State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

February 13 thru February 15, 2024

State of New York
Court of Appeals

To be argued Tuesday, February 13, 2024

No. 15 Matter of Jaime v City of New York
No. 16 Matter of Orozco v City of New York

New York City is appealing court orders that allowed two men who claim they were intentionally harmed by City employees to file late notices of claim against the City. It contends the claimants failed to show that it had actual knowledge of the essential facts underlying their claims, a principal factor in determining whether to allow a late notice of claim under General Municipal Law § 50-e(5).

Luis Jaime alleges that, while he was being held in pre-trial detention at Rikers Island in 2019 and 2020, City correction officers repeatedly assaulted him and denied him access to adequate medical care. Jaime claims assault, battery and negligence based on "deliberate indifference" to his safety. Adan Orozco alleges that officers of the New York Police Department, with support of personnel from the Special Narcotics Prosecutor for the City, used a fraudulently obtained warrant to arrest him on drug charges in 2018. He was held in custody for nearly five months until the charges were unconditionally dismissed. Orozco claims false arrest, false imprisonment and malicious prosecution. Both men failed to file notices of claim with the City within 90 days after their claims arose, as required by GML § 50-e(1)(a), and they sought permission to file late notices of claim.

Supreme Court granted both requests, finding the City had actual knowledge of the facts constituting the claims within 90 days after the claims arose. In Orozco, it said actual knowledge could "be imputed to the City" because the City's officers investigated the case and "the NYPD possessed all essential facts."

The Appellate Division, First Department affirmed both orders. In a 4-1 decision in Orozco, it said the City "is deemed to have actual notice of the claim by virtue of the fact that its employees participated and were directly involved in the conduct giving rise to petitioner's claims and are in possession of records and documents relating to the incident.... [The City's] agents procured the allegedly false warrant upon attestations as to probable cause, executed the allegedly false arrest, and generated the reports pertaining thereto; the prosecutor would have had access to those same records and examined same in connection with preparing its opposition to defendant's motions and in preparing more generally for trial.... [The City's] actual knowledge may be presumed by the very nature of the action and the allegations."

The dissenter in Orozco said, "The majority assumes, based on the presence and agents of the NYPD at the time of petitioner's arrest and the existence of investigatory procedures and record-keeping, that actual knowledge of the circumstances constituting petitioner's claims for false arrest, false imprisonment, and malicious prosecution can be imputed to [the City]. However, this assumption is unsubstantiated by the record presented on appeal. Petitioner did not submit his own affidavit, or the affidavit of anyone else with personal knowledge, or any documentary evidence in support of his argument that [the City] had actual knowledge.... The mere alleged existence of police reports and other records arising from an investigation, without evidence of their content, is insufficient to impute actual knowledge to" the City.

For appellant City in No. 15: Assistant Corporation Counsel Lorenzo Di Silvio (212) 356-1671
For appellant City in No. 16: Assistant Corporation Counsel Elina Druker (212) 356-2609
For respondents Jaime and Orozco: Sang J. Sim, Bayside (718) 281-0400

State of New York
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To be argued Tuesday, February 13, 2024

No. 17 Favourite Limited v Cico

Upper East Side Suites, LLC (UESS), a Delaware limited liability company, was formed in 2007 as a vehicle for investment in Manhattan real estate with more than $4.5 million in capital contributions from its members. In May 2016, after its real estate ventures collapsed, UESS and its members brought this action to recover their lost investments in UESS from the company's two managers, siblings Benedetto and Carla Cico, alleging self-dealing and deficient management by the Cicos.

In November 2016, the Delaware secretary of state cancelled UESS's certificate of formation for failure to replace its registered agent. In February 2018, Supreme Court dismissed the original complaint, including UESS's direct claims, but allowed UESS members to file their first amended complaint to replead their claims derivatively. In April 2018, a UESS member obtained a Delaware Certificate of Revival for the company and, in June 2018, the company's members approved a resolution authorizing UESS to file a second amended complaint to include it as a plaintiff. In June 2019, Supreme Court denied the Cico's motion to dismiss the second amended complaint except for certain time-barred claims.

The Appellate Division, First Department reversed, denied the motion to file a second amended complaint, and dismissed the action. It said UESS had no "capacity or standing" to sue because it had been cancelled and was not properly revived. It said the individual plaintiff who obtained the certificate of revival lacked authority to act on the company's behalf.

The plaintiffs sought to correct this defect in December 2020 by filing a certificate of correction in Delaware to nullify the 2018 certificate of revival and then filing a new certificate of revival based on the members' vote to authorize prosecution of the action in June 2018. Then they moved to file a third amended complaint.

