

**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.

OPINION

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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. 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