State of New York
Court of Appeals

To be argued Tuesday, April 16, 2024

No. 46 Matter of Timperio v Bronx-Lebanon Hospital

This workers' compensation case arose from a mass shooting at Bronx-Lebanon Hospital in June 2017, when Dr. Henry Bello, who resigned his position at the Hospital two years earlier when he was accused of sexually harassing another employee, returned to the Hospital wearing a white doctor's coat with his old identification badge and carrying an AR-15 assault rifle. He set fire to the nursing station on the 16th floor with gasoline and began shooting. He wounded Dr. Justin Timperio, a first-year resident who had never met Bello; fatally shot another doctor; and wounded a patient and four other members of the medical staff. Bello then killed himself.

Three days later, the Hospital and its workers' compensation insurer, the State Insurance Fund (SIF), filed a claim on Timperio's behalf for workers' compensation benefits for his injuries. Timperio did not authorize the claim, opposed the award of benefits, and did not cash the benefit checks that were sent to him. Instead, in 2018, Timperio filed a negligence action against the Hospital in federal district court seeking damages for his wounds. The Hospital moved to dismiss the federal suit on the ground it was barred by the exclusive remedy provision of Workers' Compensation Law (WCL) § 11. Timperio objected that his injuries were not compensable under the WCL, which would preserve his federal claim. The federal court denied the motion, finding Timperio's injuries did not arise out of and in the course of his employment because there was no evidence that the shooting originated in work-related differences, then it stayed the federal case pending completion of the workers' compensation proceedings.

The Workers' Compensation Board affirmed a determination that Timperio's injuries were compensable based on the presumption in WCL § 21(1) that a workplace assault on a claimant is "presumed to have arisen out of the employment, absent substantial evidence that the assault was motivated by purely personal animosity." The Board said, "The lack of a prior personal or professional relationship between [Timperio and Bello] does not rebut the WCL 21 presumption as there is no evidence whatsoever to support that the shooting was motivated by personal animosity.... [T]here is more than the slender nexus required between [Timperio's] employment and the assault at issue. The assault occurred while [Timperio] was working, it was perpetrated by a former employee, and the assault occurred in a non-public area of the hospital."

The Appellate Division, Third Department reversed, saying Timperio successfully rebutted the presumption of compensability because "the attack was perpetrated by an individual who was not employed by the hospital at the time of the attack (and had not worked there for over two years), was not and never was Timperio's coworker, did not know Timperio and provided no reason for the attack prior to taking his own life.... [T]here is no evidence that the attack was based upon an employment-related animus between the two individuals or that the attack had any nexus to Timperio's employment...."

The appellants argue the court misapplied long-settled law by ruling that the absence of evidence of "an employment related animus" toward Timperio rebutted the presumption, and that it will preclude future claimants from obtaining benefits for injuries that have been compensable.

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For respondent Timperio: Arnold N. Kriss, Brooklyn (212) 577-2000

State of New York
Court of Appeals

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To be argued Tuesday, April 16, 2024

No. 47 Matter of Rawlins v Teachers' Retirement System of the City of New York

Michele Rawlins was the principal of a public school in Brooklyn in 2019. Early in the year a school cook was transferred to a different school after engaging in erratic behavior, and he twice returned and demanded to speak with Rawlins. He returned for a third time in April 2019 and asked to speak with her, saying she had his belt and wallet. Rawlins was in the cafeteria and saw the former cook arguing with a school-safety agent. She said she felt the cook was stalking her and she feared for her life. She fled from the cafeteria and the school. The police were summoned and took a report of criminal trespass, but did not arrest the cook.

Rawlins never returned to work and, instead, applied for accidental disability retirement (ADR), saying she had been "permanently psychologically disabled" by the cook's threatening behavior. In support, she submitted reports from her treating physicians, including a psychiatrist's diagnosis that she was disabled by post-traumatic stress disorder (PTSD) as a result of the April 2019 incident.

The Medical Board of the Teachers' Retirement System of the City of New York (TRS) denied her application for ADR, saying, "Purposeful conduct by coworkers giving rise to a disabling injury is not an accident within the meaning of the pension statute." Instead, it found that she "remains disabled from employment as a Principal due to Psychological illness" and awarded her the less generous benefits of ordinary disability retirement.

Rawlins brought this suit against TRS to challenge the determination as arbitrary and capricious, arguing that injuries caused by the intentional conduct of a third party are accidental for disability pension purposes. TRS responded that she was ineligible for ADR because the conduct that caused her disability was intentional and because it was a risk inherent in her job as principal, which included ensuring security at the school.

Supreme Court dismissed the suit, saying TRS had a rational basis for its determination because "New York courts have held that intentional harassment or assault by a coworker does not constitute a service-related accident."

The Appellate Division, First Department affirmed. It said, "The Medical Board rationally found that petitioner's injuries resulted not from an accident in the work setting but from '[p]urposeful conduct' by a former coworker, which 'is not an accident within the meaning of the pension statute' (see Matter of Kelly v DiNapoli, 30 NY3d 674, 681-682 [2018] ['a petitioner is entitled to accidental disability retirement benefits when the injury was caused by "a precipitating accidental event ... which was not a risk of the work performed"']])."

