CasePrepPlus

March 22, 2019

An advance sheet service summarizing recent and significant New York appellate cases

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FIRST DEPARTMENT

ATTORNEYS, ACCOUNT STATED.

THE ABSENCE OF A RETAINER AGREEMENT DOES NOT PRECLUDE RECOVERY OF ATTORNEY'S FEES UNDER THE ACCOUNT STATED THEORY.

The First Department determined the absence of a retainer agreement did not preclude recovery of attorney's fees under the account stated theory: "... '[F]ailure to comply with the letter of engagement rule (22 NYCRR 1215.1) does not preclude . . . recovery of legal fees under a theory of account stated' ... . The record before us shows that, after receiving the benefit of Carling's services, Peters invoked the absence of a retainer agreement in an effort to evade her payment obligations, and the court was right to award him the amounts reflected in his bills." ***Carling v. Peters*, 2019 N.Y. Slip Op. 01713, First Dept 3-12-19**

CIVIL RIGHTS LAW, CRIMINAL LAW.

STOP AND ARREST OF PLAINTIFF PURSUANT TO NYC'S STOP AND FRISK POLICY STATED VALID CAUSES OF ACTION PURSUANT TO 42 U.S.C. § 1983 AGAINST THE POLICE OFFICERS AND THE CITY.

The First Department determined the allegations describing the stop and arrest of the plaintiff pursuant to NYC's stop and frisk policy stated causes of action pursuant to 42 U.S.C. § 1983 against the individual officers and the city: "The complaint, as amplified by plaintiff's opposition papers, alleges that, on February 13, 2013, plaintiff and a friend, both black men, were driving in a luxury sports car in the Bronx. They were not driving recklessly or violating any traffic laws. Nevertheless, they were pulled over by the police, and five or six officers, including the individual defendants, removed them from the car and searched them and the car. The police found marijuana in the friend's pocket, but recovered no other contraband, either in the car or on plaintiff's person. Nevertheless, plaintiff was arrested and held for two days. Charges against him were dismissed in October 2013. The complaint alleges further that, during this time period, the New York City Police Department employed a 'stop and frisk' policy, pursuant to which every year the police stopped hundreds of thousands of overwhelmingly and disproportionately minority persons, including black men, and subjected them to searches, for no reason other than that they were in supposedly high-crime areas. The complaint alleges that the 'stop and frisk' policy, rather than some constitutionally cognizable cause, was the reason plaintiff was detained, searched, and arrested. To prove the existence of this policy, plaintiff submitted, among other things, the New York City Bar Association's 24-page 'Report on the NYPD's Stop-and-Frisk Policy,' dated May 2013, which examined the policy and made recommendations for its reform and the protection of city residents' civil liberties. The foregoing states a cause of action under 42 USC § 1983 against the individual defendants ... . At this procedural juncture, it is not necessary for plaintiff to allege that any of the individual defendants did any more than participate in his unlawful arrest. By alleging the existence of an extraconstitutional municipal 'stop and frisk' policy, and that the individual defendants unlawfully arrested plaintiff pursuant to that policy, the complaint states a cause of action under 42 USC § 1983 against the City ...". **Smith v. City of New York, 2019 N.Y. Slip Op. 01828, First Dept 3-14-19**

CONTRACT LAW, NEGLIGENCE.

QUESTION OF FACT WHETHER GROSS NEGLIGENCE MIGHT OVERCOME A CONTRACTUAL LIMITATION ON LIABILITY.

The First Department, reversing Supreme Court, determined there was a question of fact whether gross negligence might overcome a contractual limitation on liability. Here a bid on a highway project turned out to be more than $80 million short, which resulted in the withdrawal of the bid. The project was for a toll road, the toll to be paid to the builder of the road. The bid was low because the date of the beginning of construction, rather than the end of construction, was used to calculate the income from the toll. Gross negligence factors included, the firing of key personnel overseeing the creation of the bid, failure to follow company policy in reviewing the bid, and departure from industry standards: "It is well-settled that contractual limitations on liability are generally enforceable ... . However, 'public policy forbids a party from attempting to avoid liability for damages caused by grossly negligent conduct' ... . Thus, a gross negligence claim will be sustained where

a party's conduct 'evinces a reckless disregard for the rights of others or smacks' of intentional wrongdoing' ...". ***S.A. De Obras y Servicios, COPASA v. Bank of Nova Scotia*, 2019 N.Y. Slip Op. 01706, First Dept 5-12-19**

CORPORATION LAW.

PLAINTIFF IN THIS DERIVATIVE STOCKHOLDER ACTION DID NOT SUFFICIENTLY ALLEGE THAT A DEMAND FOR RELIEF ON THE BOARD COULD BE EXCUSED, COMPLAINT PROPERLY DISMISSED.

The First Department determined the complaint in this shareholder derivative action was properly dismissed for failure to first make a demand for relief on the board. The *Rales* criteria were not met: "Under Rales, 'a court must determine whether . . . the particularized factual allegations of a derivative stockholder complaint create a reasonable doubt that, as of the time the complaint is filed, the board of directors could have properly exercised its independent and disinterested business judgment in responding to a demand' ... . The 'mere threat of personal liability . . . is insufficient to challenge either the independence or disinterestedness of directors' ... . However, 'a substantial likelihood' of liability 'disables [a director] from impartially considering a response to a demand by' a stockholder ... . 'Where, as here, directors are exculpated from liability except for claims based on fraudulent, illegal or bad faith conduct, a plaintiff must . . . plead particularized facts that demonstrate that the directors acted with scienter, i.e., that they had actual or constructive knowledge that their conduct was legally improper' ... . Even though the complaint alleges that BMS' audit committee and senior management knew about gaps in the company's internal controls, it fails to establish bad faith or scienter ... . Plaintiff's contention that defendants face a substantial likelihood of liability because they signed 10-K's that contained false statements is also unavailing. It is true that 'when directors communicate publicly . . . about corporate matters[,] the sine qua non of directors' fiduciary duty to shareholders is honesty' ... . However, 'to establish liability for misstatements when the board is not seeking shareholder action, shareholder plaintiffs must show that the misstatement was made knowingly or in bad faith' ...". ***Deckter v. Andreotti*, 2019 N.Y. Slip Op. 01717, First Dept 3-12-19**

CRIMINAL LAW, EVIDENCE.

