legislature enacted CPLR 214-j to provide a one-year window in which survivors of sexual offenses committed when they were adults could bring civil claims previously barred by the statute of limitations. The legislative justification explicitly states that New York's limitations periods had proved insufficient "in giving survivors of these heinous crimes enough time to pursue justice" (Senate Introducer's Mem in Support of 2022 NY Senate Bill S66-A, enacted as L 2022, ch 203). Such shows a legislative intent to "correct an injustice."*

Although no New York State appellate court has ruled directly as to the constitutionality of the ASA, the Southern District of New York explicitly found that the ASA does not violate the Due Process Clause of the New York State Constitution in *Carroll v Trump* (650 F Supp 3d 213, 224-225 [SD NY 2023]). The court in *Carroll* held that "it is not the function of courts to second guess the Legislature as to the existence of a serious injustice in determining the constitutionality of a revival statute" before ultimately concluding that the ASA is

* New York State Assemblymember Linda Rosenthal stated the following purpose as it relates to the ASA:

> "Regardless of your age, sexual assault destroys a piece of you, and it takes most survivors time to process and overcome the trauma. More time than New York law currently allows. Now that the Adult Survivors Act is finally law, the doors to justice will be flung wide open and countless survivors will have an opportunity to seize justice by filing a case against their abusers, and the institutions that harbored them, in the civil court . . . [T]he passage of the ASA signals a long overdue shift in New York's law, a necessary rebalancing of the scales of justice and ensures that survivors are protected." (Governor Hochul Signs Adult Survivors Act, available at https://www.governor.ny.gov/news/governor-hochul-signs-adult-survivors-act.)

constitutional "just as the similar revival provision of the Child Victims Act has passed constitutional muster by every court to consider the question." (*Carroll*, 650 F Supp 3d at 222, 224-225.) This court adopts the *Carroll* court's ruling in finding that the ASA does not violate the New York State Constitution's Due Process Clause. As discussed infra, the *Carroll* decision also found that the ASA did not violate the United States Constitution's Due Process Clause.

Moreover, New York State courts have weighed in on precisely this question as it relates to the revival window of CPLR 214-g, the Child Victims Act (CVA). The CVA is a mirror statute to the ASA, reviving claims for alleged victims. The primary distinction between the two acts is that the ASA revives claims for people who allege that they were sexually assaulted when they were over the age of 18, while the CVA does the same for alleged victims who were under the age of 18 at the time of the alleged assault. The assertion that the ASA is unconstitutional because the plaintiffs were able to bring their suit at the time the alleged incident occurred is also without merit. The Court of Appeals in *Hymowitz v Eli Lilly & Co.* squarely rejected the notion that a claim revival statute violates the New York State Constitution's Due Process Clause because plaintiffs were able to assert a cause of action at the time of the initial alleged incident. (73 NY2d 487, 502 [1989].) Here, the fact that the plaintiff could have asserted a claim at the time of the alleged incidents is therefore irrelevant, as that fact alone has been found insufficient to support a finding of a violation of a defendant's due process rights.

Defendant's arguments that the two acts are fundamentally different because the CVA includes a "Justification" section are unpersuasive, as this court finds the legislative text between the two statutes and the legislative intent to be sufficiently similar for the purposes of analysis of the constitutionality of the ASA. New York State courts and federal courts have similarly found that the legislative intent of the ASA to clearly evince a legislative intent sufficient to defeat a due process challenge. (*J.S.M. v City of Albany Dept. of Gen. Servs.*, 83 Misc 3d 1082, 1088 [Sup Ct, Albany County 2024]; *see Carroll*, 650 F Supp 3d at 224-225.)

In analyzing the constitutionality of the CVA, New York State courts have consistently held that it does not run afoul of the New York State Constitution's due process requirement because it was "enacted as a reasonable response in order to remedy an

injustice." (*Schearer v Fitzgerald*, 217 AD3d 980, 982 [2d Dept 2023].) As the ASA and CVA are analogous statutes, and the legislative intent is clear, this court holds that the ASA does not violate defendant's due process rights under the New York State Constitution.

