State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

November 17 thru 19, 2020

State of New York
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To be argued Tuesday, November 17, 2020 (arguments begin at 2 pm)

No. 85 JPMorgan Chase Bank, National Association v Caliguri
No. 86 US Bank National Association v Nelson

These mortgage foreclosure actions hinge on whether the plaintiffs established standing by providing evidence that they were the holder or owner of the mortgage note on which they sought to foreclose, or whether they were required to provide such evidence.

In Case No. 85, JPMorgan Chase Bank brought this action in 2014 to foreclose a $1 million mortgage on a Suffolk County house owned by Ross Caliguri, alleging he defaulted on the loan. The bank acquired the note in 2008 when it purchased all assets of the originator of the loan, Washington Mutual Bank (WaMu), in a receivership transaction. Caliguri raised affirmative defenses in his answer, including lack of standing, and demanded production of the original note. Chase, which had attached to its complaint copies of the mortgage and the note with a blank endorsement from WaMu, did not comply with the demand to inspect the original note. Supreme Court denied Caliguri's motion to dismiss, finding the bank had established standing, and granted the bank's motion for summary judgment.

The Appellate Division, Second Department affirmed, saying, "JPMorgan Chase demonstrated its prima facie entitlement to judgment as a matter of law by producing the mortgage, the unpaid note, and evidence of default.... In addition, it established its standing by attaching to the summons and complaint a copy of the consolidated note, bearing an endorsement in blank from the original lender.... Contrary to the defendant's contention, 'there is no requirement that an entity in possession of a negotiable instrument that has been endorsed in blank must establish how it came into possession of the instrument in order to be able to enforce it....'" Caliguri argues that Chase failed to establish standing by proving it had actual possession of the original mortgage note. He says the lower courts acted prematurely in granting summary judgment to the bank when he had challenged the bank's standing and his demand for inspection of the original note had not been met.

In Case No. 86, US Bank brought this action in 2009 to foreclose a $660,000 mortgage on a three-family residence in Brooklyn owned by Kenyatta and Safiya Nelson. US Bank alleged in its complaint that it was "the owner and holder of [the] note and mortgage being foreclosed." In their answers, the Nelsons denied the bank's factual allegations and raised several affirmative defenses, but did not expressly assert that US Bank lacked standing. Supreme Court granted the bank a judgment of foreclosure and sale in 2015.

The Appellate Division, Second Department affirmed on a 3-1 vote, ruling the Nelsons waived any claim that the bank lacked standing to foreclose. It said, "[The] issue of standing is waived absent some affirmative statement on the part of a mortgage foreclosure defendant, which need not invoke magic words or strictly adhere to any ritualistic formulation, but which must clearly, unequivocally, and expressly place the defense of lack of standing in issue by specifically identifying it in the answer or in a pre-answer motion to dismiss. A mere denial of factual allegations will not suffice for this purpose." The dissenter said, "[T]here is no reason to adopt a rule of law that mandates that the defense of lack of standing is waived unless magic words such as 'defense' or 'affirmative defense' appear together with 'lack of standing' in a responsive pleading.... [W]here ... a plaintiff alleges in its complaint that it is the 'owner and holder of [the] note being foreclosed'..., a denial ... should suffice to put the plaintiff on notice as to the issue of standing."

No. 85 For appellant Caliguri: Jeffrey Herzberg, Hauppauge (631) 761-6558
For respondent JPMorgan Chase: Alan E. Schoenfeld, Manhattan (212) 230-8800
No. 86 For appellant Nelsons: Jared B. Foley, Manhattan (212) 935-3131
For respondent US Bank: Katherine Wellington, Manhattan (212) 918-3000

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To be argued Tuesday, November 17, 2020 (arguments begin at 2 pm)

No. 84 Matter of Part 60 Put-Back Litigation (Deutsche Bank National Trust Co. v Morgan Stanley Mortgage Capital Holdings, LLC)