Supreme Court granted the motion, saying the Appellate Division dismissed the case without prejudice and "the action was never disposed" because the Cicos never filed a proposed judgment. "It would make no sense ... for plaintiffs to have commenced another separate action under a different index number and then to have moved to consolidate it with this one when this one has always remained active and pending," it said, noting that the plaintiffs had cured the timing defect that led to the Appellate Division's dismissal.

The Appellate Division, on a 3-2 vote, modified by denying the motion to file the third amended complaint. "Given this Court's outright dismissal of the claims based on a finding of lack of standing, there was no action pending when plaintiffs moved for leave to file the third amended complaint. Thus, the trial court lacked any discretion or authority to grant plaintiffs such leave, where we had properly dismissed the second amended complaint before plaintiffs filed the motion to amend...," it said. "Our dismissal order was binding on the parties," and entry of a judgment "is a mere ministerial act." It said expiration of Delaware's three-year statute of limitations "posed a second procedural obstacle that deprived Supreme Court of discretion to grant leave to amend."

The dissenters argued that leave to file the third amended complaint was properly granted because the Cicos failure "to submit a proposed judgment during the 14 months between our dismissal of plaintiffs' complaint and the motion court's decision to grant plaintiffs leave" to amend the complaint "left this action pending, along with defendants' counterclaims...." They said the third amended complaint was not time-barred because the plaintiffs "sought only to add a factual recitation of the steps taken to revive [UESS]. They did not seek to add new causes of action ... or to add new theories of liability...."

For appellants UESS and Favourite et al: Peter Jakab, Manhattan (212) 732-9290
For respondent Cicos: Sean M. Kemp, Rhinebeck (845) 876-3024

State of New York
Court of Appeals

To be argued Tuesday, February 13, 2024

No. 18 Urias v Daniel P. Buttafuoco & Associates, PLLC

Manuel Urias underwent prostate surgery in 2003 and was left in a coma from which he never recovered. His wife, Delfina Urias, retained Daniel P. Buttafuoco and his law firm, Daniel P. Buttafuoco & Associates, to represent her and her family in a medical malpractice action against the physicians and hospital involved, an action that was settled for $3.7 million in 2009. Buttafuoco sought judicial approval of a contingency fee that he calculated to be $864,552, and Supreme Court approved the fee and the settlement. Buttafuoco later agreed to reduce the attorneys' fee to $710,000.

Urias brought this legal malpractice action against Buttafuoco and his firm in 2012, claiming a violation of Judiciary Law § 487, breach of contract and fiduciary duty, and fraud. Judiciary Law § 487 provides that an attorney who is "guilty of any deceit or collusion ... with intent to deceive the court or any party ... forfeits to the party injured treble damages, to be recovered in a civil action." She alleged the defendants had deceived the court in the underlying action regarding the amount of legal fees they were entitled to under Judiciary Law § 474-a, which limits attorneys' fees in medical malpractice actions. She said the defendants misled the court into approving a fee of $710,000 when section 474-a limited the fee to $516,226.

The Buttafuoco defendants moved to dismiss the suit, arguing that it was an improper collateral attack on the settlement in the medical malpractice case and Urias should have moved to vacate the judgment in that case instead of bringing this separate legal malpractice action. Urias argued the Judiciary Law § 487 claim was not a collateral attack on the medical malpractice judgment because the statute authorizes treble damages "to be recovered in a civil action," such as this legal malpractice suit.

Supreme Court granted summary judgment dismissing the legal malpractice suit. It said "the remedy for fraud allegedly committed during the course of a legal proceeding must be exercised in that lawsuit by moving to vacate the civil judgment (CPLR 5015[a][3]) and not by another plenary action collaterally attacking that judgment."

The Appellate Division, Second Department affirmed. For the defendants' allegedly fraudulent conduct in obtaining the attorneys' fee award in the medical malpractice action, it said, "The plaintiff's remedy ... 'lies exclusively in that lawsuit itself, i.e., by moving pursuant to CPLR 5015 to vacate the civil judgment due to its fraudulent procurement, not a second plenary action collaterally attacking the judgment in the original action.'"

The Urias say, "The words 'in a civil action' in [section 487] is the crux of this appeal." They cite the statutory language that an attorney who violates it "is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action." The Urias argue that "the clear wording of the statute ... contemplates two (2) independent remedies. One is a formal criminal prosecution commenced by the district attorney's office. The other is by the injured party commencing a civil action to recover treble damages. The latter is exactly what we have here."

