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Reporting on Significant Court of Appeals Opinions and Developments in New York Practice

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CASE LAW DEVELOPMENTS

Third-Party Beneficiary Breach of Contract Prevailing Wage Claims Available Even if Contracts Do Not Explicitly Acknowledge Right

In Addition, Agreement to Shorten Limitation Period Unenforceable

In *Walton v. Comfort Sys. USA (Syracuse), Inc.*, 2026 N.Y. Slip Op. 03911 (June 23, 2026), the New York State Court of Appeals was tasked to answer two certified questions from the United States Court of Appeals for the Second Circuit. They related to third-party beneficiary breach of contract claims asserted in a federal putative class action seeking to enforce the right of a public works project employee to receive a prevailing wage under the Labor Law.

Labor Law § 220 provides that on public works projects "laborers, workmen or mechanics" must be paid no less than "the prevailing rate of wages." It was undisputed that the plaintiffs were laborers, workmen or mechanics within the meaning of the statute and that the subject contracts were for public works. Under New York law, third parties can sue as beneficiaries on contracts made for their benefit. To do so, the third party must establish that the contracting parties had the specific "intent to benefit the third party." *Dormitory Authority of the State of N.Y. v. Samson Construction Co.*, 30 N.Y.3d 704, 710 (2018). Otherwise, the third party is considered an "incidental beneficiary," with no independent right to enforce the contract.

In *Walton,* the first question concerned whether third-party beneficiary breach of contract claims are available even if the contract does not explicitly acknowledge the worker's right to prevailing wages, language required by Labor Law § 220. The second asked whether agreements to shorten limitation periods to one year in public works contracts are enforceable against such claims.

The subject contracts each provided in pertinent part that "[n]o action shall be brought against [defendant] more than one year after accrual of the cause of action"; some contracts stated that they were entered into with the "understanding that the services to be provided by [defendant] are not required to be paid under any local, state, or federal prevailing wage statute"; some that the "contract amount is based on our regular labor rates, if prevailing wage applies contact our office immediately for a revised [a]greement"; two set forth a yearly fee and stated that the "proposal amount is based on prevailing wage rates"; and several said nothing about whether the defendant would pay a prevailing wage.

The federal district court granted defendant's motion for partial summary judgment holding, as relevant here, that plaintiffs could not enforce the prevailing wage requirement as third-party beneficiaries because the contracts did not expressly state a promise to pay them prevailing wages. The court also held that the plaintiffs' claims were untimely. On appeal, the Second Circuit certified the questions referenced above.

In answering the first question in the affirmative, the Court of Appeals noted that in previously interpreting the relevant Labor Law § 220, the Court "described this provision as 'intended for the direct benefit of laborers' and held that its prevailing wage requirement is 'inserted in the contract' by operation of law, 'whether voluntarily or under compulsion of the statute, for the benefit of the laborer.'" In addition, the Court has "reaffirmed that '"where a valid statute requires the insertion of provisions intended for the protection of laborers . . . in contracts relating to matters . . . subject to regulation by the State," a "contractual obligation is created which may be enforced by action brought by one . . . for whose benefit the provisions have been inserted."'" *Walton* at *3.

Thus, the Court's precedent

> makes clear that in assessing the availability of a third-party breach of contract action in this context, we

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> focus on what Labor Law § 220 requires to be included in the contract, not what the parties chose to include. And because the statute's promise to pay prevailing wages is inserted into every covered public works contract by operation of law for covered workers' benefit, such workers are third-party beneficiaries of the contracts. A contrary rule would enable contracting parties to cut off an avenue for the recovery of the prevailing wages required by statute, contrary to our case law and the statute's purpose.

Id.

As to the second question, CPLR 201 permits a written agreement to shorten a limitation period and it has been held that "contractually shortened limitation periods generally apply to third-party beneficiary claims." Nevertheless, in the unique situation at hand, the contractual benefit emanates from a statutory command, thereby making the agreement to shorten the limitation period applicable to third-party prevailing wage claims unenforceable. "Indeed, as we have explained, Labor Law § 220 compels contractual recognition of a worker's right to sue as a third-party beneficiary for the worker's protection. Applying the general rule to allow contracting parties to limit workers' ability to recover prevailing wages without the workers' input or agreement would be plainly inconsistent with the statute's purpose." *Id.* at *4.

