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, October 22, 2014

No. 200 Branic International Realty Corp. v Pitt

Branic International Realty Corp., the owner of a single room occupancy (SRO) rent-stabilized hotel on the Upper West Side of Manhattan, entered into an agreement with the New York City Human Resources Administration (HRA) in 2003. HRA agreed to rent as many as 134 rooms in the hotel as emergency housing for its homeless clients and to pay a nightly rate of $65 per room. HRA placed Phillip Pitt at the hotel in January 2003 and paid the rent for him directly to Branic until April 2007, when it notified Branic that it was cancelling his placement. HRA temporarily ceased paying for Pitt's room that month, but he continued to live there without paying rent. In June 2007, Branic commenced this licensee holdover proceeding to evict Pitt. Pitt moved to dismiss the proceeding on the ground he was a "permanent tenant" entitled to continued occupancy under the Rent Stabilization Code (RSC).

Civil Court granted Pitt's motion for summary judgment and dismissed the proceeding, finding Pitt was protected from eviction as a "permanent tenant" of the hotel under RSC § 2520.6(j). It rejected Branic's argument that Pitt was not tenant under the RSC because it had no landlord-tenant relationship with him, since Pitt had no obligation to pay rent. "In defining who is a permanent hotel tenant, the Code does not refer to who must pay rent," the court said. "The Code considers tenants permanent if they reside continuously in a hotel as a primary residence for six months."

Appellate Term, First Department reversed and awarded possession of the room to Branic. Since HRA placed Pitt at the hotel and paid the rent, he had "no express or implied landlord-tenant relationship" with Branic, it said. "Therefore, [Pitt] was merely a licensee of HRA..., not a 'permanent tenant' entitled to the protections afforded by [section 2520.6(j)]. Since [Pitt's] license was revoked and he has no right to continued possession..., [Branic's] cross motion for summary judgment on its claim for possession should have been granted."

The Appellate Division, First Department reversed and dismissed the proceeding. "A plain reading of RSC § 2520.6(j) reveals that the only requirement to be a 'permanent tenant' is six months or more of continuous residence in a particular hotel building." While Pitt would not qualify as a "tenant" under RSC § 2520.6(d) because he lacked a landlord-tenant relationship, it said, "RSC §2520.6(j) states that 'reference in this code to "tenant" shall include permanent tenant with respect to hotels.' This language indicates that ... a hotel's permanent tenant is nonetheless afforded the rent stabilization protections under the RSC." Although "housing accommodations ... leased by ... any municipality" are exempt from the RSC under section 2520.11(b), the court said Branic's agreement with HRA "cannot be construed as a lease" due to "the absence of essential terms such as the precise number of rooms to be occupied and paid for by HRA." Pitt voluntarily vacated the room in July 2012, but the court said this case "affects a large number of New Yorkers who declare permanent tenancy in a SRO" and, thus, "presents an exception to the mootness doctrine."

For appellant Branic: Ronald J. Rosenberg, Garden City (516) 747-7400
For respondent Pitt: Martha A. Weithman, Manhattan (212) 799-9638

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To be argued Wednesday, October 22, 2014

No. 195 Motelson v Ford Motor Company

In July 2000, Steven Motelson was driving home to Staten Island in a 1998 Ford Explorer with four passengers when he lost control of the vehicle in Goshen, Orange County. His adult son Gary Motelson was in the front seat, and Gary's sons Brian and Evan Motelson sat in the rear with a family friend. The SUV accelerated, swerved, and rolled over nearly four times, coming to rest on its side with its roof partially collapsed. Steven died at the scene and Brian died the next day. The other passengers survived. Gary brought this action against Ford Motor Company, which manufactured the vehicle, and Ford Motor Credit Company, which leased it to Steven, alleging that Ford had been negligent in designing the roof support system. Among other claims, the suit sought damages for Gary and Evan for severe emotional distress, on the theory that they were in the "zone of danger" when they witnessed the fatal injuries of Steven and Brian.

