

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

Curry v. County of Suffolk

2026 NY Slip Op 02246 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2026) · No. 2021-03069, 2021-04611 · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, affirmed the denial of Suffolk County's motion for summary judgment in a personal-injury action arising from a container placed in a roadway. The court held that governmental-function immunity did not apply and that issues of fact remained regarding proximate cause. It reversed the denial of Winters Bros.' motion for leave to amend its answer, dismissed the appeal from the order denying reargument, and found the renewal issue academic.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Valerie Brathwaite Nelson; Deborah A. Dowling; Phillip Hom
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2021-03069, 2021-04611
DISPOSITION	affirmed_in_part_reversed_in_part
PROCEDURAL POSTURE	Appeals from orders of the Supreme Court, Suffolk County: (1) County of Suffolk and Winters Bros. separately appeal from an order dated April 16, 2021, which denied the County's motion for summary judgment and denied Winters Bros.' motion for leave to amend their answer; (2) Winters Bros. appeal from an order dated June 23, 2021, which denied their motion for leave to renew and reargue the prior motion to amend.
STANDARD OF REVIEW	Summary judgment is appropriate when there are no triable issues of fact. Denial of leave to amend is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published

PARTIES

County of Suffolk, Winters Bros. Waste Systems of Long Island, LLC,
Winters Bros. Recycling Corp. v. Michelle Curry, Town of Babylon

TOPICS

negligence municipal liability proximate cause summary judgment civil procedure
appellate procedure

PRACTICE AREAS

Personal Injury Municipal Law Civil Procedure Appellate Practice

QUESTIONS PRESENTED

1. Whether the County was entitled to summary judgment on governmental function immunity.
2. Whether the County was entitled to summary judgment because the cross-over driver's negligence was the sole proximate cause.
3. Whether the Supreme Court improvidently exercised its discretion in denying Winters Bros.' motion for leave to amend their answer under CPLR 3025.

HOLDINGS

1. The County's placement of the container in the roadway and failure to warn were not an exercise of police powers for public protection, so the County was not entitled to governmental function immunity.
2. The County failed to eliminate triable issues of fact as to whether its alleged negligence in placing the container and failing to warn was a substantial cause of the plaintiff's injuries, even though the other driver's negligence was a substantial factor.
3. The Supreme Court abused its discretion in denying Winters Bros.' motion to amend; leave should be freely granted absent prejudice, palpably insufficient amendment, or patent lack of merit.

KEY QUOTATIONS

"When a negligence claim is asserted against a municipality, the first issue for a court to decide is whether the municipal entity was engaged in a proprietary function or acted in a governmental capacity at the time the claim arose" (*2)

"A governmental entity performs a purely proprietary role when its activities essentially substitute for or supplement traditionally private enterprises" (*2)

"In deciding whether a function is proprietary or governmental, a court examines 'the specific act or omission out of which the injury is claimed to have arisen and the capacity in which that act or failure to act occurred . . . , not whether the agency involved is engaged generally in proprietary activity or is in control of the location in which the injury occurred'" (*2)

"The overarching principle governing determinations of proximate cause is that a defendant's negligence qualifies as a proximate cause where it is a substantial cause of the events which produced the injury" (*3)

*“When a question of proximate cause involves an intervening act, liability turns upon whether the intervening act is a normal or foreseeable consequence of the situation created by the defendant's negligence” (*3)*

*“Applications for leave to amend pleadings under CPLR 3025(b) should be freely granted unless the proposed amendment (1) would unfairly prejudice or surprise the opposing party, or (2) is palpably insufficient or patently devoid of merit” (*4)*

*“Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side, the very elements of the laches doctrine” (*4)*

FACTUAL BACKGROUND

The plaintiff was driving on a roadway in Suffolk County when another vehicle traveling in the opposite direction crossed into her lane, causing her to swerve. Her vehicle struck a container allegedly placed in the roadway by Winters Bros. in connection with a commercial eviction supervised by the County's deputy sheriff. She sued the County, Winters Bros., the Town of Babylon, and others for personal injuries.

PROCEDURAL HISTORY

The plaintiff sued the County of Suffolk, Winters Bros., and the Town of Babylon for personal injuries after her car struck a container in the roadway. The County moved for summary judgment on governmental immunity and proximate cause grounds; Winters Bros. moved to amend their answer to correct ownership of the container. The Supreme Court denied both motions. The County and Winters Bros. appealed. Winters Bros. also moved to renew/reargue, which was denied, and they appealed that too.

DISPOSITION

affirmed_in_part_reversed_in_part

REMAND INSTRUCTIONS

The amended answer in the form attached to the papers in support of Winters Bros.' motion is deemed served.

CASES CITED

- Applewhite v Accuhealth, Inc., 21 NY3d 420
- Canberg v County of Nassau, 214 AD3d 943
- Ferreira v City of Binghamton, 38 NY3d 298
- Wittorf v City of New York, 23 NY3d 473
- Miller v State of New York, 62 NY2d 506
- Connolly v Long Is. Power Auth., 30 NY3d 719
- Turturro v City of New York, 28 NY3d 469
- Hain v Jamison, 28 NY3d 524
- Mazella v Beals, 27 NY3d 694

- *Derdiarian v Felix Contr. Corp.*, 51 NY2d 308
- *DeBartolo v Coccia*, 276 AD2d 663
- *Inglese v City of New York*, 237 AD3d 1077
- *Jin Liang Lin v Gee*, 200 AD3d 666
- *Caldara v County of Westchester*, 197 AD3d 607
- *Lucido v Mancuso*, 49 AD3d 220
- *Redd v Village of Freeport*, 150 AD3d 780
- *Loomis v Civetta Corinno Constr. Corp.*, 54 NY2d 18
- *Edenwald Contr. Co. v City of New York*, 60 NY2d 957
- *JBGR, LLC v Chicago Tit. Ins. Co.*, 195 AD3d 604
- *Nick v Schneider*, 150 AD3d 1250
- *Czarnecki v Corso*, 81 AD3d 774
- *Metro Found. Contrs., Inc. v M.A. Angeliades, Inc.*, 233 AD3d 669
- *Bank of Am., N.A. v Davis*, 210 AD3d 737

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