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.

To be argued Wednesday, February 12, 2014 (arguments begin at 1 p.m.)

No. 36 Hoover v New Holland North America, Inc.

This products liability case arose in October 2004, when Gary Hoover was using a tractor-mounted post hole digger in the backyard of his Niagara County home. His 16-year-old step-daughter, Jessica Bowers, was helping him by making sure the auger was vertical before Hoover set it in motion. Bowers's coat became snagged on the rotating driveline that connected the tractor's power take off with the gearbox of the digger. As she was pulled into the driveline, her right arm was severed above the elbow. The tractor and post hole digger were owned by Peter Smith, who had previously removed a plastic safety shield from the digger's gearbox after several years of use left it damaged beyond repair. The shield was meant to cover part of the driveline where it was attached to the gearbox with a bolt and nut, which protruded from the driveline.

Bowers brought this action against the seller of the post hole digger, CNH America LLC, and its distributor, Niagara Frontier Equipment Sales, Inc., among other defendants, alleging defective design. All defendants except CNH and Niagara Frontier settled during the trial for $4.6 million. The jury awarded Bowers $8.8 million in damages, apportioning 35 percent of the liability to CNH and 2 percent to Niagara Frontier.

The Appellate Division, Fourth Department affirmed, ruling Bowers submitted sufficient proof to establish that "a protruding bolt that attached the driveline to the gearbox was an entanglement hazard; the plastic gearbox shield used to guard against the protruding bolt could be damaged by normal use or foreseeable misuse of the digger; and there were design alternatives that would have reduced or eliminated the hazards in the subject product and would have resulted in only a nominal increase in cost. Thus, [Bowers] presented sufficient evidence that the digger was defectively designed, and ... that Smith's removal of the damaged gearbox shield did not constitute a substantial modification."

CNH and Niagara Frontier argue they cannot be held liable under a design defect theory because Smith's removal of the safety shield, and his failure to replace it when it was damaged after years of use, constituted a substantial modification of the digger. The product "had all necessary shields, including the gearbox shield, and was reasonably safe" when it was sold to Smith, they say. The Appellate Division's ruling "would require manufacturers to design safety components that will never wear out and will never need replacement" and would encourage "risky behavior by owners of products because it shifts to manufacturers the consequences of the owner's failure to perform maintenance and to keep equipment in safe condition."

For appellants CNH and Niagara Frontier: Paul F. Jones, Buffalo (716) 847-8400
For respondent Bowers: John A. Collins, Buffalo (716) 849-1333
For respondent Andrews: Joseph A. Matteliano, Buffalo (716) 852-2500

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To be argued Wednesday, February 12, 2014 (arguments begin at 1 p.m.)

No. 37 Matter of Gupta v Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts

Federal prosecutors charged Brooklyn immigration attorney Raghubir K. Gupta in 2007 with helping undocumented aliens submit fraudulent applications for an amnesty program. He was convicted of one felony count of immigration fraud after a jury trial in U.S. District Court for the Southern District of New York in 2008, and was sentenced to 51 months in prison and fined $10,000. In 2010, the Appellate Division, Second Department struck Gupta's name from the roll of attorneys to reflect his automatic disbarment based on the federal felony conviction.

In 2012, the U.S. Court of Appeals for the Second Circuit vacated Gupta's criminal conviction and remanded the case for further proceedings, ruling the federal trial court violated his constitutional right to a public trial by excluding the public from jury selection without justification. Based on the Second Circuit's decision, Gupta moved at the Appellate Division to vacate its prior disbarment order and reinstate him to the practice of law.

The Appellate Division, Second Department vacated its disbarment order, but denied his motion for reinstatement. Instead, on its own motion, the court ordered that Gupta "is immediately suspended from the practice of law based on the acts of professional misconduct underlying the criminal allegations." The court authorized the Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts to initiate a disciplinary proceeding against Gupta and directed it to serve him with a petition within 60 days.

Gupta argues the Appellate Division order suspending him from practice violated due process because he "had no notice of an application for suspension, no notice of the evidence upon which the application was based and no opportunity to respond." He says the suspension order should be reversed because the Grievance Committee had not opposed his reinstatement nor sought an interim suspension; he had no notice a suspension was being considered and no opportunity to argue why suspension was not appropriate; no facts justifying suspension were in the record before the Appellate Division and it did not explain the reasons for its decision; and there was "no evidence of misconduct which immediately threatens the public interest."

