SURVEY OF NEW YORK LAW: TORTS

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INTRODUCTION

This year, the courts of the State of New York decided hundreds—if not thousands—of cases involving the ever-expanding law of torts. This year's Torts Article focuses on a special subset of those cases, which are meant to highlight areas where the law continues to evolve. All of the cases surveyed here share at least one commonality: all of the cases focus on substantive torts issues. Many of the cases involve reversals. Other cases involve dissenting opinions.

Of note, several negligence claims against municipalities, instituted pursuant to the Child Victim's Act, were decided at the appellate level. The Second Department, specifically, addressed multiple cases and clarified its view of summary judgment in that context. Likewise, *Beadell v. Eros Management Reality, LLC* highlights the courts' ongoing engagement with familiar types of cases (such as cases involving suicides) presented in new contexts (involving a hotel). Finally, in *Cantore v. Costantine*, the Court analyzed an emerging area of society, which undoubtedly will increasingly make its way to courts: the evolving presence of "dog friendly" establishments and the establishments' potential liability for dogs who bite patrons.

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If you want to know what happened in these cases—and more—read on.

I. NEGLIGENCE

The First Department issued a split decision in *Beadell v. Eros Management Realty, LLC*.[1] At issue there was "whether a hotel is subject to liability for failing to prevent a guest's suicide under a theory of assumed duty, where the hotel does not have custody or control of that guest but delays calling the police after a family member's request."[2] The majority held no duty adhered.[3] At the outset, the majority noted its analysis differed from the dissent's analysis because "the dissent focus[ed] on aspects of the record that were admittedly unknown to defendants at the time the incident was unfolding," including "decedent's prior history, diagnosis, and treatment for suicidal ideations, the multiple medications he was taking for anxiety and depression, and the content of the messages he sent to family members in the events leading up to this tragic incident," which the majority felt could not be considered.[4]

Plaintiffs argued the duty of care began to adhere "when decedent's sister called the hotel at approximately 6:40 p.m. and indicated her concern that decedent was going to end his life."[5] While the decedent was coherent and did not express suicidal ideations, he had sent a photograph to his mother "of his feet standing on a ledge looking down."[6] In response, the hotel "contacted decedent in his hotel room, at which time decedent indicated that he was fine and did not wish to be disturbed," which the hotel conveyed to the sister.[7] Decedent then sent further text messages and a phone call, which his sister felt indicated he was having suicidal ideations.[8] Plaintiff's sister called the hotel again, and the manager returned the call before calling 911.[9] A group, including police officers and hotel employees, went to Decedent's room.[10] The group did not receive a response to knocking, and

1. *See* Beadell v. Eros Mgmt. Realty, LLC, 212 N.Y.S.3d 15, 33 (App. Div. 1st Dep't 2024).
2. *Id.* at 19.
3. *Id.* at 23.
4. *Id.* at 19.
5. *Id.*
6. *Beadell*, 212 N.Y.S.3d at 20.
7. *Id.*
8. *Id.*
9. *See id.* at 21.
10. *Id.*

therefore a building engineer unlocked the door.[11] "When officers entered decedent's room, they observed an empty bottle of alcohol, pill bottles and decedent on the window ledge just outside of the window."[12] The police officers spoke to Decedent for three minutes before Decedent committed suicide.[13]

The court began by reviewing the principles governing liability for failure to prevent a suicide.[14] Applying those principles, the court found Defendants did not owe a duty because "[a]s a guest of the hotel, decedent was not under defendants' actual physical custody or control and there is no evidence that defendants had any expertise to detect suicidal tendencies or the control necessary to care for the decedent's well-being."[15] The court further found Defendants had not assumed a general duty to act by agreeing to check on the Decedent.[16]

To the contrary, the majority analyzed any potentially assumed duty as a limited duty to perform two checks.[17] The majority reasoned Defendants discharged their first duty by checking on Decedent.[18] The majority further rejected Plaintiff's argument that "that the duty assumed was . . . to make a medical determination as to the likelihood of decedent's suicide or progression of his suicidal ideations."[19] The majority also found Defendants had discharged their second duty because the hotel had timely sought police intervention.[20] More broadly, the majority also found the hotel had not assumed a duty to prevent Decedent's suicide.[21]