For appellants Marta and Delfina Urias: Daniel Zahn, Holbrook (631) 471-3851
For respondents Daniel P. Buttafuoco et al: Ralph A. Catalano, Jericho (516) 931-1800

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To be argued Wednesday, February 14, 2024

No. 20 Syeed v Bloomberg L.P.

This federal case arose in 2018 when Nafeesa Syeed, a South Asian-American woman working as a reporter in Bloomberg Media's Washington, D.C. bureau, applied for several reporting jobs with Bloomberg in New York City, including a reporter position in Bloomberg's United Nations bureau. She was not hired for any of the New York jobs. When Syeed asked about the U.N. bureau job, which had been filled by a man, an editor allegedly told her one reason she had not been considered for the job was that it had not been designated a "diversity slot," which she took to mean Bloomberg would only consider her for designated "diversity" positions in New York City.

Syeed subsequently quit her Bloomberg job, moved to California and, in 2020, filed this lawsuit against Bloomberg under the New York City Human Rights Law (NYCHRL) and New York State Human Rights Law (NYSHRL) for discrimination on the basis of race and sex in denying her promotions, setting her compensation, and creating a hostile work environment. Bloomberg moved to dismiss for failure to state a claim.

U.S. District Court dismissed the suit, saying that, to state a claim under the NYCHRL or NYSHRL, "the impact of the employment action must be felt *by the plaintiff*" in New York City or State. The court said Syeed "did not experience the impact of the alleged discrimination in New York" because she did not "live or work" in the City or State when it occurred.

The U.S. Court of Appeals for the Second Circuit said Syeed's appeal raises "an unsettled issue of New York law:" whether an out-of-state resident who is denied a job in New York for discriminatory reasons can satisfy the New York-impact requirement of the Human Rights Laws. "The closest case is Hoffman v Parade Publications [15 NY3d 285], where the New York Court of Appeals held that, because NYCHRL and NYSHRL were intended to protect persons who inhabit or are persons within New York City and State, respectively, 'nonresidents of the city and state must plead and prove that the alleged discriminatory conduct had an impact within those respective boundaries,'" the court said. "Applying that test, the Hoffman court found that the plaintiff – who resided and worked in Georgia, but who attended quarterly meetings in, and was managed and fired from, New York City – was not himself sufficiently impacted within New York City or State to be able to bring a claim for discriminatory termination.... Hoffman, however, was silent as to whether, in discriminatory failure-to-hire or failure-to-promote cases, a nonresident plaintiff – who did not work in New York City or State, but who alleged that but for an employer's unlawful conduct, he or she would have worked in New York City or State – would also be unable to assert sufficient personal impact in New York City or State." The Second Circuit is asking this Court to resolve the core issue in the case by answering a certified question: "Whether a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the [NYCHRL or NYSHRL] if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds."

For appellant Syeed: Niall MacGiollabhui, Manhattan (646) 850-7516
For respondent Bloomberg: Elise M. Bloom, Manhattan (212) 969-3000
For amici State and City: Assistant Solicitor General Cleland B. Welton II (212) 416-6197

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To be argued Wednesday, February 14, 2024

No. 21 People v Jonaiki Martinez Estrella

In June 2018, Jonaiki Martinez Estrella and about a dozen other members of the Trinitarios gang in the Bronx confronted 15-year-old Lesandro Guzman-Feliz and, believing he belonged to a rival gang, chased him into a bodega. A few gang members followed him into the store, beat him and dragged him out onto the street, where they all joined in the beating, which was captured on video. They repeatedly stabbed and slashed Guzman-Feliz with knives and a machete until Estrella stabbed him in the throat, inflicting the only fatal wound.

Estrella was convicted of first-degree murder, second-degree murder and lesser charges, and was sentenced to life without parole on the first-degree count of murder preceded by torture. That count was based on Penal Law § 125.27(a)(x), which applies to a defendant who intentionally caused the death of a person and "acted in an especially cruel and wanton manner pursuant to a course of conduct intended to inflict and inflicting torture upon the victim prior to the victim's death. As used in this subparagraph, 'torture' means the intentional and depraved infliction of extreme physical pain; 'depraved' means the defendant relished the infliction of extreme physical pain upon the victim evidencing debasement or perversion or that the defendant evidenced a sense of pleasure in the infliction of extreme physical pain...."