HANDCUFFING THE DEFENDANT PENDING IDENTIFICATION BY THE UNDERCOVER OFFICER AMOUNTED TO AN ARREST WITHOUT PROBABLE CAUSE, MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED.

The First Department, reversing Supreme Court, determined handcuffing the defendant pending identification by the undercover officer amounted to an arrest without probable cause. Defendant's motion to suppress the identification and the buy money should have been granted: "The hearing court expressly determined that the police detention of defendant was supported by reasonable suspicion, but that probable cause did not exist until the undercover officer who allegedly bought drugs from defendant made an identification. Because the record provides no reason for the officers to have concluded that defendant, a suspect in a street drug sale, was armed or dangerous, or likely to resist arrest or flee, handcuffing him was inconsistent with an investigatory detention and elevated the intrusion to an arrest not based on probable cause ... . Accordingly, the undercover officer's identification of defendant and the buy money recovered as a result of the unlawful arrest should have been suppressed, and defendant is entitled to a new trial preceded by an independent source hearing ...". ***People v. Perez*, 2019 N.Y. Slip Op. 01822, First Dept 3-14-18**

DEFAMATION, CIVIL PROCEDURE, CONSTITUTIONAL LAW.

SUPREMACY CLAUSE DOES NOT PRECLUDE DEFAMATION SUIT AGAINST PRESIDENT TRUMP FOR STATEMENTS MADE WHILE A CANDIDATE.

The First Department, in a full-fledged opinion by Justice Renwick, over a two-justice dissent, determined that the Supremacy Clause did not preclude a New York State civil suit for defamation against President Trump. In response to allegations by the plaintiff that Donald Trump had made unwanted sexual advances, then candidate Trump made statements denying the allegations (made by plaintiff and other women), calling them false and outright lies saying, for example, "all of these liars will be sued after the election is over:" "[T]he current sitting President attempts to shield himself from consequences for his alleged unofficial misconduct by relying upon the constitutional protection of the Presidency. We reject defendant President Trump's argument that the Supremacy Clause of the United States Constitution prevents a New York State court - and every other state court in the country - from exercising its authority under its state constitution. Instead, we find that the Supremacy Clause was never intended to deprive a state court of its authority to decide cases and controversies under the state's constitution. ... [T]he Supremacy Clause provides that federal law supersedes state law with which it conflicts, but it does not provide that the President himself is immune from state law that does not conflict with federal law. Since there is no federal law conflicting with or displacing this defamation action, the Supremacy Clause does not provide a basis for immunizing the President from state court civil damages actions. Moreover, in the absence of a federal law limiting state court jurisdiction, state and federal courts have concurrent jurisdiction. Thus, it follows that the trial court properly exercised jurisdiction over defendant and properly denied his motion to dismiss." ***Zervos v. Trump*, 2019 N.Y. Slip Op. 01851, First Dept 3-14-19**

EDUCATION-SCHOOL LAW, MUNICIPAL LAW.

NYC CHARTER DID NOT GIVE THE PUBLIC ADVOCATE AUTHORITY FOR A SUMMARY INQUIRY INTO THE ADEQUACY OF SOFTWARE USED TO TRACK STUDENTS WITH INDIVIDUALIZED EDUCATION PROGRAMS, SUPREME COURT REVERSED.

The First Department, in a full-fledged opinion by Justice Oing, over a full-fledged, two-justice, dissenting opinion, reversing Supreme Court, determined that the NYC Charter did give the Public Advocate the power to conduct a summary inquiry into the adequacy of computer software designed to keep track of students with Individualized Education Programs (IEP's) and to seek appropriate funding from Medicaid: "We agree with [Matter of Green v. Giuliani (187 Misc 2d at 138)] that [NYC Charter] section 1109's reach includes not only corruption, but 'all forms of official misconduct.'... Arguably, in light of Green, section 1109's reach continues to evolve over time to include areas not limited to corruption. The question that remains is whether the section 1109 phrase 'any alleged violation or neglect of duty' should be broadened so as to bring within its reach all forms of conduct, including acts that amount to administrative inefficiency, deficiency, or mismanagement. We believe it should not, mindful of the admonition uttered over a century ago: 'It would be intolerable if . . . all the heads of departments of the city could be haled into court and cross-examined by disaffected taxpayers, or even by some other hostile official, with no result except publicity. It is much better that proceedings of this kind should be confined to the legitimate purposes of the law' ... . Section 1109 is set forth in Chapter 49 of the Charter, entitled 'Officers and Employees.' Neither that chapter, nor the Charter itself, defines 'violation' or 'neglect of duty.' In the absence of a clear definition, either by statute or case law, we are guided by dictionary definitions because they are 'useful guideposts' in determining the meaning of a statutory word or phrase ... . * * * ... . [W]e find no legal basis to expand section 1109's reach beyond allegations that clearly fall within the plain meaning of a 'violation' or a 'neglect of duty...'... . ... [P]etitioner's allegations of administrative mismanagement, namely, the inefficient governmental administration of a computer software ... are not sufficient bases to support the instant section 1109 judicial summary inquiry application." ***Matter of James v. Fariña*, 2019 N.Y. Slip Op. 01729, First Dept 3-12-19**

FAMILY LAW, EVIDENCE.

CHILD'S INCOMPLETE TESTIMONY STRICKEN IN A FAMILY COURT ACT § 1028 PROCEEDING MAY BE ADMITTED IN A FAMILY COURT ACT § 1046 CHILD ABUSE PROCEEDING.

