State of New York
Court of Appeals

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To be argued Wednesday, October 14, 2020 (arguments begin at noon)

No. 77 Jin Ming Chen v Insurance Company of the State of Pennsylvania

Jin Ming Chen was injured while working on a New York City construction site in 2007. He sued the general contractor, Kam Cheung Construction, Inc., which resulted in a personal injury judgment awarding the plaintiff $2,330,000 in damages and $396,994 in interest in 2013. The contractor had both primary and excess insurance coverage. The primary policy, issued by Arch Insurance Group, provided coverage up to $1,000,000 for "those sums that the insured becomes legally obligated to pay as damages because of bodily injury" and further stated "we will pay ... prejudgment interest awarded against the insured on that part of the judgment we pay [and] ... all interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid...." The primary policy said the interest payments "do not reduce the limits of insurance." The excess policy, issued by the Insurance Company of the State of Pennsylvania (ICSOP), provided coverage up to $4,000,000 in excess of the $1,000,000 primary policy and contained a "follow form" provision that said "the coverage provided by this policy shall follow the terms, definitions, conditions, and exclusions" of the primary policy. After the award of damages, the primary policy was declared void in a separate action by Arch due to misrepresentations made by Kam Cheung.

The plaintiff demanded that ICSOP pay the full personal injury judgment and, when the insurer disclaimed coverage, brought this action against it seeking full payment. Supreme Court granted partial summary judgment to the plaintiff in May 2016. It ruled that ICSOP must pay, but agreed with the insurer that its excess policy did not provide a "drop down in coverage" and ICSOP was not liable for the first $1,000,000 of the personal injury judgment. The court later granted ICSOP's motion for reargument to consider what, if any, liability it had for pre- and post-judgment interest. The plaintiff argued the excess insurer was liable for all interest awarded on the $2,330,000 injury judgment. ICSOP argued it was not liable for pre-judgment interest on the first $1,000,000 of the injury award or for any post-judgment interest, since the primary policy provided coverage for those costs. Supreme Court agreed with ICSOP and adopted the insurer's proposed judgment of $1,526,938 plus $159,628 in interest from May 2016.

The Appellate Division, First Department affirmed, rejecting the plaintiff's argument that ICSOP was liable for all interest that accrued on the personal injury judgment pursuant to the "follow form" provision of the excess policy. It said the terms and conditions of the primary policy "include, in its Supplementary Payments provision, Arch's agreement to cover prejudgment interest 'on the part of the judgment we pay,' i.e., the first $1 million, and 'all' postjudgment interest on the 'full amount of any judgment.'" Under the Maintenance of Underlying Insurance provision of the ICSOP policy, it said, "ICSOP's excess coverage would be triggered only upon exhaustion of the 'limits of insurance of the Underlying Insurance...,' which 'limits,' in turn, were not reduced by, and thus included, the interest payments set forth in the Supplementary Payments provision." It also rejected the plaintiff's argument that ICSOP waived its interest-related claims by failing to raise them at the summary judgment stage.

For appellant Jin Ming Chen: Kenneth J. Gorman, Manhattan (212) 406-4993
For respondent ICSOP: Elizabeth F. Ahlstrand, Manhattan (212) 653-8861

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To be argued Wednesday, October 14, 2020 (arguments begin at noon)

No. 78 DiLorenzo v Windermere Owners LLC

In October 2009, Laura DiLorenzo leased a Manhattan apartment from Windemere Chateau, Inc. (Chateau), at a market-rate monthly rent of $2,300. Chateau had registered the apartment with the Department of Housing and Community Renewal (DHCR) as rent stabilized from 1984 until June 2009, when the most recent stabilized monthly rent was $1,450.70. In July 2010, Chateau filed a registration with DHCR declaring the apartment exempt from rent stabilization due to high rent vacancy, and four months later sold the building to Windermere Owners LLC (Owners). Owners and Chateau claim the apartment was legally deregulated because Chateau spent $82,015 on renovations to the apartment in 2009, which allowed it to raise the legal monthly rent well over the $2,000 threshold for high rent deregulation at that time. DiLorenzo brought this rent overcharge action against Owners and Chateau in 2011, alleging that her apartment did not qualify for deregulation because the amounts the defendants claimed were spent on renovations in 2009 were not spent on qualifying individual apartment improvements (IAIs), were not spent at all, or merely duplicated improvements made to the apartment in 1995 and 1998. The parties agreed the defendants would have to show they spent at least $21,972 on qualifying IAIs to reach the $2,000 deregulation threshold.