The Appellate Division, First Department vacated the first-degree murder conviction and remanded for resentencing on the remaining convictions, finding there was insufficient evidence to establish two elements of the crime. Noting that "the puncture wounds, cuts, scrapes, and blunt force injuries that the victim sustained" before he was stabbed in the throat "all were 'superficial' – a medical term describing an injury that affects the top layer of skin," the court said, "[I]t cannot be reasonably doubted that the fatal blow to the victim's neck caused extreme pain. Yet, that blow was a single act rather than a course of conduct. Thus, we find that defendant and his accomplices did not engage in a 'course of conduct' involving the intentional infliction of extreme physical pain." It said, "[T]he record also fails to support the conclusion that defendant 'relished' or 'evidenced a sense of pleasure in the infliction of extreme physical pain.' In arguing to the contrary, the People point out that, after the homicide, defendant twice told other gang members that he had 'hit [the victim] in the neck,' in a tone that the listener considered boastful. This did not meet the statutory standard. In our view, the statute contemplates evidence that the defendant savored the infliction of extreme pain in the process of inflicting the pain, and for its own sake."

The prosecution argues, "Nothing in the statute limits the definition of 'torture' to a series of physical assaults that each, independently, penetrates the deeper levels of the skin.... The jury rationally found, therefore, that by roughly dragging [the victim] from the bodega, beating and kicking him, and repeatedly stabbing him with knives and a machete, defendant and his cohorts inflicted extreme physical pain...." It also argues the evidence "proved that defendant's conduct was 'depraved' in that he reveled in the pain he inflicted.... [D]efendant bragged about the killing in comic-book style, exultantly remarking that the impaled victim was 'not gonna eat for a good long time....' As the jury rationally found, defendant's braggadocious statements, viewed in the context of the savage assault on [the victim], proved that defendant derived pleasure from inflicting pain on the helpless teenager."

For appellant: Bronx Assistant District Attorney Reva Grace Phillips (718) 664-2316
For respondent Estrella: Steven N. Feinman, White Plains (914) 949-8214

State of New York
Court of Appeals

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To be argued Wednesday, February 14, 2024

No. 22 People v Jason Bohn

Jason Bohn was charged with first-degree murder under the "torture" provision of Penal Law § 125.27(1)(a)(x) for the fatal beating and strangling of his girlfriend, Danielle Thomas, in their Queens apartment in June 2012. He did not deny killing Thomas, but raised the affirmative defense of extreme emotional disturbance (EED) at trial. The evidence showed the Bohn's fatal assault on the victim lasted at least 80 minutes, a 3-minute portion of which was recorded in a voicemail message left when a call was accidentally made from Thomas's phone to one of Bohn's friends. In the recording, Thomas can be heard screaming, moaning and pleading for mercy, while Bohn angrily taunts and mocks her. Bohn repeatedly demanded information about an unknown phone number he found on Thomas's phone, while she repeatedly denied any knowledge of the phone call. The victim's injuries included broken ribs, a lacerated liver and a fractured trachea. Bohn was convicted of first-degree murder and lesser charges and was sentenced to life without parole.

He argued on appeal that the prosecution failed to establish all of the elements of the torture-murder statute, which applies to intentional murders in which the defendant "acted in an especially cruel and wanton manner pursuant to a course of conduct intended to inflict and inflicting torture upon the victim prior to the victim's death. As used in this subparagraph, 'torture' means the intentional and depraved infliction of extreme physical pain; 'depraved' means the defendant relished the infliction of extreme physical pain upon the victim evidencing debasement or perversion or that the defendant evidenced a sense of pleasure in the infliction of extreme physical pain...." In particular, Bohn argued there was no evidence that he "relished" or took "pleasure" in inflicting pain.

The Appellate Division, Second Department found there was sufficient evidence to support the conviction and affirmed, without discussing specific elements of the torture-murder provision. The court also rejected Bohn's claims that Supreme Court improperly denied his for-cause challenges to three prospective jurors and that it erred by qualifying a prosecution rebuttal witness as an expert on his EED defense.

Bohn argues, "The evidence here was insufficient to prove the torture mens rea beyond a reasonable doubt.... Both the defense's and the People's experts agreed that appellant sounded angry on the voicemail, and his actual statements demonstrated rage at Thomas for what he perceived as her disloyalty for calling an unknown number on her phone. But far from demonstrating appellant was deriving pleasure, the voicemail suggested appellant continued to injure Thomas to obtain information relating to that number and to punish her for deceiving him.... Thomas's injuries, blunt force traumas with manual strangulation, also failed to suggest appellant enjoyed inflicting them. There was no evidence she was brutalized for hours on end, no weapons were used, and no acute sadism, such as sexual or fetishistic violence, was involved.... If Thomas's blunt-force trauma injuries – all too common in one-on-one intentional murders – established an intent to torture under [section 125.27(1)(a)(x)], it would automatically convert numerous cases to first-degree murders-by-torture, setting a da ngerous precedent."

