

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

McNeil v. World Class Sec. Servs. Holdings, LLC

McNeil, 2026 NY Slip Op 03670 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2025-00215 · Decided June 10, 2026

SUMMARY

The Appellate Division, Second Department, affirmed dismissal of the plaintiff's personal-injury claims against John Ross Lindsay. The court held that the assault and battery claim was barred by the statute of limitations and that New York does not recognize a negligent assault or battery claim where the alleged injury resulted from an intentional punch.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Paul Wooten, J.; Lourdes M. Ventura, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 10, 2026
DOCKET	2025-00215
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendant John Ross Lindsay's motion pursuant to CPLR 3211(a)(5) and (7) to dismiss the complaint against him.
STANDARD OF REVIEW	On a CPLR 3211(a)(5) motion based on the statute of limitations, the defendant bears the initial burden of establishing prima facie that the limitations period expired, after which the burden shifts to the plaintiff to raise a question of fact concerning tolling, inapplicability, or timely commencement. On a CPLR 3211(a)(7) motion, the court accepts the complaint's factual allegations as true, affords the plaintiff every favorable inference, and determines whether the alleged facts fit within any cognizable legal theory.
PRECEDENTIAL VALUE	published intermediate appellate decision

TOPICS

statute of limitations

motions to dismiss

assault

battery

negligence

PRACTICE AREAS

Torts

New York civil procedure

Appellate practice

QUESTIONS PRESENTED

1. Whether the plaintiff's assault-and-battery cause of action was barred by the applicable statute of limitations.
2. Whether New York recognizes a negligence cause of action based on the alleged intentional punching of the plaintiff.
3. Whether the Supreme Court properly dismissed the complaint against Lindsay under CPLR 3211(a)(5) and (7).

HOLDINGS

1. The assault-and-battery cause of action was barred by the applicable statute of limitations, and the plaintiff failed to raise a question of fact showing that the limitations period was tolled, otherwise inapplicable, or satisfied by timely commencement.
2. The negligence cause of action was properly dismissed because New York does not recognize a cause of action for negligent assault or battery, and the alleged intentional punching could support only a battery claim, not a negligence claim.
3. Dismissal under CPLR 3211(a)(7) was proper because the facts alleged did not state a cognizable negligence theory.

KEY QUOTATIONS

“A defendant who seeks dismissal of a complaint on the ground that it is barred by the statute of limitations bears the initial burden of proving, prima facie, that the time in which to commence an action has expired” (at 1)

“New York does not recognize a cause of action to recover for negligent assault or battery” (at 2)

“Negligence is distinguished from assault and battery by the absence of that intent which is a necessary ingredient of the latter” (at 2)

“Here, the only inference that may be drawn from the evidence and the plaintiff's allegations is that her alleged injuries resulted solely from the defendant's intentional act of punching her in the face.” (at 2)

FACTUAL BACKGROUND

McNeil alleged that she sustained personal injuries on December 1, 2019, when Lindsay punched her in the face. Lindsay had pleaded guilty to misdemeanor disorderly conduct on June 3, 2021, and the criminal case was sealed and closed. McNeil commenced the civil action on or about October 6, 2022, asserting assault and battery and a negligence-based cause of action against Lindsay.

PROCEDURAL HISTORY

McNeil commenced an action seeking damages for personal injuries allegedly sustained when Lindsay punched her in the face. The Supreme Court, Kings County, granted Lindsay's motion to dismiss the first cause of action as time-barred and the second cause of action for failure to state a cause of action. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Weinberg Real Estate Affiliates, LLC v Weinberg, 231 AD3d 775, 776
- Dodobayeva v Rubinoff, 242 AD3d 706
- Parziate v Meron, 231 AD3d 736, 741
- Vilsack v Meyer, 96 AD3d 827, 828
- Dray v Staten Is. Univ. Hosp., 160 AD3d 614, 617
- Western Elec. Co. v Brenner, 41 NY2d 291, 293
- Potter v Zucker Hillside Hosp., 176 AD3d 884, 885
- Leon v Martinez, 84 NY2d 83, 87-88
- Brophy v Big Bros. Big Sisters of Am., Inc., 224 AD3d 866, 868
- Pierce Coach Line, Inc. v Port Wash. Union Free Sch. Dist., 213 AD3d 959, 960
- NFA Group v Lotus Research, Inc., 180 AD3d 1060, 1061
- Cordell Marble Falls, LLC v Kelly, 191 AD3d 760, 762
- Sokol v Leader, 74 AD3d 1180, 1181-1182
- Borrerro v Haks Group, Inc., 165 AD3d 1216, 1217-1218
- McMullin v Village of Spring Val., 229 AD3d 787, 788
- Murray v Long Is. R.R. Co., 35 AD2d 579, affd 28 NY2d 849
- Rosas v Petkovich, 218 AD3d 814, 817
- Chiesa v McGregor, 209 AD3d 963, 965-966
- Thomas v Fayee, 302 AD2d 451, 452

OPINION

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PER CURIAM.

