



Can a Board of Directors be sued separately from the corporation that it serves? The First Department clarified recently that it cannot. The Board acts on behalf of the corporation, but the Business Corporation Law does not recognize it as an entity subject to or capable of suit on its own. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

## FIRST DEPARTMENT

### CORPORATIONS, TORTS

*Tahari v 860 Fifth Ave. Corp.*, 2025 NY Slip Op 05584 (1st Dept Oct. 09, 2025)

**Issue:** Is a Board of Directors an entity capable of being sued separate and apart from the corporation it serves?

**Facts:** In a long-running dispute between "a shareholder in a residential cooperative corporation and the cooperative corporation regarding the shareholder's combination and renovation of two penthouse apartments," the First Department dismissed the plaintiff's claims for breach of fiduciary duty against the cooperative corporation and its individual board members. Thereafter, the plaintiff amended the complaint to assert fiduciary duty claims against the Board of Directors of the cooperative corporation, as a separate entity from the corporation itself. Defendant moved to dismiss, arguing that the Board of Directors was not a separate entity subject to suit. "The motion court denied defendants' motion to dismiss and granted plaintiff's cross-motion to amend the complaint to add the board president as a representative of the board of directors. Specifically, the court held that this Court has determined that the board of directors of a cooperative corporation is directly amenable to suit, as opposed to the cooperative corporation and/or individual board members."

**Holding:** The First Department reversed, and dismissed the claims against the Board of Directors. The Court clarified, "the board of directors of a corporation is not amenable to suit, separate and apart from being sued in its representative capacity for the corporation." The Court explained, "[a] board of directors is a group of individuals elected by the shareholders of a corporation to manage day-to-day operations and make decisions on behalf of the corporation. Significantly, the Business Corporation Law does not contain a provision authorizing a corporation's board of directors to commence suit in its own capacity, separate from the corporation. Nor does the Business Corporation Law contain any provision permitting suit directly against a board of directors." The Court thus cautioned that the trial court had misinterpreted its prior precedent in *Dau v 16 Sutton Place Apt. Corp.* (205 AD3d 533 [1st Dept 2022]), which never raised whether a Board of Directors could be subject to suit separately from its corporation, and only involved whether claims against a Board were adequately and timely pled.

## SECOND DEPARTMENT

### HUMAN RIGHTS LAW, PRELIMINARY INJUNCTION

*Long Is. Roller Rebels v County of Nassau*, 2025 NY Slip Op 05512 (2d Dept Oct. 8, 2025)

**Issue:** Did the plaintiff adequately demonstrate its entitlement to a preliminary injunction enjoining enforcement of Nassau County Local Law No. 3-2024, "which prohibits the use of Nassau County park property for the purposes of organizing a sporting event or competition that allows athletic teams or sports designated for females, women, or girls to include biological males as competitors"?

**Facts:** The plaintiff, a "women's roller derby league that permits transgender women, among others, to participate in its league," commenced this action to permanently enjoin enforcement of the Nassau County local law, alleging that it "discriminates against women's leagues with transgender women participants in violation of the New York State Human Rights Law and Civil Rights Law § 40-c." The plaintiff moved for a preliminary injunction to enjoin enforcement of the local law while the action was pending, but Supreme Court denied motion, without making express findings on the plaintiff's likelihood of success, irreparable harm, or the balance of the equities.

**Holding:** The Appellate Division, Second Department reversed, and granted plaintiff the preliminary injunction enjoining the Nassau County local law. The Court held, "[t]he plaintiff demonstrated a likelihood of success on the merits on the cause of action alleging discrimination on the basis of gender identity, defined as 'a person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender' (Executive Law § 292[35]), in violation of the NYSHRL and the Civil Rights Law." As a result, the Court ex-

plained, the likely violation of the civil rights law led to a presumption that the plaintiff had suffered irreparable harm. In any event, the Court noted, “[t]he plaintiff made credible allegations that it would be denied a permit to use a place of public accommodation based on its designation as a women’s team that allows transgender women to participate. Further, the plaintiff has found it difficult to find private facilities for practice, which reduced its opportunities for practice, resulting in a lowering of its ranking. While the County suggests that the plaintiff can use its facilities by designating itself as a mixed-sex league, which is permitted under the local law, this would change the identity of the league and would force its players to identify themselves as playing in a mixed-sex league. The plaintiff demonstrated that this would jeopardize its status with its governing body, its ability to find teams from other leagues to compete against, and its ability to grow as a league.” Thus, the Court held that a preliminary injunction should be granted to preserve the status quo while the action proceeded to a determination on the merits.

## FOURTH DEPARTMENT

### TORTS, NEGLIGENT SUPERVISION

*Harper v Buffalo City Sch. Dist.*, 2025 NY Slip Op 05595 (4th Dept Oct. 10, 2025)

**Issue:** Did Supreme Court properly dismiss on summary judgment the plaintiff’s Child Victims Act claims for negligent supervision against defendant?

**Facts:** Plaintiff commenced a Child Victims Act action, claiming that “when he was a student in the seventh or eighth grade in approximately 1975-1976, he was subjected to sexual abuse by a nonparty music teacher employed by defendants.” Defendant moved for summary judgment dismissing the complaint, and Supreme Court, among other things, dismissed the plaintiff’s “second cause of action, alleging negligent supervision of plaintiff while acting in loco parentis,” and “fifth cause of action, alleging negligent supervision and training of the music teacher and negligent training of defendants’ other employees.”

**Holding:** The Appellate Division, Fourth Department reversed, and reinstated the plaintiff’s negligent supervision claims. The Court explained, “[s]chools have a duty to adequately supervise students in their care, and may be held liable for foreseeable injuries proximately related to the absence of adequate supervision. That duty requires that the school exercise such care of them as a parent of ordinary prudence would observe in comparable circumstances. A plaintiff may succeed on a claim of negligent supervision by establishing that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused injury. Where an employee acquires knowledge within the scope of their employment, that knowledge is imputed to the employer and the latter is bound by such knowledge even if the information is never actually communicated to the employer. The adequacy of a school’s supervision of its students is generally a question left to the trier of fact to resolve, as is the question of whether inadequate supervision was a proximate cause of the plaintiff’s injury.”

Here, the Court held, the plaintiff raised a triable issue of fact on “whether defendants had sufficiently specific knowledge or notice of the music teacher’s conduct” by submitting an affidavit describing “that on two occasions the music teacher entered the boys’ locker room while plaintiff and his classmates were changing and that on each occasion the gym teacher instructed the music teacher to leave” and the gym teacher’s affidavit from a different case averring that “he had heard rumors from many students that the music teacher had a sexual interest in the male students at the school and that he was suspicious that the music teacher may have had inappropriate relationships with students.” Further, the music teacher “testified that he had ‘always’ had students visit him at his home and that other teachers were aware that students would visit him at his home, where the abuse of plaintiff is, in part, alleged to have occurred.” This, the Court held, was enough to preclude summary judgment.

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