



The Court of Appeals recently addressed when a defendant is subjected to a custodial interrogation requiring the use of *Miranda* warnings before any incriminating statements obtained may be used against him at trial. And the Third Department addressed an open question of New York law concerning whether the salary of a sole shareholder in a professional service corporation must be deducted when calculating the corporation's lost profits for breach of contract. Let's take a look at those opinions and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

CRIMINAL LAW, *MIRANDA* WARNINGS

People v Robinson, 2025 NY Slip Op 05871 (Ct App Oct. 23, 2025)

Issue: Are *Miranda* warnings required before the police may question a suspect who has been handcuffed following an incident?

Facts: "In 2020, defendant Savion Robinson was arrested for causing physical injury in the course of stealing a bicycle. In advance of his bench trial for robbery in the second degree, defendant moved to suppress his at-the-scene admission to police officers that he punched the victim, arguing that the statement was the product of custodial interrogation conducted without *Miranda* warnings. Supreme Court ordered a hearing to determine admissibility.

At the hearing, police officer Anthony Sasso testified that he was on uniformed patrol in Times Square just before midnight when he observed two men, defendant and the victim, fighting near the intersection of Broadway and 46th Street. According to Officer Sasso, he and several other police officers intervened, handcuffed both men, and proceeded to question them about who started the fight and why. The victim asserted that the fight began when defendant stole his bicycle. After questioning, defendant eventually admitted to punching the victim. The officers did not give defendant *Miranda* warnings before obtaining his statement."

Supreme Court denied defendant's motion to suppress the statement, explaining "'this seems to be the classic case of investigatory questioning rather than custodial interrogation,' and therefore *Miranda* warnings were unnecessary." After defendant was convicted of a lesser included charge, the Appellate Division, First Department affirmed, concluding that "there was no custodial interrogation requiring *Miranda* warnings because a reasonable innocent person in defendant's situation would have believed that the police were still in the process of gathering information about the fight at the time the officer asked 'What happened?'" The Appellate Division held that any error would have been harmless in any event.

Holding: The Court of Appeals affirmed the defendant's conviction, albeit on the grounds that the admission of defendant's statement was harmless. The Court explained, the constitutional right against self-incrimination "prohibits the People from using a statement made by a defendant during 'custodial interrogation' unless the prosecution can demonstrate use of the now-familiar *Miranda* warnings." To determine whether a suspect is in custody, "courts must consider whether a reasonable person innocent of any wrongdoing would have believed that they were not free to leave, and whether there was a forcible seizure which curtailed that person's freedom of action to the degree associated with a formal arrest . . . Although [the Court] declined to create a per se rule that handcuffs place an individual in custody in all instances, [it] warned that 'there may be very few circumstances where a handcuffed person is not in custody for purposes of *Miranda* given the obvious physical constraint and association with formal arrest.' Therefore, the use of handcuffs must be given very substantial weight in the custody inquiry." Here, the Court reasoned, since "Defendant remained restrained as he was searched, questioned, and repeatedly accused of theft and assault by the victim over an approximately eight-minute period[,] Defendant's freedom of movement was restricted to a degree comparable to a formal arrest, and he was given no reason to believe he would shortly be released or permitted to leave."

The Court also held that defendant had been interrogated. "[I]nterrogation refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." Here, "defendant was asked several express questions about his physical altercation with the victim. Over the course of the encounter, the officers also made defendant aware they had witnessed him punch the victim and heard the victim's version of events. And they continued asking defendant for his side of the story even after Officer Sasso observed that he was 'not talking.'"

Finally, the Court explained, "it is not dispositive that defendant was questioned in the immediate aftermath of the altercation, while the officers were still determining whether a crime had occurred—circumstances Supreme Court seemingly relied on in deeming the en-

counter a classic case of investigatory questioning that did not require *Miranda* warnings. Our case law draws no categorical distinction between interrogation and so-called investigatory questioning. Interrogation is almost definitionally *investigatory* in nature. And while we have recognized a distinction between coercive interrogation and permissible street inquiry, the most salient difference between these categories is not when the questioning takes place, but the presence or absence of custody.”

Although defendant’s incriminating statement had been improperly admitted, the Court nonetheless held the constitutional error harmless because the “evidence at trial, including the victim’s and Officer Sasso’s un rebutted trial testimony and the video footage, overwhelmingly established defendant’s guilt. Further, there is no reasonable possibility that the admission of defendant’s statement affected the outcome of the trial.”

THIRD DEPARTMENT

CONTRACTS, LOST PROFITS DAMAGES

Radiation Oncology Servs. of Cent. N.Y., P.C. v Our Lady of Lourdes Mem. Hosp., Inc., 2025 NY Slip Op 06112 (3d Dept Nov. 6, 2025)

Issue: When calculating damages for lost profits of a professional service corporation due to a breach of contract, must the salary of its sole shareholder principal be deducted from the recoverable amounts?

