

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

OPINION

Tesoriero v. ANMAC Holding Corp. 2026 NY Slip Op 03996

PER CURIAM.

Tesoriero v ANMAC Holding Corp. - 2026 NY Slip Op 03996 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Tesoriero v ANMAC Holding Corp. 2026 NY Slip Op 03996 June 24, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Grace Tesoriero, etc., appellant, v ANMAC Holding Corp., et al., defendants, Irwin Friedman & Son, Inc., respondent. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 24, 2026 2023-07176, (Index No. 510254/18) Francesca E. Connolly, J.P. Valerie Brathwaite Nelson Barry E. Warhit Elena Goldberg Velazquez, JJ. Bernstone & Grieco, LLP (Steve S. Efron, New York, NY, of counsel), for appellant. Gallo Vitucci Klar LLP, New York, NY (C. Briggs Johnson and Debra A. Boccardi [Adler] of counsel), for respondent. [*1] DECISION & ORDER In a consolidated action to recover damages for personal injuries, the plaintiff appeals from an amended order of the Supreme Court, Kings County (Debra Silber, J.), dated August 14, 2023. The amended order, insofar as

appealed from, granted that branch of the motion of the defendant Irwin Friedman & Son, Inc., which was for summary judgment dismissing the complaint insofar as asserted against it. ORDERED that the amended order is affirmed insofar as appealed from, with costs. Arthur Tesoriero (hereinafter the decedent) allegedly fell when he stepped into a partially exposed hole in the interior concrete floor of his place of employment. The defendant Irwin Friedman & Son, Inc. (hereinafter the defendant), had been retained by the decedent's employer to repair a leak, and the defendant dug a hole to repair an underground water pipe. The decedent allegedly sustained personal injuries from his fall and commenced this consolidated action against the defendant, among others. During discovery, the decedent died, and the plaintiff was thereafter substituted for him in this action as the administrator of his estate. The defendant moved, inter alia, for summary judgment dismissing the complaint insofar as asserted against it. In an amended order dated August 14, 2023, the Supreme Court, among other things, granted that branch of the defendant's motion. The plaintiff appeals. Generally, a contractual obligation, standing alone, will not give rise to tort liability in favor of a third party (see *Espinal v Melville Snow Contrs.* , 98 NY2d 136, 140 ; *Abney v Meridian Props., LLC* , 222 AD3d 921, 922). "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'" (*Miller v Infohighway Communications Corp.* , 115 AD3d 713, 715 , quoting *Espinal v Melville Snow Contrs.* , 98 NY2d at 140 ; see *Bradley v US Brownsville III Hous. Dev. Fund Corp.* , 213 AD3d 902, 905). Moreover, "[a] builder or contractor is justified in relying upon the plans and specifications which he has contracted to follow" (*Ryan v Feeney & Sheehan Bldg. Co.* , 239 NY 43, 46 ; see *Peluso v ERM* , 63 AD3d 1025, 1026 ; *Gee v City of New York* , 304 AD2d 615, 616). "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 [*2] prudence on notice that the project, if completed according to the plans, is potentially dangerous'" (*Nichols-Sisson v Windstar Airport Serv., Inc.* , 99 AD3d 770 , 772, quoting *West v City of Troy* , 231 AD2d 825, 826 ; see *Hodzic v M. Cary, Inc.* , 202 AD3d 1063, 1064). Here, the defendant made a prima facie showing of its entitlement to judgment as a matter of law dismissing the complaint insofar as asserted against it by demonstrating that it did not owe a duty of care to the decedent (see *Espinal v Melville Snow Contrs.* , 98 NY2d 136). The defendant satisfied its contractual obligation to repair the pipe, backfill the hole, and cover the area with plywood and cones a few days prior to the incident. The defendant was not retained to re-cement the hole or to return to the premises to maintain the premises until the area was re-cemented. Accordingly, it cannot be said to have launched a force or instrument of harm (see *Zaslow v City of New York* , 124 AD3d 642, 643-644 ; *Peluso v ERM* , 63 AD3d at 1025). Moreover, the defendant reasonably believed that the decedent's employer would re-cement the work site after the defendant completed its work, thereby eliminating any dangerous condition likely to cause injury (see *Peluso v ERM* , 63 AD3d at 1025). In opposition, the plaintiff failed to raise a triable issue of fact. In light of our determination, it is not necessary to

address the parties' remaining contentions. Accordingly, the Supreme Court properly granted that branch of the defendant's motion which was for summary judgment dismissing the complaint insofar as asserted against it. CONNOLLY, J.P., BRATHWAITE NELSON, WARHIT and GOLDBERG VELAZQUEZ, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.