

**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

OPINION

Casares v. Village of Westbury 2026 NY Slip Op 01028

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" (*Borrerro 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