B. United States Constitution Due Process Requirements

Federal constitutional principles compel the same result. The United States Supreme Court has long held that revival of expired civil claims does not violate the Due Process Clause. (*Stogner v California*, 539 US 607, 651 [2003].) Moreover, in *Chase Securities Corp. v Donaldson* (325 US 304, 314 [1945]), the Supreme Court emphasized the deference it gives to the legislature relative to civil statutes of limitations:

> "The[ ] shelter [of statutes of limitations] has never been regarded as what now is called a 'fundamental' right or what used to be called a 'natural' right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control." (*Chase Securities Corp. v Donaldson*, 325 US 304, 314 [1945].)

Further, as discussed supra the Southern District of New York in *Carroll*, adopted by this court, found that the ASA did not violate the Due Process Clause of either the United States Constitution or the New York State Constitution.

As claim revival statutes generally do not give rise to an issue of federal due process violations and the ASA specifically has been found to comply with federal due process protections this court is not inclined to disturb established precedent. Arguments that the ASA is different from the general class of claim revival statutes are unavailing, and as such this court does not consider such. Notably, defendant actually concedes that claim revival statutes pose no issue under the Fourteenth Amendment.

C. Ex Post Facto

Defendant further argues that the ASA violates the Ex Post Facto Clause of the United States Constitution. This argument is similarly without merit.

As the United States Supreme Court has made clear, the Ex Post Facto Clause, by its own terms, "applies only to penal statutes" (*Collins v Youngblood*, 497 US 37, 41 [1990], citing *Calder v Bull*, 3 US 386 [1798]). The ASA is a civil remedial

statute. It imposes no criminal liability, and its sole function is to reopen access to civil courts.

In *Smith v Doe* (538 US 84 [2003]), the Supreme Court upheld a retroactive sex offender registration statute against an ex post facto challenge, emphasizing that "only the clearest proof" will suffice to override legislative intent and reclassify a civil statute as punitive. (*Id.* at 92.) Applying the *Mendoza-Martinez* factors, the *Smith* Court concluded that even the public registration of sex offenders—a far more severe consequence than mere monetary liability—was not punitive in nature. The ASA, which allows civil plaintiffs to seek compensatory and punitive damages under long-standing tort principles, does not remotely approach the threshold for punitive legislation.

Courts analyzing revival statutes akin to the ASA have reached the same conclusion. In *Bernard v Cosby* (US Dist Ct, D NJ, Sept. 29, 2023, No. 1:21-cv-18566, slip op at 23-25), the United States District Court rejected defendant's ex post facto challenge to a nearly identical New Jersey revival statute. The court explained that civil remedies, including punitive damages, do not transform a remedial statute into criminal punishment. That reasoning applies with equal force here. Defendants have failed to demonstrate that the ASA is punitive in nature such that the legislation may be successfully challenged on ex post facto grounds.

Accordingly, defendant's motion to dismiss is denied in its entirety on this ground as well.

Plaintiff's Motion to Extend Time to Serve Carsey-Werner

In motion sequence 003, plaintiff seeks to extend the time to serve process upon defendant Carsey-Werner pursuant to CPLR 306-b. CPLR 306-b sets forth the service requirements and timing thereof, and specifically provides that "[i]f service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service."

Courts have interpreted the "good cause shown" and "interest of justice" standards in CPLR 306-b as "two separate standards by which to measure an application for an extension of time to serve" (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 104 [2001]). Good cause requires a showing that "diligent efforts at service" have been made by the party seeking an extension. (*Id.* at 105.) A court

> "may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff's request for the extension of time, and prejudice to defendant." (*Id.* at 105-106.)

Courts routinely grant extensions for service in cases where "defendants have not demonstrated any prejudice." (*Hernandez v Abdul-Salaam*, 93 AD3d 522, 522 [1st Dept 2012].)

