

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

Casares v. Village of Westbury

2026 NY Slip Op 01028 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2026) · No. 2023-02437 · Decided February 25, 2026

SUMMARY

The Appellate Division, Second Department affirmed the dismissal of Denise Casares's amended complaint, which sought damages for mental anguish arising from the Village of Westbury's removal of a tree. The court held that the complaint did not assert a viable negligent infliction of emotional distress claim and failed to allege negligence sufficient to state a cause of action under CPLR 3211(a)(7).

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Paul Wooten, J.; Deborah A. Dowling, J.; Laurence L. Love, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	February 25, 2026
DOCKET	2023-02437
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' CPLR 3211(a)(7) motion to dismiss the amended complaint for failure to state a cause of action.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the complaint is liberally construed, the alleged facts are presumed true, and the plaintiff receives the benefit of every favorable inference; the court determines only whether the alleged facts fit within any cognizable legal theory. Dismissal is warranted when the plaintiff fails to allege facts supporting an element of the claim or when the allegations and permissible inferences do not establish an enforceable right of recovery.
PRECEDENTIAL VALUE	published

TOPICS

motions to dismiss

negligent infliction of emotional distress

negligence

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

torts

municipal law

appellate procedure

QUESTIONS PRESENTED

1. Whether the amended complaint stated a cause of action for negligent infliction of emotional distress or another cognizable claim.
2. Whether dismissal under CPLR 3211(a)(7) was proper because the amended complaint failed to allege negligence and therefore failed to state a cause of action.

HOLDINGS

1. The amended complaint did not assert a cause of action for negligent infliction of emotional distress, which generally requires a breach of a duty that unreasonably endangered the plaintiff's physical safety or caused the plaintiff to fear for the plaintiff's own safety.
2. Dismissal of the amended complaint under CPLR 3211(a)(7) was proper because the complaint failed to allege negligence and therefore failed to state a cause of action.

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])

"Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" ([*1])

"A cause of action to recover damages for negligent infliction of emotional distress generally requires a plaintiff to show a breach of a duty owed to him [or her] which unreasonably endangered his [or her] physical safety, or caused him [or her] to fear for his [or her] own safety" ([*1])

FACTUAL BACKGROUND

The defendants removed a tree from the street in front of Casares's property before she could mount a legal challenge to its removal. Casares brought an action seeking damages for mental anguish. Her amended complaint did not allege facts establishing negligence or a cognizable negligent-infliction-of-emotional-distress claim.

PROCEDURAL HISTORY

Casares commenced an action seeking damages for mental anguish arising from the defendants' removal of a tree from the street in front of her property. Defendants moved under CPLR 3211(a)(7), and the Supreme Court, Nassau County, granted the motion. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Weinstein v. Levitin, 208 A.D.3d 531, 532
- Gruber v. Donaldsons, Inc., 201 A.D.3d 887, 888-889
- Clevenger v. Yuzek, 222 A.D.3d 931, 934
- Connaughton v. Chipotle Mexican Grill, Inc., 29 N.Y.3d 137, 142
- Wedgewood Care Ctr., Inc. v. Kravitz, 198 A.D.3d 124, 130
- Borrerro v. Haks Group, Inc., 165 A.D.3d 1216, 1219
- Sacino v. Warwick Val. Cent. Sch. Dist., 138 A.D.3d 717, 719
- Davydov v. Youssefi, 205 A.D.3d 881, 884
- Trayvilla v. Japan Airlines, 178 A.D.3d 746, 747
- Whitfield v. Law Enforcement Empls. Benevolent Assn., 237 A.D.3d 1139

OPINION

PER CURIAM.

Casares v Village of Westbury (2026 NY Slip Op 01028) Casares v Village of Westbury 2026 NY Slip Op 01028 Decided on February 25, 2026 Appellate Division, Second 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 on February 25, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

PAUL WOOTEN DEBORAH A. DOWLING LAURENCE L. LOVE, JJ. 2023-02437 (Index No. 289/22) [*1]Denise Casares, appellant, v Village of Westbury, et al., respondents. Denise Casares, Westbury, NY, appellant pro se. Milber, Makris, Plousadis & Seiden, LLP, Islip Terrace, NY (William E. Morrissey, Jr., of counsel), for respondents. DECISION & ORDER In an action to recover damages for mental anguish, the plaintiff appeals from an order of the Supreme Court, Nassau County (Diccia T. Pineda-Kirwan, J.), dated February 24, 2023.

The order granted the defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the amended complaint. ORDERED that the order is affirmed, with costs. The plaintiff commenced this action

to recover damages for "mental anguish" stemming from the defendants' removal of a tree from the street in front of her property before she could mount a legal challenge to the tree's removal.

The defendants moved pursuant to CPLR 3211(a)(7) to dismiss the amended complaint. In an order dated February 24, 2023, the Supreme Court granted the motion. The plaintiff appeals. "'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'" (*Weinstein v Levitin*, 208 AD3d 531, 532, quoting *Gruber v Donaldsons, Inc.*, 201 AD3d 887, 888; see *Clevenger v Yuzek*, 222 AD3d 931, 934).

"Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142; see *Wedgewood Care Ctr., Inc. v Kravitz*, 198 AD3d 124, 130).

Here, contrary to the plaintiff's contention, the amended complaint does not assert a cause of action predicated upon negligent infliction of emotional distress. "A cause of action to recover damages for negligent infliction of emotional distress generally requires a plaintiff to show a breach of a duty owed to him [or her] which unreasonably endangered his [or her] physical safety, or caused him [or her] to fear for his [or her] own safety" (*Borrer v Haks Group, Inc.*, 165 AD3d 1216, 1219 [internal quotation marks omitted]; see *Sacino v Warwick Val.*

Cent. Sch. Dist., 138 AD3d 717, 719). "[A]llegations of intentional conduct... 'cannot form the basis of a cause of action sounding in negligence'" (*Davydov v Youssefi*, 205 AD3d 881, 884, quoting *Trayvilla v Japan [*2]Airlines*, 178 AD3d 746, 747; see *Gruber v Donaldsons, Inc.*, 201 AD3d at 889).

Here, the Supreme Court properly granted the defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the amended complaint for failure to state a cause of action, as the amended complaint failed to allege negligence (see *Whitfield v Law Enforcement Empls. Benevolent Assn.*, 237 AD3d 1139; *Gruber v Donaldsons, Inc.*, 201 AD3d at 889).

The defendants' remaining contentions are academic in light of the foregoing. CHAMBERS, J.P., WOOTEN, DOWLING and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court