The dissent would have found a duty existed.[22] According to the dissent, "Defendants were not asked to recognize or treat [Decedent's] condition; they were obligated only to fulfill a commitment that they voluntarily undertook—to call the police," which they failed to do in

11. *Beadell*, 212 N.Y.S.3d at 21.
12. *Id.*
13. *Id.*
14. *Id.* at 22.
15. *Id.* at 23 (citing Gordon v. New York, 517 N.E.2d 1331, 1332 (N.Y. 1987); Cygan v. New York, 566 N.Y.S.2d 232, 238 (App. Div. 1st Dep't 1991)).
16. *Beadell*, 212 N.Y.S.3d at 25 (citing Huntley v. State, 464 N.E.2d 467, 467 (N.Y. 1984)).
17. *Id.* at 28.
18. *Id.* at 24.
19. *Id.* at 24–25.
20. *Id.* at 26 (citing Besedina v. N.Y.C. Transit Auth., 902 N.Y.S.2d 369 (App. Div. 2d Dep't 2010)).
21. *Beadell*, 212 N.Y.S.3d at 28.
22. *Id.* at 33 (Singh, J.P., dissenting).

a timely manner.[23] The dissent would have held the duty to call 911 adhered and required immediate action.[24]

In *LG 70 Doe v. Town of Amherst*, the court addressed a negligence cause of action in the context of a Child Victims Act case.[25] Plaintiff alleged "he was repeatedly sexually assaulted between 1977 and 1981 by his former youth baseball coach (coach), who was employed at that time as a police officer by defendant Town of Amherst (Town)."[26] The supreme court denied the Town's motion for summary judgment in part as to the negligent supervision cause of action.[27] The Fourth Department reversed.[28]

The court held Plaintiff's claim involved a governmental function and that Plaintiff failed to allege a special duty.[29] The court explained Plaintiff did not "allege a promise or other affirmative action by the Town assuming a duty to act on behalf of plaintiff specifically, nor does it allege that plaintiff relied upon such an assumption," and therefore "[t]he court therefore erred in denying that part of the motion seeking dismissal of plaintiff's seventh cause of action against the Town."[30]

In *MCVAWCD-DOE v. Columbus Avenue Elementary School*, the Second Department likewise addressed negligent hiring, supervision, and retention claims arising out of a Child Victims Act case involving a teacher.[31] The supreme court dismissed Plaintiff's negligence claims, but the Second Department reversed.[32]

First, the court rejected Defendant's argument "that they lacked constructive notice of the teacher's alleged abusive propensities and conduct."[33] The court reasoned, "given the frequency of the alleged abuse, which occurred over a three-year period, and always occurred inside the same classroom during the school day, the defendants did

23. *Id.*

24. *Id.* at 37.

25. *See* LG 70 Doe v. Town of Amherst, 211 N.Y.S.3d 691, 694 (App. Div. 4th Dep't 2024).

26. *Id.*

27. *Id.*

28. *Id.* at 693–94.

29. *Id.* at 695 (citing Ruiz v. City of Buffalo, 953 N.Y.S.2d 775, 776 (App. Div. 4th Dep't 2012)).

30. *LG 70 Doe*, 211 N.Y.S.3d at 695 (citing *Ruiz*, 953 N.Y.S.2d at 776).

31. MCVAWCD-DOE v. Columbus Ave. Elementary Sch., 207 N.Y.S.3d 669, 670 (App. Div. 2d Dep't 2024).

32. *Id.*

33. *Id.* at 671 (citing Palopoli v. Sewanhaka Cent. High Sch. Dist., 87 N.Y.S.3d 207, 210 (App. Div. 2d Dep't 2018)).

not eliminate triable issues of fact as to whether they should have known of the abuse."[34]

Second, the court rejected Defendants' argument that there were no triable issues of fact regarding its supervision of the teacher.[35] The court noted, (1) "the teacher was on 'probationary' status during the relevant period," (2) "the special education lessons during which the alleged abuse occurred were one-on-one and behind closed doors," (3) "the plaintiff testified at his deposition that the school principal 'never came in' or 'checked' on him during the lessons," and (4) "only a single observation report from Columbus Avenue Elementary School is available in the teacher's employment file during the relevant period."[36]

The Second Department again addressed a negligence cause of action asserted under the Child Victims Act in *Sayegh v. City of Yonkers*.[37] "According to the plaintiff, as a child in 1970 and 1971, he was repeatedly sexually abused by a teacher while attending an elementary school operated by the defendants in Yonkers."[38] The supreme court granted the motion, but the Second Department reversed.[39] As with the prior case, the court found, "defendants failed to establish, prima facie, that they lacked constructive notice of the teacher's alleged abusive propensities and conduct."[40] The court extensively cited *MCVAWCD-DOE* in its reasoning.