First, the court finds that plaintiff attempted to serve Carsey-Werner by mailing the pleadings to Carsey-Werner's principal and mailing address as listed with the Secretary of State. Second, Carsey-Werner is not prejudiced, as they have acknowledged knowledge of the complaint, in part by agreeing to participate in mediation of the underlying matter. Moreover, at the time the instant motion was filed, no discovery had taken place, further limiting any claim that Carsey-Werner was prejudiced. The court finds that, at this early stage of the litigation, Carsey-Werner will be afforded ample time and opportunity to answer, move and engage in discovery.

Although plaintiff concedes that service was not timely effectuated, for all of the foregoing reasons, the court finds that extending service is in the interest of justice. Therefore plaintiff's motion is granted to the extent that plaintiff is directed to properly serve process upon defendant Carsey-Werner within 30 days.

The court has considered the remaining arguments and finds such unavailing.

Accordingly, it is hereby ordered that defendant's motion sequence 002 to dismiss is denied in its entirety; and it is further ordered that plaintiff's motion sequence 003 to extend plaintiff's time to serve defendant Carsey-Werner is granted to the extent that plaintiff is directed to properly complete service of process upon Carsey-Werner within 30 days of the date of this order.

[240 NYS3d 678]

ROBERT JAMES, Plaintiff, v MARINI HOMES, LLC, Defendant.

Supreme Court, Otsego County, July 14, 2025

HEADNOTES

Jury — Selection of Jury — Disclosure of Juror Information — Protection of Confidential Information

Disclosure — Discovery and Inspection — Post-Note of Issue Discovery Request — No Unusual or Unanticipated Circumstances

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RESEARCH REFERENCES

By the Publisher's Editorial Staff

AM JUR 2d Depositions and Discovery §§ 1, 3, 5, 7, 19; AM JUR 2d Jury §§ 92, 97, 117.

CARMODY-WAIT 2d Disclosure §§ 42:1, 42:212, 42:232–42:233; CARMODY-WAIT 2d Selection and Impanelment of Jury §§ 55:1, 55:11; CARMODY-WAIT 2d Discovery § 187:51; CARMODY-WAIT 2d Jury Selection and Supervision §§ 191:1, 191:4.

NY JUR 2d Disclosure §§ 2, 10, 13, 161; NY JUR 2d Jury § 71.

SIEGEL, NY PRAC (6th ed) § 362.

ANNOTATION REFERENCE

Propriety of Disclosure of State Jurors' Personal Identifying Information. 95 ALR6th 219.

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Query: (juror /s confidential /5 information /p disclos!) or 840.6

APPEARANCES OF COUNSEL

Smith, Sovik, Kendrick & Sugnet, P.C. (*Kevin J. Casserino* of counsel) for defendant.

Robert James, plaintiff pro se.

OPINION OF THE COURT

BRIAN D. BURNS, J.

Defendant filed a notice for application for disclosure of jury

list pursuant to 22 NYCRR 840.6. The Commissioner of Jurors was put on notice of the application. Plaintiff has been heard in opposition to the application.

Defendant seeks the jurors' names to "investigate the biases, impartiality, prejudices, mental competence, and any other factors which might cause less than a fair trial [for defendant]." The defendant relies on *People v Perkins* (125 AD2d 816 [3d Dept 1986]) to support its request for disclosure of the jurors' names. In *Perkins*, the Court held the application

> "should be granted since it appears the information is sought by an attorney for a defendant in a criminal matter as part of counsel's trial preparation and for the valid purpose of advancing his client's right to a fair and impartial jury trial. Moreover, there is no indication whatsoever that the privacy interests sought to be protected by the statute will be compromised if relief is granted in this case." (*Id.* at 818.)

In the present case, the information sought is "confidential and shall not be disclosed except . . . as permitted by the appellate division" under Judiciary Law § 509 (a). The Appellate Division, Third Department delegated the authority to hear and determine requests for disclosure of juror information under 22 NYCRR 840.6 to the trial courts. The rule itself dates to 1989. It directs that all applications "for disclosure of the list of potential jurors for use in counsel's trial preparation shall be directed to and determined by the trial judge or justice." The rule does not set forth any criteria for determining the application and there is a paucity of cases interpreting the rule. The rule is unique to the Appellate Division, Third Department (*see Matter of Barker v Union Corrugating Co.*, 72 Misc 3d 731 [Sup Ct, Onondaga County 2021]).

