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.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

February 12 thru 14, 2019

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 Tuesday, February 12, 2019

No. 11 Andryeyeva v New York Health Care, Inc.
No. 12 Moreno v Future Care Health Services, Inc.

Plaintiffs – home health care attendants for elderly and disabled clients – worked at the clients' residences in 24-hour shifts. The attendants in the Andryeyeva action were paid an hourly rate for the 12 daytime hours of their 24-hour shift and a flat rate for the 12 nighttime hours. The attendants in the Moreno action were paid flat rates per shift.

The attendants commenced these putative class actions against their employers contending that they were entitled to the minimum wage for each hour of their 24-hour shifts and their employers' payment practices violated the Labor Law and 12 NYCRR 142-2.1(b) because it resulted in a regular hourly wage that was below the minimum wage. Employers contended that they were not required to pay the attendants for each hour of a 24-hour shift because they were permitted to exclude 8 hours of sleep time and 3 hours of meal time from the wages, so long as that time for sleep and meals was actually afforded.

In each case, the Appellate Division, Second Department held that the attendants were entitled to be paid the minimum wage for all 24 hours of their shifts, regardless of whether the attendants were afforded opportunities for sleep and meals. Employers argue that the economic model of the home healthcare industry is structured in reliance on the Department of Labor's interpretation of 12 NYCRR 142-.21(b) that, according to employers, permits payment to home health care attendants for 13 hours of a 24-hour shift, excluding 11 hours for sleeping and taking meal breaks. The attendants counter that employers paid them an unlawfully low wage for those shifts that amounted to less than the minimum wage for each of the 24 hours where the plaintiff was at the client's residence.

No. 11 For appellants New York Health Care et al: Sari E. Kolatch, Manhattan (212) 586-5800
For respondents Andryeyeva et al: Jason Rozger, Manhattan (212) 509-1616
For amicus curiae Dept. of Labor: Deputy Solicitor General Steven C. Wu (212) 416-6073
No. 12 For appellants Future Care Health Services et al: Aaron C. Schlesinger, Manhattan (212) 382-0909
For respondents Moreno et al: Michael J.D. Sweeney, Kingston (845) 255-9370

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 Tuesday, February 12, 2019

No. 13 People v Omar Alvarez

In 1994, Omar Alvarez and 38 others members of a violent drug trafficking organization operating in Manhattan were charged with various crimes, including a 1993 shooting that killed one teenager and injured two others. Alvarez was convicted of a variety of crimes including murder, attempted murder, conspiracy and assault and was sentenced to an aggregate prison term totaling 66 2/3 years to life. The Appellate Division affirmed his conviction (People v Alvarez, 275 AD2d 679 [2000]).

In 2017, Alvarez filed a petition for a writ of error coram nobis in the Appellate Division, First Department, seeking to vacate the Appellate Division order affirming his conviction on the ground that he was denied the right to effective assistance of appellate counsel. The Appellate Division denied the writ of error coram nobis.

Alvarez argues that the writ should be granted because, among other things, assigned appellate counsel failed to seek a sentence reduction in the interest of justice at the Appellate Division. In response, the People argue that any request for a sentence reduction in the interest of justice had little or no chance of success, given that the sentence reflected the heinous crimes for which Alvarez was convicted, his refusal to express remorse or accept responsibility for his crimes, and his extremely poor prognosis for favorable future social adjustment.

For appellant Alvarez: Richard M. Greenberg, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Yan Slavinskiy (212) 335-9000

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 Tuesday, February 12, 2019

No. 14 Matter of Madison County IDA v State of New York Authorities Budget Office

In 2013, the Empire State Development Corporation notified the Madison County Industrial Development Agency (MCIDA) that MCIDA had been awarded a grant of up to $96,000 to assist Ciotti Enterprises in building and operating a new construction and demolition materials recycling facility. The terms of the grant provided that if Ciotti failed to complete the project or otherwise violated certain terms of the grant, MCIDA would be required to repay some or all of the grant funds or penalties. In an admitted effort to shield itself from liability, MCIDA incorporated Madison Grant Facilitation Corporation as a local development corporation for the purpose of accepting the grant. The State of New York Authorities Budget Office determined that MCIDA was not authorized to create Madison Grant as its subsidiary.