Deutsche Bank National Trust Co., acting as trustee of a trust created to hold and securitize 5,337 subprime mortgages, brought this breach of contract action against the sponsor of the securitization, Morgan Stanley Mortgage Capital Holdings, seeking damages for numerous defaults that occurred after the residential mortgage-backed securities (RMBS) were sold to investors. Morgan Stanley acquired the mortgage loans at a bankruptcy auction in 2007, shortly before the housing market collapsed, and conveyed them to an affiliate pursuant to a representations and warranties agreement (RWA) in which it attested to the quality of the loans. The affiliate then conveyed the loans to the trust pursuant to a pooling and servicing agreement (PSA) with Deutsche Bank and others. The RWA provides that, in the event of a breach of any of the warranties, Morgan Stanley must cure or repurchase the affected loans. It also provides that Morgan Stanley's repurchase obligation "constitutes the sole remedy" of any "person or entity with respect to such breach." The PSA contains a similar "sole remedies" clause. Claiming the trust suffered more than $495 million in damages due to widespread breaches of the warranties, Deutsche Bank sought compensatory and punitive damages. Morgan Stanley argued that compensatory damages were precluded by the sole remedy clauses; Deutsche Bank argued the clauses were unenforceable because Morgan Stanley acted with "gross negligence."

Supreme Court granted Morgan Stanley's motion to dismiss claims for compensatory damages, as precluded by the sole remedy clauses, and punitive damages. It said gross negligence was not established by a 2014 cease and desist order from the Securities and Exchange Commission (SEC), which found Morgan Stanley violated the Securities Act of 1933 by understating to investors the number of delinquent loans in the trust. The court said, "This order does not make findings as to the willful misconduct or gross negligence that would support ... relief from the sole remedy provisions.... Indeed, the SEC order specifically provides ... that the violation of the Securities Act 'may be established by a showing of negligence.'" It dismissed the punitive damages claim because "an independent claim of fraud is not plead; nor does the complaint plead a wrong aimed at the public, generally."

The Appellate Division, First Department reversed and reinstated the claims for compensatory and punitive damages. Citing allegations that an analysis by the trust's insurer found breaches of warranties in all 800 of the loans it sampled and that Morgan Stanley departed from its own underwriting guidelines in various ways, it said "the complaint's allegations of pervasive, knowing breaches of the representations and warranties on multiple grounds as to the quality of loans throughout the pool sufficiently pleaded gross negligence to render the sole remedy clause ... unenforceable." Regarding punitive damages, it said the complaint, which cited SEC findings that Morgan Stanley committed "fraud and deceit" on investors, "sufficiently alleges that defendants' conduct was 'egregious' and 'part of a pattern directed at the public generally...;" and "plaintiff's allegations of wrongdoing committed against it are sufficient to support a demand for punitive damages at this pleading stage."

For appellant Morgan Stanley: Brian S. Weinstein, Manhattan (212) 450-4000
For respondent Deutsche Bank National Trust: Steven F. Molo, Manhattan (212) 607-8160

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To be argued Wednesday, November 18, 2020 (arguments begin at 2 pm)

No. 88 Matter of Peyton v New York City Board of Standards and Appeals

Maggi Peyton and other residents of Park West Village, a three-building apartment complex on the Upper West Side of Manhattan, brought this proceeding to challenge a building permit granted by New York City's Department of Buildings (DOB) in 2014 to Jewish Home Life, Inc. (JHL) for construction of a 20-story nursing home on land owned by PWV Acquisition, LLC on the same zoning lot as Park West Village. They contended the JHL project violated the open space requirements of the City's Zoning Resolution. Previously, Park West Village residents had unsuccessfully challenged a permit issued by DOB in 2007 for construction of an apartment tower known as 808 Columbus on the zoning lot. They objected to the inclusion of a roof garden at 808 Columbus, which would be accessible only to its residents, in the calculation of open space required for the project. The Board of Standards and Appeals (BSA) upheld the permit in 2009, finding that the roof garden qualified as open space. In the current case, the Park West Village residents objected to inclusion of the roof garden at 808 Columbus in the open space calculation for JHL's nursing home project, which would not meet the open space requirements without it. The BSA denied their appeal in 2015, saying the Zoning Resolution "could be read to allow some open space to be reserved for the residents of a single building."

The Park West Village residents brought this article 78 proceeding to annul BSA's decision and revoke JHL's permit. They argued that the exclusive roof garden did not qualify as open space under amendments made to the Zoning Resolution in 2011, after approval of 808 Columbus and before approval of JHL's project, which substituted the words "zoning lot" and "all zoning lots" for "building" and "any buildings." Section 12-10 of the Zoning Resolution now defines "open space" as "that part of a zoning lot, including courts or yards, which is open and unobstructed from its lowest level to the sky and is accessible to and usable by all persons occupying a dwelling unit or a rooming unit on the zoning lot."