The First Department determined that a child's testimony stricken from a Family Court Act § 1028 proceeding can be admitted in a Family Court Act § 1046(a)(vi) child abuse proceeding: "On the merits, this appeal raises the issue of whether a child's testimony stricken from a hearing pursuant to Family Ct Act § 1028 may be considered in connection with a fact-finding hearing regarding abuse allegations, pursuant to Family Ct Act § 1046(a)(vi). We hold that it may be so used. Family Ct Act § 1046(a)(vi) sets forth, in relevant part, that 'previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence,' when corroborated, and '[t]he testimony of the child shall not be necessary to make a fact-finding of abuse or neglect.' Here, then 14-year-old Ashley refused to continue with her testimony at the FCA 1028 hearing regarding her allegations of sexual abuse after she already had been cross-examined for three days by respondent's counsel. According to a letter from Ashley's therapist submitted to the court, it would be detrimental for the child to return to testify. We agree with the Family Court that it could rely upon Ashley's incomplete testimony for the purposes of the subsequent fact-finding hearing, subject to a statutory requirement of corroboration. The use of Ashley's incomplete testimony was in accordance with the legislative intent of Family Ct Act § 1046(a)(vi) to address 'the reluctance or inability of victims to testify' ...". ***Matter of Jaylyn Z. (Jesus O.)*, 2019 N.Y. Slip Op. 01846, First Dept 3-14-19**

FORECLOSURE, CONTRACT LAW.

THE 30-DAY NOTICE PROVISION IN THE MORTGAGE DID NOT PRECLUDE ACCELERATING THE DEBT BY THE ALLEGATIONS IN THE FORECLOSURE COMPLAINT, SUPREME COURT SHOULD NOT HAVE NULLIFIED THE ACCELERATION.

The First Department, reversing Supreme Court, determined Supreme Court should not have nullified the acceleration of the mortgage in this foreclosure action. Because acceleration was optional, the 30-day notice provision in the mortgage did not preclude acceleration by the allegations in the foreclosure complaint: "Supreme Court erred in nullifying plaintiff's assignor's acceleration in the prior action based on Section 22 of the mortgage which provides that the lender may accelerate the mortgage only if, inter alia, it has served defendant with a proper 30-day notice of default. Where the acceleration is optional as here, some affirmative action must be taken to evince the note holder's election to accelerate ... . Affirmative action can be in the form of a letter ... or the commencement of a foreclosure action ... . Plaintiff's assignor accelerated the mortgage debt by commencing the prior action and stating in its complaint that 'plaintiff elects herein to call due the entire amount secured by the mortgage(s).' " ***Capital One, N.A. v. Saglimbeni*, 2019 N.Y. Slip Op. 01837, First Dept 3-14-19**

PERSONAL INJURY.

MERELY QUESTIONING THE CREDIBILITY OF PLAINTIFF'S EXPLANATION OF THE CAUSE OF HER STAIRWAY SLIP AND FALL DID NOT RAISE A QUESTION OF FACT, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.

The First Department, reversing Supreme Court, determined that defendant's motion for summary judgment in this slip and fall case should not have been granted. Defendant did not submit evidence refuting plaintiff's explanation of the cause of her fall (a hole in the stairs). Merely questioning the credibility of the plaintiff did not raise a question of fact: "Plaintiff was injured when, while walking down a staircase in defendant's building, her foot struck a hole in the stairs, causing her to fall from the third floor to the second floor. Defendant failed to establish entitlement to judgment as a matter of law by submitting evidence refuting plaintiff's testimony identifying the cause of her fall ... . Defendant's challenge to the credibility of plaintiff's evidence is a matter for resolution by a trier of fact ...". ***Morales v. 320 E. 176th St., LLC*, 2019 N.Y. Slip Op. 01711, First Dept 3-12-19**

PERSONAL INJURY, EVIDENCE.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS INTERSECTION TRAFFIC ACCIDENT CASE SHOULD HAVE BEEN GRANTED, PLAINTIFFS NO LONGER NEED TO DEMONSTRATE FREEDOM FROM COMPARATIVE FAULT.

The First Department, reversing Supreme Court, noted the plaintiff in a traffic accident case no longer has to demonstrate freedom from comparative fault to warrant summary judgment: "Plaintiff made a prima facie showing of negligence on the part of defendants by submitting an affidavit stating that as she was driving through the intersection she noticed that defendant driver failed to stop at the stop sign when plaintiff had the right of way (see Vehicle and Traffic Law § 1142[a]). Plaintiff was not required to demonstrate her own freedom from comparative negligence to be entitled to summary judgment as to defendants' liability ...". ***Garcia v. McCrea*, 2019 N.Y. Slip Op. 01842, First Dept 3-14-19**

PERSONAL INJURY, VEHICLE AND TRAFFIC LAW.

FAILURE TO PROVIDE SEATBELTS IN A TAXICAB VIOLATES THE VEHICLE AND TRAFFIC LAW AND IS NEGLIGENCE AS A MATTER OF LAW.

The First Department noted that the failure to provide seatbelts in a taxicab violates the Vehicle and Traffic Law and constitutes negligence: "The failure to provide seatbelts in a taxicab is a violation of Vehicle and Traffic Law § 383, and constitutes negligence as a matter of law ... . Where an injured party fails to wear an available seatbelt, such failure would go to damages, not liability … . That is not the case when the vehicle owner fails to provide seatbelts in the first instance ... ". ***Grant v. AAIJ African Mkt. Corp.*, 2019 N.Y. Slip Op. 01823, First Dept 3-14-19**

SECOND DEPARTMENT

APPEALS, CIVIL PROCEDURE.

30-DAY TIME TO APPEAL WITH RESPECT TO ALL PARTIES IS TRIGGERED BY THE SERVICE OF THE ORDER OR JUDGMENT WITH WRITTEN NOTICE OF ENTRY BY ANY PARTY.

The Second Department, in a full-fledged opinion by Justice Dillon, determined that the 30-day period for filing a notice of appeal (CPLR 5513(a)) is triggered for all parties when any party serves the other parties with the order or judgment appealed from with written notice of entry: "This appeal provides our Court with an occasion to clarify the meaning of CPLR 5513(a). The 1996 amendment to CPLR 5513(a), effective January 1, 1997, requires that an order or judgment be served 'by a party' with written notice of entry in order to commence the time to undertake an appeal (L 1996, ch 214, § 1). ... [W]e hold that service of the order or judgment with written notice of entry by any party upon the other parties to the action operates to commence the 30-day time to appeal with respect to not only the serving party, but all the parties in the action. * * * ... [T]he language of CPLR 5513(a) as to who serves notice of entry is not limited to the 'prevailing party,' or to 'the appealing party,' or to 'the party seeking to limit an adversary's appellate time.' Rather, 'a' party, which is unrestricted, necessarily refers to 'any' party to an action. As a result, the service of an order or judgment with written notice of entry commences the 30-day time to appeal as to not only the party performing the service, but as to all other parties as well. Here, the County's [defendant's] service on June 17, 2015, of the Supreme Court's order with written notice of entry commenced the plaintiffs' time to appeal the order as to all of the defendants, including those who served a notice of entry at a later date, and those who may have served no notice of entry at all. The plaintiffs' appeal must therefore be dismissed as untimely as to all of the defendants (see CPLR 5513[a])." ***W. Rogowski Farm, LLC v. County of Orange*, 2019 N.Y. Slip Op. 01815, Second Dept 3-13-19**

CRIMINAL LAW, ATTORNEYS, APPEALS, EVIDENCE.