Supreme Court ruled the defendants deregulated the apartment illegally, finding they failed to substantiate the bulk of their claimed expenses because they produced no witnesses with personal knowledge that the work was performed and failed to show the work did not duplicate prior IAIs that had not exceeded their useful life. It said they substantiated only $5,650 spent on electrical work, which would entitle them to a monthly rent increase of $141.25 and raise the last legal rent in 2009 to $1,591.25. The court ruled DiLorenzo was entitled to a stabilized lease with monthly rent of $1,591.25. It found she was overcharged $77,700 and, because the defendants "failed to ... rebut the presumption of willfulness," awarded her treble damages of $233,100.

The Appellate Division, First Department reversed on a 3-2 vote. The majority, after de novo review of the evidence – including invoices from contractors, checks made to the contractors, and photos of the apartment – found the defendants had substantiated $78,901.95 worth of renovations, which "well exceeded the $21,972 threshold needed" to deregulate the apartment. Regarding the defendants' failure to show the 2009 improvements were not made during the useful life of the improvements made in 1995 and 1998, it said they "were not required ... to adhere to a useful life schedule in performing the IAI's" and, in any case, DiLorenzo waived the claim by failing to raise it in her complaint.

The dissenters said they would have affirmed the trial court's decision in full, contending "the majority usurps Supreme Court's authority to make factual findings," the court they said "was in the best position to assess the evidence and credibility of the witnesses." They said the invoices, checks and photos were inadequate, by themselves, to establish that the renovation work was actually done and "no legal conclusions could be drawn from the documents in the record without witness testimony connecting them to the work allegedly performed" in the apartment. They said DiLorenzo did not waive the useful life issue because she "did not have the burden to establish useful life;" and said the useful life schedule does apply to the types of kitchen and bathroom upgrades involved in this case.

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For respondents Chateau and Owners: Kevin D. Cullen, Manhattan (212) 233-9772

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To be argued Wednesday, October 14, 2020 (arguments begin at 2 p.m.)

No. 79 People v Everett D. Balkman

Everett Balkman was the front-seat passenger in a car that was stopped by an officer of the Rochester Police Department in August 2014. The officer had run the vehicle's plate number and his computer returned a "similarity hit" indicating that some personal information of the car's registered owner – such as name, birth date, or aliases – was similar to that of someone subject to an active arrest warrant. He later testified that this was the only reason he stopped the vehicle. He said the similarity notification involved a warrant issued by Rochester City Court instead of an out-of-state warrant, so he gave it heightened attention, but he did not take time to read the message because he was concerned the occupants of the car might flee. He immediately approached the driver, who said she was the owner's sister, checked her license, then stepped forward to examine the registration and inspection stickers. At that point, he spotted a chrome-plated handgun on the floor between Balkman's feet and arrested him for weapon possession. After the scene was secured, the officer checked the similarity hit and found there was no warrant for the owner or driver of the car.

Balkman moved to suppress the hand gun, arguing that the mere fact that the officer's computer run returned a similarity hit did provide the reasonable suspicion of criminality needed to justify the stop. County Court denied the motion, finding "the computer notification of a City warrant and the owner of the car" provided reasonable suspicion for the stop. When the officer "within seconds of speaking to the driver" saw the handgun "in plain view," it said, he had probable cause for the arrest. Balkman then pled guilty to criminal possession of a weapon in the second degree and was sentenced to 3½ years in prison.