At trial, Gary and Evan presented testimony of their treating psychiatrists that they suffered extreme emotional distress due to the accident -- resulting in posttraumatic stress disorder, depression, and other mental conditions -- and testimony of an economist about the cost of their future psychiatric treatment. Ford did not cross-examine the witnesses or offer rebuttal testimony. The jury found Ford was negligent in designing the roof and the defect was a substantial factor in causing Steven's death, but it awarded no damages to Gary or Evan.

Supreme Court, among other things, granted the motion of Gary and Evan to set aside the verdict to the extent of ordering a new trial on "zone of danger" damages unless Ford agreed to awards of $3.2 million to Gary and $5.5 million to Evan. It said the plaintiffs "not only witnessed their father and grandfather's head crushed under the roof, but also feared that their own lives were in peril as they were under the same roof which the jury found was defective and negligently designed. They were injured physically and emotionally from the same position of peril.... Gary and Evan Motelson were within the 'zone of danger' and can recover for the emotional distress resulting from it.... The defendants chose not to question the psychiatrists appearing for either [plaintiff], nor did the defendants present any contrary evidence."

The Appellate Division, Second Department modified by reversing the order for a new trial on zone of danger damages and dismissing the suit. "The issue of whether Gary Motelson and Evan Motelson suffered emotional distress because they were placed in Steven Motelson's zone of danger ... was not submitted to the jury," it said. "The jury was instructed that, if it found that the plaintiffs were entitled to recover from the defendants, it 'must also include in [the] verdict damages for any mental suffering; emotional, psychological injuries. These are subsumed ... into the pain and suffering questions' (see 1B NY PJI3d 2:284). However, no separate causes of action sounding in infliction of emotional distress or zone-of-danger damages resulting from Steven Motelson's injuries and death were submitted to the jury. The verdict sheet asked whether the negligent design of the roof was 'a substantial factor in causing Steven Motelson's injuries and death,' and not whether that defect caused injuries to any other plaintiff."

For the Motelson appellants: Brian J. Isaac, Manhattan (212) 233-8100
For respondent Ford Motor : Wendy Lumish, Miami, FL (305) 530-0050
For respondent Ford Motor Credit: Joanna M. Topping, White Plains (914) 323-7000

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To be argued Wednesday, October 22, 2014

No. 196 Sue/Perior Concrete & Paving, Inc. v Lewiston Golf Course Corporation

Lewiston Golf Course Corporation (LGCC) was formed under the laws of the Seneca Nation of Indians in 2007 to develop and operate a golf course on a 250-acre parcel in the Town of Lewiston as an amenity to the Seneca Casino and Hotel in Niagara Falls. LGCC is a subsidiary of Seneca Niagara Falls Gaming Corporation (SNFGC), which is a subsidiary of Seneca Gaming Corporation (SGC), which is owned by the Seneca Nation. SNFGC conveyed the parcel to LGCC and, in August 2007, LGCC contracted with Sue/Perior Concrete & Paving, Inc. to build an 18-hole golf course and related facilities for $12.7 million. LGCC received more than $1 million in tax breaks for the project through the Niagara County Industrial Development Agency (NCIDA). The project was completed in December 2009, a year later than planned, and Sue/Perior claimed it was owed an additional $4.1 million for extra work and delay-related damages. When LGCC refused to pay, Sue/Perior filed a mechanic's lien against the property and brought this action for foreclosure of the lien and for breach of contract, among other things. LGCC moved to dismiss on sovereign immunity grounds.

Supreme Court denied the motion, ruling LGCC was not entitled to sovereign immunity as an "arm" of the Seneca Nation under the factors identified in Matter of Ransom v St. Regis Mohawk Educ. & Community Fund (86 NY2d 553). "Though LGCC did satisfy some of the basic factors..., LGCC was not specifically established to enhance the health, education and welfare of the Nation, which function is generally reserved for a governmental agency." It was created "to construct and operate a championship level golf course to promote tourism in the Niagara region," the court said.