EVIDENCE DEFENDANT'S STEPFATHER APOLOGIZED TO THE ROBBERY VICTIM FOR THE DEFENDANT'S ACTIONS AND THE TESTIMONY ABOUT AN ANONYMOUS INFORMANT'S IDENTIFICATION OF THE DEFENDANT SHOULD NOT HAVE BEEN ADMITTED, PROSECUTOR SHOULD NOT HAVE ENCOURAGED INFERENCE OF GUILT BASED ON FACTS NOT IN EVIDENCE, APPELLATE ISSUES CONSIDERED IN THE INTEREST OF JUSTICE.

The Second Department, reversing defendant's conviction, reaching the appellate issues in the interest of justice, determined that improperly admitted evidence warranted a new trial, noting that the prosecutor also acted improperly. The identity of the defendant was a key issue in this robbery case. The victim (Fernandez) should not have been allowed to testify that the defendant's stepfather told the victim he was sorry for what defendant had done and returned the victim's keys. Also, the investigating detective should not have been allowed to testify that an anonymous informant had identified the defendant: "There was no showing that the defendant participated in or was in any way connected to his stepfather's actions ... . [T]he testimony of an investigating detective recounting a conversation with an anonymous informant, a non-testifying witness, violated the defendant's rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution... . The informant reportedly was an eyewitness to the crime and identified the defendant by name. The testimony 'went beyond the permissible bounds of provid[ing] background information as to how and why the police pursued [the] defendant' ... . Upon retrial, we remind the People that, on summation, a prosecutor may not 'improperly encourage[ ] inferences of guilt based on facts not in evidence' ... . Here, there was no evidence to support the prosecutor's assertion that Fernandez had identified the defendant as the robber 'immediately' by recognizing a distinctive 'dot' on the defendant's face." ***People v. Gonsalves*, 2019 N.Y. Slip Op. 01792, Second Dept 5-13-19**

CRIMINAL LAW, EVIDENCE.

RECORDED JAIL PHONE CALLS MAY NOT HAVE RELATED TO THE OFFENSE WHICH WAS THE SUBJECT OF THE TRIAL, CONVICTION REVERSED.

The Second Department, reversing defendant's conviction, determined recordings of jail phone calls made by the defendant should not have been admitted in this criminal possession of a weapon case. It was possible the recordings related to a subsequent weapons charge, not the charge before the jury: "[T]he timing and content of the telephone calls made it highly unlikely that the defendant was referencing his September 2014 arrest for the instant offense, rather than his subsequent arrest on the unrelated gun possession charge. Moreover, in addition to the lack of relevance of this evidence to the charges in this case, the jury was unaware of the defendant's subsequent May 2015 arrest, and therefore was unable to properly evaluate the weight to be accorded to the recordings as evidence of the defendant's guilt of the instant offense. Thus, there was a substantial risk that the jury would be misled into believing that the defendant's admissions in the telephone recordings referred to the instant offense. The admission of the recordings into evidence placed the defendant in the untenable position of deciding whether to accept this misleading narrative that the telephone recordings referred to the instant offense or disclose his later arrest on a similar gun possession charge, which disclosure itself would have caused him undue prejudice ...". ***People v. Robinson*, 2019 N.Y. Slip Op. 01799, Second Dept 3-13-19**

FORECLOSURE, CONTRACT LAW.

PROVISION IN MORTGAGE WHICH GAVE BORROWER RIGHT TO DE-ACCELERATE THE DEBT DID NOT PRECLUDE PLAINTIFF BANK FROM ACCELERATING THE DEBT BY FILING A SUMMONS AND COMPLAINT, FORECLOSURE ACTION TIME-BARRED.

The Second Department, in a full-fledged opinion by Justice Miller, determined that a reinstatement provision in a mortgage which gives the borrower the option to de-accelerate the debt did not preclude the plaintiff bank from accelerating the debt, rendering the foreclosure action time-barred: "This appeal presents an issue of first impression for this Court. The plaintiff in this mortgage foreclosure action contends that it lacked the authority to exercise its contractual option to accelerate the maturity of the entire balance of the loan it seeks to recover. The plaintiff argues that it was prevented from validly accelerating the debt by virtue of a reinstatement provision in the subject mortgage which gives the borrower the option, under certain circumstances, to effectively de-accelerate the maturity of the debt. The plaintiff further argues that the statute of limitations did not begin to run until the borrower's rights under the reinstatement provision in the subject mortgage were extinguished. * * * ... . [T]he defendant demonstrated that the subject mortgage provided the plaintiff with the right to require the defendant to immediately pay 'the entire amount then remaining unpaid under the Note and [mortgage]' if the plaintiff first satisfied certain conditions set forth in the mortgage. The defendant's evidentiary submissions established that the plaintiff complied with those conditions ... , and then validly exercised its option to accelerate the entire remaining balance due under the note by filing the summons and complaint in the first foreclosure action in June 2010 ... . Accordingly, since this action was not commenced until October 2016, the defendant established, prima facie, that the time in which to commence this action has expired (see CPLR 213[4]). * * * … [T]he extinguishment of the defendant's contractual right to

de-accelerate the maturity of the debt pursuant to the reinstatement provision in paragraph 19 of the mortgage was not a condition precedent to the plaintiff's acceleration of the mortgage ...". ***Bank of N.Y. Mellon v. Dieudonne*, 2019 N.Y. Slip Op. 01732, Second Dept 3-13-19**

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

PROOF DID NOT DEMONSTRATE THE NOTICE REQUIREMENTS OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL) 1304 WERE MET.