The prosecution argues "the statute and the legislative history do not confine torture murder to a limited set of scenarios where only the most brutal or macabre of murders justify a conviction" and, even if the law is limited to "uncommon" crimes, "statistics show that murder by prolonged beating and choking is an uncommon form of homicide.... The evidence also established that defendant relished the infliction of pain upon Danielle and that he derived a sense of pleasure in the infliction of extreme physical pain. Defendant continued to inflict extreme physical pain upon Danielle and taunt her despite her pleas for mercy and obvious suffering, thus allowing a reasonable factfinder to conclude that defendant enjoyed inflicting pain upon her.... [I]t is of no moment that defendant may also have tortured Danielle to garner information about a number he found on her phone. It is well-established that individuals may commit crimes with more than one purpose in mind, and these purposes (pleasure and information gathering) are not mutually exclusive."

For appellant Bohn: Mark W. Vorkink, Manhattan (212) 693-0085 ext 549
For respondent: Queens Assistant District Attorney Christopher Blira-Koessler (718) 286-5988

State of New York
Court of Appeals

To be argued Wednesday, February 14, 2024

No. 23 People v Farod Mosley

A police surveillance camera recorded video of a man firing three shots from a handgun into the driver's side of a red van on a Syracuse street in June 2015. The two brothers in the van fled the scene, did not report the incident to police, and were unable or unwilling to identify the shooter. No other eyewitnesses came forward, leaving the poor quality surveillance video as the key evidence in the case. County Court allowed a Syracuse police detective -- who had met Farod Mosley for the first time seven months after the shooting incident, when he was arrested on unrelated charges in January 2016 – to identify Mosley as the gunman in the video. The court found the detective "has an extensive basis of knowledge for making an identification of Mr. Mosley." Mosley was convicted of two counts of second-degree criminal possession of a weapon, one count of reckless endangerment, and sentenced to 15 years in prison.

The Appellate Division, Fourth Department affirmed in a 3-2 decision, ruling the trial court did not abuse its discretion in permitting the detective's identification testimony "because the People presented evidence establishing that the police detective was familiar with defendant based on numerous prior interactions with defendant over the course of more than a year, during which time the police detective observed defendant's appearance, body language, demeanor, and gait. Thus, there 'was some basis for concluding that the [police detective] was more likely to identify defendant correctly than was the jury'.... Also, the court properly concluded that the police detective would be more likely to identify defendant ... because of the 'poor quality of the surveillance [video]'" It said "the court properly instructed the jurors that, inter alia, the police detective's testimony should not automatically be accepted and that the identity of the shooter was a question of fact for the jury...."

The dissenters argued the lower court erred in allowing the detective's identification. "During voir dire, the police detective testified that he interacted with defendant at a police station, where he 'sat in rooms' with defendant, 'walked side by side' with him on occasion, and viewed photographs of him. The police detective could recall, however, only a single day on which these interactions took place and conceded that he did not recall ever having a 'street interaction[]' with defendant. Thus..., there was an insufficient basis on which to conclude that the police detective was more likely than the jury to correctly identify the person in the poor quality surveillance video." They said the detective's court-approved testimony that he had known Mosley for about a year and a half "overstated the police detective's familiarity with defendant and thus deprived the jury of the ability to independently assess the police detective's basis for making the identification and determine whether to accept or reject that testimony."

For appellant Mosley: Thomas Leith, Syracuse (315) 422-8191
For respondent: Onondaga County Sr. Asst. District Attorney Bradley W. Oastler (315) 435-2470

State of New York
Court of Appeals

To be argued Wednesday, February 14, 2024

No. 24 People v Harvey Weinstein

Hollywood producer Harvey Weinstein was found guilty of sexually assaulting two women in New York – a conviction of first-degree criminal sexual act for forcibly performing oral sex on M.H. at his Soho apartment in 2006 and a conviction of third-degree rape for having non-consensual intercourse with J.M. at a midtown Manhattan hotel in 2013. Weinstein was sentenced to 23 years in prison. In addition to M.H. and J.M., a third complainant, A.S., testified at trial about her alleged rape by Weinstein in 1993 as a predicate for two counts of predatory sexual assault, of which Weinstein was acquitted. Three other women, who had also been aspiring actors, were permitted to testify that Weinstein had sexually assaulted them. All of these witnesses had previously expressed hopes that Weinstein could help further their entertainment careers, or fears that he could impede them. The Appellate Division, First Department affirmed the judgment.

