

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Jones v. Marshalls

2026 NY Slip Op 00087 (N.Y. Ct. App. 2026) · No. Index No. 24115/19; Appeal No. 5571; Case No. 2024-06590 · Decided January 13, 2026

SUMMARY

The Appellate Division, First Department modified an order granting summary judgment to defendants in a premises-liability action. It affirmed dismissal of the claims against USM, Inc. because the cleaning company was an independent contractor and no exception to the general rule of nonliability applied, but denied summary judgment to Marshalls because it had a nondelegable duty to maintain its store in a reasonably safe condition and could be vicariously liable for the subcontractor's negligence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Kapnick, J.; Rosado, J.; Michael, J.; Hagler, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	January 13, 2026
DOCKET	Index No. 24115/19; Appeal No. 5571; Case No. 2024-06590
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' motions for summary judgment dismissing the complaint.
STANDARD OF REVIEW	De novo review of summary judgment and the legal sufficiency of the record.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion; precedential within the First Department subject to later appellate authority.
PARTIES	Christopher Jones v. Marshalls, Marshalls of MA, Inc., The TJX Companies, Inc., USM, Inc.

TOPICS

premises liability

vicarious liability

negligence

summary judgment

standard of review

PRACTICE AREAS

torts

premises liability

negligence

civil procedure

QUESTIONS PRESENTED

1. Whether USM, Inc. could be held liable for the alleged negligence of JK Maintenance & Services Inc., an independent contractor.
2. Whether Marshalls had a nondelegable duty to maintain the public area of its store in a reasonably safe condition and could be held vicariously liable for negligence by the cleaning subcontractor.
3. Whether summary judgment could be granted to Marshalls based on lack of notice of the hazardous condition.

HOLDINGS

1. USM was entitled to summary judgment dismissing the complaint because JK was an independent contractor, USM did not control the manner of JK's work, none of the recognized exceptions applied, and USM's alleged passive omissions did not launch a force or instrument of harm.
2. Marshalls was not entitled to summary judgment dismissing the complaint because it had a nondelegable duty to maintain the public area of its store in a reasonably safe condition and could be held vicariously liable for negligence by the subcontractor that caused the floor to become unsafe.
3. The court did not reach whether Marshalls established lack of notice because the existence of Marshalls' nondelegable duty and potential vicarious liability independently required denial of summary judgment.

KEY QUOTATIONS

“However, the court should not have granted summary judgment dismissing the complaint as against Marshalls, which had a nondelegable duty to maintain the public area of its store in a reasonably safe condition.” ([*1])

“Therefore, Marshalls can be held vicariously liable for any negligence on the part of the subcontractor that caused the floor to become unsafe” ([*1])

FACTUAL BACKGROUND

Christopher Jones was injured at a Marshalls store when a floor condition allegedly became unsafe. Cleaning services at the store were provided by JK Maintenance & Services Inc., an independent contractor hired by USM, Inc. The record showed that neither USM nor Marshalls controlled how JK performed its cleaning tasks, and USM was not present at the store when the accident occurred.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, granted summary judgment to Marshalls, Marshalls of MA, Inc., The TJX Companies, Inc., and USM, Inc. The Appellate Division unanimously modified the order to deny summary

judgment to Marshalls and otherwise affirmed the dismissal as to USM.

DISPOSITION

other

CASES CITED

- Kleeman v. Rheingold, 81 N.Y.2d 270, 273-274 (1993)
- Espinal v. Melville Snow Contractors, 98 N.Y.2d 136, 140 (2002)
- Tobola v. 123 Washington, LLC, 195 A.D.3d 456, 457 (1st Dep't 2021)

OPINION

PER CURIAM.

Jones v Marshalls (2026 NY Slip Op 00087) Jones v Marshalls 2026 NY Slip Op 00087 Decided on January 13, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 13, 2026 Before: Manzanet-Daniels, J.P.

SEQ CHAPTER \h \r 1, Kapnick, Rosado, Michael, Hagler, JJ. Index No. 24115/19|Appeal No. 5571|Case No. 2024-06590| [*1]Christopher Jones, Appellant, v Marshalls, et al., Respondents. The Law Offices of Michel S. Lamonsoff, PLLC, New York (Brendan O'Meara of counsel), for appellant. Kenney Shelton Liptak Nowak LLP, White Plains (Deborah A. Summers of counsel), for respondents.

Order, Supreme Court, Bronx County (Laura G. Douglas, J.), entered September 30, 2024, which granted the motion of defendants Marshalls, Marshalls of MA, Inc., The TJX Companies, Inc. (collectively, Marshalls), and USM, Inc. for summary judgment dismissing the complaint as against them, unanimously modified, on the law, to deny Marshalls' motion, and otherwise affirmed, without costs.

The court properly granted the summary judgment motion to the extent of dismissing the complaint as against USM, based on unrefuted evidence that defendant JK Maintenance & Services Inc. was an independent contractor hired by USM to provide cleaning services to Marshalls.

The general rule is that a party who retains an independent contractor is not liable for that contractor's negligent acts (see Kleeman v Rheingold, 81 NY2d 270, 273 [1993]). The record establishes that neither USM nor Marshalls exercised control over how JK performed its cleaning

tasks at the Marshalls store where plaintiff was injured, and that USM was not even present at the location at the time of the accident.

None of the exceptions described in *Kleeman* (*id.* at 274) are applicable as to USM. Moreover, USM's allegedly passive omissions with respect to its contractor do not constitute the launch of a force or instrument of harm so as to render USM liable to plaintiff (see *Espinal v Melville Snow Contrs.*, 98 NY2d 136, 140 [2002]).

However, the court should not have granted summary judgment dismissing the complaint as against Marshalls, which had a nondelegable duty to maintain the public area of its store in a reasonably safe condition. Therefore, Marshalls can be held vicariously liable for any negligence on the part of the subcontractor that caused the floor to become unsafe (see *Tobola v 123 Washington, LLC*, 195 AD3d 456, 457 [1st Dept 2021]).

In light of the foregoing, we find it unnecessary to consider whether Marshalls established lack of notice of the hazardous condition. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 13, 2026

PER CURIAM.

Jones v Marshalls (2026 NY Slip Op 00087) Jones v Marshalls 2026 NY Slip Op 00087 Decided on January 13, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 13, 2026 Before: Manzanet-Daniels, J.P., Kapnick, Rosado, Michael, Hagler, JJ. Index No. 24115/19|Appeal No. 5571|Case No. 2024-06590| [*1]Christopher Jones, Appellant, v Marshalls, et al., Respondents.

The Law Offices of Michel S. Lamonsoff, PLLC, New York (Brendan O'Meara of counsel), for appellant. Kenney Shelton Liptak Nowak LLP, White Plains (Deborah A. Summers of counsel), for respondents. Order, Supreme Court, Bronx County (Laura G. Douglas, J.), entered September 30, 2024, which granted the motion of defendants Marshalls, Marshalls of MA, Inc., The TJX Companies, Inc. (collectively, Marshalls), and USM, Inc. for summary judgment dismissing the complaint as against them, unanimously modified, on the law, to deny Marshalls' motion, and otherwise affirmed, without costs.

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