Supreme Court dismissed the suit, finding the resolution is ambiguous and deferring to the interpretation of DOB and BSA. The court said "the 2011 amendments do not unambiguously alter the meaning or measurement of open space as interpreted by BSA.... [T]he court cannot say that the open space provisions could not be subject to different interpretations, and concludes there is enough ambiguity to defer to [DOB]."

The Appellate Division, First Department reversed on a 3-1 vote and revoked JHL's permit, finding the definition of open space in ZR § 12-10 is "clear and unambiguous" and precluded use of the roof garden in the open space formula. It said, "That language unambiguously requires open space to be accessible to all residents of any residential building on the zoning lot, not only the building containing the open space in question." The dissenter said, "[P]etitioners are bound by [BSA's] 2009 Resolution and cannot now relitigate whether 808 Columbus's roof complies with open space requirements in relation to the present proposed project." He also said, "Supreme Court correctly found the provisions of the ZR are susceptible to conflicting interpretations, and properly deferred to the BSA's practical and rational interpretation of the definition of open space."

For appellant BSA: Assistant Corporation Counsel Jonathan Popolow (212) 356-4084
For appellant PWV Acquisition: Philip E. Karmel, Manhattan (212) 541-2000
For respondents Peyton and Hoffman et al: John R. Low-Beer, Brooklyn (718) 744-5245

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To be argued Wednesday, November 18, 2020 (arguments begin at 2 pm)

No. 89 People v Sergio Del Rosario *(papers sealed)*

Sergio Del Rosario is challenging his designation as a risk level three sexually violent offender under the Sex Offender Registration Act (SORA). He pled guilty to first-degree rape in 2014, admitting he forcibly raped a 16-year-old girl who was a close family member. Serving five years in prison, he told therapists during sex offender treatment that he planned the rape to exact revenge on his wife for alleged infidelity. Prior to his release, the Board of Examiners of Sex Offenders prepared a case summary and risk assessment instrument (RAI) to determine his risk to the public. It assessed risk factor points for use of violence, sexual contact, duration of the offense, age of the victim, and failure to accept responsibility, resulting in a presumptive level two designation. The Board did not assess any points under risk factor 7, which applies when the offender's crime "was directed at a stranger" or "arose in the context of a professional or avocational relationship," according to the SORA Risk Assessment Guidelines and Commentary. Where the relationship is not familial, the Guidelines say, "The need for community notification ... is generally greater when the offender strikes at persons who do not know him well or who have sought out his professional care." At the SORA hearing, the prosecutor asked Supreme Court to grant an upward departure from level two based on Del Rosario's "gross abuse of familial trust" between himself and the victim and also based on his motive of revenge.

Supreme Court ordered the upward departure and designated Del Rosario a level three offender, saying "the Guidelines do not account for the complete and gross abuse of trust exhibited by [an offender] who physically, sexually and emotionally abuses [a close family member].... Nor do the Guidelines provide for the assessment of RAI Risk Factor points for the circumstances under which a defendant physically beats [a family member] and completely strips her clothes from her body before forcibly raping her in the back of his truck...." It said "such omissions ... reflect a failure of the RAI ... to properly account for the defendant's complete and gross abuse of the child victim's trust..., despite the obvious significance of such conduct with respect to the defendant's risk of recidivism and the threat he poses to the public safety."

The Appellate Division, Second Department affirmed, ruling "Supreme Court providently exercised its discretion" in ordering the upward departure. "The fact that the defendant had a close family relationship with the victim was not taken into account by the RAI...," it said. "Moreover, the defendant's reported motivation for raping the victim reflects a lack of insight into his conduct not adequately taken into account by the RAI."

Del Rosario argues, "Since the 'abuse of familial trust' was already accounted for in the RAI, through age and relationship, it could not form the basis of an upward departure. Inasmuch as the other factors cited by the hearing court such as the use of force and violence, sexual intercourse, duration, and failure to accept responsibility had also been adequately accounted for by the RAI, the court erred in granting an upward departure." He cites the Second Department's conflicting decision in People v Mota (165 AD3d 988), which held that an offender's "abuse of trust within a family relationship is already adequately accounted for by the Guidelines" and is not an aggravating factor that could justify an upward departure.