In *Toro v. McComish*, the Second Department reversed a supreme court order granting a motion for summary judgment in a trip-and-fall action.[41] The court held the Defendant had failed to meet her initial burden in two ways. First, the Defendant failed to establish "plaintiff's alleged inability to identify what caused her accident."[42] Second, the Defendant failed to establish that the stairway did not present a dangerous condition.[43] The court noted, "plaintiff testified that she might

34. *Id.* at 672 (citing Nizen-Jacobellis v. Lindenhurst Union Free Sch. Dist., 143 N.Y.S.3d 368, 370 (App. Div. 2d Dep't 2021)).

35. *See id.*

36. *MCVAWCD-DOE*, 207 N.Y.S.3d at 672.

37. *See* Sayegh v. City of Yonkers, 213 N.Y.S.3d 129, 131 (App. Div. 2d Dep't 2024).

38. *Id.*

39. *Id.*

40. *Id.* at 132 (citing *MCVAWCD-DOE*, 207 N.Y.S.3d at 671).

41. Toro v. McComish, 212 N.Y.S.3d 192, 193 (App. Div. 2d Dep't 2024).

42. *Id.* at 194 (citing Dilorenzo v. Nunziatto, 177 N.Y.S.3d 72, 73 (App. Div. 2d Dep't 2022).

43. *Id.* at 194 (citing San Antonio v. 340 Ridge Tenants Corp., 166 N.Y.S.3d 256, 259 (App. Div. 2d. Dep't 2022)).

have lost her balance on either the fourth step from the top of the staircase or the fourth step from the bottom of the staircase," but also noted "the report of the plaintiff's expert witness, which was also submitted in support of the defendant's motion, stated that the treads on the staircase were 'uneven and pitched forward,' creating an 'inherent walking hazard,' and that the 'out-of-level and sloping condition' affected 'the entire staircase.'"[44] Moreover, the court rejected the Defendant's argument that "the nonlevel and sloping condition that allegedly caused the plaintiff to fall amounted to a latent condition and could not have been discovered upon a reasonable inspection."[45]

In *Weiss v. Vacca*, the Second Department reversed a supreme court order denying a motion to dismiss made by a property owner.[46] Plaintiff "slipped and fell in a shower."[47] Specifically, "the complaint alleged as defects that the shower floor was slippery and there were no grab bars in the shower stall where [Plaintiff] alleged she slipped and fell."[48] The court reasoned these allegedly dangerous conditions were not the subject of a legally cognizable duty: "there is no common-law or statutory requirement imposing a duty upon the defendants to provide nonslip surfacing or grab bars in a shower or shower stall."[49] The court further explained, "[n]or is there a duty to install such devices where the shower and shower stall were not alleged to be defective or hazardous for ordinary use."[50]

In *Giuntini v. City of New York*, a property owner successfully established the inapplicability of a New York City Administrative Code provision that shifts liability to abutting property owners for defects.[51] As relevant to *Giuntini*, though, the statute does not apply to owner-occupied residential properties that are one, two, or three-family dwellings.[52] After reversing supreme court on the issue, the Second Department further held the property owner "established that he could not be held liable under common-law principles, since he did not create the uneven condition on the sidewalk or cause such condition

44. *Id.*
45. *Id.*
46. Weiss v. Vacca, 196 N.Y.S.3d 479, 482 (App. Div. 2d Dep't 2023).
47. *Id*.
48. *Id.*
49. *Id.* (citing Lunan v. Mormile, 735 N.Y.S.2d 534, 534 (App. Div. 1st Dep't 2002)).
50. *Id.* (citing Balleram v. 11P, LLC, 38 N.Y.S.3d 415, 415 (App. Div. 1st Dep't 2016)).
51. Giuntini v. City of New York, 208 N.Y.S.3d 276, 279 (App. Div. 2d Dep't 2024).
52. *See id.* at 278.

through a special use of the sidewalk."[53] Therefore, the Second Department dismissed the claim.[54]

