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 Wednesday, October 19, 2022

No. 86 Worthy Lending LLC v New Style Contractors, Inc.

Worthy Lending LLC began making a series of loans to Checkmate Communications LLC in 2019 pursuant to a financing agreement that gave Worthy a security interest in Checkmate's assets, including its accounts receivable. The agreement also authorized Worthy to notify Checkmate's account debtors of its security interest in the accounts and instruct them to make payments directly to Worthy. The lender sent such a notice to New Style Contractors, Inc., an account debtor that owed Checkmate more than $1.4 million, and directed New Style to make its payments only to Worthy. It warned New Style that, pursuant to Uniform Commercial Code (UCC) § 9-406, payments made to Checkmate "will not discharge any of [New Style's] obligations with respect to such Accounts" and New Style "shall remain liable to [Worthy] for the full amount of such Accounts." Worthy sent additional notices to New Style when it continued to make its payments to Checkmate, but New Style never made a payment to Worthy. After Checkmate defaulted on more than $3.2 million in loans from Worthy in 2020, Worthy accelerated the debt and demanded immediate payment. Worthy then brought this action against New Style asserting a single claim under UCC 9-607 and seeking recovery of all amounts New Style paid to Checkmate after it received Worthy's first notice of assignment.

Supreme Court dismissed the suit, saying, "As an initial matter, the court finds that the agreement between [Worthy] and Checkmate provided [Worthy] with a security interest and was not an assignment" of Checkmate's accounts. It said Worthy's "complaint admits that there is an underlying dispute between it and Checkmate, and that Checkmate owes plaintiff over $3 million.... The existence of that dispute bars plaintiff from bringing a cause of action under UCC § 9-607. In other words, that ongoing dispute bars plaintiff from bringing a case against one of Checkmate's debtors based on the notion that [New Style] should have started paying [Worthy] before Checkmate even defaulted...." It further held that "the notice of assignment was not sufficient under UCC § 9-406 to require [New Style] to start making payments to plaintiff. Of course, a secured party with a security interest is not the same as an assignee...."

The Appellate Division, First Department affirmed, saying Worthy "did not have an independent cause of action against [New Style] pursuant to UCC 9-607. Plaintiff and [New Style] have no contractual or other relationship or duty to one another. Plaintiff seeks to impose upon [New Style] a separate obligation to repay plaintiff the same amount it has already paid [Checkmate] under their contract. Because there was a dispute between plaintiff, the secured creditor, and [Checkmate] as to who had the right to collect from [New Style], section 9-607(e) applied" to preclude Worthy's claim.

Worthy argues the lower court decisions conflict with a 2020 commentary from the UCC Permanent Editorial Board that UCC 9-406 does not distinguish between a security interest and an assignment, which makes its notice directing New Style to make payments directly to Worthy enforceable under UCC 9-607. It also says Checkmate's default is not a "dispute" that would void Checkmate's assignment of its accounts to Worthy.

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For respondent New Style: Glenn P. Berger, Manhattan (212) 687- 3000

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No. 85 Everhome Mortgage Company v Aber

Nuchem Aber borrowed $368,000 from Fairmont Funding, LTD in 2003, and the loan was secured by a mortgage on residential property in Brooklyn. Aber allegedly stopped making monthly payments on the mortgage in 2008. Fairmont assigned the mortgage to Everhome Mortgage Company on April 13, 2009, and 17 days later – on April 30, 2009 – Everhome commenced a foreclosure action against Aber. The mortgaged property was transferred to Equity Recovery Corporation in December 2009. In 2013, Supreme Court dismissed the first foreclosure action based on Everhome's failure to appear for a conference. On June 24, 2015, Everhome commenced this second foreclosure action against Equity and Aber. In their answer, Equity and Aber contended the action was time-barred.

Supreme Court granted Equity's motion to dismiss the action as time-barred. It found the first foreclosure action "filed on 4/30/09" accelerated the mortgage, triggering the six-year statute of limitations on the entire debt, and this second action "was filed on 6/24/15, slightly more than six years later." Thus, it said Equity "met its initial burden of demonstrating, prima facie, that this action was untimely," and Everhome failed to raise a question of fact in opposition.