Rawlins argues, "The injurious event herein was a 'sudden, fortuitous mischance, out of the ordinary and injurious in impact,' occurring in the performance of petitioner's job duties, but was not a general risk of the work performed. Thus, for the fact there is no Court of Appeals rule that purposeful conduct cannot be an 'accident,' the Appellate Division erred in failing to grant ADR." She says she was not a supervisor or coworker of the cook; and she "was not trained to prepare herself or protect herself against ... a personally directed stalking event at her workplace; which is not a common event or a ... foreseeable risk of her job."

For appellant Rawlins: Chester Lukaszewski, Mineola (516) 775-4725
For respondent TRS: Assistant Corporation Counsel Janet L. Zaleon (212) 356-0860

State of New York
Court of Appeals

To be argued Tuesday, April 16, 2024

No. 48 Mulacek v ExxonMobile Corporation

This breach of contract action arises from the acquisition of InterOil Corporation, a Canadian oil and gas company, by ExxonMobile Corporation and its Canadian subsidiary in February 2017. Exxon paid InterOil's shareholders $45 per share in the transaction, and a Contingent Resource Payment (CRP) agreement provided that those shareholders would receive a second payment based on an appraisal of InterOil's oil and gas reserves in Papua New Guinea. Under the CRP agreement, InterOil shareholders became "Holders" of escrow verification receipts (EVR) evincing their rights to a share of the CRP funds. It defines "Required Holders" as the holders of more than 25% of the EVRs and it created a "Holder Committee" composed of two former InterOil directors to act as agent for the Holders. The appraisal of the New Guinea properties was completed and the CRP payments issued in September 2017. Philippe Mulacek and four other InterOil shareholders filed this action against Exxon in September 2021, alleging the company breached its obligations under the CRP agreement by manipulating the New Guinea appraisal process to reduce their payments. They sought $220 million in damages.

Supreme Court dismissed the suit based on section 8.05 of the CRP agreement, which states: "Notwithstanding anything to the contrary in this Agreement, only the Required Holders or the Holder Committee (with Required Holder approval) will have the right, on behalf of all Holders, by virtue of or under any provision of this Agreement, to institute any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Agreement, and no individual Holder or other group of Holders will be entitled to exercise such rights." The court said the plaintiffs lacked standing to sue under "the unambiguous terms of Section 8.05" because it "expressly prohibits individual shareholders, or small groups of shareholders such as plaintiffs, from initiating any action to enforce or challenge the CRP."

The Appellate Division, First Department affirmed on a 3-2 vote, rejecting the plaintiffs' argument that section 8.05 barred them only from bringing a class action. It said, "Critically, section 8.05's penultimate sentence not only provides that plaintiffs cannot bring a class action to challenge any aspect of the CRP agreement, but it also bars them from bringing any action or proceeding altogether. 'Notwithstanding anything to the contrary in this Agreement ... no individual Holder or other group of Holders will be entitled to exercise such rights.' Such 'rights,' written in the plural as opposed to in the singular, refer to those set out in the beginning of the sentence – namely, 'institut[ing] any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Agreement."

The dissenters argued the clause is ambiguous. "Here, the omission of standard 'no-action' clause language and the inclusion of the words 'on behalf of all Holders' strongly indicates that section 8.05 was intended as a limitation only on who may bring class actions 'on behalf of all Holders,' rather than a restriction on who may institute any claim at all. Indeed, section 8.05 could easily have been drafted with standard language frequently used in such contracts to provide that only the Required Holders or the Holder Committee were authorized to pursue 'any remedy with respect to' the CRPA." They said "section 8.05 does not constitute an unambiguous waiver by 'Holders' ... of their applicable fundamental, common-law right to bring ... individual claims on their own behalf."

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State of New York
Court of Appeals

To be argued Tuesday, April 16, 2024

No. 45 Roman Catholic Diocese of Albany v Vullo

The Roman Catholic Diocese of Albany and other plaintiffs – including churches, religious orders and service organizations – brought this action to challenge regulations issued in 2017 by the state Department of Financial Services (DFS) requiring that health insurance policies in New York provide coverage for "medically necessary abortions." The regulation exempts "religious employers," as defined in regulations. The plaintiffs argued that the abortion services requirement violated their religious beliefs and impaired their right to the free exercise of religion under the Federal and New York Constitutions.

State Supreme Court dismissed the suit in 2019 based on this Court's 2006 decision in Catholic Charities of Diocese of Albany v Serio (7 NY3d 510), which rejected a similar challenge to a New York statute, the Women's Health and Wellness Act (WHWA), that required insurance policies providing prescription coverage to include "contraceptive drugs and devices," holding the WHWA was "a neutral law of general applicability." The Appellate Division, Third Department affirmed the trial court, saying "the constitutional arguments raised by plaintiffs here are the same as those raised and rejected in Catholic Charities" and "they must meet the same fate by operation of the doctrine of stare decisis." The Third Department said that, as in Catholic Charities, the regulation requiring abortion coverage "set forth a neutral directive ... to be uniformly applied without regard to religious belief or practice, except for those who qualified for a narrowly tailored religious exemption." This Court denied leave to appeal.