In *Bialecki v. HBO Builders West, Inc.*, the Fourth Department reversed summary judgment in a case arising out of an alleged defect with a reservoir cap on a truck.[55] "The truck, equipped with a front-end snow plow, malfunctioned while plaintiff was driving it to someone who had agreed to purchase it from defendant."[56] First, "[a]s plaintiff was driving the truck to the buyer, 'everything' on the dashboard display 'turned red,' and plaintiff pulled the truck to the side of the road."[57] Next, "[p]laintiff attempted to investigate the cause of the problem by opening the hood, checking the oil, and looking for signs of overheating, such as smoke and steam."[58] But then, "[a]s [plaintiff] was turning the plastic reservoir cap, 'it exploded,' causing plaintiff injuries."[59]

The court first rejected Defendant's argument that "plaintiff's act of unscrewing the reservoir cap constituted an unforeseeable intervening cause of the accident."[60] The court reasoned, "there are triable issues of fact whether plaintiff's conduct was a normal and foreseeable consequence of the truck's mechanical issues."[61] Next, and relatedly, the court rejected the argument that Plaintiff solely proximately caused the accident:

> [D]efendant failed to establish as a matter of law that plaintiff's conduct, in investigating the cause of the malfunction and checking the water level in the reservoir, was of an unreasonable character, was done in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, or was done with conscious indifference to the outcome.[62]

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53. *Id.* at 279 (citing Daniel v. Khadu, 136 N.Y.S.3d 768, 770 (App. Div. 2d Dep't 2021)).

54. *Id.* at 277.

55. Bialecki v. HBO Builders West, Inc., 199 N.Y.S.3d 321, 323 (App. Div. 4th Dep't 2023).

56. *Id.* at 323.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Bialecki*, 199 N.Y.S.3d at 324.

61. *Id.* (citing Calabrese v. Smetko, 665 N.Y.S.2d 144, 145 (App. Div. 4th Dep't 1997)).

62. *Id.* at 324.

In *Kolvenbach v. Cunningham*, the Second Department issued a mixed decision in a negligence case arising out of a high speed car chase.[63] "Kolvenbach sought to recover damages for personal injuries he allegedly sustained in December 2017 when a vehicle driven by Louis F. Williams [who died as a result of the crash] collided with the vehicle he was driving."[64] Plaintiff alleged "Williams was speeding and driving erratically and that Williams crashed his vehicle into Kolvenbach's vehicle as a result of a high-speed police pursuit initiated by Cunningham."[65] Williams' estate also brought suit against the municipal defendants.[66]

The court noted police officers engaged in emergency operations in their vehicles are only subject to liability if they act with reckless disregard for the safety of others.[67] The court held the municipal defendants "failed to eliminate all triable issues of fact as to whether Cunningham acted with reckless disregard for the safety of others and whether such conduct was a proximate cause of Kolvenbach's injuries."[68] The court explained, "on the day at issue, Cunningham pursued Williams at high speeds on damp roads through a main thoroughfare, and that Williams' vehicle narrowly avoided colliding with other vehicles at earlier points during the pursuit."[69] Additionally, the court noted, "[t]here also remain triable issues of fact as to whether Cunningham activated the siren on his police vehicle . . . and whether he violated police protocols by failing to update his supervisors on the progress of the pursuit via his police radio."[70]

However, as to the deceased driver's claims, the court affirmed dismissal, noting the decedent's "actions of driving erratically and speeding in order to evade the police were sufficiently serious to bar the causes of action to recover damages for pain and suffering and wrongful death."[71]

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63. *See* Kolvenbach v. Cunningham, 205 N.Y.S.3d 459, 461 (App. Div. 2d Dep't 2024).

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* (quoting S.L. v. City of Yonkers, 176 N.Y.S.3d 73, 74 (App. Div. 2d Dep't 2022)).

68. *Kolvenbach*, 205 N.Y.S.3d at 461–62 (citing Miller v. Suffolk Cnty. Police Dep't, 962 N.Y.S.2d 708, 710 (App. Div. 2d Dep't 2013)).

69. *Id.* at 462.

70. *Id.* (citing Mouring v. City of New York, 976 N.Y.S.2d 185, 187 (App. Div. 2d. Dep't 2013)).

71. *Id.* (citing Manning by Manning v. Brown, 689 N.E.2d 1382, 1384 (N.Y. 1997)).