MCIDA and Madison Grant argue that the General Municipal Law expressly authorizes Industrial Development Agencies (IDAs) to do all things "necessary or convenient" to carry out their purposes and exercise the powers expressly given to them, including to accept and use grants. The Budget Office argues that an IDA's authority to create a subsidiary to accept grants cannot be implied from the "necessary or convenient" language in the General Municipal Law and such an interpretation of the law would impair the transparency and public accountability required for the use of public funds.

For appellants MCIDA et al: Charles W. Malcomb, Buffalo (716) 856-4000
For respondents Budget Office et al: Assistant Solicitor General Robert M. Goldfarb (518) 776-2015

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 Wednesday, February 13, 2019

No. 15 Matter of Eastbrooke Condominium v Ainsworth

Real Property Law section 339-y(4) provides that the board of managers of a condominium may act as an agent of each condominium unit owner who has given written authorization to seek review of a tax assessment. Accordingly, Eastbrooke Condominium by its Board of Managers, on behalf of all unit owners, challenged the tax assessments imposed by the Town of Brighton for multiple tax years on the condominium property.

Supreme Court determined the property was overassessed and directed that the owners receive appropriate refunds. The court determined, however, that refunds should only be issued to those owners who filed specific authorizations with the Board of Managers for particular years. The Appellate Division, Fourth Department affirmed, holding unit owners are required to give an authorization for each tax year for which the assessment is challenged and unit owners' authorizations for one year does not give the Board of Managers authorization to act as owners' agent for a different year.

For appellants Eastbrooke Condominium et al: Robert L. Jacobson, Pittsford (585) 218-6290
For respondents Ainsworth et al (Town of Brighton): Thomas A. Fink, Rochester (585) 546-6448

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 Wednesday, February 13, 2019

No. 16 Matter of Larchmont Pancake House v Board of Assessors

Larchmont Pancake House occupies and operates a restaurant in the Village of Larchmont and pays the operating costs for the property, including property taxes. The Pancake House does not own the property. The Pancake House challenged the real property tax assessment on the property in 2010, 2011, 2012 and 2013 and commenced these four proceedings to review the assessments. The Assessor of the Town of Mamaroneck and the Board of Assessment review asked Supreme Court to dismiss the petitions on various grounds, including that the Pancake House was not an aggrieved party and lacked standing to challenge the assessments. Supreme Court denied the request.

The Appellate Division, Second Department reversed and granted the requests to dismiss the proceedings. The Appellate Division noted that although the Pancake House is an aggrieved party within the meaning of the Real Property Tax Law (RPTL) because the assessments had a direct adverse effect on its pecuniary interest, RPTL article 7 requires the filing of a grievance complaint with the Assessor or Board of Assessment Review before a proceeding to challenge the assessment can be maintained. "In this regard," the Appellate Division observed "RPTL article 5 requires that the property owner file the complaint or grievance to obtain administrative review of a tax assessment" and the Pancake House, which filed the complaints with the Board of Assessment Review, never owned the property.

The Pancake House argues that a taxpayer should not have its assessment review curtailed by a technicality and, in any event, the Appellate Division's interpretation of the law imposes requirements that do not exist in the law. The Board argues that RPTL article 5 and 7 contain different classes of persons who may act under each and, contrary to the Pancake House's argument, "property owners and aggrieved parties combining their efforts to review assessments is neither impossible, unlikely nor unheard of."

For appellant Pancake House: Kevin M. Clyne, Melville (631) 501-5011
For respondents Board of Assessors (Mamaroneck): William Maker, Jr., Mamaroneck (914) 381-7815

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 Wednesday, February 13, 2019

No. 17 Matter of Save America's Clocks v City of New York

The 13 story neo-Italian Renaissance style building at 346 Broadway in New York City was constructed between 1894 and 1898. A clocktower sits atop the western end of the building and houses the largest of the few purely mechanical tower clocks of its kind in New York. A room on the 14th floor of the building contains an interior spiral staircase which leads up to a landing housing the clock's pendulum and then to the clocktower's machine room. The four glass and metal clock faces make up the four walls of the machine room, in the center of which the clock mechanism sits inside a glass and wood enclosure. The clock's 5,000 pound bell strikes the hours. Being a purely mechanical instrument, the clock must be wound every week.