The Second Department, reversing Supreme Court, determined the bank did not demonstrate that the notice requirements of RPAPL 1304 were met: "Lechtanski [the loan servicer representative] did not have personal knowledge of the purported mailing and failed to make the requisite showing that he was familiar with the plaintiff's mailing practices and procedures, and therefore, did not establish 'proof of a standard office practice and procedure designed to ensure that items are properly addressed and mailed' ... . Moreover, the copy of the notice annexed to the Lechtanski affidavits, while bearing a notation 'VIA CERTIFIED AND FIRST CLASS MAIL,' bears no indicia of actual mailing such as postal codes and was unaccompanied by any mailing receipts or tracking information ...". ***Wells Fargo Bank, N.A. v. Taylor*, 2019 N.Y. Slip Op. 01817, Second Dept 3-13-19**

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF WAS INJURED WORKING ON AN HVAC SYSTEM, THE WORK WAS ROUTINE MAINTENANCE, NOT COVERED BY LABOR LAW § 241(6).

The Second Department, reversing Supreme Court, determined that plaintiff's work on an HVAC system was routing maintenance, not covered by Labor Law § 241(6): "The plaintiff allegedly injured his back when he was performing a seasonal 'start-up' of a cooling tower on the defendant's HVAC system, which consisted of transitioning the HVAC system from heating to cooling. The company the defendant was employed by had done this work on a yearly basis for the past 10 years. As part of the work, the plaintiff and his coworker needed to reinstall a circulation pump on the HVAC tower, which had been removed for the winter months. To do so, the plaintiff tied a rope around the circulation pump, which weighed approximately 100 pounds, passed the rope over the top of an overhead beam, and pulled from the other side to raise the pump about three to five feet off the ground so his coworker could install it in the cooling tower. The plaintiff held the pump in the air for about 20 or 25 minutes while his coworker attempted to install it, but felt pain in his back and was unable to hold it any longer. The plaintiff allegedly needed back surgery as a result of the incident. ... Although maintenance work performed in connection with construction, demolition, or excavation work is included under Labor Law § 241(6), '[r]outine maintenance is not within the ambit of Labor Law § 241(6)' ... . The Labor Law 'does not cover routine maintenance in a nonconstruction, nonrenovation context' ...". ***Byrnes v. Nursing Sisters of the Sick Poor, Inc.*, 2019 N.Y. Slip Op. 01736, Second Dept 3-13-19**

PERSONAL INJURY, EVIDENCE.

THE CAUSE OF PLAINTIFF'S DECEDENT'S SLIP AND FALL CALL COULD NOT BE IDENTIFIED, THE LIGHTER BURDEN OF PROOF PURSUANT TO THE *NOSEWORTHY* DOCTRINE DID NOT APPLY.

The Second Department, reversing Supreme Court, determined defendant's motion for summary judgment should have been granted because the cause of plaintiff's decedent's fall could not be identified. The *Noseworthy* lighter burden of proof did not apply. Although plaintiff's expert identified defects in the area where plaintiff's decedent fell, none of the defects were demonstrated to have caused the fall: "Contrary to the plaintiff's contention, the *Noseworthy* doctrine does not apply to the circumstances of this case, since the defendants' knowledge concerning the cause of the decedent's accident is no greater than that of the plaintiff ... . Even accepting the defects identified in the plaintiff's expert's affidavit, the plaintiff failed to raise a triable issue of fact as to whether the decedent's fall was proximately caused by those allegedly unsafe conditions ... . 'Since it is just as likely that the accident could have been caused by some other factor, such as a misstep or loss of balance, any determination by the trier of fact as to the cause of the accident would be based upon sheer speculation' ...". ***Perrelli v. Evangelista*, 2019 N.Y. Slip Op. 01807, Second Dept 3-13-19**

THIRD DEPARTMENT

CRIMINAL LAW.

COURT DID NOT CONSIDER THE APPROPRIATE FACTORS BEFORE PROCEEDING TO TRIAL IN DEFENDANT'S ABSENCE, DEFENDANT HAD MADE ALL PRIOR APPEARANCES AND NO EFFORT WAS MADE TO SECURE HIS PRESENCE AT THE TRIAL.

The Third Department, reversing defendant's conviction, determined County Court did not consider the appropriate factors before ordering the trial in defendant's absence. Defendant had made all prior appearances and no effort was made to secure his presence: "Defendant had been present at all prior appearances, and there was no explanation for his failure to

appear at trial. Defendant's counsel stated that he had been calling defendant for a week without success. That morning, counsel had contacted local jails and hospitals looking for defendant. Despite counsel's request for an adjournment, County Court concluded that defendant had been warned of the consequences of failing to appear and had voluntarily decided to be absent. The court then issued a bench warrant and immediately began the trial. County Court abused its discretion in conducting the trial in defendant's absence, as the record does not reflect that the court considered the appropriate factors. Nothing in the record indicates any difficulty in rescheduling the trial, fear that evidence or witnesses would be lost or that further efforts to locate defendant would be futile ... . 'Moreover, the fact that trial was commenced immediately after issuance of a bench warrant demonstrates only a minimal effort to locate defendant prior to trial' ... . The court did not provide even a short adjournment for execution of the warrant or a determination as to whether defendant could be located within a reasonable time ... . Because the court violated defendant's right to be present at his trial, we reverse." ***People v. Smith*, 2019 N.Y. Slip Op. 01858, Third Dept 3-14-19**

CRIMINAL LAW, MENTAL HYGIENE LAW.

CONFLICTING PSYCHIATRIC EVALUATIONS REQUIRED A COMPETENCY HEARING, EVEN IF ONE OF THE PSYCHIATRISTS HAD CHANGED HIS OR HER MIND.