In *Moore v. City of New York*, the Second Department likewise addressed the standard for liability arising out of an emergency vehicle engaged in emergent operations.[72] "At the time of the collision, [defendant] was driving a fire engine on an emergency call" and "plaintiff stopped in the right lane at an intersection because she saw the fire engine, with its lights and sirens activated, coming up behind her."[73] While making a right turn, "either from the lane immediately to the left of the plaintiff or from the oncoming traffic lane that was two lanes to the plaintiff's left . . . the fire engine collided with the plaintiff's vehicle."[74] Applying a statute, the court identified the standard as reckless disregard for the safety of others.[75] The court found Roberts' misguided turn did not meet the standard and therefore reversed the order refusing to dismiss the claim.[76]

In *Shepard v. Power*, the Second Department reversed a decision granting summary judgment on a permissive use issue.[77] "In August 2014, [decedent], who was 18 years old at the time, and [the decedent's brother] saw the defendant's 2010 Lamborghini in the parking lot of a bar in Suffolk County."[78] The Defendant, who was exiting a bar, "permitted first the decedent's brother and then the decedent to drive the Lamborghini while the defendant was a passenger."[79] But, "[w]hile the decedent was driving, he lost control of the Lamborghini, which hit a guardrail, causing the decedent to be ejected from the Lamborghini and to sustain injuries from which he ultimately died."[80] Defendant's deposition revealed "he had consumed approximately three alcoholic beverages while at the bar, did not know the decedent's driving experience, and did not ask the decedent if he had experience driving a car similar to the Lamborghini."[81] Further, "[a]lthough the defendant testified that he raised his hand, intending to communicate to the decedent to slow down, he did not actually tell the decedent to slow down."[82] The Court held:

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72. *See* Moore v. City of New York, 198 N.Y.S.3d 120, 123 (App. Div. 2d Dep't 2023).

73. *Id.* at 122.

74. *Id.*

75. *See id.*

76. *See id.* at 123 (citing Bourdierd v. City of Yonkers, 184 N.Y.S.3d 808, 810 (App. Div. 2d Dep't 2023)).

77. *See* Shepard v. Power, 195 N.Y.S.3d 94, 95 (App. Div. 2d Dep't 2023).

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 96.

82. *Shepard*, 195 N.Y.S.3d at 96.

> The defendant's submissions failed to eliminate triable issues of fact as to whether, under the circumstances presented, the defendant was negligent in permitting the 18-year-old decedent to drive the defendant's Lamborghini at a dangerously high rate of speed, thereby creating an unreasonable risk of harm that caused or contributed to the decedent's death.[83]

The First Department issued a split decision in *SanMiguel v. Grimaldi*. The question on appeal was whether New York law "bars a plaintiff mother's claim for emotional harm resulting from lack of informed consent for certain prenatal procedures."[84] "Plaintiff . . . pregnant with her first child, was admitted to St. Barnabas Hospital . . . one week past her due date . . . ."[85] Then, "[a]fter more than 40 hours of labor," the OB-GYN "unsuccessfully attempted vacuum extraction twice . . . and then ordered a Cesarean section."[86] Plaintiff alleged: (1) she repeatedly requested a Cesarean section, (2) she never consented to vacuum extraction, and (3) she specifically told the staff she did not want a vacuum extraction.[87] Plaintiff's "child was resuscitated at delivery, intubated immediately, and chest compressions were started."[88] The child died a week later.[89] Defendants moved for summary judgment, which Supreme Court denied.[90]

The case turned on a prior Court of Appeals case, which "held that a mother's damages for emotional harm could not be recovered on a cause of action for ordinary medical malpractice where the child was born alive and in the absence of independent physical injury to the mother."[91] The majority distinguished the prior precedent based on the theory of recovery.[92] Specifically, the majority found it dispositive that the prior case sounded in medical malpractice while the current case sounded in a lack of informed consent.[93] Alternatively, the majority would have "revisited" and rejected the prior precedent: "further consideration is warranted with respect to whether a mother may