In *Barker*, a party filed a motion seeking the disclosure of juror information. The court found "sound reasons for not permitting the disclosure of juror identity prior to voir dire." (*Id.* at 733.)

> "Even the seemingly innocent characterization of defendants' request as one to investigate the biases, impartiality, prejudices, mental competence, and any other factors which might cause less than a fair trial is one which lends itself to great mischief. Potential jurors are not parties to an action. Opening the door to de facto cross-examination on items which one may find in an Internet search based

> only on a name and general location . . . is hardly a stable foundation and would lead to the treatment of jurors as adverse parties instead of potential finders of fact." (*Id.* [internal quotation marks omitted].)

The court ultimately denied the motion on the grounds that it lacked the legal authority to do so under the Judiciary Law. (The court is located in the Fourth Department, which does not have a rule delegating the authority to determine such motions, similar to that in the Third Department.)

In considering the request for disclosure of jurors' names in the present case, the court finds that it presents a scenario not present in *Perkins* and thus can be distinguished from it. First, *Perkins* was a criminal case which presented constitutional issues not present here. In addition, the plaintiff herein is not represented by counsel. Attorneys are bound by the Rules of Professional Conduct, including conduct as it relates to prospective jurors (*see* Rules of Prof Conduct [22 NYCRR 1200.0] rule 3.5). Specifically, counsel is prohibited under rule 3.5 from communicating with a juror or prospective juror (Rules of Prof Conduct rule 3.5 [a] [4]) or attempting to influence a juror or prospective juror (Rules of Prof Conduct rule 3.5 [a] [5]). Lawyers may not "conduct a vexatious or harassing investigation of either a member of the venire or a juror or, by financial support or otherwise, cause another to do so." (Rules of Prof Conduct rule 3.5 [a] [6].) Plaintiff, who is not represented by counsel, is not bound by these rules. The information defense counsel seeks would necessarily have to be shared with plaintiff, who is not duty bound to honor such confidentiality. The court does not suggest that the plaintiff would intentionally misuse the information but his lack of counsel could too easily lead to the improper violation of jurors' privacy interests.

There have been almost unimaginable advances in computer technology and the amount and nature of information available about potential jurors in the last 39 years since the *Perkins* case was decided and its court held "there is no indication whatsoever that the privacy interests sought to be protected by the statute will be compromised if relief is granted in this case." (*Perkins* at 818.) In today's world, a simple Internet search of a juror's name can reveal the address of every location they have ever lived, their telephone number, email addresses, the names and relationship of family members, social media accounts, arrest record, and employment history.

Unfortunately, there is no certainty that any of the above information is accurate. This leads exactly to the type of mischief anticipated by the *Barker* court and the "de facto cross-examination . . . and . . . the treatment of jurors as adverse parties instead of potential finders of fact." (*Barker* at 733.)

In *Matter of Newsday, Inc. v Sise* (71 NY2d 146 [1987]), the New York Court of Appeals was presented with the question of whether juror questionnaires were confidential or subject to disclosure pursuant to a Freedom of Information Law request. The Court determined that the juror questionnaires were confidential and not subject to disclosure because

> "[i]t is the knowledge about the jurors—the private details obtained from the questionnaires concerning their spouses' names, the names and ages of their children, their home telephone numbers, occupations, educational backgrounds, and criminal records, if any—which the statute is designed to protect from public disclosure (*see, Matter of Herald Co. v Roy*, 107 AD2d 515, 520; *see also, People v Perkins*, 125 AD2d 816, 817-818)." (*Newsday* at 152.)

"It is the information from the questionnaires, not the forms themselves which, if made public, could invade the jurors' privacy interests or threaten their safety and that information, therefore was made confidential." (*Id.*) The very same type of information on a juror questionnaire which the Court of Appeals found was confidential is now readily available through an Internet search of a juror's name.

