

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

Weiss v. Fran Corp.

2026 NY Slip Op 02147 (N.Y. Ct. App. 2026) · No. 2024-08765 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, reversed an order denying the defendant's CPLR 3211(a) motion and dismissed a personal-injury complaint arising from a pedestrian accident at an allegedly darkened intersection. The court held that the contractor owed no tort duty to the plaintiff under the Espinal exceptions because its alleged failure to restore illumination did not launch an instrument of harm and its contract did not entirely displace the Town's duty to maintain the premises safely.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Deborah A. Dowling, J.; James P. McCormack, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	April 8, 2026
DOCKET	2024-08765
DISPOSITION	reversed
PROCEDURAL POSTURE	The defendant appealed from an order of the Supreme Court, Rockland County, denying its CPLR 3211(a) motion to dismiss a personal-injury complaint.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the complaint is liberally construed, its factual allegations are presumed true, and the plaintiff receives the benefit of every favorable inference. When evidentiary material is submitted and considered without converting the motion to one for summary judgment, the court determines whether the plaintiff has a cause of action; dismissal is appropriate only when a material fact alleged by the plaintiff is not a fact at all or no significant dispute exists regarding it.

PRECEDENTIAL VALUE	Published intermediate appellate decision; precedential under New York law, subject to correction before publication in the Official Reports.
PARTIES	Fran Corp. v. Moyshe Weiss

TOPICS

duty of care negligence personal injury motions to dismiss contracts

PRACTICE AREAS

torts civil procedure personal injury contracts

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable negligence claim against a contractor that had contracted with the Town to repair a street light but had no contractual privity with the injured pedestrian.
2. Whether the alleged negligent failure to restore illumination constituted the launching of an instrument of harm under the Espinal exceptions.
3. Whether the contractor's agreement entirely displaced the Town's duty to maintain the intersection safely.

HOLDINGS

1. A contractual obligation, standing alone, does not create tort liability to a third party; a contractor assumes a duty of care only if it launches a force or instrument of harm, the plaintiff detrimentally relies on continued performance, or the contractor entirely displaces the other party's duty to maintain the premises safely.
2. The alleged negligent failure to restore illumination to an already darkened intersection was, at most, a failure to act as an instrument for good and did not constitute the launching of an instrument of harm sufficient to impose a duty of care on Fran Corp.
3. Fran Corp.'s contractual undertaking was not a comprehensive and exclusive property-maintenance obligation that entirely displaced the Town's duty to maintain the premises safely.

KEY QUOTATIONS

“On a motion to dismiss pursuant to CPLR 3211(a)(7), the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory” ([*1])

“Because a finding of negligence must be based on the breach of a duty, a threshold question in tort cases is whether the alleged tortfeasor owed a duty of care to the injured party” ([*2])

“The defendant's purported negligence in failing to restore illumination to a darkened intersection amounts to, at most, a failure to act as an “instrument for good, which is insufficient to impose a duty of care” upon the

*defendant in the absence of contractual privity with the plaintiff” ([*2])*

FACTUAL BACKGROUND

Weiss was struck by a motor vehicle while crossing at an intersection in the Town of Ramapo. He alleged that an unilluminated street light contributed to the accident and that Fran Corp., which had contracted with the Town to repair the light, negligently repaired it before the accident. Fran Corp. submitted its contract with the Town in support of its motion to dismiss.

PROCEDURAL HISTORY

Moyshé Weiss sued Fran Corp. for personal injuries sustained when a motor vehicle struck him as a pedestrian. The Supreme Court denied Fran Corp.'s motion to dismiss, and the Appellate Division reversed and granted the motion.

DISPOSITION

reversed

CASES CITED

- Clevenger v. Yuzek, 222 A.D.3d 931, 934 (2d Dep't 2023)
- Pergament v. Government Employees Insurance Co. (GEICO), 225 A.D.3d 799, 800 (2d Dep't 2024)
- Espinal v. Melville Snow Contractors, 98 N.Y.2d 136, 138, 140-141 (2002)
- Valdez v. M.A. Angeliades, Inc., 222 A.D.3d 911, 911-912 (2d Dep't 2023)
- Leon v. Martinez, 84 N.Y.2d 83, 87 (1994)
- Church v. Callanan Industries, 99 N.Y.2d 104, 112 (2002)
- Espeleta v. Synergy Resources, Inc., 172 A.D.3d 1320, 1321 (3d Dep't 2019)
- Santos v. Deanco Services, Inc., 142 A.D.3d 137, 142 (2d Dep't 2016)
- Palka v. Servicemaster Management Services Corp., 83 N.Y.2d 579, 588 (1994)
- Moch Co. v. Rensselaer Water Co., 247 N.Y. 160, 167-170 (1928)
- Anderson v. Jefferson-Utica Group, Inc., 26 A.D.3d 760, 761 (3d Dep't 2006)