For appellant Gupta: Raghubir K. Gupta (pro se), Brooklyn (718) 222-1948
For respondent Grievance Committee: Mark F. DeWan (718) 923-6300

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To be argued Wednesday, February 12, 2014 (arguments begin at 1 p.m.)

No. 38 Matter of The Association for a Better Long Island, Inc. v New York State Department of Environmental Conservation

In 2010, the State Department of Environmental Conservation (DEC) amended its regulations in 6 NYCRR Part 182 to extend its enforcement power under the State's Endangered Species Act to include "incidental" takings of protected species. The regulations require a permit for "any activity that is likely to result in the take or a taking of any species listed as endangered or threatened," including hunting, trapping, "and all lesser acts such as disturbing, harrying or worrying." They define an incidental taking as one "that is incidental to, and not the intended purpose of, an otherwise lawful activity." Among other things, the amendments would require landowners to obtain an "incidental take permit" before conducting any activity that would destroy or degrade the habitat of a protected species.

The Town of Riverhead and its Community Development Agency, along with other plaintiffs, brought these consolidated actions to challenge the amended regulations on procedural and substantive grounds. Riverhead owns 3,000 acres of property on the site of the closed Grumman manufacturing facility, now called Enterprise Park at Calverton, and it plans to subdivide and redevelop the site. It says the property provides habitat for several listed species, including the tiger salamander and short eared owl, and thus would be subject to regulation under the challenged amendments. The DEC moved to dismiss for lack of standing, arguing the plaintiffs had not suffered any actual injury because they had not applied for permits nor been subject to any DEC action under the regulations.

Supreme Court dismissed the suits, ruling the plaintiffs lacked standing and their claims were not ripe for review because none of them "has shown that they are currently engaged in an activity regulated under Part 182.... The fact that the petitioners may be required, in the future, to undergo the DEC Part 182 review process is insufficient to constitute an actual or concrete injury." It said they had not applied for a permit, sought a DEC determination of what activities would be subject to regulation, nor had they been cited or fined for a violation under Part 182.

The Appellate Division, Third Department affirmed. It ruled the procedural challenges were ripe, but still must be dismissed for lack of standing because "petitioners' allegations that they may be required to comply with the regulations is potential, speculative harm that is insufficient to confer standing."

Riverhead argues landowners "affected by illegally adopted regulatory amendments must have standing to assert their invalidity at the time of adoption" or the four-month statute of limitations will bar court review. "The Third Department's decision ... creates an untenable "Catch 22" situation. Procedural challenges to improperly adopted regulations ... cannot be brought until the property owner is subjected to the amendments, by which time the procedural challenges would be time barred. No party would have standing to bring such a challenge within the very short four-month statute of limitations period."

For appellant Riverhead: Frank A. Isler, Riverhead (631) 727-4100
For respondent DEC: Assistant Solicitor General Andrew B. Ayers (518) 474-0768

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To be argued Wednesday, February 12, 2014 (arguments begin at 1 p.m.)

No. 39 People v Anthony Lewis

Anthony Lewis was arrested in May 2007 and charged with participating in a scheme to produce counterfeit credit cards, with account information stolen from bank customers in other states, and using the fraudulent cards to make purchases at stores in Manhattan. In January 2007, investigators from the New York County District Attorney's Office had obtained wiretap warrants to eavesdrop on Lewis's phone calls. In March 2007, acting without a warrant, the investigators attached a global positioning system (GPS) device to his car to track its movements and assist them in following him. He was found guilty of multiple larceny, forgery, and identity theft charges. After the trial and before sentencing, the Court of Appeals held in People v Weaver (12 NY3d 433 [2009]) that a warrant is required for continuous monitoring with a GPS tracker. The trial court summarily denied Lewis's motion to set aside the verdict based on Weaver. He was sentenced to 9⅓ to 28 years in prison.

Lewis argued on appeal that he was entitled to a new trial and suppression of the warrantless GPS evidence based on Weaver. Among other claims, he argued the trial court violated CPL 310.20(2) by listing the names and locations of stores where the forged cards were used, rather than the victims -- the banks and cardholders -- to distinguish between similar counts on the verdict sheet. The statute permits courts to use "names of complainants" on verdict sheets.