Majority of Court of Appeals Refuses to Apply Equitable Estoppel to Excuse Failure to File Notice of Claim

Finds Village Did Not Engage in Wrongful or Misleading Conduct

In the past we have addressed General Municipal Law (GML) § 50, which requires the filing of a notice of claim as a condition precedent to an action against a municipality. CPLR 9801 contains similar notice of claim requirements with respect to personal injury or property damages actions against a village, expressly incorporating GML §§ 50-e and 50-i. CPLR 9802 provides that with respect to a contract action "no action shall be maintained against the village upon or arising out of a contract of the village . . . unless a written verified claim shall have been filed with the village clerk within one year after the cause of action shall have accrued."

In *Incorporated Vil. of Freeport v. Freeport Plaza W., LLC,* 2026 N.Y. Slip Op. 03906 (June 18, 2026), the parties had entered into a contract in March 2017, in which the defendant FPW agreed to purchase from the plaintiff real property located in the Village of Freeport and to develop it. In February 2018, the plaintiff Village brought this action against the defendant, alleging, among other things, that the defendant breached the contract by failing to close by the deadline stated in the contract. The defendant asserted a counterclaim in March 2018 for anticipatory breach of contract. It was undisputed, however, that the defendant never filed a notice of claim with respect to the counterclaim. The issue here was whether the Village was equitably estopped from raising the defense of the defendant's failure to perform all conditions precedent.

Relevant to the discussion is that discovery was conducted over a period of nearly a year and a half, in which the Village exchanged discovery and participated in depositions of witnesses and the parties appeared before the trial court nine times. The trial was originally scheduled for October 28, 2019, but was adjourned to December 2019 to enable the parties to complete discovery.

On October 4, 2019, the Village moved to dismiss FPW's counterclaim for failure timely to file a notice of claim under CPLR 9802. FPW argued in opposition that the Village should be equitably estopped from asserting the notice of claim requirement. FPW maintained that the Village had commenced the action and thus "had actual knowledge of the contract dispute from which the counterclaim arose, but deliberately delayed raising the issue until the eve of trial, at which point the statutory limitation period on the counterclaim had expired." *Id.* at *1. The trial court denied the Village's motion, but the Appellate Division reversed.

A majority of the Court of Appeals affirmed. It noted that compliance with the notice of claim requirement is a condition precedent to be pleaded and proved; "a primary purpose of these statutes is to afford local governments 'the opportunity to fully investigate and, if regarded as appropriate, to settle claims without the expense and hazards of litigation' "; " 'statutory requirements conditioning suit against a governmental entity must be strictly construed' because they 'protect[] the public fisc' and are 'allowed only by the State's waiver of sovereign immunity' (citations omitted)"; and, significantly, "[w]here the text of a notice of claim statute 'permits no exception,' we have concluded that the Legislature intends its enforcement even if the government 'had actual knowledge of the claim or failed to demonstrate actual prejudice' (citation omitted)." *Id.*

Here, the Court rejected FPW's argument that the Village should be equitably estopped from asserting non-compliance with the notice of claim requirement because it failed to move to dismiss FPW's counterclaim on that basis until a year and a half into the case. The Court stressed that generally equitable estoppel "is not applied against the government, as a matter of policy, because to do so could easily result in large scale public fraud" and "violate the doctrine of separation of powers." The Court acknowledged, however, that it may be warranted against governmental agencies, but only "in unusual factual situations to prevent injustice," limited to the "rarest of cases."

In *Bender v. New York City Health & Hosps. Corp.*, 38 N.Y.2d 662 (1976), the Court had held that estoppel can apply " 'where a governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his position to his detriment or prejudice.' " *Incorporated Vil. of Freeport* at *1. In the instant action, the majority concluded that the Village did not engage in such wrongful or misleading conduct:

> As the Appellate Division correctly determined, participation in litigation, without more, does not constitute action calculated to mislead or discourage a party from filing a notice of claim. That holds true here, where the Village was pressing its own breach of contract claim and therefore had every reason to participate in discovery and related court conferences, independent of

> FPW's counterclaim. Moreover, the Village's answer to the counterclaim put FPW on notice that it was raising FPW's "fail[ure] to perform all conditions precedent" as an affirmative defense, and compliance with a notice of claim statute such as CPLR 9802 "is a condition precedent" to an action against a municipality (citations omitted).

Id. at *1–2.

The majority rejected the dissent's reliance on discovery "logjams" and the Village's failure to comply with a practice rule, without explaining

> how or why FPW would have reasonably relied on this conduct in failing to file a notice of claim. Notice of claim statutes are longstanding procedural requirements in municipal litigation and compliance is "not overly burdensome." We do not condone the Village's litigation conduct, but nothing prevented FPW, represented by experienced legal counsel, from filing a notice of claim. To the extent FPW relied on the Village's conduct to their detriment, such reliance was unreasonable (citations omitted).

Id. at *2.