The Third Department, over a dissent, determined a hearing was required to assess defendant's competency to stand trial because conflicting reports from the two psychiatric evaluations. The fact that one of the psychiatrists apparently changed his or her opinion was deemed irrelevant. The matter was sent back for a reconstruction hearing: "[T]here can be no dispute that, after receiving conflicting examination reports, County Court failed to conduct a competency hearing. Although the People rely on defense counsel's representation that the psychiatric examiner who filed a report stating that defendant was not competent to stand trial had changed his mind, this representation and subsequent withdrawal of the request for a hearing did not relieve the court of its statutory duty to conduct a hearing pursuant to CPL 730.30 (4) for the purpose of determining defendant's mental capacity to stand trial ... . We agree with the dissent that, pursuant to CPL 730.30 (2), a competency hearing need not always be held '[w]hen the examination reports submitted to the court show that each psychiatric examiner is of the opinion that the defendant is not an incapacitated person' (emphasis added). However, we do not agree that CPL 730.30 (2) applies when the record demonstrates that the court has been provided with two conflicting examination reports, even if the defendant's attorney represents that one of the examiners has since changed his or her opinion. Given the circumstances present here, reconstruction of defendant's mental capacity at the time of his violation hearing should be possible by means of 'contemporaneous observation and records' ...". ***People v. Vandegrift*, 2019 N.Y. Slip Op. 01854, Third Dept 3-14-19**

FAMILY LAW, APPEALS, CIVIL PROCEDURE.

THERE IS NO APPEAL FROM A DEFAULT STEMMING FROM FAILURE TO APPEAR, MUST MOVE TO VACATE THE DEFAULT.

The Third Department, dismissing the appeal, explained that where a party in default for failing to appear wishes to appeal, the party must first move to vacate the default: "Respondent appeared by telephone before the Support Magistrate for arraignment, an appearance and a hearing, following which the Support Magistrate concluded that respondent had willfully violated the support order and recommended that he be incarcerated. The matter was referred to Family Court for confirmation. Respondent requested permission to give electronic testimony. Family Court denied that application both in writing and orally and directed, on the record, that respondent must appear in person for the hearing. When respondent did not appear, the court conducted the hearing in his absence, found that he willfully violated the support order and committed him to jail for 180 days. Respondent appeals. Family Court properly found respondent in default ... . Although respondent's counsel appeared and offered the explanation that respondent could not afford to travel to New York, the court had already heard and rejected that excuse in connection with respondent's application to give electronic testimony and directed him to appear in person for the hearing. When respondent failed to do so, the court did not abuse its discretion by finding him in default ... . '[T]he proper procedure would be for [respondent] to move to vacate the default and, if said motion is denied, take an appeal from that order' ... . Because no appeal lies from an order entered on default, we must dismiss this appeal ...". ***Matter of Ulster County Support Collection Unit v. Beke*, 2019 N.Y. Slip Op. 01864, Third Dept 3-14-19**

FOURTH DEPARTMENT

CIVIL PROCEDURE.

IN THIS COMBINED ARTICLE 78 AND DECLARATORY JUDGMENT ACTION, THE FOUR-MONTH STATUTE OF LIMITATIONS APPLICABLE TO ARTICLE 78 DID NOT APPLY TO THE DECLARATORY JUDGMENT ACTION WHICH ONLY INVOLVED PRIVATE PARTIES, NOT A GOVERNMENT BODY OR OFFICER.

The Fourth Department, in a full-fledged opinion by Justice NeMoyer, determined that the declaratory judgment action was not subject to the four-month statute of limitations for Article 78 actions. The plaintiff and defendant are private parties who

own land on opposite sides of Cady Road. A portion of the Cady Road was declared discontinued and defendant allegedly erected a barrier. Plaintiff's action sought Article 78 relief against a town official as well as a declaratory judgment. Because no Article 78 relief was possible with respect to the private defendant who allegedly erected the barrier, the shorter statute of limitations did not apply to the declaratory judgment action concerning the rights of the private parties: "Relief under CPLR article 78 is available only against a limited subset of official and institutional parties. It follows that the four-month statute of limitations applicable to article 78 proceedings cannot be imported to bar a declaratory judgment action against a private individual not subject to article 78. * * * ... [D]efendant is not a 'body or officer' within the meaning of CPLR 7802 (a), i.e., he is not a 'court, tribunal, board, corporation, [or] officer,' and it is well established that article 78 relief is available only against a 'body or officer' as defined by section 7802 (a) ... . [T]he true gravamen of its declaratory claims 'requires a judicial determination as to the rights of the parties to use Cady Road [which] would [thereby] settle the rights of private [parties],' i.e., plaintiff and defendant. And it is well established that such a contest between the 'rights of private [parties]' cannot be adjudicated in an article 78 proceeding ... . [B]ecause an article 78 proceeding was not a 'proper vehicle' for plaintiff's private claims for declaratory relief against defendant, the four-month 'limitations period set forth in CPLR 217 [1] is not applicable to [such claims] and the six-year statute of limitations set forth in CPLR 213 (1) applies instead' ...". ***Matter of Grocholski Cady Rd., LLC v. Smith*, 2019 N.Y. Slip Op. 01966, Fourth Dept 3-15-19**

CIVIL PROCEDURE, APPEALS.

DEMAND FOR A JURY TRIAL, MADE ONE DAY LATE, SHOULD HAVE BEEN GRANTED, THE DENIAL OF THE ORAL APPLICATION FOR A JURY TRIAL IS PROPERLY CONSIDERED ON APPEAL FROM THE FINAL JUDGMENT, EVEN THOUGH NO FORMAL MOTION ON NOTICE WAS MADE.

The Fourth Department, reversing Supreme Court, over an extensive dissent, determined (1) defendants' oral application requesting a jury trial, made one day late, should have been granted, and (2) the appeal from a final judgment allows an appeal of the denial of the late application for a jury trial, even though no formal motion on notice was made. The dissent argued the denial was not appealable because there was no formal motion on notice: "An appeal from a final judgment 'brings up for review . . . any non-final judgment or order which necessarily affects the final judgment' (CPLR 5501 [a] [1]). The parties do not dispute that the order denying defendants' application for leave to file a late demand for a jury trial necessarily affected the final judgment. ... [T]he State Constitution provides for a right to a jury trial in civil cases (see NY Const, art I, § 2 ...). Although that right may be waived through the failure to demand it in a timely fashion (see CPLR 4102 [a]), the court 'may relieve a party from the effect' of such waiver 'if no undue prejudice to the rights of another party would result' (CPLR 4102 [e]). While '[t]he decision . . . to relieve a party from failing to timely comply with CPLR 4102 (a) lies within the sound discretion of the trial court' ... , we conclude that the court's denial of defendants' application was an abuse of discretion." ***Braun v. Cesareo*, 2019 N.Y. Slip Op. 01962, Fourth Dept 3-15-19**

CIVIL PROCEDURE, PERSONAL INJURY, PRIVILEGE, EVIDENCE.