Weinstein argues the admission of such testimony about uncharged crimes deprived him of a fair trial by tending to show he had a propensity for committing the charged crimes, without having any valid purpose. The Appellate Division ruled the evidence was admissible to prove Weinstein's intent, to show that he "knew that a woman would not consent to having sex with him merely as a quid pro quo for the assistance he could provide them in their professional career," and to provide context explaining why the complainants maintained cordial relationships with him after the assaults. Weinstein also challenges the trial court's ruling that, if he took the stand, prosecutors could cross-examine him about 28 uncharged sex offenses and other bad acts spanning nearly 30 years. Weinstein did not take the stand and he contends the ruling deprived him of his right to testify on his own behalf.

Weinstein argues the third-degree rape charge was time-barred because it was filed 68 days after the five-year statute of limitations expired and the trial court improperly applied CPL 30.10(4)(a)(I) to extend it. The statute tolls the running of the statute of limitations for periods after commission of the crime during which "the defendant was continuously outside this state," and the prosecution maintained Weinstein had been outside of New York for 264 days. The Appellate Division rejected his claim that the tolling statute does not apply to New York residents like him, saying the statute does not distinguish between residents and nonresidents.

Weinstein also claims he was deprived of a fair trial by the denial of his for-cause challenges to a juror, before and after she was sworn in, who he says falsely denied during voir dire that her soon-to-be published novel was about "predatory older men" and their relationships with younger women. The Appellate Division said he failed to establish that the juror was dishonest about the nature of her novel or that its subject matter indicated that she would be biased against him. The court concluded that it was "not obvious ... that she was grossly unqualified from jury service."

For appellant Weinstein: Arthur L. Aidala, Manhattan (212) 486-0011
For respondent Manhattan D.A.: Appeals Division Chief Steven C. Wu (212) 335-9000

State of New York
Court of Appeals

To be argued Thursday, February 15, 2024

No. 25 Matter of Colon v Teachers' Retirement System of the City of New York

New York City school teacher Louis Barcelo died of COVID-19-related causes in April 2020 and his registered domestic partner, Anne Marie Colon, was his designated beneficiary to receive the ordinary death benefit under his Teachers' Retirement System (TRS) pension plan. At that time, his death did not qualify for the pension plan's accidental death benefit, which has a greater monetary value and may be claimed only by the plan member's "eligible beneficiary" as defined by Retirement and Social Security Law (RSSL) § 601(d), which would be Barcelo's teenage daughter. In May 2020, the State Legislature amended the law to extend accidental death benefits, which had been limited to cases where members died as a result of their work, to include members who died as a result of COVID-19 infection. The amendment (RSSL § 607-i) was made retroactive to March 1, 2020, and provided that if the ordinary death benefit had already been paid, the statutory or "eligible beneficiary" would receive the difference between that and the accidental death benefit.

Colon attempted to file a claim for ordinary death benefits in June 2020, but found TRS had frozen her account based on the enactment of RSSL § 607-i. In August 2020, TRS determined that "if TRS receives a valid application for a[n] ... accidental death benefit from a statutory beneficiary, which we expect, the accidental death benefit will be paid out in lieu of the [ordinary] death benefit." In September 2020, the guardian of Barcelo's daughter filed for accidental death benefits on her behalf. The following month, Colon filed this suit to annul TRS's determination, arguing that its application of the amendment to deny her claim and give priority to the statutory beneficiary violated the Pension Impairment Clause of the State Constitution (article V, § 7[a]).

Supreme Court granted Colon's petition and ordered TRS to pay her the ordinary death benefit and to pay the enhanced amount of the accidental death benefit to Barcelo's daughter. "I think we can read the statute, so that it is not unconstitutional..., and that would be to acknowledge that a designated beneficiary of the ordinary death benefit could still get their benefit and just reduce the accidental death benefit that then goes to the statutory beneficiary ... so that all rights are protected...," it said. "People take care of things they think they need to take care of, and they designate beneficiaries accordingly. So here, [Barcelo] designates a beneficiary, he dies, he can no longer make alternative arrangements. And, then,... six weeks later, a statute is enacted, which basically negated the actions that he took."

The Appellate Division, First Department reversed. "Applying the plain language of the statute, the decedent's statutory beneficiary was entitled to unreduced accidental death benefits because [Colon], the designated beneficiary, had not yet been paid any ordinary death benefits. Supreme Court's interpretation that the statute required payment of ordinary death benefits to designated beneficiaries who 'should have been paid' improperly 'amend[ed the] statute by inserting words that are not there'.... The suspension of [Colon's] application for ordinary death benefits to afford the statutory beneficiary an opportunity to file a claim for accidental death benefits was appropriate. [TRS's] interpretation of the amended statute as prioritizing statutory beneficiaries' claims was not irrational and entitled to deference...." It rejected Colon's claim that TRS's application of the amended statute violated the Pension Impairment Clause because she 'failed to show that the retirement benefits and associated rights were 'diminished or impaired'...."