In 1968, New York City acquired the building and from 1972 until 2013 the bottom level of the clocktower operated as an art gallery and performance space accessible to the public. The building fell into a state of disrepair while it was owned by the City. From 1980 until 2015, a city employee gave tours of the clocktower, maintained the clock, and wound the clock weekly. In 1989, the Landmarks Preservation Commission (LPC) designated the clock as an Interior Landmark.

In 2013, the City sold the building to Civic Center Community Group Broadway LLC, who planned to repurpose the building as a residential hotel and combined retail uses. The deed provided that the purchase was subject to the 1989 notice of interior landmark designation. In 2014, LPC granted the owner permission to convert the clocktower into a triplex private apartment and to disconnect the clock from its mechanism and to electrify the clock. Save America's Clocks, Inc., The Historic Districts Council and others challenged LPC's determination, based on New York City's Landmarks Preservation and Historic Districts Law.

As framed by the Appellate Division, First Department, resolution of the dispute turns on whether the Landmark Law permits the LPC to require a private owner of property purchased subject to a notice of interior landmark designation to preserve the historic character and operation of the interior landmark and to continue to allow at least minimal public access to it. Owner argues that LPC has no power to regulate access to and operation of landmarks and should not have the authority to review and approve all changes to interior landmarks that might affect their accessibility. Owner notes that "for decades, landmark owners have made their properties off-limits for security purposes, safety concerns, economic reasons, and even just convenience – all without needing the LPC's approval." Aligned with the owner for this appeal, the City and LPC assert that the law "is built around the premise that preservation is best served when private property owners are able to use and adapt historic buildings so that, in the long haul, they will assume the burdens of preservation." Save America's Clocks and others argue that "granting permission to destroy a last-of-its kind architectural feature in order to accommodate private luxury housing would prioritize wealth and prestige over preservation, thereby standing the Landmarks Law on its head."

For appellant City defendants: Assistant Corporation Counsel Diana Lawless (212) 356-0848
For appellant Civic Center (owner): James P. Rouhandeh, Manhattan (212) 450-4000
For respondents Save America's Clocks et al: Michael S. Hiller, Manhattan (212) 319-4000

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, February 14, 2019

No. 18 Ajdler v Province of Mendoza

In 1997, the Argentine Province of Mendoza issued bonds in the principal amount of $250 million with a September 4, 2007 maturity date. Moshe Marcel Ajdler held $7,050,000 of the bonds. Governed by New York law, the bonds were to bear 10% annual interest from September 4, 1997, payable bi-annually. The interest would accrue from and include the most recent date to which interest had been paid or duly provided for until payment of the principal was made or duly provided for. Each bondholder had the right to receive payment of the principal of and interest on its bond on the stated maturity date. Further, "[a]ll claims against [Mendoza] for payment of principal of or interest . . . on or in respect of the [b]onds [would] be prescribed unless made within four years from the date on which such payments first became due."

On June 30, 2004, Mendoza offered the bondholders the option to exchange their bonds for new securities paying a lower interest rate and maturing in 2018. A majority of bondholders accepted the exchange offer. Ajdler did not. On August 23, 2004, Mendoza announced that it would make no further interest payments on the bonds. Thus, the last interest payment Ajdler received on his bonds was that for March 2004. He received no interest payments thereafter, nor did he receive payment of principal on the bonds' September 4, 2007 maturity date. Nearly a decade later, on March 1, 2017, Ajdler commenced this contract action in the Southern District of New York, asserting Mendoza failed to repay principal upon the maturity date and pay interest on that principal after March 2004. As to the latter, Ajdler alleged that interest continued to accrue on the bonds, even after their maturity date, for as long as the principal remained unpaid.

The United States District Court for the Southern District of New York granted Mendoza's motion to dismiss the complaint as time-barred, stating "the [b]onds matured on September 4, 2007, at which time principal became due. In addition, the interest on the [b]onds became due biannually between September 4, 2004 and September 4, 2007. Accordingly, Ajdler's claims for both principal and interest are untimely." On appeal to the United States Court of Appeals for the Second Circuit, the Second Circuit certified the following questions to this Court: "(1) If a bond issuer remains obligated to make biannual interest payments until the principal is paid, including after the date of maturity…, do enforceable claims for such biannual interest continue to accrue after a claim for the principal of the bonds is time-barred?" and (2) "If the answer to the first question is 'yes,' can interest claims arise ad infinitum as long as the principal remains unpaid, or are there limiting principles that apply?"

