

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Deitrich v. Binghamton Rd. Elec., LLC

Deitrich, 2026 NY Slip Op 00557 (Appellate Division of the Supreme Court of the State of New York Third Department 2026) · No. CV-24-1902 · Decided February 5, 2026

SUMMARY

The New York Appellate Division, Third Department held that transporting the oversized shed at issue was not an inherently dangerous activity because the alleged negligence involved ordinary failures to observe surroundings and remain within a lane. Accordingly, the independent-contractor exception to the general rule against vicarious liability did not apply, and the court dismissed the claims against Amish Country Sheds of VT, LLC. A dissent would have affirmed denial of summary judgment, concluding that factual issues concerning the shed's loading, trailer, and safety equipment required a jury determination.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Powers, J.; Pritzker, J.P.; Fisher, J.; McShan, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	February 5, 2026
DOCKET	CV-24-1902
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant Amish Country Sheds of VT, LLC appealed from an order denying its motion for summary judgment dismissing the complaint against it.
STANDARD OF REVIEW	Summary judgment is proper when the movant makes a prima facie showing of entitlement to judgment as a matter of law and the opposing party fails to raise a material issue of fact. On the inherently dangerous activity issue, the court determined whether ACS established prima facie that the work was not inherently dangerous and, if so, whether plaintiff raised a material factual issue in opposition. The evidence was viewed under the applicable summary-judgment standard, including whether any reasonable view of the evidence could support a contrary jury finding.

PRECEDENTIAL VALUE	Published; precedential
PARTIES	Amish Country Sheds of VT, LLC v. Anthony P. Deitrich

TOPICS

vicarious liability construction law personal injury summary judgment appellate procedure

PRACTICE AREAS

torts construction law personal injury appellate procedure

QUESTIONS PRESENTED

1. Whether transporting the oversized prefabricated structure was an inherently or abnormally dangerous activity creating an exception to the general rule that a party is not liable for the negligence of an independent contractor.
2. Whether ACS made a prima facie showing that the transportation activity was not inherently dangerous and whether plaintiff raised a material issue of fact in opposition.
3. Whether the permit requirements and alleged regulatory violations created a nondelegable duty or otherwise imposed vicarious liability on ACS.

HOLDINGS

1. The transportation of the oversized load was not inherently dangerous under the facts presented because the alleged negligence—failing to observe surroundings and crossing into a neighboring lane—was an ordinary driving error avoidable through reasonable care and was not inherent in the transportation work.
2. ACS could not be held vicariously liable for the purported negligence of St Mary because St Mary was an independent contractor and no inherently dangerous-activity exception or nondelegable duty applied.
3. The specialized permit and Department of Transportation regulations did not establish a nondelegable duty or otherwise make ACS vicariously liable for St Mary's negligence.

KEY QUOTATIONS

*“a party who retains an independent contractor, as distinguished from a mere employee or servant, is not liable for the independent contractor's negligent acts” ([*2])*

*“Demanding though it may be, the activity of transporting [oversized loads on public highways] — successfully accomplished countless times daily — does not involve that sort of inherent risk for the nonnegligent driver and is simply not an inherently dangerous activity so as to trigger vicarious liability” ([*3])*

*“Accordingly, the proof submitted by ACS made a prima facie showing that the trucking of the load in question was not inherently dangerous, and plaintiff's proof in opposition did not raise a material issue of fact.” ([*5])*

FACTUAL BACKGROUND

ACS sold a prefabricated structure measuring 14 feet by 20 feet and arranged for St Mary & Sons Transport LLC, an independent contractor, to transport it from the place of construction to the purchaser's home. While following an oversized-load permit route through a highway construction zone, St Mary's driver, Kenneth R. Rousell II, crossed into a neighboring lane or failed to observe his surroundings, and the side of the structure struck plaintiff, a construction worker. Plaintiff alleged that ACS was vicariously liable for St Mary's and Rousell's negligence and was independently negligent in the loading of the structure.

PROCEDURAL HISTORY

Deitrich sued ACS and other defendants after being injured by an oversized shed transported through a highway construction site. ACS moved for summary judgment, arguing that it owed no duty and could not be vicariously liable for the negligence of St Mary, an undisputed independent contractor. Supreme Court denied the motion, finding a triable issue concerning negligent transportation and concluding that transporting an oversized load could be an inherently dangerous activity. The Appellate Division reversed, granted ACS summary judgment, and dismissed the complaint against ACS.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order was reversed on the law, ACS's motion for summary judgment was granted, and the complaint against ACS was dismissed.

CASES CITED

- *Feliberty v. Damon*, 72 NY2d 112, 117-118 (1988)
- *Brothers v. New York State Elec. & Gas Corp.*, 11 NY3d 251, 257-258 (2008)
- *Rosenberg v. Equitable Life Assur. Socy. of U.S.*, 79 NY2d 663, 668-670 (1992)
- *Mery v. Eginger*, 149 AD3d 827, 828 (2d Dept 2017), *affd*, 31 NY3d 1068 (2018)
- *Rackowski v. Realty USA*, 82 AD3d 1475, 1476-1477 (3d Dept 2011)
- *Baraban v. Orient-Express Hotels*, 292 AD2d 203, 204 (1st Dept 2002)
- *Chainani v. Board of Educ. of City of N.Y.*, 87 NY2d 370, 379, 381 (1995)
- *Carlineo v. Akins*, 71 AD3d 1535, 1536 (4th Dept 2010)
- *Chiles v. D & J Serv., Inc.*, 34 AD3d 319, 320 (1st Dept 2006)
- *Brown v. Transcare N.Y., Inc.*, 27 AD3d 350, 351 (1st Dept 2006)
- *Davies v. Contel of N.Y.*, 187 AD2d 898, 899 (3d Dept 1992)
- *Montano v. City of Watervliet*, 47 AD3d 1106, 1109 (3d Dept 2008)
- *Moulton-Barrett v. Ascension Health-IS, Inc.*, 222 AD3d 1064, 1067 (3d Dept 2023)
- *Dojce v. 1302 Realty Co., LLC*, 199 AD3d 647, 650 (2d Dept 2021)

- Wright v. Tudor City Twelfth Unit, 276 NY 303, 306-307 (1938)
- Kleeman v. Rheingold, 81 NY2d 270, 275 (1993)
- Ek v. Herrington, 939 F2d 839, 843-844 (9th Cir 1991)
- Kopinska v. Metal Bright Maintenance Co., 309 AD2d 633, 633-634 (1st Dept 2003)
- Rodriguez v. Lex Assoc., 235 AD2d 354, 354 (1st Dept 1997)
- McCartney v. Zurcher, 2025 Neb. Ct. App. LEXIS 595, *54-55 (Nov. 4, 2025)
- Williams v. Tennessee Riv. Pulp & Paper Co., 442 So. 2d 20, 23 (Ala. Sup. Ct. 1983)
- Doak v. Green, 677 So. 2d 301, 302-303 (Fla. Dist. Ct. App. 1st Dist. 1996)
- American Home Assur. Co. v. National R.R. Passenger Corp., 908 So. 2d 459, 468 (Fla. 2005)

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