Facts: “[P]laintiff Michael J. Fallon is a physician specializing in radiation oncology and is sole shareholder of plaintiff Radiation Oncology Services of Central New York, P.C. . . . In 2001, ROSCNY entered into a written coverage agreement with defendant, under which ROSCNY was granted the exclusive right to provide oncology services at the hospital, with Fallon serving as medical director of the department.” After a reveal of Fallon’s charts revealed quality of care issues, “defendant precautionarily suspended Fallon’s clinical privileges and, within one day of reinstating his privileges with certain conditions, terminated Fallon and ROSCNY’s services for an alleged breach of the agreement.”

ROSCNY then sued for, among other things, breach of contract. Following disclosure and summary judgment motions, ROSCNY was granted judgment in its favor on liability for breach of contract, and a trial on damages was scheduled. “[T]he parties filed respective motions in limine disputing the method of calculating damages and whether evidence of Fallon and ROSCNY’s duty to mitigate the damages suffered from defendant’s breach may be submitted to the jury. Such dispute essentially distills to whether the salary paid by a professional service corporation to its sole shareholder must be treated as an expense in calculating the lost profits, thus subtracting it from the corporation’s profits and correspondingly reducing its damages. Supreme Court, in a pair of well-reasoned decisions, determined that Fallon’s salary as paid by ROSCNY under the coverage agreement is not an expense and could be recoverable as damages for lost profits. Supreme Court further found that evidence of Fallon and ROSCNY’s efforts to mitigate the damages suffered from defendant’s breach may be submitted to the jury, and whether or not Fallon’s postbreach earnings are income derived because of defendant’s breach is a question to be resolved by the jury in determining damages.”

Holding: The Appellate Division, Third Department affirmed, explaining that damages for breach of contract should leave “the injured party . . . in as good a position as it would have been had the contract been fully performed, at the least cost to the defendant. Under certain circumstances, an injured party may recover lost profits resulting from a breach that are the natural and probable consequence of that breach. However, equally fundamental is that the injured party should not recover more from the breach than it would have gained if there was full performance under the contract. Therefore, when an injured party, now relieved of its contractual obligations by a breach, had an opportunity to earn or could with reasonable diligence earn additional income during the unexpired term of the now-broken agreement, the damages award should be reduced by those sums to reflect an accurate loss of the net profit.”

Although “salaries paid to shareholders and principals are ordinarily treated as an avoidable expense in corporations and subtracted from the damages resulting from a breach,” the parties disagreed on “whether professional service corporations should be entitled to different treatment. Plaintiffs contend they should, because only a licensed physician can be a director, officer or shareholder of a professional service corporation formed for the purpose of providing medical services. Due to this, a professional service corporation can and often does, as ROSCNY has done since its formation in 2001, make a federal tax election that permits it to pay all or nearly all of its net profit to its shareholders as a fully deductible expense. By passing on the entire net profit to the shareholder, such as Fallon, professional service corporations like ROSCNY avoid unnecessary taxation on both the corporation and the shareholder. But by doing so, the net profit of a professional service corporation becomes greatly reduced or eliminated, resulting in virtually no recovery from a breach of contract action — even one which results in no profits subsequently being passed on to shareholders during the remaining term of such agreement.” Defendant, in contrast, argued that “professional service corporations should be treated like other corporations for the purposes of calculating damages, and therefore Fallon’s salary is an expense to ROSCNY that becomes an avoided cost upon the breach of the coverage agreement.”

The Court, in reviewing these competing approaches, sided with plaintiffs, explaining that “the approach enunciated by the Fourth Circuit represents a more accurate balancing of the unique traits of professional corporations with the established principles of damages in New York. While our Legislature has created significant overlap between professional service corporations and traditional business corporations, we cannot ignore the inherent distinctions, particularly the principal capital of a professional corporation being its human capital — the skills and reputation and contacts of its professional employees. Indeed, the backbone of a professional corporation are its

licensed professionals, who are the only ones who can serve as shareholders or officers, or render professional services on behalf of the corporation—while remaining personally and fully liable for their negligent or wrongful acts . . . To then erase all or nearly all of the damages caused by defendant’s breach under that agreement because ROSCNY passed on its net profits to its sole shareholder generating those revenues, would then prevent it from recovering any fair and just compensation owed to it as the nonbreaching party under the rules applicable to traditional corporations. Accordingly, in recognition that the majority of other jurisdictions have adopted the stance taken by the Fourth Circuit in *Bettius*, we are satisfied that Supreme Court properly held that Fallon’s salary as paid by ROSCNY under the coverage agreement is not an expense and could be recoverable as damages for lost profits.”

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