Undoubtedly, defendant has the right to a fair trial (*see* Judiciary Law § 500). That right, however, can be protected by the opportunity to conduct a voir dire of potential jurors during jury selection at which time jurors' potential bias, prejudice, mental competence and any other issues that might cause less than a fair trial can be explored. This court will provide the defendant's counsel, and the pro se plaintiff, as much time as is needed to fully explore these issues during jury selection. It is not necessary to disclose the jurors' names, and by extension their families' names, and all of the other information alluded to hereinabove, to ensure that a fair jury is selected in this case. The request to disclose the jurors' names is, therefore, denied.

Turning to the remaining issue at hand, in response to the application, plaintiff indicated his intent to conduct deposi-

tions. The trial note of issue in this matter was filed on February 13, 2023. The trial, which commences on July 21, 2025, was scheduled by order dated March 14, 2025. It is well-settled that post-note of issue discovery may only be conducted with approval from the court upon motion where the movant demonstrates that "unusual or unanticipated circumstances" developed since the filing of the note of issue to warrant such relief (22 NYCRR 202.21 [d]; *Fusco v Town of Colonie*, 201 AD3d 1114, 1114-1115 [3d Dept 2022]; *Miller v Metropolitan 810 7th Ave.*, 50 AD3d 474, 475 [1st Dept 2008]).

Plaintiff's filing does not constitute a motion under the CPLR. Even if the court construed it as a motion, plaintiff has not demonstrated unusual or unanticipated circumstances to justify additional discovery where the trial is scheduled to commence in just over one week. The request is denied.

The court has examined all other arguments and to the extent they are not specifically addressed, they are denied.

Now, therefore, it is hereby ordered that the application for disclosure of the jury list is denied; and it is further ordered that plaintiff's request to conduct additional discovery is denied.

[240 NYS3d 895]

New York State Police, Petitioner, v S.C., Respondent.

Supreme Court, Westchester County, July 25, 2025

HEADNOTES

Records — Sealing of Records — Extreme Risk Protection Order — Request to Seal Prior to Expiration of Order

RESEARCH REFERENCES

By the Publisher's Editorial Staff

Am Jur 2d Courts § 27; Am Jur 2d Depositions and Discovery §§ 62, 64.

Carmody-Wait 2d Disclosure §§ 42:521–42:523, 42:525.

NY Jur 2d Courts and Judges §§ 179–180; NY Jur 2d Disclosure §§ 411–415.

Siegel, NY Prac (6th ed) § 353.

ANNOTATION REFERENCE

See ALR Index under Court Records; Protective Orders.

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APPEARANCES OF COUNSEL

The Legal Aid Society of Westchester County, White Plains (*Bryce Alvord* of counsel), for respondent.

Letitia James, Attorney General, White Plains (*Kathleen Kelly* of counsel), for petitioner.

OPINION OF THE COURT

William J. Giacomo, J.

Respondent moves by letter application to seal the records of the extreme risk protection order (ERPO) proceeding conducted by this court prior to the expiration of the order, or, in the alternative, seeks a protective order with respect to certain documents.

Factual and Procedural Background

The court assumes familiarity with the record. After a hearing held on July 10, 2025, this court found that petitioner had

proved by clear and convincing evidence that the respondent is likely to engage in conduct that would result in serious harm to self or others as defined in Mental Hygiene Law § 9.39 (a) and granted the petitioner's application for an ERPO pursuant to CPLR article 63-A. On the record, counsel for respondent requested the court seal the ERPO file or issue a protective order for certain documents. The court advised respondent to proceed by letter motion and include arguments in support of his requested relief.

In his letter application, respondent argues that there is good cause to seal the entire record due to the prejudice against him if the record were to remain accessible to the public. He claims that the public interest is already protected by having the ERPO in place and there is no need for the records to be accessible to the public. Further, according to respondent, allowing the prosecution access to these records in any upcoming related and unrelated criminal charges would compromise his ability to present a defense.

