State of New York
Court of Appeals

To be argued Wednesday, May 5, 2021 (arguments begin at noon)

No. 39 Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Company

Plaintiffs brought this proposed class action against legal publisher Matthew Bender & Company in 2017 alleging, among other things, that it engaged in deceptive business practices in the marketing and sale of its book titled "New York Landlord-Tenant Law," commonly known as the "Tanbook," in violation of General Business Law (GBL) § 349. The Tanbook is an annual compilation of statutes, regulations and other legal and editorial materials. The named plaintiffs – Himmelstein, McConnell, Gribben, Donoghue & Joseph (HMGDJ), a law firm engaged in landlord-tenant disputes; the not-for-profit Housing Court Answers, which assists pro se litigants in Housing Court; and tenant advocate and organizer Michael McKee – said Matthew Bender promoted the book as "a complete and definitive compilation of the New York rent regulations and laws," while it was actually "rife with omissions and inaccuracies," some of which went uncorrected for years. They claimed class members are "entitled to recover their contract damages consisting of the amount they paid for the book." The plaintiffs obtained their Tanbooks through the company's subscription service by which the books were mailed to them upon release each year, along with a three-page "agreement and order form," which ended with the statement: "WE DISCLAIM ALL WARRANTIES WITH RESPECT TO PUBLICATIONS, EXPRESS OR IMPLIED.... WE DO NOT WARRANT THE ACCURACY, RELIABILITY OR CURRENTNESS OF THE MATERIALS CONTAINED IN THE PUBLICATIONS."

GBL prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state."

Supreme Court granted Matthew Benders' motion to dismiss the suit, saying the plaintiffs did not show its conduct was "consumer oriented" as required for GBL § 349 claims. Citing First Department precedent, it said "consumers are those 'who purchase goods and services for personal, family, or household use'.... The sale of goods directed at professionals is not a consumer oriented conduct, and Plaintiffs have failed to state facts demonstrating that the sale of Tanbooks is oriented towards consumers rather than professionals." It said the breach of contract claim was defeated by the sales contracts, which "included a disclaimer wherein Matthew Bender explicitly stated that it was not warranting the accuracy or completeness of the Tanbook."

The Appellate Division, First Department affirmed on a different ground, saying the GBL § 349 "claim was correctly dismissed because the only injury alleged to have resulted from defendant's allegedly deceptive business practices is the amount that plaintiffs paid for the book, which does not constitute an injury cognizable under the statute...."

The plaintiffs argue that GBL § 349 "is a broad remedial statute intended to apply to 'virtually all economic activity' in the state." Their argument is supported by an amicus brief from the Attorney General's Office, which says this Court "should reject any limitation of GBL § 349 to purchases made for personal, family, and household purposes, and recognize that the statute also prohibits deceptive acts or practices aimed at businesses seeking to buy goods and services in the marketplace." It says, "The text, history, and purpose of GBL § 349 do not support the First Department's restriction of its scope."

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State of New York
Court of Appeals

To be argued Wednesday, May 5, 2021 (arguments begin at noon)

No. 41 People v Joseph Schneider

Joseph Schneider was charged in Brooklyn in 2016 with enterprise corruption and other crimes stemming from his participation in a national internet gambling enterprise based in Costa Rica, which involved operations in Brooklyn and other locations throughout the nation. Much of the evidence against him was obtained by monitoring his cell phone calls and electronic messages pursuant to eavesdropping warrants issued by a Supreme Court justice in Brooklyn. Schneider, a California resident, moved to suppress the eavesdropping evidence, arguing that the Brooklyn court did not have authority to issue the warrants because he placed his calls from California primarily to New Jersey, he had never set foot in New York, and he had no contacts with anyone in New York.

Criminal Procedure Law (CPL) 700.10(1) provides that a "justice" may issue an eavesdropping warrant, and CPL 700.05(4) defines "justice" as "any justice of the supreme court of the judicial district in which the eavesdropping warrant is to be executed." CPL article 700 does not define the term "executed."

Supreme Court denied the suppression motion, saying, "The issue here is whether 'execution of the warrant' occurred in Kings County, where the calls were monitored, or in California, where the defendant made the phone calls." Citing the requirement in CPL 700.35(1) that an eavesdropping warrant "must be executed according to its terms by a law enforcement officer," the court said, "based on the plain meaning of the term and its use in CPL 700.35, an eavesdropping warrant is 'executed' by law enforcement officers, and not the participants to the communication.... In this case, the eavesdropping warrants were to be executed in Kings County," so the warrants were valid. Schneider subsequently pled guilty to enterprise corruption, first-degree promoting gambling and possession of gambling records, and conspiracy. He was sentenced to concurrent terms of one to three years.

The Appellate Division, Second Department affirmed, saying "the plain meaning of the word 'execute' and the use of that word in relevant sections of the Criminal Procedure Law reveal that an eavesdropping warrant is 'executed' when a communication is intercepted by law enforcement officers," which in this case occurred in Brooklyn. "Moreover, we reject the defendant's argument that the eavesdropping warrants, which were authorized for the purpose of investigating crimes that were occurring in New York, constituted an unconstitutional extraterritorial application of New York State law...."

Schneider argues that Supreme Court "erred and acted beyond the scope of its authority when it authorized eavesdropping warrants for a California resident who never set foot in New York and never made calls to or received calls from New York and committed no crimes in New York." He also says the lower court acted unconstitutionally "when it authorized an eavesdropping warrant on a cell phone in a state [California] that does not permit electronic eavesdropping for gambling related offenses and does not permit eavesdropping from another state absent a joint state investigation."

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