For appellant Del Rosario: Debra A. Cassidy, White Plains (914) 286-3400
For respondent: Westchester County Asst. District Attorney Christine DiSalvo (914) 995-3496

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To be argued Thursday, November 19, 2020 (arguments begin at 11 am)

No. 90 Matter of Town of Irondequoit v County of Monroe

Prior to 2017, Monroe County had for many years guaranteed payment of maintenance, repair, and demolition charges its towns levied against the owners of dilapidated or vacant properties pursuant to Real Property Tax Law (RPTL) § 936(1), which provides that counties guarantee their towns' "taxes" by crediting them "with the amount of ... unpaid delinquent taxes." However, on December 30, 2016, Monroe County's Director of Real Property Tax Services issued a Tax Charges Memorandum which said it would no longer guarantee or credit maintenance and demolition charges because they were not taxes. The Tax Memo also notified the towns that the County would deduct from the November 2017 sales tax distribution any amounts they were previously credited for unpaid maintenance charges. The Towns of Irondequoit and Brighton brought this CPLR article 78 proceeding against the County to compel it to guarantee their maintenance charges and bar it from recouping prior credits from their sales tax distributions.

Supreme Court ruled for the Towns, ruling they "have a legally valid basis to demand and receive the guaranty and credit of the subject charges which qualify as taxes." It said the maintenance charges are "levied as taxes against the real property, for which the County is responsible for collecting, guaranteeing, and crediting."

The Appellate Division, Fourth Department reversed on a 3-2 vote and dismissed the suit, finding the maintenance charges are not "taxes" for which the County would be responsible. It said, "The maintenance charges are assessed against individual properties for their benefit and thus do not fall within the general definition of 'tax,' which instead contemplates 'public burdens imposed generally for governmental purposes benefitting the entire community'.... Nor do those charges constitute 'special ad valorem levies' ... because they are not used to defray the cost of a 'special district improvement or service'.... Maintenance charges also are not assessed 'ad valorem' because the amount of the charge is not based on property value but is instead based on the actual expense to the town." If the charges constitute special assessments, it said, "the definition of 'tax' specifically excludes 'special assessments' (RPTL 102[20])."

The dissenters argued that maintenance charges assessed against real property "must be guaranteed by the county 'in the same manner" as property taxes and special ad valorem levies." They said "such charges are, strictly speaking, not taxes. Rather, they are more appropriately classified as "'[s]pecial assessment[s]'" (RPTL 102[15]...), which are excluded from the strict definition of a 'tax' (RPTL 102[20]). The RPTL, however, expressly contemplates that special assessments, under some circumstances, are to be treated as taxes for purposes of property tax collection." Citing a 1990 opinion of the State Board of Equalization and Assessment that such maintenance charges are "in the same nature" as taxes, they said, "That has been the law in this State for decades. If the rule proposed by the majority were to stand, towns would almost never be able to recoup their costs for maintaining, repairing, or demolishing blighted properties."

For appellant Brighton: Kenneth W. Gordon, Rochester (585) 244-1070
For appellant Irondequoit: Megan K. Dorritie, Rochester (585) 232-6500
For respondent Monroe County: Michele R. Crain, Rochester (585) 753-1433

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To be argued Thursday, November 19, 2020 (arguments begin at 11 am)

No. 91 People v J.L.

J.L. was a 17-year-old high school student in 2010 when, after his aunt evicted him from her house, he paid a recent acquaintance $100 to let him stay in the spare bedroom of the acquaintance's basement apartment in Brooklyn. A few hours after he arrived, J.L was sitting in the kitchen when a bullet fired through the window struck him in the neck. Responding police officers found him sitting on the front porch with a bloody towel wrapped around his head and neck. Officers followed a trail of blood from the porch down stairs into the apartment, into a rear bedroom, then to the kitchen. In the bedroom they found a loaded MAC-11 submachine gun in a partially open dresser drawer, and J.L was charged with constructive possession of the weapon. His DNA was found on the MAC-11, but analysts did not determine whether the DNA was left by his blood or by some other means. J.L testified that when he was shot, he ran from the kitchen to the bedroom in search of a towel to stop the bleeding, found one, then ran outside to ask a neighbor to call 911. He testified that he saw "something like a gun" in the bedroom, but he did not pick it up and he stayed only briefly while grabbing the towel.