Moreover, as noted above, the Court has previously ruled that notice of claim requirements are to be strictly construed even where the government "had actual knowledge of the claim or failed to demonstrate actual prejudice." Finally, the notice of claim requirements apply to counterclaims, and filing a notice of claim does not become unnecessary merely because the counterclaim here was responsive to the Village's breach of contract action.

In maintaining that the Appellate Division order should be reversed, the dissent stressed that the Village waited until only weeks before trial after a year and a half of "intensive litigation" to move to dismiss; it never notified the court during any of the over ten conferences of the notice of claim issue; it did not comply with a Commercial Division rule (24) and failed to provide written notice in advance of its intended motion to the Court; FPW's counterclaim was "compulsory" in the sense that "it was a 'claim for relief' that would 'impair the rights or interests established in the first action' and as a result could not "'remain silent' on its anticipatory breach claim in the Village's affirmative action without waiving its anticipatory breach claim in a subsequent action"; the Village's defense failed to comply with CPLR 3015(a) since it only asserted generally that FPW "'failed to perform all conditions precedent,' a defense that could equally be read to refer to the contract conditions the Village had sued upon"; and the "Village acted both wrongfully and negligently in ways that induced FPW's detrimental reliance," including the Village's recalcitrant tactics during discovery, resulting in "logjams" harming FPW. Thus, the dissent concluded that

> [u]nder these circumstances, where the Village misled Supreme Court, the counterclaim mirrors the original claim and arises from the fact of the litigation itself, and dismissal of the counterclaim does not further the statutory purposes of affording the Village an opportunity for pre-litigation investigation and settlement, the Village is estopped from asserting the notice of claim requirement as a complete defense to FPW's counterclaim.

Id. at *3.

Second Department Sanctions Pro Se Litigant for Citing a Single Nonexistent Case

Pro Se Status and Single Incident Did Not Prevent Sanction

In the February 2026 edition of the *Law Digest*, we reported on the Third Department's decision in *Deutsche Bank Natl. Trust Co. v. LeTennier*, 250 N.Y.S.3d 260 (3d Dep't 2026), which was apparently the first New York State appellate sanction award for the improper use of artificial intelligence. Ultimately, the Court awarded sanctions totaling $10,000, noting defendant's repeated citations to nonexistent cases after being placed on notice of the problem.

In *Julien v. Arthur*, 2026 N.Y. Slip Op. 03308 (2d Dep't May 27, 2026), a Family Court Act proceeding, the father-pro se litigant's appellate brief contained a single nonexistent case as the sole support for his judicial bias claim against the Family Court. The Second Department initially provided an historical discussion of the state of the law in other Departments and across the country with respect to the unverified usage of GenAI to draft briefs and other legal memoranda. It then concluded in this case that a $250 sanction was merited even though the offense was committed by a pro se litigant on one occasion and the father acknowledged responsibility without further reoccurrence:

> [T]he mere fact that the father's conduct was not as egregious as that of the defendant in *LeTennier* does not obviate the need for a sanction. The failure to verify even a single GenAI citation to a fictitious case may warrant the imposition of sanctions to account for the unnecessary waste of resources of the Court and of opposing parties. Further, the mere fact of a party's pro se status "does not excuse [the party's] failure to check the legal citations" presented to the Court. Moreover, the imposition of a sanction for frivolous conduct serves not only to punish a party for the offending conduct, but also to deter future frivolous conduct by other pro se litigants and attorneys (citations omitted).

Id. at *2.

The court cautioned the father that any future misuse of GenAI could be met with a larger sanction.

New Court Rule Addresses Use of Artificial Intelligence

Note that effective June 1, 2026, the New York State Unified Court System has adopted a new rule, Part 161, regulating the use of Artificial Intelligence ("AI") by attorneys and parties in the New York State courts. The rule provides, in part, that the use of AI "by attorneys and parties of artificial intelligence tools in preparing papers submitted to a court should not be prohibited, as long as such use is in accordance with the duties and responsibilities that apply to individuals who submit papers to a court. Since those duties and responsibilities

already apply to all submissions, regardless of whether AI tools were used, attorneys and parties should not be required, upon submitting papers, to disclose to the court that they have used AI in the preparation of such papers." § 161.3. In accordance with 22 N.Y.C.R.R. Part 130 "any attorney or party who uses an artificial intelligence tool, as defined in 22 NYCRR 161.2(a), in preparing any paper, as defined in 22 NYCRR 161.2(b), filed in or submitted to this court or served on another party in a case before this court is required to carefully review the paper and independently ensure that it contains no fabricated or fictitious cases, statutes, or other material. By signing such paper, an attorney or party certifies that such a review has been conducted and that the paper contains no such fabricated or fictitious content. If this court determines that this requirement has not been satisfied, such attorney or party may be subject to sanction or other remedial action." Appendix A, Model Rule. Judges, in their discretion, can implement their own rules, but are encouraged to adopt the model rule. § 161.4.

