State of New York
Court of Appeals

To be argued Wednesday, February 8, 2023

No. 19 James B. Nutter & Company v County of Saratoga

James B. Nutter & Company (JBNC) held a mortgage on property in the Town of Galway, Saratoga County, and in 2015, after the borrowers defaulted, it filed a foreclosure action in Saratoga Supreme Court. JBNC contacted Galway in 2018 to inquire about the tax status of the property, was told that $3,309.92 in taxes were owed, and it paid the amount in full, but it was not informed that delinquent taxes were also owed for prior years. About two months later, Saratoga County filed a petition and notice of foreclosure of $9,330.97 in tax liens on the same property for 2016 and 2017. In December 2018, the County obtained a default judgment awarding it title to the property and it recorded its deed. It then sold the property for $142,500.

JBNC brought this action against the County, the Town and related defendants to vacate the default judgment and the County's deed, contending that it was not served with notice of the tax foreclosure proceeding as required by Real Property Tax Law (RPTL) § 1125, which provides that notice must be sent to any party with an interest in the property by both certified mail and first class mail. The County produced affidavits of mailing of the notice by certified and first class mail to the Kansas City street address listed on JBNC's mortgage, along with the certified mail receipt. JBNC responded that it never received the notice and produced a tracking history generated from the certified mail receipt that indicated the certified mailing was delivered to an unspecified post office box in Kansas City rather than its street address.

Supreme Court granted the County's motion for summary judgment dismissing the suit based on RPTL 1125(1)(b)(i), which states, "The notice shall be deemed received unless both the certified mailing and the ordinary first class mailing are returned by the United States postal service within forty-five days after being mailed." The court said, "While the unexplained tracking information for the certified mailing is troubling," the County established "that neither the first class mailing nor the certified mailing were returned as undeliverable.... Accordingly, notice of the proceeding was deemed received by plaintiff pursuant to" the statute.

The Appellate Division, Third Department affirmed on a 4-1 vote, saying "documentary evidence" that the notices were mailed to JBNC's street address and were not returned demonstrated the County's compliance with RPTL 1125, and the tracking sheet showing the certified mailing went to "an unspecified post office box" did not raise a material issue of fact. It said the "clear and explicit language" of the statute's "deemed received" provision "specified what was minimally required of a party attempting to rebut the presumption of service – i.e., proof establishing that both the certified mailing and the ordinary first class mailing were returned. To permit anything less would render this part of RPTL 1125(1)(b)(i) meaningless.... [A]lthough plaintiff's proof established that the certified mailing was delivered to a different address, delivery to a different address is not the same as the certified mailing being returned."

The dissenter said that, while "there was no proof that the relevant mailings were returned to defendants and, as such, were 'deemed received by plaintiff..., this is merely a rebuttable presumption" and the statute does not require JBNC to prove "that both mailings were returned to the County to rebut this presumption." Noting that "statutes authorizing tax sales are to be liberally construed in the owner's favor because tax sales are intended to collect taxes, not forfeit real property," he said JBNC's evidence – including the tracking sheet for the certified mailing "which raises troubling questions of fact that are best resolved at trial," and its payment of the 2018 tax bill which "strongly suggests that plaintiff did not intend to forfeit the property" – successfully rebutted the presumption of receipt.

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State of New York
Court of Appeals

To be argued Wednesday, February 8, 2023

No. 14 People v Dakota W. Baldwin
No. 15 People v Mamadou Ba

The appellants in these cases challenge the standards set by two intermediate appellate courts for invoking their interest of justice jurisdiction to reduce an allegedly harsh or excessive sentence under CPL 470.15(6)(b). They say those standards create barriers to sentence review that go beyond the terms of the statute, which gives the intermediate courts interest of justice power to determine whether "a sentence, though legal, was unduly harsh or severe."

Dakota Baldwin was charged with assaulting a correction officer at the Chemung County Jail in 2018. Baldwin had threatened to hang himself and then attacked an officer who was attempting to remove his bed sheets from his cell. Baldwin pled guilty to a reduced charge of attempted assault in the second degree in exchange for a sentence of two to four years.