83. *Id.* at 97.
84. SanMiguel v. Grimaldi, 212 N.Y.S.3d 577, 579 (App. Div. 1st Dep't 2024).
85. *Id.* at 580.
86. *Id.*
87. *See id.* at 580–81.
88. *Id.* at 581.
89. *See SanMiguel*, 212 N.Y.S.3d at 581.
90. *See id.*
91. *Id.* at 579 (citing Sheppard-Mobley v. King, 830 N.E.2d 301, 302 (N.Y. 2005)).
92. *Id.* at 580.
93. *Id.*

recover for emotional damages resulting from physical injuries to her fetus or infant during pregnancy, labor, or delivery caused by medical malpractice or lack of informed consent."[94]

The dissent would have applied prior precedent.[95] According to the dissent, "controlling precedents mandate dismissal of this claim because the mother did not suffer an independent physical injury stemming from the lack of informed consent, and her emotional damages arise solely from the physical injuries sustained by the infant who was born alive," further reasoning that "the infant, having been born alive, has viable claims of lack of informed consent and medical malpractice . . . ."[96] According to the dissent, "although the majority makes sympathetic, if not logical, arguments for allowing a plaintiff mother to recover emotional damages, under the circumstances here, I believe we are bound by Court of Appeals controlling precedents . . . ."[97]

II. DOG BITES

In *Cantore v. Costantine*, the Second Department addressed third-party liability for dog bites that occur in business establishments.[98] There, a restaurant held itself out as dog friendly.[99] While at the restaurant, a minor accompanying her mother was bit by a dog owned by restaurant patrons.[100] At issue in the case was the import of *Hewitt v. Palmer Veterinary Clinic*,[101] which held a Plaintiff in a dog-bite case need not prove that a veterinary practice—as an establishment with specialized knowledge of animals—had notice of the vicious propensities of an animal to prevail.[102] The *Cantore* court held "*Hewitt*, in line with the jurisprudence of this area of law, does not serve to carve out a path for ordinary negligence actions against all premises owners, in contravention of the vicious propensities notice requirement."[103] The Court explained, "[t]o the extent that *Hewitt* applied an ordinary negligence standard, without the vicious propensities notice requirement, it is specific to the facts therein, namely, where

94. *SanMiguel*, 212 N.Y.S.3d at 580.
95. *See id.* at 591 (Renwick, P.J., dissenting in part).
96. *Id.* (citing *Sheppard-Mobley*, 830 N.E.2d at 302).
97. *Id.* at 592.
98. *See* Cantore v. Costantine, 199 N.Y.S.3d 173, 175 (App. Div. 2d Dep't 2023).
99. *Id.*
100. *See id.*
101. Hewitt v. Palmer Veterinary Clinic, PC, 159 N.E.3d 228 (N.Y. 2020).
102. *See Cantore*, 199 N.Y.S.3d at 175 (citing *Hewitt*, 159 N.E.3d at 231–32)).
103. *Id.*

the defendant retains specialized knowledge relating to animal behavior."[104] Turning to the facts of the case before it, the court reasoned, "the circumstances of this case do not lend themselves to elimination of the vicious propensities notice requirement."[105]

III. FRAUD

In *Hillary Developer, LLC v. Security Title Guaranty Corp.*, the Second Department addressed a fraudulent concealment cause of action in a third-party complaint.[106] The case arose out of a Sheriff's auction.[107] A property owner failed to satisfy a judgment that had a lien on real property.[108] The buyer, "upon learning that the subject premises had since been sold to a different buyer at a sheriff's auction to satisfy the subject judgment," sued the property owner and the title insurance company.[109] In turn, one Defendant sued its agent, SSS Settlement Services.[110] Supreme Court denied a motion to dismiss the Complaint.[111] The Second Department reversed, holding the Defendant "failed to allege, inter alia, any material omission of fact by SSS Settlement or that she relied upon any such material omission" and "failed to allege that SSS Settlement owed her a duty to disclose the material information."[112]

IV. FALSE IMPRISONMENT

In *McKay v. Town of Southampton*, the Court addressed two issues related to false imprisonment claims.[113]

> The issues raised on this appeal are (1) whether the plaintiff's confinement was privileged where he did not make an application for his release, but where the district attorney's office consented to and requested his release pursuant to CPL 180.80; and (2) whether the plaintiff retroactively consented to his own allegedly

104. *Id.* at 180.
105. *Id.* at 181.
106. *See* Hillary Dev., LLC v. Sec. Title Guar. Corp. of Balt., 196 N.Y.S.3d 17, 18 (App. Div. 2d Dep't 2023).
107. *Id.* at 18.
108. *See id.*
109. *Id.* at 18–19.
110. *See id.* at 19.
111. *See Hillary Dev.*, 196 N.Y.S.3d at 19.
112. *Id.* (citing Pasternack v. Lab'y Corp. of Am. Holdings, 59 N.E.3d 485, 493 (N.Y. 2016)).
113. McKay v. Town of Southampton, 196 N.Y.S.3d 728, 730 (App. Div. 2d Dep't 2023).

