

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

Semon v Pebble Corp.

Semon, 2026 NY Slip Op 03899 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 653380/24; Appeal No. 6932; Case No. 2025-00570 · Decided June 18, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed dismissal of plaintiffs' complaint, holding that New York City's cashless-ban provision does not create an implied private right of action. The court concluded that plaintiffs may still pursue common-law claims such as breach of contract and unjust enrichment, but declined to consider leave to amend because plaintiffs had not sought that relief in Supreme Court.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Friedman, J.; Gesmer, J.; Michael, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	June 18, 2026
DOCKET	Index No. 653380/24; Appeal No. 6932; Case No. 2025-00570
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting defendants' motion to dismiss the complaint under CPLR 3211(a)(1) and (7).
STANDARD OF REVIEW	The court reviewed the dismissal order on appeal and determined whether the complaint stated a viable claim and whether documentary evidence supported dismissal under CPLR 3211(a)(1) and (7).
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	Sean Semon et al. v. Pebble Corp. et al.

TOPICS

- statutory interpretation
- legislative intent
- consumer protection
- appellate procedure
- breach of contract

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Administrative Code of the City of New York § 20-840 creates an implied private right of action for customers allegedly overcharged in cash transactions.
2. Whether plaintiffs could obtain leave on appeal to amend their complaint to add breach-of-contract and unjust-enrichment claims when they had not sought leave to amend in the trial court.

HOLDINGS

1. Administrative Code § 20-840 does not afford plaintiffs or putative class members a private right of action.
2. Plaintiffs' request for leave to amend the complaint to add breach-of-contract and unjust-enrichment causes of action was not properly before the Appellate Division because plaintiffs had not sought leave to amend below.

KEY QUOTATIONS

"[W]here a statute does not make express provision for a private remedy, such a remedy may be had only if a legislative intent to create such a right of action is fairly implied in the statutory provisions and their legislative history" ([*1])

"The third factor . . . is the most important and typically turns on the legislature's choice to provide one particular enforcement mechanism to the exclusion of others because it demonstrates that the legislature considered and decided what avenues of relief were appropriate" ([*1])

FACTUAL BACKGROUND

Plaintiffs purchased food with cash from a fast-food restaurant operated by defendants. They alleged that defendants effectively overcharged them by failing to return exact change, and they sought relief under New York City's cashless-ban provision, Administrative Code § 20-840. The court concluded that the statute did not create a private right of action, although common-law claims such as breach of contract and unjust enrichment could remain available.

PROCEDURAL HISTORY

The Supreme Court, New York County, granted defendants' motion to dismiss the complaint on January 7, 2025. The Appellate Division, First Department, unanimously affirmed without costs. Plaintiffs' request for leave to amend to add breach-of-contract and unjust-enrichment claims was rejected because they had not sought leave to amend below.

DISPOSITION

affirmed

CASES CITED

- Ortiz v Ciox Health LLC, 37 NY3d 353, 360 [2021]
- Konkur v Utica Academy of Science Charter Sch., 38 NY3d 38, 41 [2022]
- Channel Chiropractic, P.C. v Country-Wide Ins. Co., 38 AD3d 294, 294 [1st Dept 2007]

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