DEFENDANTS' DECEDENT'S PHARMACY RECORDS IN THIS BICYCLE-VEHICLE COLLISION CASE ARE NOT PROTECTED BY PHYSICIAN-PATIENT PRIVILEGE AND MUST BE DISCLOSED SUBJECT TO TIME LIMITATIONS AND IN CAMERA REVIEW.

The Fourth Department, reversing (modifying) Supreme Court, determined that defendants' decedent's pharmacy records were not protected by physician-patient privilege and must be disclosed to plaintiff, subject to certain limitations and an in camera review. Plaintiff was injured when her bicycle collided with a vehicle driven by decedent: "We agree with plaintiffs, however, that decedent's pharmacy records are not protected by the physician-patient privilege (see CPLR 4504 [a] ...) and are 'material and necessary' to the prosecution of the action (CPLR 3101 [a] ...). Nevertheless, we conclude that plaintiffs' request for records 'before and after' the collision was overly broad, and we therefore limit disclosure of the pharmacy records to the six-month period immediately preceding the collision. Furthermore, those records 'should not be released to [plaintiffs] until the court has conducted an in camera review thereof, so that irrelevant information is redacted'... . ... [D]efendants are directed to submit to the court, for the six-month period immediately preceding the accident, pharmacy records identifying the medications prescribed to decedent and the prescribed dosages of those medications, and we remit the matter to Supreme Court for an in camera review of those records." ***Carr-Hoagland v. Patterson*, 2019 N.Y. Slip Op. 02000, Fourth Dept 3-15-19**

CRIMINAL LAW, APPEALS.

SENTENCING COURT DID NOT MAKE THE APPROPRIATE FINDINGS FOR THE IMPOSITION OF ELECTRONIC MONITORING, MATTER SENT BACK, BECAUSE THE LEGALITY OF THE SENTENCE IS IMPLICATED THE ISSUE NEED NOT BE PRESERVED FOR APPEAL.

The Fourth Department determined Supreme Court did not make the appropriate findings in support of imposing electronic monitoring as a condition probation. The matter was sent back. The court noted that the issue involves the legality of the sentence and therefore need not be preserved for appeal: "A sentencing court imposing probation may require the defendant, pursuant to the statute, to submit to electronic monitoring (see § 65.10 [4]). 'Such condition may be imposed

only where the court, in its discretion, determines that requiring the defendant to comply with such condition will advance public safety, probationer control or probationer surveillance' (id.). Here, the court failed to make such a determination. To the contrary, it is evident from our review of the sentencing minutes that the court did not consider defendant or his actions to pose a threat to public safety. There may, however, be a legitimate purpose for the electronic monitoring based on probationer control or probationer surveillance. Therefore, we modify the judgment by striking the condition of probation requiring that defendant submit to surveillance via electronic monitoring and pay the fees associated therewith, and we remit the matter to Supreme Court to make a discretionary determination whether to impose electronic monitoring based on appropriate findings." ***People v. Fitch*, 2019 N.Y. Slip Op. 01973, Fourth Dept 3-15-19**

CRIMINAL LAW, EVIDENCE.

DEFENDANT'S INSTRUCTING ANOTHER TO KILL HIS WIFE AND HER MOTHER DID NOT COME NEAR ENOUGH TO ACCOMPLISHING MURDER TO SUPPORT THE ATTEMPTED MURDER CONVICTIONS.

The Fourth Department, reversing the attempted murder convictions, determined the evidence did not demonstrate that the defendant came near enough to accomplishing murder to support the convictions. The defendant, who was in jail, gave detailed instructions to kill his wife and her mother to another inmate, who immediately informed jail authorities: " 'Acts of preparation to commit an offense do not constitute an attempt . . . There must be a step in the direct movement towards the commission of the crime after preparations have been made . . . Likewise, acts of conspiring to commit a crime, or of soliciting another to commit a crime do not per se constitute an attempt to commit the contemplated crime' ... . Consequently, the People must establish that defendant 'engaged in conduct that came dangerously near commission of the completed crime' ... . The evidence establishes only that defendant planned the crimes, discussed them with the inmate in the next cell and with that inmate's girlfriend, and exchanged notes about them. Thus, inasmuch as 'several contingencies stood between the agreement in the [jail] and the contemplated [crimes],' defendant[] did not come very near' to accomplishment of the intended crime[s]' ... . Where, as here, the evidence fails to establish that defendant took any action that brought the crime close to completion, no matter how slight ... , the evidence is not legally sufficient to support a conviction of attempt to commit that crime ...". ***People v. Lendof-Gonzalez*, 2019 N.Y. Slip Op. 01904, Fourth Dept 3-15-19**

ENVIRONMENTAL LAW, CIVIL PROCEDURE.

PETITIONER DID NOT HAVE STANDING TO SEEK A STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) REVIEW OF A ONE-DAY SQUIRREL-HUNTING FUND-RAISING EVENT.

The Fourth Department determined petitioner did not have standing to seek a State Environmental Quality Review Act (SEQRA) review of one-day squirrel hunting event put on by a volunteer fire department: "Prior to 2017, the one-day hunting contests at issue had been held annually by respondent as fundraisers, with prizes having been awarded based on the weight of squirrels turned in at the end of each contest. Petitioner resides approximately 50 miles from the area where respondent has held the hunting contests. She alleges an environmental injury-in-fact based on her fondness for squirrels, the impact that the hunting contests may have on the 'local ecology,' and the possibility that the contests may result in the killing of squirrels that she sees near her residence. Petitioner contends that she therefore has standing to bring this proceeding/action. We reject that contention. Standing is 'a threshold requirement for a [party] seeking to challenge governmental action' ... . The burden of establishing standing to challenge an action pursuant to SEQRA is 'on the party seeking review' ... . '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' ... . In addition, to establish standing under SEQRA, a petitioner must establish, inter alia, 'an environmental injury that is in some way different from that of the public at large'... . Here, we conclude that petitioner has not met her burden of establishing an environmental injury-in-fact. Although petitioner may have alleged some environmental harm, she has alleged, at most, an injury that is 'no different in either kind or degree from that suffered by the general public' . Petitioner also has not established that the hunting activities at issue have affected the wildlife where she resides, nor has she established that she has used, or even visited, the area where the hunting contests have been conducted ...". ***Matter of Sheive v. Holley Volunteer Fire Co., Inc.*, 2019 N.Y. Slip Op. 01982**

FAMILY LAW, EVIDENCE.