> illegal detention, and thus, did not sustain an injury, upon pleading guilty and agreeing to a sentence of "time served."[114]

Plaintiff had been arrested, but his attorney and the assistant district attorney handling the case had agreed to his release.[115] The Town of Southampton, however, failed to respond to the request to release Plaintiff (who did not know he should have been released).[116] Plaintiff was released two-and-a-half months later.[117] The Court explained, "[P]laintiff did not waive his claims for false imprisonment and negligence by pleading guilty to reckless endangerment in the second degree."[118] The Court reasoned "plaintiff's argument does not relate to the factual elements of the crime charged, but relates to the more fundamental issue of whether the defendant improperly failed to release the plaintiff from custody when it was required to pursuant to" the law.[119] Moreover, the Court held Plaintiff did not consent to his confinement.[120]

V. LABOR LAW

In *Stoneham v. Barsuk*, the Court answered an age-old question in Labor Law cases: "whether plaintiff was engaged in an activity protected by Labor Law § 240 (1)."[121] In *Stoneham*, "Plaintiff . . . was lying beneath a lifted trailer working on a faulty air brake system when the trailer fell on him causing serious injuries."[122] The Court held Section 240 of the Labor Law "was not intended to cover ordinary vehicle repair and, thus, the courts below correctly dismissed the section 240 (1) cause of action . . . ."[123] The Court's holding came after the supreme court dismissed the case and the appellate division affirmed in a three-to-two decision.[124]

The majority "[e]mploy[ed] a holistic view of the statute," and held "that the activity in which plaintiff was engaged, ordinary vehicle

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114. *Id.*
115. *Id.* at 731.
116. *See id.*
117. *See id.*
118. *McKay*, 196 N.Y.S.3d at 733.
119. *Id.* (citing People v. Taylor, 478 N.E.2d 755, 757 (N.Y. 1985)).
120. *See id.* at 734 (citing Parvi v. Kingston, 362 N.E.2d 960, 962 (N.Y. 1977)).
121. Stoneham v. Joseph Barsuk, Inc., 232 N.E.3d 179, 180 (N.Y. 2023).
122. *Id.*
123. *Id.*
124. *Id.*

repair, is not an activity covered by Labor Law § 240 (1)."[125] Notably, the Court found the "work is analogous to that of a factory worker engaged in the normal manufacturing process,"[126] which it is well established is not covered by the Labor Law.[127] The Court reasoned, "if the statute applied in this case, car owners would be absolutely liable for gravity-related injuries that occurred when a mechanic was working on their car."[128]

The dissent would have found the facts of the case warranted the protections of section 240.[129] The dissent noted, "as the majority correctly concludes, it is not the nature of the structure, but rather the nature of the work that determines whether section 240(1) properly applies."[130] The dissent, invoking *Runner v. New York Stock Exchange*, would have found "at least a question of fact in this case as to whether the protections of Labor Law § 240 (1) are available because plaintiff suffered an injury due to a 'significant elevation differential' which could have been avoided by the provision of appropriate safety equipment."[131]

CONCLUSION

This *Survey* year proved interesting as the courts continue to work through the ever-present issues in tort law. The Adult Survivors' Act claims window closed on November 23, 2023. Courts have begun developing law based on claims under that Act, while the courts continue to develop law based on claims under the Child Victims Act. And, of course, the courts continue to develop case law across the spectrum of torts that arise. Since the end of the *Survey* year, courts have been issuing new decisions, which continue to write and rewrite the law of torts. As always, stay tuned—and read next year's Torts submission.

125. *Id.* at 183.
126. *Stoneham*, 232 N.E.3d at 183.
127. *See id.*
128. *Id.*
129. *Id.* (Cannataro, J., dissenting).
130. *Id.* at 184.
131. *Stoneham*, 232 N.E.3d at 184; *see* Runner v. N.Y. Stock Exch., Inc., 922 N.E.2d 865, 866 (N.Y. 2009).