For appellant Ajdler: Michael H. McGinley, Philadelphia, PA (215) 994-4000
For respondent Province of Mendoza: Carmine D. Boccuzzi, Jr., Manhattan (212) 225-2000

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, February 14, 2019

No. 19 People v Carlos Tapia

In the early morning hours of November 2, 2008, a police sergeant and lieutenant were driving in the Bronx and observed an altercation outside a bar. Following their intervention, Carlos Tapia was charged with, among other crimes, attempted assault in the first degree on the theory that he, acting in concert with another, and with intent to cause serious physical injury, attempted to cause serious physical injury to the victim by means of a deadly weapon or dangerous instrument, to wit, a sharp object.

At a jury trial, the victim testified that he was waiting for a taxi outside the bar when he felt someone hit him from behind. The victim identified two assailants and also testified that Tapia and the other assailant kicked him and slammed him against cars, and that at some point, he felt "something warm" running down his face and he realized he had been cut, but he did not see what had been used to cut him. One of the doctors who treated the victim at the hospital testified that his lacerations were "potentially life threatening" and were consistent with "being struck with a sharp cutting instrument" such as a knife, box cutter, or a piece of glass if it "had the right edge."

The police sergeant testified that he saw the victim be “body-slammed” and he then saw Tapia drag the victim between two parked vehicles. According to the sergeant, Tapia did not have any weapons, but there was a shattered beer bottle on the sidewalk next to where he saw Tapia and the victim. The sergeant admitted on cross-examination that he did not see Tapia cut the victim.

The People produced the police lieutenant, but informed the trial court that he had been retired for over a year and did not remember anything about the incident. Over Tapia’s objection, the trial court permitted the People to introduce the lieutenant’s grand jury testimony as a past recollection recorded.

Tapia argues that the evidence was insufficient to support his conviction of attempted assault in the first degree, inasmuch as "the evidence failed to establish beyond a reasonable doubt, directly or by inference circumstantially, that defendant carried a dangerous instrument, cut the victim's face with it, or was aware that the other attacker intended to or was cutting the victim with such an instrument.” He further asserts that the introduction of the lieutenant’s grand jury testimony violated the Confrontation Clause and the criminal procedure law. The People counter that Tapia’s conviction for attempted assault in the first degree, under a theory of acting in concert, was proven beyond a reasonable doubt, as the evidence supported the conclusion that either Tapia or the co-assailant cut the victim or, if the co-assailant did the cutting, Tapia continued to participate in the attack after the co-assailant cut the victim. The People further assert that portions of the lieutenant’s grand jury testimony was properly admitted as a past recollection recorded to supplement his in-court testimony, which was subject to cross-examination.

For appellant Tapia: Daniel A. Rubens, Manhattan (212) 506-3679
For respondent: Bronx Assistant District Attorney James J. Wen (718) 838-6669

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, February 14, 2019

No. 20 People v Timothy Martin

Pursuant to a search warrant, the police conducted a search of an apartment in Manhattan. Inside, officers found Timothy Martin sleeping on a mattress on the floor of a bedroom containing drugs and items associated with drug sales. Martin was alone in the bedroom with the drugs. A hospital bill addressed to Martin at the apartment and clothing that apparently fit him were found in that bedroom.

Before reading his Miranda rights, an officer asked Martin where he lived. He responded that he lived in the apartment. This statement was later introduced into evidence, over Martin's objection, to prove his constructive possession of the drugs.

Martin argues that he was subject to custodial interrogation without first receiving Miranda warnings and the "pedigree exception" – whereby police need not administer Miranda warnings before asking routine administrative questioning "to secure the biographical data necessary to complete booking or pretrial services" (Pennsylvania v Muniz, 496 US 582) – does not apply here because the "where do you live" question was likely to elicit an incriminating response. In other words, he says, "When the police execute a search warrant for drugs in an apartment, find drugs, arrest a person found sleeping in the apartment, and then ask him where he lives, that is not an administrative question. It is investigatory." The People argue that the courts below properly applied this Court's decision in People v Rodney (85 NY2d 289) in finding that Martin's statement about his address fell within the pedigree exception. The People also assert that any error in admitting Martin's statement about his address was harmless, given that the evidence overwhelmingly established that he lived in the apartment.

For appellant Martin: Megan Byrne, Manhattan (212) 577-2523
For respondent: Manhattan Assistant District Attorney Alexander Michaels (212) 335-9000