The Appellate Division, Fourth Department upheld the ruling. While courts have held SGC and SNFGC have sovereign immunity as arms of the Seneca Nation, it said the "more important" Ransom factors support the denial of immunity to LGCC. The Seneca Council's "own statements reflect that the purpose of LGCC -- to develop a golf course as an 'amenity' to the Nation's gaming operations -- is several steps removed from the purposes of tribal government, e.g., 'promoting tribal welfare, alleviating unemployment, [and] providing money for tribal programs'.... The documents LGCC submitted to NCIDA further indicate that the central purpose of the golf course project was not to provide funds for traditional governmental programs," but instead "to serve as a regional economic engine." Among other factors weighing against immunity, it said, "(1) LGCC generates its own revenue; (2) there is no evidence in the record ... that a suit against LGCC would impact the Nation's fiscal resources; and (3) LGCC does not have binding authority over the Nation's funds." Unlike SGC and SNFGC, "LGCC was intended to function as a regular business entity, with profits, losses, and legal and tax obligations applicable to any other business operated outside the confines of an Indian reservation by a non-native entity."

LGCC argues that it "is virtually identical in purpose and structure" to SGC and SNFGC, which "have consistently been held by other courts ... to possess sovereign immunity.... When creating LGCC, the Tribal Council emphasized the governmental purposes to be served, stating in LGCC's Charter that 'the economic success of the Nation's gaming operations is vitally important to the economy of the Nation and the general welfare of its members,' and that 'the Nation has found it to be in the best interests of the Nation and its gaming operations to develop and operate a golf course [in] Lewiston'.... LGCC's Charter provides that it is a 'governmental instrumentality' and 'subordinate arm' of the Seneca Nation 'entitled to all of the privileges and immunities of the Nation,' and expressly states that LGCC is entitled 'to enjoy the sovereign immunity of the Nation, to the same extent as the Nation.'"

For appellant Lewiston Golf Course: Edmund C. Goodman, Portland, Oregon (503) 242-1745
For respondent Sue/Perior Concrete & Paving: Gregory P. Photiadis, Buffalo (716) 855-1111

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To be argued Wednesday, October 22, 2014

No. 203 Strauss Painting, Inc. v Mt. Hawley Insurance Company

Manual Mayo was injured on September 16, 2008 while working on a renovation project for the Metropolitan Opera Association (the Met) at Lincoln Center. Mayo brought a personal injury action against the Met two months later and, on December 5, 2008, the Met notified its contractor, Strauss Painting, Inc., of the lawsuit and demanded a defense and indemnification. On December 29, 2008, the Met's insurer sent a letter to Strauss demanding a defense and indemnification for the Met. On January 13, 2009, Strauss's insurance broker sent a notice of occurrence to Strauss's commercial general liability insurer, Mt. Hawley Insurance Company. On February 3 and March 4, 2009, Mt. Hawley wrote to the Met's insurer seeking information to determine whether the Met was an additional insured under the Mt. Hawley policy and when the Met first had notice of Mayo's injury. After the Met filed a third-party complaint against Strauss in the Mayo action seeking a defense and indemnification, Strauss brought this action against Mt. Hawley and the Met on March 12, 2009, seeking a declaration that Mt. Hawley was required to defend and indemnify Strauss in the Mayo action. On June 16, 2010, the Met filed cross claims against Mt. Hawley in this action, seeking a declaration that it was an additional insured under Mt. Hawley's policy and was entitled to a defense and indemnification in the Mayo action.

Supreme Court granted the Met's summary judgment motion and ruled Mt. Hawley must defend and indemnify the Met in the Mayo action. Even if Strauss's renovation contract did not expressly require it to name the Met as an additional insured, the court said, "it is indisputable that the Mt. Hawley policy ... does contain an 'additional insured endorsement' that, in turn, names the Met as an additional insured against 'liability for "bodily injury" ... caused, in whole or in part, by ... the acts or omissions of those acting on your behalf....'" It found "the Met's three/four-month delay in notifying Mt. Hawley [of Mayo's suit] was unreasonable," but said Mt. Hawley failed to provide the Met with a notice of disclaimer. "The ... February 3 and March 4 [letters] ... are insufficient in that they did not definitively disclaim coverage, but rather reserved Mt. Hawley's right to disclaim coverage." The court granted Mt. Hawley's motion to dismiss Strauss's complaint, saying "a notice of disclaimer was issued by Mt. Hawley as to Strauss, denying coverage, due to untimely notice of the Mayo occurrence."

