

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

Tesoriero v. ANMAC Holding Corp.

Tesoriero, 2026 NY Slip Op 03996 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2023-07176 · Decided June 24, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an amended order granting Irwin Friedman & Son, Inc. summary judgment dismissing the personal-injury complaint against it. The court held that the contractor did not owe the decedent a duty of care under the Espinal framework because it completed its contracted pipe repair, backfilled the hole, and covered the area with plywood and cones, without undertaking responsibility to re-cement or maintain the site. The plaintiff failed to raise a triable issue of fact.

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.; Valerie Brathwaite Nelson, J.; Barry E. Warhit, J.; Elena Goldberg Velazquez, J.                                                                       |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                              |
| DECIDED               | June 24, 2026                                                                                                                                                                       |
| DOCKET                | 2023-07176                                                                                                                                                                          |
| DISPOSITION           | affirmed                                                                                                                                                                            |
| PROCEDURAL POSTURE    | The plaintiff appealed from an amended order granting the defendant contractor summary judgment dismissing the complaint insofar as asserted against it.                            |
| STANDARD OF REVIEW    | On a summary-judgment motion, the movant must make a prima facie showing of entitlement to judgment as a matter of law; the opposing party must then raise a triable issue of fact. |
| PRECEDENTIAL VALUE    | Published intermediate appellate decision                                                                                                                                           |
| PARTIES               | Grace Tesoriero, as administrator of the estate of Arthur Tesoriero v. Irwin Friedman & Son, Inc.                                                                                   |

## TOPICS

personal injury

premises liability

duty of care

construction law

appellate procedure

## PRACTICE AREAS

torts

construction law

personal injury

## QUESTIONS PRESENTED

1. Whether the contractor owed the decedent a tort duty of care for injuries allegedly arising from the unre-cemented hole after the contractor completed its contracted pipe-repair work.
2. Whether the contractor launched a force or instrument of harm sufficient to create an exception to the general rule that a contractual obligation alone does not give rise to tort liability to a third party.
3. Whether the contractor was entitled to summary judgment dismissing the complaint.

## HOLDINGS

1. The contractor did not owe the decedent a duty of care because it completed its contractual obligation to repair the pipe, backfill the hole, and cover the area with plywood and cones, was not retained to re-cement or maintain the premises, and did not launch a force or instrument of harm.
2. Summary judgment dismissing the complaint against the contractor was proper because the contractor established prima facie that it owed no duty of care, and the plaintiff failed to raise a triable issue of fact.

## KEY QUOTATIONS

*"However, one exception to this general rule exists where 'the contracting party, in failing to exercise reasonable care in the performance of [its] duties, launch[es] a force or instrument of harm'" ([\*1])*

*"A contractor that performs its work in accordance with contract plans may not be held liable unless those plans are 'so patently defective as to place a contractor of ordinary prudence on notice that the project, if completed according to the plans, is potentially dangerous'" ([\*1]-[\*2])*

## FACTUAL BACKGROUND

Irwin Friedman & Son, Inc. was retained by Arthur Tesoriero's employer to repair a leaking underground water pipe. The contractor dug a hole in the interior concrete floor, repaired the pipe, backfilled the hole, and covered the area with plywood and cones several days before Tesoriero allegedly fell. The contractor was not retained to re-cement the hole or to maintain the premises until re-cementing, and it reasonably believed the employer would re-cement the work site.

## PROCEDURAL HISTORY

Arthur Tesoriero allegedly fell into a partially exposed hole at his workplace and commenced a consolidated personal-injury action against several defendants, including Irwin Friedman & Son, Inc. During discovery, Tesoriero died and Grace Tesoriero was substituted as administrator of his estate. Supreme Court, Kings County,

granted the contractor's motion for summary judgment, and the Appellate Division affirmed insofar as appealed from.

## DISPOSITION

affirmed

## CASES CITED

- Espinal v. Melville Snow Contrs., 98 N.Y.2d 136, 140
- Abney v. Meridian Props., LLC, 222 A.D.3d 921, 922
- Miller v. Infohighway Communications Corp., 115 A.D.3d 713, 715
- Bradley v. US Brownsville III Hous. Dev. Fund Corp., 213 A.D.3d 902, 905
- Ryan v. Feeney & Sheehan Bldg. Co., 239 N.Y. 43, 46
- Peluso v. ERM, 63 A.D.3d 1025, 1026
- Gee v. City of New York, 304 A.D.2d 615, 616
- Nichols-Sisson v. Windstar Airport Serv., Inc., 99 A.D.3d 770, 772
- West v. City of Troy, 231 A.D.2d 825, 826
- Hodzic v. M. Cary, Inc., 202 A.D.3d 1063, 1064
- Zaslow v. City of New York, 124 A.D.3d 642, 643-644

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