For appellant Colon: Kerstin M. Miller, Baltimore, MD (410) 321-9000
For respondent TRS: Assistant Corporation Counsel Jamison Davies (212) 356-2490

State of New York
Court of Appeals

To be argued Thursday, February 15, 2024

No. 26 Matter of Agramonte v Local 461, District Council 37, American Federation of State, County and Municipal Employees

Edwin Agramonte, Omer Ozcan and Raphael Sequiera are challenging their union's conduct of a 2021 election of officers for Local 461, District Council 37, AFSCME, which represents 1,200 lifeguards employed by the New York City Department of Parks and Recreation. The unincorporated union is composed of 30 year-round lifeguards, including Agramonte, and 1,170 seasonal lifeguards who generally work from Memorial Day to Labor Day. In early February 2021, Local 461 President Jason Velasquez issued notices of meetings to nominate candidates and to elect officers on Feb. 25 and 26; he sent the notices to year-round members, but not to seasonal members of the Local. At the nominations meeting, Agramonte nominated himself for president and several seasonal members, including Sequiera and Ozcan, for other offices. The Local's Election Committee ruled that only Agramonte was eligible to run and struck the rest of his slate because seasonal members do not pay dues during months they are not paid and, thus, they were not in good standing at the time of the election. Agramonte lost the election among year-round lifeguards; then he and his fellow petitioners commenced this proceeding to annul the election and compel Local 461 to allow seasonal lifeguards to vote and run for office in a new election. They alleged violations of the Local's own constitution and internal rules, but did not allege that all members authorized the challenged actions.

Supreme Court dismissed the suit, which alleged breach of contract and violation of the common law of elections, due to the petitioners' failure "to sufficiently plead that the individual members of Local 461 authorized or ratified the purportedly unlawful conduct," citing Martin v Curran (303 NY 276 [1951]). It said "the Martin Court concluded that, because a labor union is a voluntary unincorporated association, the plaintiff was required to plead and prove that each member of the union authorized or ratified the alleged wrongful conduct...."

The Appellate Division, First Department affirmed based on Martin. "[T]he law is well settled that suits for breaches of agreements or for tortious wrongs against officers of unincorporated associations, including unions, are limited to situations in which 'the individual liability of every single member can be alleged and proven,'" it said, quoting Martin.

The Agramonte petitioners argue that Martin does not apply to this case because they are not seeking money damages, but instead have "requested injunctive relief to address the unlawful conduct of an election in a local public employees' union, the Lifeguards' Union. Petitioners-Appellants alleged that the officer election held by their union had been conducted in a manner which undercut the basic ability of members to get a fair election, which we assert is a fundamental right under New York law. The basic problem: Only 2.5% of the members of the union were allowed to run for office or vote in the union's 2021 election." They say this case "is akin to union disciplinary cases, guided by the Court of Appeals' decision in Madden v Atkins (4 NY2d 283 [1958])," which created an exception to the Martin rule for cases involving wrongful expulsion from a union.

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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 15, 2024

No. 27 Taxi Tours Inc. v Go New York Tours, Inc.

Go New York Tours, Inc., and the other parties in this antitrust case are engaged in the "hop-on, hop-off" tour bus business in New York City, running buses on fixed routes past popular tourist attractions and allowing customers to "hop off" to visit an attraction and then "hop on" another of the company's buses to visit the next site. The sightseeing companies also offer "multi-attraction passes" that provide customers admission to various sites at discounted rates. The three major competitors in New York – Go New York Tours; Gray Line New York Tours and its related companies; and Big Bus Tours Ltd. and its affiliates – each negotiate their own agreements with tourist attractions to create their bundled passes.

When Taxi Tours Inc., a Big Bus entity, brought this unfair competition suit against Go New York in 2019, Go New York asserted counterclaims against the Gray Line and Big Bus groups for violation of the Donnelly Act, New York's primary antitrust statute, and a related claim for tortious interference with business relations. Go New York alleged that its competitors disparaged it to various attractions, such as the Empire State Building, One World Observatory, and the Intrepid museum; and conspired to use their market power to threaten the attractions with losing their relationships with Gray Line and Big Bus if they did business with Go New York. The Donnelly Act prohibits "every contract, agreement, arrangement or combination whereby ... [c]ompetition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained."