J.L.'s defense attorney asked Supreme Court to charge the jury that possession of the MAC-11 must be "voluntary" as defined in Penal Law § 15.00(2), which provides that a voluntary act "includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it." The court agreed that possession must be voluntary, but declined to give the jury instruction. "This voluntary thing is more confusing than helpful," the court said. "I am inclined not to give it, but you can argue even if he was aware of it for a short period of time he certainly didn't have enough time to" get rid of the gun.

J.L. was convicted of third-degree criminal possession of a weapon and was ultimately sentenced to one to three years in prison as a youthful offender. The Appellate Division, Second Department affirmed. It said, without elaboration, that "the Supreme Court's instructions to the jury do not warrant reversal."

The defense argues that J.L. "was deprived of his due process right to a fair trial when the court refused to charge the jury on the statutory definition of 'voluntary possession' – the minimal requirement for criminal culpability – where the evidence showed that appellant's inadvertent discovery and brief awareness of the gun in issue was not 'for a sufficient period of time to have been able to terminate' control of it."

The prosecution argues, "The trial court properly denied defendant's request for a voluntary possession instruction because the court's instructions on the definitions of possession and 'knowingly' were sufficient to convey to the jury the applicable material legal principles. In any event, any error in declining to give a voluntary possession instruction was harmless."

For appellant J.L.: Cynthia Colt, Manhattan (212) 693-0085 ext. 232
For respondent: Brooklyn Assistant District Attorney Dmitriy Povazhuk (718) 250-2000

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To be argued Thursday, November 19, 2020 (arguments begin at 11 am)

No. 92 People v Lance Williams

Lance Williams shot and wounded Leon Carson and an innocent bystander in the lobby of a Bronx apartment building in 2012. Williams did not deny the shooting, much of which was recorded by surveillance cameras, but claimed he acted in self-defense. Facing charges of attempted murder, first-degree assault, and second-degree criminal possession of a weapon, Williams testified he had a fraught history with Carson and his family and had been wounded by Carson's brother in two separate shooting incidents in 2007. On the day of the 2012 incident, Williams said he had purchased marijuana in the apartment building from a man called "Foe" and, as he stepped outside the building, he was confronted by Carson and another man. He said Carson pulled a gun from his right pocket and showed it to him. Williams said "I thought he was going to kill me" and he fled back to Foe's apartment. Foe refused to let him stay there, but grabbed his own handgun and told Williams he would escort him to his car. At the bottom of the stairs, Foe looked into the lobby and saw Carson's associate. Williams said Foe handed him the gun and told him to "just walk behind me." When they entered the lobby, Williams said he saw Carson reach into the same pocket that had held his gun and "I just blanked out and I just started shooting." Williams then returned the gun to Foe and fled in his car.

Supreme Court instructed the jury on justification as a defense to the murder and assault counts, and the jury acquitted Williams of those charges. However, the court denied his request to instruct the jury on temporary lawful possession of a weapon as a defense to the weapon possession count. He was convicted of that charge and sentenced to seven years in prison.

The Appellate Division, First Department affirmed, saying there was "no reasonable view of the evidence, viewed most favorably to defendant, to support" a temporary lawful possession charge. "Regardless of whether defendant came into possession of a pistol in an excusable manner, he 'used [it] in a dangerous manner' (People v Williams, 50 NY2d 1043 ...) when he fired five shots in the lobby of a building, admittedly shooting two victims (including a bystander not claimed to be posing any threat) while defendant 'just blanked out'...."

Williams argues, "New York courts hold that a defendant is entitled to an instruction on [temporary lawful possession] in exigent circumstances, including where, as here, the defendant possessed the gun briefly while acting in self-defense." The Appellate Division ruled he was not entitled to the instruction because he used the gun "in a dangerous manner," he says, "But the only evidence that Williams acted 'dangerously' was that he shot at Carson – the same evidence that allowed the jury to conclude that Williams acted in justified self-defense.... That ruling created a Catch-22 in which a defendant may not receive an instruction on temporary lawful possession if he uses the weapon in self-defense – even where, as here, the possession was otherwise lawful and use of the weapon was justified to protect against imminent deadly force. That result contradicts this Court's precedent ... and it is repellent to the deeply rooted policies that underlie the right to self-defense."

For appellant Williams: John M. Briggs, Manhattan (212) 450-3292
For respondent: Bronx Assistant District Attorney David A. Slott (718) 838-6298