Alternatively, respondent requests the court issue a protective order for the temporary extreme risk protection order (TERPO) application, the transcript and evidence at the ERPO hearing and the court's ultimate decision. Respondent argues that the prosecution in any ongoing or subsequent criminal proceeding should be denied access to these records absent leave of court. Similar to above, respondent claims that he would be unfairly prejudiced in criminal proceedings if these documents were publicly available to the prosecution.

In opposition, petitioner argues that premature sealing of the record is against the intent of the Legislature. Further, respondent has allegedly failed to establish good cause shown for sealing the records. According to petitioner, respondent has also failed to establish the need for a protective order, as mere concern about the use of information in a related criminal case is insufficient to establish good cause.

Discussion

Request to Seal the Records

Uniform Rules for Trial Courts (22 NYCRR) § 216.1 (a) provides, in relevant part:

> "Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of

> good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties."

It is well settled there is a "broad constitutional presumption, arising from the First and Sixth Amendments, as applied to the states by the Fourteenth Amendment, that the public is entitled to access to court proceedings." (*Gryphon Dom. VI, LLC v APP Intl. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006].) In general, courts have "been reluctant to allow the sealing of court records, even where both sides to the litigation have asked for such sealing." (*Id.* [citations omitted].) As "confidentiality is the exception, the court must make an independent determination of whether to seal court records in whole or in part for good cause. . . . The party seeking to seal documents must demonstrate compelling circumstances." (*Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2d Dept 2007] [internal quotation marks and citations omitted].)

Pursuant to CPLR 6346 (1), "[a] protection order issued pursuant to this article, and all records of any proceedings conducted pursuant to this article, shall be sealed upon expiration of such order." Respondent is requesting the entire ERPO record sealed prior to the expiration of the order. However, CPLR 6346 specifically addresses the sealing of ERPO records and mandates that the record be sealed at the expiration of the order. Thus, any sealing prior to this expiration is against the intent of the statute. Further, as established by case law, sealing of court records is an exception to the rule. Here, respondent has not met his burden to demonstrate compelling circumstances for why the records should be sealed.

Protective Order

"CPLR 3103 (a) provides, in pertinent part, that a court may enter a protective order 'to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.' The party seeking a protective order bears the burden of showing that such relief is warranted." (*Board of Mgrs. of Fishkill Woods Condominium v Gottlieb*, 184 AD3d 792, 793-794 [2d Dept 2020].)

Respondent requests the court enter a protective order limiting access to certain documents in his ERPO file. He argues that, at a later date, allowing the prosecutors access to these records during any criminal proceedings would unfairly prejudice him. Here, however, respondent did not meet his burden

of showing that this relief is warranted. At the outset, the ERPO statute itself provides that

> "[n]otwithstanding any contrary claim based on common law or a provision of any other law, no finding or determination made pursuant to this article shall be interpreted as binding, or having collateral estoppel or similar effect, in any other action or proceeding, or with respect to any other determination or finding, in any court, forum or administrative proceeding." (CPLR 6347.)

Thus, the language of the ERPO statute already provides that the ERPO determination, which is civil, should not have a collateral estoppel effect on any upcoming criminal trial.

Furthermore, the court will not preemptively issue a protective order for matters which have not yet taken place. Pursuant to the ERPO statute, even after the expiration of the ERPO, records are available to certain police forces and departments, among other entities. If and when it is applicable, the Criminal Court will make a determination as to what is admissible. Accordingly, as there is no basis for a protective order at this time, respondent's request is denied.

All other arguments raised on this motion and evidence submitted by the parties in connection thereto have been considered by this court notwithstanding the specific absence of reference thereto.

Conclusion

Accordingly, it is hereby ordered that respondent's motion, made by letter application, is denied in its entirety.

77 Bank of Am., NA v Gilles, 2025 NY Slip Op 52149(U). Accounts and Accounting—Account Stated—Credit Card Debt—Affidavit of Bank's Custodian of Records. (Civ Ct, Queens County, Nov. 26, 2025, Torres, J.)