EVIDENCE OF EXCESSIVE CORPORAL PUNISHMENT WARRANTED A NEGLECT FINDING, FAMILY COURT REVERSED.

The Fourth Department, reversing Family Court, determined that the evidence of excessive corporal punishment warranted a finding of neglect: "A party seeking to establish neglect must establish, by a preponderance of the evidence, 'first that [the] child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired and second, that the actual or threatened harm to the child is a consequence of the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship' ... . Although a parent may use reasonable force to discipline his or her child to promote the child's welfare ... , the 'infliction of excessive corporal punishment' constitutes neglect (Family Ct Act § 1012 [f] [i] [B]). Indeed, 'a single incident of excessive corporal punishment is sufficient to support a finding of neglect' ... . Here, petitioner established by a preponderance of the evidence that the father

neglected the child by inflicting excessive corporal punishment (see generally Family Ct Act § 1012 [f] [i] [B]). At the hearing, petitioner presented, among other things, witness testimony and medical records indicating that the child sustained a bruised left temple, a bruised eye, and a bloody and swollen nose after the father struck him ...". ***Matter of Justin M.F. (Randall L.F.),* 2019 N.Y. Slip Op. 01907, Fourth Dept 3-15-19**

FAMILY LAW, EVIDENCE, SOCIAL SERVICES LAW.

EVIDENCE NOT SUFFICIENT TO SUPPORT 'INDICATED' CHILD MALTREATMENT REPORT, DETERMINATION ANNULLED AND REPORT AMENDED TO 'UNFOUNDED' AND SEALED.

The Fourth Department determined the evidence of child maltreatment was insufficient and the "indicated" report maintained in the New York State Central Register of Child Abuse and Maltreatment should be amended to unfounded and sealed: "At the fair hearing, DSS had the burden of establishing by a fair preponderance of the evidence that petitioner maltreated the child by the use of excessive corporal punishment (see Social Services Law § 424-a [2] [d]), and that such corporal punishment impaired or was in imminent danger of impairing the child's physical, mental, or emotional condition (see Social Services Law § 412 [2] [a]; Family Ct Act § 1012 [f] [i]). Impairment of mental or emotional condition is defined as 'a state of substantially diminished psychological or intellectual functioning' (Family Ct Act § 1012 [h]). Physical impairment is defined as ' a state of substantially diminished physical growth, freedom from disease, and physical functioning' ... . Other than a general reference in DSS records that the child was 'upset' by the incident, DSS did not present evidence that the incident physically, mentally, or emotionally impacted the 10-year-old child. The marks observed on the child's back, i.e., the sole marks attributed to petitioner by a preponderance of the evidence, apparently resolved the day after petitioner struck him, and before the DSS case worker examined the child. Under the circumstances here, the evidence is insufficient to establish that the child suffered the requisite impairment of his physical, mental, or emotional well-being to support a finding of maltreatment. Thus, the determination that petitioner placed the child in imminent risk of physical or emotional impairment is not supported by substantial evidence, and we therefore annul the determination and grant the petition ...". ***Matter of Jonathan L. v. Poole,* 2019 N.Y. Slip Op. 01908, Fourth Dept 3-15-19**

PERSONAL INJURY.

CAUSE OF THE SLIP AND FALL WAS NOT BASED UPON PURE SPECULATION, DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED.

The Fourth Department, reversing (modifying) Supreme Court, determined that defendants' motion for summary judgment in this slip and fall case should not have been granted. The cause of the fall was not based upon pure speculation. Plaintiff fell stepping out of a bath tub at a hotel: "[D]efendants submitted plaintiff's deposition testimony, which, when viewed in the light most favorable to plaintiff and giving her the benefit of every reasonable inference ... , establishes that plaintiff believed that the alleged dangerous or defective configuration or installation of the tub caused her to fall and sustain injuries. In addition, defendants failed to establish in support of their motion the absence of a dangerous or defective condition, and thus they were not entitled to summary judgment dismissing the complaint on that ground either ... . We agree with defendants, however, that the court properly granted their motion to the extent that plaintiff alleged that they were negligent in failing to warn of dangerous and defective conditions. Defendants met their initial burden of establishing that any dangerous or defective condition was open and obvious, and plaintiff failed to raise a triable issue of fact ...". ***Del-Rosario v. Liverpool Lodging, LLC,* 2019 N.Y. Slip Op. 01986, Fourth Dept 3-15-19**

PRODUCTS LIABILITY, PERSONAL INJURY.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IN THIS FARM EQUIPMENT PRODUCTS LIABILITY ACTION SHOULD HAVE BEEN GRANTED.

The Fourth Department, reversing Supreme Court, determined that defendants' motion for summary judgment in this products liability action should have been granted. Plaintiff "was working inside of a piece of farm equipment known as a grain cart, she lost her footing and her right leg became caught in a rotating auger." A steel safety guard covering the auger had apparently been removed: "[T]he Killbros defendants submitted the affidavit of an expert, which was incorporated by reference into Bentley's moving papers, who opined that plaintiff's injuries would not have occurred if the steel safety guard had not been removed. ... Defendants established their entitlement to summary judgment dismissing the strict products liability causes of action insofar as they are predicated on a design defect theory by submitting evidence that the product was reasonably safe ... . The Killbros defendants' expert averred that the steel safety guard was manufactured in accordance with industry standards, was designed to last the life of the product, and was 'state of the art' inasmuch as it was permanently welded to the interior of the grain cart and could not be removed except by using an acetylene torch or other such heavy-duty tool ... . [T]he Killbros defendants are entitled to summary judgment dismissing the cause of action against them alleging negligent design and manufacture. '[I]nasmuch as there is almost no difference between a prima facie case in negligence and one in strict liability,' we conclude that plaintiffs similarly failed to raise an issue of fact with respect

to their cause of action for negligent design and manufacture ...". ***Beechler v. Kill Bros. Co.*, 2019 N.Y. Slip Op. 01993, Fourth Dept 3-15-19**

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