The U.S. Supreme Court vacated the Third Department's judgment and remanded the case "for further consideration in light of" the high court's 2021 decision in Fulton v Philadelphia (141 S Ct 1868). In Fulton, the Court ruled in favor of a Catholic foster care agency that refused to certify same-sex couples to be foster parents, holding that the anti-discrimination provision in Philadelphia's standard foster care contract was not "generally applicable" because it incorporated "a system of individual exemptions" subject to the city's sole discretion. It said, "The creation of a formal mechanism for granting exceptions renders a policy not generally applicable, regardless whether any exceptions have been given, because it 'invite[s]' the government to decide which reasons for not complying with the policy are worthy of solicitude."

On remand, the Third Department reaffirmed the dismissal of the complaint in this case, saying "Fulton did not explicitly overrule Catholic Charities. Fulton also did not revisit or overturn the existing rule 'that laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable,'" the standard underlying Catholic Charities and a standard that "remains good law.... Accordingly, Fulton does not bar the holding of Catholic Charities that a regulation, like the one at issue here, was neutral and generally applicable despite the presence of exemptions based upon specified criteria...."

The plaintiffs argue that, under Fulton and other recent precedents, the abortion coverage requirement "is not a neutral law of general applicability because it contains exemptions that undermine its asserted purposes. First, the Abortion Mandate contains a narrow religious exemption that covers certain religious organizations but not others.... Second, the Abortion Mandate exempts numerous employers ... and fails to ensure abortion coverage for unemployed women in the State, reflecting secular exemptions that likewise defeat the law's general applicability." This triggers strict scrutiny which the regulation would fail, they say, because "the State has other options to pursue its stated interests without burdening religious exercise."

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To be argued Tuesday, April 16, 2024

No. 49 Eccles v Shamrock Capital Advisors, LLC

This investor dispute arises from the 2018 merger between FanDuel Ltd., an online fantasy sports company incorporated in Scotland in 2007, with Paddy Power Betfair plc, which operated a major sports gambling business in Europe. FanDuel had expanded into the American fantasy sports market in 2009 and established its headquarters in New York. In 2017, FanDuel shareholders restructured the company by collapsing its classes of stock into two categories, preferred shares and common shares, and amended its Articles of Association to provide that in the event of a merger or takeover, preferred shareholders would be compensated first for the value of their stock and common shareholders would share only in any funds that remained. Shamrock Capital Advisors and KKR & Co. between them owned 36% of the preferred shares and had the power to compel all FanDuel shareholders to submit to a proposed merger. In May 2018, just days after the U.S. Supreme Court ruled that states could legalize sports gambling, FanDuel's directors voted at a meeting in New York to proceed with the merger and resolved that FanDuel's assets were worth $465.5 million, somewhat less than the total value of its preferred shares. Shamrock and KKR assented to the merger and compelled all FanDuel shareholders to agree. As a result, the preferred shareholders received all of FanDuel's 40% share in a new sports gambling company, PandaCo, Inc., and nothing was left for the common shareholders.

Nigel John Eccles and more than 100 other common shareholders in FanDuel filed this action in Manhattan, asserting claims under New York law including breach of fiduciary duty, against Shamrock and KKR, six former members of FanDuel's board of directors (director defendants), and PandaCo and other corporations created in the wake of the merger. They claimed the defendants had schemed to ensure that preferred shareholders received all benefits of the merger by undervaluing FanDuel's assets. The defendants moved to dismiss and argued that under the internal affairs doctrine of choice of law, the laws of Scotland applied because claims arising from relations among directors and shareholders are generally governed by the law of the jurisdiction of incorporation. And under Scots law, they said, directors and shareholders owe a fiduciary duty only to the company as a whole, not to individual shareholders.

Supreme Court refused to dismiss the breach of fiduciary duty claims, ruling New York law governed the case because the internal affairs doctrine did not apply "where the defendants are not current officers, directors, and shareholders" and FanDuel was eliminated by the merger. On the merits, it said the plaintiffs adequately stated their claims under New York law.

The Appellate Division, First Department reversed and dismissed the suit under Scots law because "FanDuel is a Scottish company, incorporated in Scotland." It said "the internal affairs doctrine applies to an officer or director at the time of the conduct at issue," regardless of whether they remain in place when the suit is filed. On the merits, it said the suit should be dismissed because "Scots law states that directors generally owe fiduciary duties only to their company, not to its shareholders."

The plaintiffs argue the Appellate Division erred in applying Scots law because New York had a greater interest in and connection to the case, since FanDuel was headquartered in New York, many of the parties reside in New York, and the merger vote occurred in New York. They also argue the court erred "by determining the substance of disputed Scots law issues without discovery" or an evidentiary hearing "as required by CPLR 4511."

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For respondents Shamrock et al: Jonathan M. Weiss, Los Angeles, CA (310) 557-2900
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