78 Perez v New York City Health & Hosps. Corp., 2026 NY Slip Op 50061(U). Disclosure—Penalty for Failure to Disclose—Fraud on Court—Submission of Falsified Purported Expert Letter in Medical Malpractice Action. (Sup Ct, Bronx County, Jan. 16, 2026, Fernandez, J.)

79 Greystone Commercial Mtge. Capital LLC v 2142 Frederick Douglass Blvd. Corp., 2026 NY Slip Op 50062(U). Mortgages—Foreclosure—Motion to Set Aside Sale. (Sup Ct, Westchester County, Jan. 20, 2026, Jamieson, J.)

80 Lafayette, Matter of, 2026 NY Slip Op 50063(U). Licenses—Firearms—Denial of Concealed Carry Pistol Permit—Failure to Disclose Arrest Information. (Sup Ct, Rensselaer County, Jan. 20, 2026, Mendez, J.)

81 People v Reeves (Myeshia), 2026 NY Slip Op 50064(U). Crimes—Disclosure—Automatic Discovery—Good Faith and Due Diligence—Existence of 911 Call. (Nassau Dist Ct, 1st Dist, Jan. 20, 2026, Agazarian, J.)

82 Serrapica v South Shore Rehabilitation & Nursing Ctr., 2026 NY Slip Op 50065(U). Trial—Verdict—Setting Verdict Aside—Sufficiency of Evidence of Public Health Law § 2801-d Claim. Damages—Inadequate and Excessive Damages—Distinct Damages for Public Health Law § 2801-d Violation and Negligence Permissible. (Sup Ct, Nassau County, Jan. 14, 2026, McGrath, J.)

83 Berman, Matter of, 2026 NY Slip Op 50066(U). Courts—Surrogate's Court—Subject Matter Jurisdiction—Petition Seeking Declaration of Decedent's True Date of Birth Unrelated to Decedent's Affairs. Courts—Surrogate's Court—Power to Entertain Declaratory Judgment Action Related to Settlement of Affairs—Petition Seeking Declaration of Decedent's True Date of Birth Not Justiciable Controversy. (Sur Ct, Dutchess County, Jan. 21, 2026, Hayes, S.)

84 Hoggard v Cheever Dev. Corp., 2026 NY Slip Op 50067(U). Contracts—Public Works Contracts—Prevailing Rate of Wages. Labor—Prevailing Rate of Wages—Public Works Contracts—Action to Recover from Bond. (Sup Ct, NY County, Jan. 14, 2026, Crawford, J.)

85 Cortorreal v W&HM Realty Partners Co., LLC, 2025 NY Slip Op 52150(U). Labor—Safe Place to Work—Alleged Fall through Wooden Scaffold Plank. (Sup Ct, Bronx County, Dec. 3, 2025, Crawford, J.)

86 Morales v Hudson View Gardens, Inc., 2025 NY Slip Op 52151(U). Labor—Safe Place to Work—Fall from Ladder. Indemnity—Contractual Indemnification—Construction Site Accident—Control over Work. (Sup Ct, Bronx County, Dec. 3, 2025, Crawford, J.)

87 Matos v Yola Realty LLC, 2026 NY Slip Op 50068(U). Negligence—Maintenance of Premises—Res Ipsa Loquitur. Motions and Orders—Motion to Dismiss—Judgment as Matter of Law. (Sup Ct, Kings County, Jan. 13, 2026, Maslow, J.)

88 People v Bey (Abdus), 2026 NY Slip Op 50069(U). Crimes—Disclosure—Automatic Discovery—Failure to Confer before Filing Motion to Dismiss. (Crim Ct, Queens County, Jan. 20, 2026, Tubridy, J.)

89 S.E. v Diocese of Brooklyn, 2026 NY Slip Op 50070(U). Records—Sealing of Records—Clergy File—Good Cause. (Sup Ct, Kings County, Jan. 9, 2026, Quiñones, J.)

90 Corst v Mushailov, 2026 NY Slip Op 50071(U). Courts—Jurisdiction—When Appearance Confers Personal Jurisdiction. (Civ Ct, Kings County, Jan. 15, 2026, Malik, J.)

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