

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, November 18, 2021 (arguments begin at noon)

No. 78 Anderson v Anderson

No. 79 Matter of Koegel

The issue raised by these appeals – one stemming from a divorce action and the other from a contested estate proceeding – is whether a defective acknowledgment of a nuptial agreement can be cured after the fact and, if so, how it can be cured.

In No. 78, Candy and Jack Anderson, when they married in 2011, drafted a nuptial agreement delineating the parties' property rights and support obligations if the marriage were to be dissolved. Candy signed it a month after the marriage. It is unclear when Jack signed it, but his signature was not acknowledged before a notary until May 2018. A month later he filed for divorce and sought a judgment that incorporated the nuptial agreement. Candy brought this action to set the agreement aside, contending it was invalid because Jack's signature was not acknowledged contemporaneously and, at the time it was finally acknowledged, the parties did not mutually reaffirm the agreement.

Supreme Court denied Candy's motion for summary judgment setting the agreement aside, holding that so long as Jack's signature "was later properly acknowledged," the agreement was valid without a need for reaffirmation by the parties to cure the defect.

The Appellate Division, Fourth Department reversed on a 3-2 vote and set the agreement aside, citing Galetta v Galetta (21 NY3d 186). It said, "[W]hen an acknowledgment is missing from a nuptial agreement, an acknowledgment and a reaffirmation by the parties is required to cure the defect. To hold otherwise would permit a spouse to act unilaterally ... at some later date" and "to choose, based on circumstances that may have changed in ways unanticipated by the other spouse..., whether to acknowledge the agreement and make it enforceable or to leave it unacknowledged and defective." The dissenters said Domestic Relations Law § 236(B)(3) does not impose "a contemporaneous acknowledgment or reaffirmation requirement." Because the agreement "was already properly acknowledged by the time its validity was required to be evaluated – i.e., when the matrimonial action was commenced –" it was enforceable.

In No. 79, William and Irene Koegel signed a prenuptial agreement prior to their marriage in 1984 which stated that "each of the parties hereto agrees to make no claim as surviving spouse to any part of the estate of the other." The agreement contained separate acknowledgments for each signature, the husband's notarized by his law partner and the wife's notarized by her personal attorney, but neither acknowledgment attested to whether the signer was known to the notary. After William died in 2014, Irene served notice on the estate's Executor, William's son, that she was exercising her right of election to take her spousal share of the estate. The Executor brought this action to invalidate the notice of election based on the prenuptial agreement, and Irene moved to dismiss the suit on the ground that defective acknowledgments rendered the agreement "invalid and unenforceable pursuant to Galetta." The Executor submitted affidavits from both notaries, who said the signers did not need to present identification because they were "well known" to the notaries. The Executor said this cured any defect.

Surrogate's Court denied Irene's motion to dismiss and the Appellate Division, Second Department affirmed. It said the notaries' affidavits "specifically stated that each observed the document being signed, took the acknowledgment in question, and personally knew the individual signer signing before him. In so doing, the defect in the acknowledgment was cured in order to give vitality to the expressed intent of the parties set forth in the prenuptial agreement."

No. 78 For appellant Jack Anderson: Lyle T. Hajdu, Lakewood (716) 488-1178

For respondent Candy Anderson: Barbara A. Kilbridge, Buffalo (716) 881-1192

No. 79 For appellant Irene Koegel: Andrew D. Himmel, Manhattan (212) 631-0200

For respondent Executor: Susan Phillips Read, West Sand Lake (518) 248-0037

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, November 18, 2021 (arguments begin at noon)

No. 80 People v Sharon Lashley

Sharon Lashley pled guilty to second-degree criminal possession of a forged instrument in Manhattan, admitting that on April 1, 2016, she opened a credit card account at a store in Harlem with a forged New Jersey driver's licence and used the card to buy \$4,783 worth of merchandise. Seeking to have her adjudicated a second felony offender, the prosecution filed a predicate felony statement alleging that Lashley was previously convicted of felony drug possession and that she was sentenced for the drug conviction on May 10, 2005, but it contained no information about any period of incarceration she might have served. In order to serve as a predicate felony under the Penal Law, the sentence for the prior drug crime must have been imposed no more than 10 years before Lashley committed the current forgery crime, with the 10-year period extended (or tolled) by any time she spent in incarceration. Because Lashley was sentenced for the drug crime nearly 11 years before she committed the current offense, CPL 400.21(2) required the prosecution to include any periods of incarceration in the predicate felony statement. Although the prosecution's failure to do so violated the statute and rendered the statement facially insufficient, neither Lashley nor her defense counsel objected to the statement at sentencing. Supreme Court sentenced her as a second felony offender to 3 ½ to 7 years.

Lashley argued on appeal that she was improperly sentenced as a second felony offender because the predicate felony statement did not allege any tolling by incarceration that would bring the 11-year-old prior felony within the 10-year limit allowed by the Penal Law. She said she could raise the claim despite her failure to object because she was challenging an illegal sentence, which does not require preservation. The prosecution argued her claim was unpreserved, saying the preservation exception for illegal sentences did not apply because she was contesting the sentencing procedure and not the substance of the sentence.

The Appellate Division, First Department modified by vacating the second felony offender adjudication and remanding the case for resentencing. "Defendant's challenge to the facial sufficiency of the predicate felony offender statement does not require preservation (see People v Soto, 138 AD3d 533 [1st Dept 2016]...), it said. "Nothing in the record demonstrates a sufficient tolling period to support the predicate felony statement submitted by the People. Therefore, the People's failure to include this information in the predicate felony statement cannot be deemed harmless (see id. at 534). Lashley was subsequently resentenced to two to four years in prison.

The prosecution argues that, under People v Samms (95 NY2d 52), "a sentencing claim must be preserved unless 1) the claim alleged that the sentence was 'substantively illegal' – meaning that the sentence could not have been imposed even if all the procedural requirements for imposing it had been followed; and 2) the substantive illegality of the sentence was evident on the face of the appellate record." It says Lashley's claim "did not satisfy either criterion."

For appellant: Manhattan Assistant District Attorney Michael D. Tarbutton (212) 335-9000
For respondent Lashley: Allison N. Kahl, Manhattan (212) 577-2523