Everhome argued on appeal that its first foreclosure action did not accelerate the mortgage because there is a question of fact as to whether it complied with paragraph 22(b) of the mortgage agreement, which required it to give Aber a 30-day notice and opportunity to cure his default before it could validly accelerate the debt. Because it was assigned the mortgage just 17 days before it filed the first foreclosure, Everhome said it could not have provided the full 30-day notice and cure period. It also cited Aber's verified answer in the 2009 foreclosure, which asserted an affirmative defense that Everhome did not give him the required 30-day notice.

The Appellate Division, Second Department affirmed in a 3-2 decision, finding Everhome did not raise a question of fact regarding its compliance with the notice requirement. The majority said "30 days before the acceleration date, the note was held and owned by the plaintiff's predecessor in interest, Fairmont. [Everhome] proffered no evidence as to whether Fairmont sent or delivered the notice, and ... did not provide any excuse for failing to submit such evidence." Regarding Aber's assertion that Everhome did not give him any notice in 2009, the court said "a bald denial of receipt is insufficient to establish, prima facie, that such notice was not mailed or delivered, or to raise a question of fact as to mailing or delivery...."

The dissenters said "the first action could not have validly been commenced as it was calendrically impossible for [Everhome], which held the note for only 17 days prior to commencement, to have satisfied the note's 30-day notice and cure period required by paragraph 22(b)(3)." They said Aber's affirmative defense in the first action that he was not given the required notice, "facts known directly by Aber from his alleged nonreceipt of any such document," was also sufficient to raise "a question of fact about the validity of the debt acceleration made in the first action" in 2009.

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For respondents Aber and Equity: Anthony R. Filosa, Garden City (516) 228-6666

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No. 88 People v Luis Jimenez

On a street in Jackson Heights in 2018, Luis Jimenez got into an altercation with an acquaintance named Jonathan, who was demanding that Jimenez repay a $20 loan. Jonathan was holding two metal rods, and his mother and uncle were present along with a small dog. Jimenez armed himself with a broken broomstick. Jonathan's mother ordered him to leave and, as he walked away, surveillance video showed that his uncle was trying to restrain Jimenez while the dog approached his leg. Jimenez struck the dog with the broomstick, causing a facial fracture and blinding the dog's right eye. He testified before the grand jury that he felt threatened because the dog was biting at his pants while he wrestled with Jonathan's uncle, who was trying to take the stick away. Jimenez was indicted on criminal mischief and animal cruelty charges.

Supreme Court dismissed the indictment with leave to re-present, ruling the prosecutor's failure to instruct the grand jury on the defense of justification impaired the integrity of the proceeding. It said Jimenez's testimony "supports a basis to believe that he had to choose between two evils in a situation not of his own doing. He testified that he was defending himself against an attack by multiple individuals over a dispute about money, which included the dog that was injured in this case. In his testimony, he stated that the dog had bitten him, and the video shows that he was being held by another male with the dog also at the defendant's side."

The Appellate Division, Second Department reversed on a 3-1 vote, saying, "There is no reasonable view of the evidence that forcefully striking and injuring the approximate eight-pound terrier poodle in the manner undertaken by the defendant, who was approximately 6 feet tall and weighed 200 pounds, was necessary as an emergency measure to avoid, at most, a bite by this small animal through denim pants." Further, the majority said the text of the self-defense statutes "'plainly limits the defense to situations where one person uses force against another person, making [them] inapplicable where, as here, a person used force ... against an animal'...."

The dissenter said "there was a reasonable view of the evidence that supported a justification instruction based upon the defendant's testimony that the dog was biting at his pants leg at the time he hit the dog.... With the benefit of hindsight, we may feel that the small size of the dog indicated that it was unlikely that the dog could have inflicted serious physical injury upon the defendant. However, the defendant's infliction of serious physical injury upon the dog would be justified to avoid less than serious injury to the defendant, since the interest of the defendant to protect his person cannot be equated with the interest of protecting an animal from injury. The question of whether the injury inflicted upon the dog could be justified to protect the person of the defendant or even his property is generally a question of fact to be determined by the trier of facts based upon the moral standards of the community..., and not as a matter of law based upon falsely equating the interest of the animal with the interest of a person."

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