The Appellate Division, Fourth Department affirmed, saying the officer "had reasonable suspicion that there was a warrant for the arrest of the registered owner of the vehicle." It said, "'Reasonable suspicion ... does not require absolute certainty'.... Rather, we must uphold an automobile stop as having been based upon reasonable suspicion as long as the officer who initiated the stop can point to 'specific and articulable facts which, along with any logical deductions, reasonably prompted th[e] intrusion.'"

Balkman argues, "The fact that there was no warrant for the registered owner rendered the officer's actions unlawful as there is no 'good faith' exception in New York to police action taken upon the authority of a document that does not exist.... [E]ven if there was such an exception, given the People's failure to present any evidence showing either the specific content of the computer-generated communication, or the supposed similarity between the registered owner and the wanted person..., there is no basis to conclude that the officer reasonably suspected that a warrant existed for the registered owner of the car. And because the officer had, literally at his fingertips, information indicating that there was no warrant..., but failed to look at it until after he had arrested Mr. Balkman..., the stop and seizure" violated constitutional standards.

For appellant Balkman: Janet C. Somes, Rochester (585) 753-4329
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To be argued Wednesday, October 14, 2020 (arguments begin at 2 p.m.)

No. 49 Matter of Marian T. (Lauren R.)

Marian T., a woman with profound intellectual disabilities and extremely limited verbal ability, was 61 years old and had been living for 12 years in a licensed family care home in Worcester, Otsego County, when the married couple that operate the home, Lauren R. and Gregg H. (petitioners), commenced this proceeding to adopt her in 2015. Marian had no known living relatives. Surrogate's Court appointed Mental Hygiene Legal Service (MHLS) to represent Marian and ordered a psychological evaluation to determine her capacity to consent to the adoption. Two psychologists agreed her mental disabilities were profound and she was largely nonverbal, but they split on whether she understood what it meant to be adopted and had the capacity to consent. The court also appointed a guardian ad litem for Marian, who concluded the adoption was in her best interests and should be approved.

A key issue in the proceeding was whether Marian's consent was required by Domestic Relations Law § 111(1)(a), which provides that "consent to adoption shall be required ... [o]f the adoptive child, if over fourteen years of age, unless the judge or surrogate in his discretion dispenses with such consent." The petitioners argued that, because Marian was over the age of 14 and the adoption was in her best interests, the court could dispense with the need for her consent. MHLS argued the statute requires an adult's consent to be adopted and that, because Marian lacked the capacity to understand the consequences of adoption, she could not consent.

Surrogate's Court granted the adoption petition, finding it was "clearly" in Marian's best interests. "The court finds [petitioners] are absolutely sincere in their affection for Marian and their desire to care for her as a member of their family," it said, and the adoption would provide "stability and structure in her living arrangements." As for consent, it said "in light of the similarities between this situation and adult guardianship proceedings, the court finds that Marian's Guardian ad Litem had the implied authority to consent to the adoption on her behalf."

The Appellate Division, Third Department affirmed "for different reasons," saying the surrogate erred in finding the guardian had implied authority to consent. Based on the language of section 111(1)(a), it said, "because [Marian] is over the age of 14, the court had express statutory authority to dispense with her consent. This conclusion is well-grounded in sound statutory construction and avoids categorically prohibiting adoptions of those who are over the age of 14 but are incapable of giving consent, including an entire class of adoptees who are so severely disabled that they simply lack the ability to communicate such consent." In view of the surrogate's "thorough best interests analysis," Marian's "consent was properly dispensed with."

MHLS argues that, based on its legislative history, the statute "was meant to apply only to child adoptees between 14 and 17" and was "intended to give court's discretionary authority to dispense with the child adoptee's consent only in the limited circumstance where knowledge that the proposed adoptive parents are not the child's natural parents would harm the child." It argues the Appellate Division "failed to strictly construe" the statute and both lower courts erred "by failing to treat the question of consent as a threshold consideration before moving on to determine whether adoption is in [Marian's] best interests."

For appellant Marian T.: Cailin Connors Brennan, Albany (518) 451-8710
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