The Appellate Division, Third Department affirmed, saying County Court "reviewed the presentence investigation report, which, in addition to setting forth defendant's mental health issues and struggles with substance abuse, also detailed defendant's criminal history and the nature of his attack upon the correction officer at issue. We are mindful that defendant was sentenced – as a second felony offender – to the maximum term of imprisonment for [the crime], but find no extraordinary circumstances or abuse of discretion warranting a reduction of the sentence imposed in the interest of justice...."

Mamadou Ba was arrested in 2016 for selling counterfeit designer handbags without a vendor's license in midtown Manhattan. He pled guilty to a misdemeanor charge of unlicensed general vending in exchange for a $500 fine. Ba argued on appeal that his sentence was excessive, particularly in view of the announcement by the district attorney's office less than a year after his plea that it would stop prosecuting unlicensed street vendors because they "pose no public safety risk."

The Appellate Term, First Department affirmed the sentence, saying "We perceive no basis for reducing the fine. Defendant received the precise sentence for which he had bargained, which was within the permissible statutory range...."

Baldwin and Ba argue that the standards set for sentence reduction by both courts – the Third Department's requirement of "extraordinary circumstances or abuse of discretion" and the Appellate Term's exclusion of legal sentences based on negotiated pleas – have no basis in CPL 470.15(6)(b) and conflict with the practices of intermediate courts in other areas of the state. They say both courts created improper barriers to sentence review since the sole standard for sentence reduction set by the statute is "unduly harsh or severe."

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State of New York
Court of Appeals

To be argued Thursday, February 9, 2023

No. 16 Anderson v Commack Fire District

Courtney Anderson was injured in June 2012, when the car she was driving collided with a fire truck owned by the Commack Fire District and driven by volunteer firefighter John Muilenburg. The truck was responding to a fire alarm with its emergency lights and siren activated. Muilenburg testified that he stopped briefly at a red light, then drove slowly into the intersection where Anderson struck the fire truck broadside. She brought this personal injury action against the Commack Fire District and Muilenburg.

Supreme Court granted Muilenburg's motion for summary judgment dismissing the suit based on Vehicle and Traffic Law (VTL) § 1104, which allows operators of authorized emergency vehicles to drive through red lights and disregard other specified traffic laws. However, section 1104(e) provides that the statute "shall not relieve the driver ... from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others." The court said Muilenburg's conduct did not meet the reckless disregard standard.

The court denied the Fire District's motion to dismiss, finding it could be liable under General Municipal Law (GML) § 205-b, which states that "fire districts ... shall be liable for the negligence of volunteer firefighters duly appointed to serve therein in the operation of vehicles owned by the fire district..., provided such volunteer firefighters, at the time of any accident or injury, were acting in the discharge of their duties." The court said the district "has not eliminated the triable issue of whether Firefighter Muilenburg's actions constitute [ordinary] negligence and expose the Fire District to liability therefore."

The Appellate Division, Second Department affirmed in a 3-1 decision. Pursuant to GML § 205-b, the Fire District "was not limited to liability for conduct rising to the level of 'reckless disregard' under [VTL] § 1104(e), and could be held liable for the ordinary negligence of a volunteer firefighter operating the Fire District's vehicle...," it said. "Here, the defendants failed to eliminate triable issues of fact as to whether Muilenburg was negligent in the operation of the fire truck and if any such negligence contributed to the accident."

The dissenter argued that claims against the Fire District should be dismissed because "the reckless disregard standard of care under [VTL] § 1104(e) applies not only to the driver of the emergency vehicle, but also to those parties who are alleged to be vicariously liable for the driver's conduct.... [GML] § 205-b does not establish any particular standard of care for the operation of vehicles, and therefore, has no application to the determination of the vicarious liability claim against the Fire District.... The purpose of the statute is to 'immunize volunteer firefighters from civil liability for ordinary negligence'..., and to 'shift liability for such negligence to the fire districts that employ them'.... Thus, [GML] § 205-b functions merely as a liability shifting statute...." She said applying the reckless disregard standard to Muilenburg's conduct "compels the conclusion that there is no liability of Muilenburg for which to hold the Fire District vicariously liable."

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For respondent Anderson: Scott Szczesny, Woodbury (516) 746-8100