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 Tuesday, October 14, 2014

No. 180 Matter of Santiago-Monteverde
Santiago-Monteverde v Pereira

Mary Veronica Santiago-Monteverde is a tenant in a rent-stabilized apartment. After she filed a Chapter 7 bankruptcy petition, the Bankruptcy Trustee, John Pereira, informed her that he intended to accept her landlord's offer to buy her interest in the lease, prompting Santiago-Monteverde to amend her bankruptcy filing to list the value of her rent-stabilized lease as personal property exempt from the bankruptcy estate under Debtor & Creditor Law § 282 (2) (a) as a "local public assistance benefit." The Bankruptcy Court granted the Trustee's motion to strike the claimed exemption on the ground that the value of the lease did not qualify as a "local public assistance benefit." Santiago-Monteverde appealed to the District Court, which affirmed.

On appeal to the U.S. Court of Appeals for the Second Circuit, Santiago-Monteverde argued that the various protections provided to tenants by the rent stabilization program create a value in a rent-stabilized lease that is separate and distinct from the fair market value of the lease, and that this added value constitutes an exempt "local public assistance benefit" under Debtor & Creditor Law § 282 (2) (a). Recognizing that the argument raised an open question under New York law, the Second Circuit asked this Court to resolve the issue by certifying the following question: "Whether a debtor-tenant possesses a property interest in the protected value of her rent-stabilized lease that may be exempted from her bankruptcy estate pursuant to New York State Debtor and Creditor Law Section 282(2) as a 'local public assistance benefit'?"

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For respondent Pereira: J. David Dantzler, Jr., Manhattan (212) 704-6075
For amici curiae State and City of NY: Dep. Solicitor General Anisha Dasgupta (212) 416-8018

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To be argued Tuesday, October 14, 2014

No. 181 Matter of Kigin v New York State Workers' Compensation Board

In 1996, claimant Maureen Kigin injured her neck and back in a motor vehicle accident while performing a work-related task. She successfully established a workers' compensation claim for wage replacement benefits and ongoing medical treatment and, in 2006, the Workers' Compensation Board classified her as having a permanent partial disability. Liability for the claim was subsequently transferred to respondent Special Fund for Reopened Cases. To alleviate Kigin's chronic neck and back pain, her treating physician prescribed acupuncture treatment, which Kigin received in February and April 2010. Meanwhile, in 2007, the State Legislature amended section 13-a (5) of the Workers' Compensation Law to require "[t]he [B]oard ... [to] issue and maintain a list of pre-authorized procedures."

In 2010, the Board published proposed regulations, which incorporated guidelines for pre-authorized procedures recommended by a Governor's task force of medical professionals. After a comment period, the Board adopted those guidelines as the standard of care for the treatment of workplace injuries involving the back, neck, shoulder and knee, rendered on or after December 1, 2010. The guidelines were also incorporated by reference into formal regulations.

Included in the guidelines were a list of pre-authorized medical procedures, and limitations on the scope and duration of each procedure. With respect to acupunture, Kigin had already received the maximum number of treatments permitted by the guidelines without a variance. Her treating physician therefore submitted variance applications to the Special Fund seeking authorization for additional treatments. After an independent medical examination, the Special Fund denied the variance request. Upon review of the evidence, including additional depositions of plaintiff's treating physician and the physician who conducted the independent medical examination, a Workers' Compensation Law Judge denied the variance request. The Workers' Compensation Board affirmed.

The Appellate Division, Third Department, affirmed the Board's determination, saying "the Board acted within its legislatively conferred authority when it devised a list of preapproved medical care deemed in advance to be medically necessary for specified conditions, and did so in a manner consistent with Workers' Compensation Law § 13 (a) and the overall statutory scheme." Kigin contends that the Board "exceeded its statutory authority by promulgating [g]uidelines that ... 'pre-determine' medical necessity, resulting in the 'pre-denial' of medical care." According to Kigin, because the amendment to Workers' Compensation Law § 13-a (5) only directed the Board to pre-authorize certain treatment, "the [g]uidelines are contrary to the statute and amount to an improper administrative attempt to legislate through regulation." Kigin further contends that the guidelines "impermissibly shift the burden of proof established by the Legislature on the question of medical necessity from the employer or insurance carrier to the injured worker."

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For respondent Special Funds: Jill B. Singer, Albany (518) 438-3585
For respondent Workers' Comp. Board: Asst. Solicitor Gen. Paul Groenwegen (518) 474-6639

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To be argued Tuesday, October 14, 2014

No. 182 Borden v 400 E. 55th Street Associates, L.P.
No. 183 Gudz v Jemrock Realty Corp.
No. 184 Downing v First Lenox Terrace Associates

The common issue in these three cases is whether CPLR 901 (b), which in general prohibits class actions to recover statutory penalties, precludes class certification in these actions seeking recovery of alleged rent overcharges under the Rent Stabilization Law, where Rent Stabilization Law § 26-516 (a) mandates a penalty of treble damages for willful overcharge of rent, but the putative class representative has waived the right of the class to seek treble damages.

The plaintiffs in these cases are residential tenants in building owned by the defendants. The plaintiffs commenced these action on behalf of themselves and all other similarly situated tenants, alleging that the defendant building owners unlawfully deregulated the rent of certain units in the buildings while receiving tax benefits in the J-51 program pursuant to Rent Stabilization Law §§ 26-504.1 and 26-504.2 (a). The complaints in each action initially sought treble damages as a penalty pursuant to Rent Stabilization Law § 26-516 (a).

The plaintiffs in each of the cases subsequently waived any claim they might have to treble damages. In Borden and Gudz, the plaintiffs moved for class certification. Supreme Court, New York County, granted the motions and certified the classes in those cases, concluding that CPLR 901 (b)'s prohibition of the use of class actions to recover penalties was not implicated because of the plaintiffs' waivers, and any tenants who wished to pursue the treble damages penalty could opt out of the class and pursue an individual action. In Downing, the defendant moved to dismiss the complaint based on CPLR 901 (b), among other grounds. Supreme Court, New York County, granted the motion and dismissed the complaint.

In Borden and Gudz, the Appellate Division, First Department, affirmed the order granting class certification, and in Downing, the court reversed the dismissal of the complaint and remitted for further consideration of whether class certification was appropriate. The Appellate Division determined that the plaintiff's waiver of the treble damages penalty, and the remaining relief sought by the plaintiffs were compensatory, not punitive.

Defendant 400 East 55th Street Associates argues that Borden's attempt to waive the treble damages provision of the Rent Stabilization Law to evade application of CPLR 901 (b) is "void as against public policy and barred by" the Rent Stabilization Code § 2520.13. Defendant Jemrock Realty Co. contends that the Rent Stabilization Law and Code impose "mandatory" penalties that cannot be waived. Defendant First Lenox states that "interpreting CPLR 901 (b) to permit the waiver of a statutory penalty ... subverts the legislative intent Of CPLR 901(b), inviting class action abuse."

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For respondent Borden: Christian Siebott, Manhattan (212) 779-1414
No. 183 For appellant Jemrock Realty Co.: Magda L. Cruz, Manhattan (212) 867-4466
For respondent Gudz: Christian Siebott, Manhattan (212) 779-1414
No. 184 For appellant First Lenox Terrace Assocs.: Todd E. Soloway, Manhattan (212) 421-4100
For respondent Downing: Matthew D. Brinckerhoff, Manhattan (212) 763-5000