

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Farray v. State of New York

Farray, 2026 NY Slip Op 03663 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2026) · No. 2022-00126 · Decided June 10, 2026

OPINION

Farray v. State of New York 2026 NY Slip Op 03663

PER CURIAM.

Farray v State of New York - 2026 NY Slip Op 03663 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Farray v State of New York 2026 NY Slip Op 03663 June 10, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Verne Farray, appellant, v State of New York, respondent. (Claim No. 130393) Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 10, 2026 2022-00126 Betsy Barros, J.P. Linda Christopher Carl J. Landicino Laurence L. Love, JJ. Spar & Bernstein, P.C. (Pollack, Pollack, Isaac & DeCicco, LLP, New York, NY [Brian J. Isaac, Paul Seidenstock, and Joshua Block], of counsel), for appellant. Letitia James, Attorney General, New York, NY (Ester Murdukhayeva, Kristin C. Holladay, and Samantha Neal of counsel), for respondent. [*1] DECISION & ORDER In a claim to recover damages for personal injuries, the claimant appeals from a judgment of the Court of Claims (Faviola A. Soto, J.), dated November 16, 2021. The judgment, upon an order of the same court dated October 25, 2021, granting the defendant's oral application, in effect, pursuant to CPLR 4401 for judgment as a matter of law dismissing the claim, made at the close of the claimant's case at a nonjury trial on the issue of liability, is in favor of the defendant and against the claimant dismissing the claim. ORDERED that the judgment is affirmed, with costs. On July 16, 2017, the claimant was injured in a motor vehicle accident. The claimant was a passenger in a vehicle traveling westbound in the far left lane of the Grand Central Parkway (hereinafter the parkway). A second vehicle was traveling westbound in the right lane of the parkway when the second vehicle came into contact with a third vehicle as the second vehicle attempted to pass the third vehicle. The second vehicle lost control, traveling across three lanes of traffic and colliding with the vehicle in which the claimant was a passenger. The vehicle in which the claimant was a passenger then broke through a 27-inch-high guiderail, traveled into the eastbound lanes of the parkway, and was hit by oncoming traffic. Thereafter, the claimant filed a claim against the State of New York, alleging that the State failed to maintain the parkway in a reasonably safe condition. Following the close of the

claimant's case at a nonjury trial on the issue of liability, in an order dated October 25, 2021, the Court of Claims granted the State's oral application, in effect, pursuant to CPLR 4401 for judgment as a matter of law dismissing the claim. Thereafter, in a judgment dated November 16, 2021, the court dismissed the claim. The claimant appeals. To be entitled to judgment as a matter of law pursuant to CPLR 4401, "a defendant must show that, upon viewing the evidence in the light most favorable to the plaintiff, there is no rational basis by which the [factfinder] could find for the plaintiff against the moving defendant" (*Whitehall v Andrade* , 231 AD3d 1094 , 1095 [internal quotation marks omitted]). "In determining whether the defendant has met this burden, a court must accept the plaintiff's evidence as true and accord the plaintiff the benefit of every favorable inference which can reasonably be drawn from the evidence presented at trial" (*id.* , quoting *Feteha v Scheinman* , 169 AD3d 871 , 872). "The State has a nondelegable duty to maintain its roads and highways in a reasonably safe condition" (*Paci v State of New York* , 233 AD3d 945 , 945 [internal quotation marks omitted]). However, the State "is not an insurer of the safety of its roads" (*Sinski v State of New York* , 2 AD3d 517, 517). "To prove that the State was negligent in the maintenance of its roadway, a claimant must demonstrate the existence of a dangerous condition of which the State had actual or constructive notice and which it failed to take reasonable measures to correct" (*Paci v State of New York* , 233 AD3d at 945-946). "Further, in order to establish liability, a claimant must demonstrate that the State's negligence in maintaining its roads in a reasonable condition was a proximate cause of the accident" (*id.* at 946). Here, the claimant contends that the 27-inch-high guiderail between the eastbound and the westbound lanes of the parkway did not meet the standard height for guiderails adopted in approximately 2012, which required guiderails to be 29 inches high, and that that condition contributed to the accident. The claimant's expert testified that 27-inch-high guiderails were nonstandard in 2017 but were standard when they were installed in 1982 and that it was not the policy of the State "to go out and change existing guiderails whenever there's a change in the standards with respect to the height of the guiderails." When asked "simply because a roadway structure is nonstandard, doesn't mean that it's hazardous, correct," the claimant's expert replied "[t]hat's correct." The claimant's expert opined that a guiderail meeting the height standard of 29 inches "[c]ould have" stopped the vehicle in which the claimant was a passenger from breaking through the guiderail and traveling into the eastbound lanes of the parkway into oncoming traffic. However, this assertion, which was conclusory and not based on any evidence, was stricken from the record by the Court of Claims (see *McHale v Sweet* , 217 AD3d 666, 667 ; *Elstein v Hammer* , 192 AD3d 1075, 1077). Accordingly, the claimant failed to meet his burden of establishing liability, and the Court of Claims properly granted the State's oral application, in effect, pursuant to CPLR 4401 for judgment as a matter of law dismissing the claim. BARROS, J.P., CHRISTOPHER, LANDICINO and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy

Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/supreme-court-of-the-state-of-new-york-appellate-division-second-judicial-department-supreme-court-o/2026/farray-v-state-of-new-york-1lnoxmhs>