The Appellate Division, First Department modified by, among other things, deleting a portion of Supreme Court's amended order that conditioned Mt. Hawley's duty to indemnify the Met upon a finding of negligence by Strauss. "The additional insured endorsement speaks in terms of 'acts or omissions,' not negligence." The Appellate Division said Mt. Hawley was obligated to provide coverage to the Met based on the language of Strauss's contract with the Met and of Mt. Hawley's liability policy. It said Strauss was not entitled to coverage in the Mayo action because its "notice of the accident to Mt. Hawley was untimely as a matter of law, and Mt. Hawley timely disclaimed coverage on that ground."

For appellant-respondent Strauss Painting: Richard Janowitz, Mineola (646) 522-4141
For respondent-appellant Mt. Hawley Insurance: Clifton S. Elgarten, Manhattan (212) 223-4000
For respondent Metropolitan Opera Assoc.: William J. Mitchell, Albertson (516) 294-5433

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To be argued Wednesday, October 22, 2014

No. 216 Sierra v 4401 Sunset Park, LLC

4401 Sunset Park, LLC, the owner of a Brooklyn apartment building, and Sierra Realty Corp., its managing agent, entered into an agreement with LM Interiors Contracting, LLC in 2008 to perform renovations in the building. The contract required LM Interiors to maintain commercial general liability (CGL) insurance and to name 4401 Sunset and Sierra Realty as additional insureds on the policy, which LM Interiors obtained from Scottsdale Insurance Company. On August 18, 2008, an employee of LM Interiors, Juan Sierra, was seriously injured at the work site while using a table saw. LM Interiors immediately notified 4401 Sunset of the accident, but did not notify Scottsdale. In November 2008, the injured worker brought a personal injury action against 4401 Sunset and Sierra Realty, and LM Interiors contacted the broker for its Scottsdale policy and filled out a claim form. On January 6, 2009, the primary insurer of 4401 Sunset and Sierra Realty, Greater New York Insurance Company (GNY), wrote to Scottsdale, tendering a claim for defense and indemnification of 4401 Sunset and Sierra Realty in the personal injury action. On February 2, 2009, Scottsdale responded with a letter to GNY disclaiming coverage on the ground it had received late notice of the accident. Scottsdale did not send the letter to 4401 Sunset or Sierra Realty, who brought a third-party action against Scottsdale for a declaration that it was required to provide coverage for them.

In Supreme Court, 4401 Sunset and Sierra Realty moved for summary judgment, arguing that Scottsdale did not properly disclaim coverage because it sent the disclaimer only to GNY, not to them. The court granted the motion and declared that Scottsdale was obligated to defend and indemnify them.

The Appellate Division, Second Department affirmed. It said, "Where a primary insurer, in this case GNY, tenders a claim for a defense and indemnification to an insurer, in this case Scottsdale, which issued a certificate of insurance to the parties, indicating that they are additional insureds, that insurer must comply with the disclaimer requirements of Insurance Law § 3420(d)(2) by providing written notice of disclaimer of coverage to the additional insureds.... The failure of Scottsdale to provide written notice of disclaimer to 4401 and Sierra Realty rendered the disclaimer of coverage ineffective against them.... Under the circumstances of this case, GNY was not the real party in interest, such that the notice of disclaimer to GNY would be rendered effective as against 4401 and Sierra Realty."

Scottsdale argues that it "complied with [section] 3420(d) when it responded to GNY directly in a timely manner, without copying 4401 or Sierra Realty. Indeed, by virtue of the insurance contract between them, GNY became 4401 and Sierra Realty's agent as to all matters related to Mr. Sierra's claim.... Inasmuch as notice to an agent constitutes notice to a principal, Scottsdale's disclaimer complies" with the statute. It also says its disclaimer was valid because GNY, "which is contractually obligated to indemnify 4401 and Sierra Realty, is the real party in interest" since "it bears the overwhelming majority, if not all, the financial exposure for 4401 and Sierra Realty's liability."

For appellant Scottsdale Insurance: Matthew Lerner, Albany (518) 463-5400
For respondents 4401 Sunset Park & Sierra Realty: Corey Reichardt, Manhattan (212) 374-9101