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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 McNeil v World Class Sec. Servs. Holdings, LLC 2026 NY Slip Op 03670 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. Tia Leah McNeil, appellant, v World Class Security Services Holdings, LLC, defendant, John Ross Lindsay, respondent. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 10, 2026 2025-00215, (Index No. 529063/22) Francesca E. Connolly, J.P. Paul Wooten Lourdes M. Ventura Phillip Hom, JJ. Chesney, Nicholas & Brower, LLP, Syosset, NY (Scott A. Koltun of counsel), for appellant. KMA Zuckert LLP, New York, NY (Jennifer Huang of counsel), for respondent. [*1] DECISION & ORDER In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Carolyn E. Wade, J.), dated November 6, 2024. The order granted the motion of the defendant John Ross Lindsay, inter alia, pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against him. ORDERED that the order is affirmed, with costs. On or about October 6, 2022, the plaintiff commenced this action against the defendant John Ross Lindsay (hereinafter the defendant) and his employer, World Class Security Services Holdings, LLC, to recover damages for personal injuries she allegedly sustained on December 1, 2019, when the defendant punched her in the face. On June 3, 2021, the defendant had pleaded guilty to a misdemeanor charge of disorderly conduct and the criminal case was sealed and closed. In an order dated November 6, 2024, the Supreme Court granted the defendant's motion, inter alia, pursuant to CPLR 3211(a)(5) and (7) to dismiss the complaint insofar as asserted against him. The plaintiff appeals. The Supreme Court properly granted, pursuant to CPLR 3211(a)(5), that branch of the defendant's motion which was to dismiss the first cause of action insofar as asserted against him. "A defendant who seeks dismissal of a complaint on the ground that it is barred by the statute of limitations bears the initial burden of proving, prima facie, that the time in which to commence an action has expired" (Weinberg Real Estate Affiliates, LLC v Weinberg , 231 AD3d 775 , 776 [internal quotation marks omitted]; see Dodobayeva v Rubinoff , 242 AD3d 706). "If the defendant satisfies this burden, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period" (Weinberg Real Estate Affiliates, LLC v Weinberg , 231 AD3d at 776 [internal quotation marks omitted]; see Parziat v Meron , 231 AD3d 736 , 741; Vilsack v Meyer , 96 AD3d 827, 828). "In determining which limitations period is applicable to a given cause of action, the court must look to the substance of the allegations rather than to the characterization of those allegations by the parties" (Dray v Staten Is. Univ. Hosp. , 160 AD3d 614 , 617; see Western Elec. Co. v Brenner , 41 NY2d 291 , 293; Potter v Zucker Hillside Hosp. ,

176 AD3d [*2] 884, 885). Here, the defendant established, prima facie, that the first cause of action, alleging assault and battery insofar as asserted against him, was time-barred (see CPLR 215[3], [8][a]; *Potter v Zucker Hillside Hosp.* , 176 AD3d at 885). In opposition, the plaintiff failed to raise a question of fact. The Supreme Court also properly granted, pursuant to CPLR 3211(a)(7), that branch of the defendant's motion which was to dismiss the second cause of action insofar as asserted against him. On a motion pursuant to CPLR 3211(a)(7) to dismiss a complaint for failure to state a cause of action, a court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez* , 84 NY2d 83, 87-88 ; see *Brophy v Big Bros. Big Sisters of Am., Inc.* , 224 AD3d 866 , 868). "Evidentiary material submitted by the plaintiff in opposition to such a motion may be considered to remedy defects in the complaint" (*Pierce Coach Line, Inc. v Port Wash. Union Free Sch. Dist.* , 213 AD3d 959, 960 , quoting *NFA Group v Lotus Research, Inc.* , 180 AD3d 1060, 1061). "If the court considers evidentiary material, the criterion then becomes whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one" (*Cordell Marble Falls, LLC v Kelly* , 191 AD3d 760, 762 [internal quotation marks omitted], quoting *Sokol v Leader* , 74 AD3d 1180, 1181-1182 ; see *Guggenheimer v Ginzburg* , 43 NY2d 268, 275). "New York does not recognize a cause of action to recover for negligent assault or battery" (*Borrerro v Haks Group, Inc.* , 165 AD3d 1216 , 1217; see *McMullin v Village of Spring Val.* , 229 AD3d 787 , 788). "Negligence is distinguished from assault and battery by the absence of that intent which is a necessary ingredient of the latter" (*Borrerro v Haks Group, Inc.* , 165 AD3d at 1217 [internal quotation marks omitted]). Although "the same act may constitute battery or negligence depending upon whether or not it was intentional, . . . there cannot be recovery for both" (*id.* at 1218 [internal quotation marks omitted]; see *Murray v Long Is. R. R. Co.* , 35 AD2d 579 , *affd* 28 NY2d 849). As such, "if the only inference that may be drawn from plaintiff's evidence is that defendant's contact with plaintiff was intentional, plaintiff may recover only in battery and the issue of negligence should not be submitted to the jury" (*Borrerro v Haks Group, Inc.* , 165 AD3d at 1218 [internal quotation marks omitted]; see *Thomas v Fayee* , 302 AD2d 451, 452). Here, the only inference that may be drawn from the evidence and the plaintiff's allegations is that her alleged injuries resulted solely from the defendant's intentional act of punching her in the face. Even if the defendant lacked any intent to make physical contact with, or otherwise injure, the plaintiff, the conduct attributed to the defendant constituted intentional, rather than negligent, conduct (see *Rosas v Petkovich* , 218 AD3d 814, 817 ; *Chiesa v McGregor* , 209 AD3d 963, 965-966 ; *Borrerro v Haks Group, Inc.* , 165 AD3d at 1218). Accordingly, the Supreme Court properly granted that branch of the defendant's motion which was pursuant to CPLR 3211(a)(5) and (7) to dismiss the complaint insofar as asserted against him. The parties' remaining contentions either are without merit or need not be reached in light of our determination. CONNOLLY, J.P., WOOTEN, VENTURA and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions

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