I suspect that we will be returning to this topic with some regularity.

Plaintiff Failed to Raise COVID Toll in Opposition to Defendants' Motion Seeking Dismissal on Statute of Limitations Grounds

Plaintiff's Awareness of Second and Third Department Precedent Results in Denial of Motion to Renew, Characterized by the Court as "Akin" to One to Reargue, and an Unappealable Order

We have reported extensively in the past in the *Law Digest* about the COVID toll. Back in 2020, we posited that the Governor's Executive Orders amounted to a toll (rather than a mere suspension). After a bit of a wait, the Second Department in *Brash v. Richards*, 195 A.D.3d 582 (2d Dep't 2021), agreed, and the other Departments concurred, followed by the Court of Appeals in 2024.

In *Qi v. Famous Sichuan N.Y. Inc.*, 2026 N.Y. Slip Op. 03767 (1st Dep't June 16, 2026), the defendants established in their motion that the applicable six-year limitation period precluded plaintiff's wage claims predating March 2, 2016. In opposition, the plaintiff failed to argue that the COVID-19 Executive Orders served as a potential toll for his claims, even though he was aware that by then the Second and Third Departments had already ruled that the Executive Orders constituted a toll. At that point, apparently the First Department had not opined on the issue. After it did so in *Murphy v. Harris*, 210 A.D.3d 410 (1st Dep't 2022), concurring with the other Departments, plaintiff moved to renew here in *Qi*, asserting that "*Murphy* 'clarified' the law on the Executive Orders/tolling issue." The First Department in *Qi* held that plaintiff's motion actually was not one to renew, but "akin" to one to reargue, the denial of which was not appealable:

> Plaintiff did not raise the issue of the COVID-19 Executive Orders serving as a potential toll for his claims, despite his admitted awareness of the Executive Orders and of the decisions of the Second and Third Departments. In light of the plain language in the Executive Orders and the holdings in *Brash* and *Matter of Roach*, any further "clarification" of the law as to how the Executive Orders served to toll the applicable statute of limitations was unnecessary, as nothing further needed to be clarified on the issue. Thus, the motion was akin to one for reargument, from which no appeal lies when denied (citation omitted).

Id. at *1.

The case illustrates that counsel should assert any good faith claims, defenses or arguments, or risk losing them. It is also important to note that the

> Appellate Division is a single state-wide court divided into departments for administrative convenience and, therefore, the doctrine of stare decisis requires trial courts in one department to follow precedents set by the Appellate Division of another department until the Court of Appeals or the Appellate Division of its department pronounces a contrary rule. This is a general principle of appellate procedure necessary to maintain uniformity and consistency.

Mountain View Coach Lines, Inc. v. Storms, 102 A.D.2d 663, 664 (2d Dep't 1984).

Trial Court Must Conform Strictly to Remittitur

Court Here Instead Chose to Ignore the Limits of the Remittitur

In *Matter of State of New York v. Ezikiel R.,* 2026 N.Y. Slip Op. 02987 (2d Dep't May 13, 2026), the Second Department had previously reversed a trial court order finding, contrary to the trial court's conclusion, that the petitioner had proven by clear and convincing evidence that the respondent suffered from sexual sadism disorder, in addition to antisocial personality disorder (ASPD) and psychopathy. However, the Appellate Division remitted the matter to the trial court for a new trial and determination as to whether those diagnoses were sufficient to find that the respondent suffered from a mental abnormality under Mental Hygiene Law § 10.03(i) and a dispositional hearing, if appropriate.

Upon remittitur, however, the trial court ignored the Appellate Division's prior determination and instead, sua sponte, held a new nonjury trial on *all* issues. The trial court concluded that the petitioner did *not* prove by clear and convincing evidence that the respondent suffered from sexual sadism disorder and the respondent did not suffer from a mental abnormality.

The Second Department reversed, emphasizing that "'[a] trial court, upon remittitur, lacks the power to deviate from the mandate of the higher court.'" Thus, "'an order or judgment entered on remittitur "must conform strictly to the remittitur"' (citations omitted)." *Id.* at *1. Because the appellate court's earlier order was binding on the trial court, it "erred in, sua sponte, holding a nonjury trial on all issues and redetermining issues already determined by this Court." *Id.* As a result, the Second Department was forced to remit the matter once again.

Wishing each of you a happy and relaxing summer!

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