The Appellate Division, First Department affirmed, saying that "the very limited GPS surveillance in this case was permissible under Weaver.... Unlike the sophisticated device in Weaver..., it did not track defendant continuously. Rather, reports indicate that the device was only accessed by the police on two days to enhance their visual surveillance." Even if it violated Weaver and the 2012 Supreme Court ruling in United States v Jones (132 S Ct 945), any error was harmless because the GPS evidence "played a minimal role in the prosecution's overwhelming case." Finding the verdict sheet complied with CPL 310.20(2), the court said, "The stores were proxies for the complainants in that they are victims of defendant's fraudulent use of the credit cards, even if they do not bear the ultimate loss."

Lewis argues the GPS evidence must be suppressed even if the device was attached to his car for three weeks, only worked for two weeks, and did not track him continuously. "Weaver simply does not turn on such fine distinctions. What mattered: that the GPS did not 'present[] ... the use of a mere beeper to facilitate visual surveillance during a single trip.'" He says the error was not harmless because the events on just one of the days the device was used produced half of the charges that were submitted to the jury. Naming stores on the verdict sheets violated CPL 310.20(2) and requires automatic reversal, he says. The Appellate Division's "creation and approval of complainant 'proxies' -- defined as anyone 'affected' by a defendant's conduct -- would expand the meaning of 'complainant' beyond the statute's limits. Aside from including all witnesses, such 'proxies' would embrace family members and friends of crime victims as 'affected' persons."

For appellant Lewis: Susan H. Salomon, Manhattan (212) 577-2523 ext. 518
For respondent: Manhattan Assistant District Attorney Susan Axelrod (212) 335-9000

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To be argued Wednesday, February 12, 2014 (arguments begin at 1 p.m.)

No. 53 Matter of Subway Surface Supervisors Assn. v New York City Transit Authority

The New York City Transit Authority (TA) employs two categories of supervisory personnel at its subway stations, Station Supervisor Level I (SS-I) and Station Supervisor Level II (SS-II). Station Supervisor is a single job title, the skills required for SS-I and SS-II are the same, and job applicants for either level take a single competitive civil service examination. When the two job categories were created in 1984, some duties of SS-Is and SS-IIs differed and SS-IIs were paid about $14,000 more in base annual salary. Since 2003, the TA has been shifting work from SS-IIs to SS-Is. The union representing SS-IIs, the Transit Supervisors Organization, sought to block the work reassignments, but its improper practice charge was dismissed.

The union representing SS-Is, the Subway Surface Supervisors Association (SSSA), now contends there are no significant differences between the duties of the two job levels and, because they perform the same work, SS-Is are entitled to the same pay as SS-IIs under Civil Service Law § 115 and the state and federal Equal Protection Clauses. Section 115 states, "In order to attract unusual merit and ability to the service of the state of New York, to stimulate higher efficiency among the personnel, to provide skilled leadership in administrative departments, to reward merit and to insure to the people and the taxpayers of the state of New York the highest return in services for the necessary costs of government, it is hereby declared to be the policy of the state to provide equal pay for equal work, and regular increases in pay in proper proportion to increase of ability, increase of output and increase of equality of work demonstrated in service."

Supreme Court denied the TA's motion to dismiss the suit, ruling that SS-Is would be entitled to the same pay as SS-IIs if they perform the same work. It found there were questions of fact as to whether SS-Is and SS-IIs perform the same work.

The Appellate Division, First Department affirmed on a 3-2 vote, holding that section 115 codifies an enforceable public policy. "Contrary to the TA's position, the issue here is not whether the union negotiated an unfavorable deal but whether the TA has violated public policy. Such disputes are amenable to review by the courts." Regarding the constitutional issue, it said, "[T]he fact that SS-Is bargained for their salary has no bearing on whether they have a viable equal protection claim, and we find that the petition sufficiently alleges the claim.... Indeed, because of SSSA's inability to control SS-II pay levels, only a judicial declaration that the TA illegally differentiated between the two classes of workers, if that is indeed what occurred, could prevent a salary disparity from re-emerging."

The dissenters argued, "[A]ll of the case law supports [the TA's] position that Civil Service Law § 115 'merely' enunciates a policy as opposed to providing an enforceable statutory right." They also found there was no viable constitutional claim. SSSA "has not cited any case law in which a union, after agreeing to a salary schedule through collective bargaining, has successfully prosecuted a claim that the equal protection clause has been violated because the salary schedule it agreed to was lower than the salary schedule for similarly situated employees."

For appellant Transit Authority: Robert K. Drinan, Brooklyn (718) 694-4667
For respondent SSSA: Gail M. Blasie, Manhattan (212) 267-9090