Supreme Court dismissed the antitrust claims for failure to state a cause of action, saying the fact "that some attractions have relationships with the counterclaim defendant[s] ... but choose not to do business with [Go New York] doesn't suffice for an inference of conspiracy to move forward. And there are no allegations of unlawful concerted actions by any particular counterclaim defendants.... Conspiracy can't be the only reason" the attractions would not contract with Go New York, "and it's just not sufficient to support a Donnelly Act claim."

The Appellate Division, Second Department affirmed. "Given the lack of any allegations concerning specific conspiratorial acts or discussions by the alleged coconspirators, the court properly declined to infer the existence of a conspiracy or an unlawful anticompetitive arrangement among Gray Line, Taxi Tours, and the attractions...," it said. "Nor does the record support Go New York's contention that Supreme Court applied the more restrictive federal pleading standard to the Donnelly Act claim." It said the tortious interference claim was properly dismissed because "Go New York failed to state a claim under the Donnelly Act," and "there were no other allegations that counterclaim defendants' conduct amounted to a crime or an independent tort" to show that "wrongful means" were used to reduce competition.

Go New York argues the lower courts "treated the Donnelly Act and the [federal] Sherman Act as essentially mirror images of each other, despite the plain language of the Donnelly Act clearly covering a greater range of anticompetitive relationships as well as anticompetitive action. By requiring that Appellant demonstrate a plausible conspiracy (not merely an arrangement) resulting in a restraint on trade, the lower courts not only applied the Sherman Act standard to the Donnelly Act, but also erroneously applied the Federal 'plausibility' pleading standard ... when they should have applied New York's lower 'notice pleading' standard," which requires that the pleadings give parties fair notice of the nature of the claims.

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State of New York
Court of Appeals

To be argued Thursday, February 15, 2024

No. 28 People v Patrick Labate

In the early morning hours of December 10, 2017, Patrick Labate crashed into a parked police car in Queens, spinning it around. He was charged with reckless driving and related charges. The district attorney's office announced readiness for trial on December 28, 2017, and trial was scheduled for September 5, 2018. On September 5, the prosecution said it was not ready for trial, without explaining why, and requested a 12-day adjournment to September 17. Criminal Court instead adjourned the trial for 43 days to October 18. The prosecution was not ready for trial on October 18 and offered no explanation, and the court adjourned the trial to November 28. The prosecution was again not ready for trial on November 28 and gave no explanation.

Labate moved to dismiss the reckless driving charge on speedy trial grounds, contending the prosecution's delays exceeded the 90-day limit of CPL 30.30. He argued that, in view of the prosecution's subsequent unreadiness and failure to explain why, its statement on September 5 that it would be ready for trial on September 17 was illusory and, therefore, it should be charged with all 43 days of the first adjournment from September 5 to October 18, not just the 12 days it had requested.

Criminal Court denied the speedy trial motion, charging the prosecution with only the 12-day delay it requested on September 5 and finding the remaining 31 days of the first adjournment were chargeable to the court. It said, "The established rule is that 'postreadiness delay attributable to the court is not chargeable to the People' (People v Brown, 28 NY3d 392 ...), thus, the period of the adjournment in excess of that actually requested by the People is excluded (id). Moreover, the Defendant failed to show either that the People's initial statement of readiness was illusory or that the People could not, in fact, be ready on the date they requested." Labate was convicted of reckless driving and was given a conditional discharge.

Appellate Term, Second Department for the 2nd, 11th and 13th Judicial Districts reversed and dismissed the reckless driving charge. "In opposition to defendant's speedy trial motions, the People did not provide any explanation, reasonable or otherwise, for their failure to be ready on September 5, 2018, October 18, 2018 or November 28, 2018," it said. "Consequently, we find that defendant met his burden of demonstrating that the People's statement that they would be ready for trial on September 17th, which is 'presumed truthful and accurate," was illusory (Brown, 28 NY3d at 405). Therefore, we agree with defendant's contention that the entire 43 days of post-readiness delay are chargeable to the People for the period from September 5th until October 18th.... Since the addition of those 31 days of chargeable time brings the number of chargeable days to more than 90," Labate's speedy trial motion should have been granted.

The prosecution argues that, under this Court's precedents, when prosecutors answer ready for trial "but then find it necessary to request an adjournment, they will be 'charged' only with the number of days they request, not with any additional days the court or the defense needs or requests." It says the "ultimate burden" is on defendants to show that a statement of readiness is illusory, and Labate "failed utterly to show that the People could not have been ready on the date they requested" (as opposed to the later date set by the court), "and that their choice of that date was somehow illusory. Thus, the Appellate Term incorrectly shifted the burden to the People to explain their subsequent unreadiness...."

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