# State of New York
# Court of Appeals



To be argued Tuesday, September 13, 2022

**No. 75 Sage Systems, Inc. v Liss**

This case stems from a partnership dispute between Sage Systems, Inc. and Robert Liss, who formed S-L Properties in 1984 to buy and hold shares of stock in a Manhattan cooperative for a unit the partners intended to share. In 2006, Liss brought an action against Sage Systems seeking a judicial dissolution of their partnership, claiming that Sage violated their proprietary lease with the cooperative by subletting space to other tenants. Supreme Court dismissed the complaint on summary judgment, finding there had been no violation of the proprietary lease. It further found that Liss had "unclean hands with respect to his demand for the equitable relief of dissolution" because he had also sublet space to others.

In 2010, Sage Systems brought this action against Liss for indemnification, under section 13.02(b) of their partnership agreement, to recover attorneys' fees it had incurred in defending against the dissolution action. Section 13.02(b) provides, "The Partnership and the other Partners shall be indemnified and held harmless by each Partner from and against any and all claims, demands, liabilities, costs, damages, expenses and causes of action of any nature whatsoever arising out of or incidental to any act performed by a Partner which is not performed in good faith or is not reasonably believed by such Partner to be in the best interests of the Partnership and within the scope of authority conferred upon such Partner under this Agreement, or which arises out of the fraud, bad faith, willful misconduct or negligence of such Partner." Liss died in 2011 and his son was appointed executor of his estate.

Supreme Court granted summary judgment to Sage and awarded it $80,153.04, rejecting the Liss estate's argument that the indemnity provision did not address attorneys' fees. The court said, "As the provision here permits the recovery of any costs, damages, and expenses..., it includes the recovery of attorney fees." It further found the provision permits recovery of attorneys' fees incurred in litigation between the partners, not just those involving third-party claims. "The parties ... did not limit the indemnity in any way, nor is there an indication that it is limited to specific claims or third-party claims in general."

The Appellate Division, First Department affirmed, saying the "broad language" of the provision "encompasses the recovery of attorneys' fees" and "is not limited to third-party claims." It concluded, "The finding of the court in the dissolution action that [Liss] had unclean hands in bringing that action is the equivalent of a determination that [he] acted in bad faith."

The Liss estate argues the indemnity provision "contains no reference whatsoever to attorney's fees. It is well-settled that where a contract for indemnification does not specifically reference indemnification for attorney's fees, the parties are not entitled to recover such fees." It cites Hooper Assocs. v AGS Computers (74 NY2d 487), which states, "Inasmuch as a promise by one party to a contract to indemnify the other for attorney's fees incurred in litigation between them is contrary to the well-understood rule that parties are responsible for their own attorney's fees, the court should not infer a party's intention to waive the benefit of the rule unless the intention to do so is unmistakably clear from the language of the promise." The estate says the provision does not apply to litigation between partners and there was no showing of bad faith.

For appellant Liss estate: Christopher A. Raimondi, Massapequa (516) 308-4462
For respondent Sage Systems: Fred L. Seeman, Manhattan (212) 608-5000

# State of New York
# Court of Appeals



To be argued Tuesday, September 13, 2022

**No. 76 Matter of D.L v S.B.**

A seven-month-old girl, A.B., was removed from her mother's care due to neglect in 2012 and placed in the custody of the Suffolk County Department of Social Services (DSS), which placed her in foster care. The mother admitted neglecting A.B. The child's biological father, D.L., resides in North Carolina. Pursuant to the Interstate Compact on the Placement of Children (ICPC), which is designed to promote cooperation among states in finding suitable placements for certain children who are moved from one state to another, Family Court in 2013 directed that an application be made to North Carolina to allow A.B. to reside with her father. After conducting an investigation required by the ICPC, North Carolina authorities found that placement with D.L. was not suitable for the child and denied the request.

In 2017, D.L. commenced this proceeding against the mother and DSS to obtain custody of A.B. DSS opposed placement of the child with D.L. based on the 2013 ICPC denial by North Carolina. D.L. argued the ICPC does not apply to the reunification of a child with a noncustodial parent.

Family Court held that the ICPC applies in this case and dismissed D.L.'s custody petition without a hearing. The court said D.L.'s "ICPC was disapproved after an investigation from North Carolina finding the father to be an inappropriate resource. Because the child is in the care and custody of DSS, ICPC applies...."

The Appellate Division, Second Department affirmed, saying, "Where a child is in the custody of a child protective agency (see Family Ct Act § 1012[i]), and a parent living outside of New York petitions for custody of the child, the provisions of the ICPC apply.... Here, since the child was in the custody of DSS and the father resided in North Carolina, we agree with the Family Court's determination that the ICPC applied. Further, since the court could not grant the father's petitions for custody absent approval from the relevant North Carolina authority, and that approval was denied, we agree with the court's determination dismissing the petitions...."

D.L. argues that the ICPC's "plain language," history, and purpose show that it does not apply to biological parents, but only to foster care placements and adoptions. He cites article III of the ICPC, which bars a "sending agency" from sending a child to another state "for placement in foster care or as a preliminary to a possible adoption" unless it complies with the ICPC and obtains approval from the receiving state. The article also states the ICPC does not apply to the relocation of a child by its "parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or guardian." He also argues that applying the ICPC to parents "would violate parents' and children's rights to due process."

For appellant D.L.: Christine Gottlieb, Manhattan (212) 998-6693
For respondent DSS: James G. Bernet, Central Islip (631) 853-4839
Attorney for the Child: Domenik Veraldi, Jr., Islandia (631) 234-5558

# State of New York
# Court of Appeals



To be argued Tuesday, September 13, 2022

**No. 77 People v Donnell Baines**

Donnell Baines was arrested on suspicion of kidnapping in a Manhattan criminal courthouse on July 15, 2010, when V.H., a woman he brought with him to a court appearance, told a court officer that Baines was holding her against her will. On the same day, investigators obtained a warrant to search Baines' Manhattan apartment and seize a variety of items including "any and all computers and computer related equipment," "electronic communication equipment ... and stored information, data, and images contained on or in" the equipment, and property belonging to V.H and at least two other women; but the warrant did not identify the crimes being investigated or any criminal activity to which the computers and other items might relate. The warrant was based on a supporting affidavit by a member of the district attorney's Detective Squad, who interviewed V.H. According to the affidavit, she told the detective that she had answered Baines' internet ad for nude models and he bought a bus ticket to bring her from North Carolina to New York. She said she saw computers and cameras in his apartment with photos of women wearing lingerie and property belonging to other women. V.H. said she stayed with Baines voluntarily for five days, but when she tried to leave on July 14 he slapped her and threatened to harm her if she left or called the police. The affidavit said her information provided "reasonable cause to believe that ... evidence of the commission of the crime[s] Kidnapping in the Second degree and related crimes" would be found. Baines moved to suppress the evidence seized, contending the warrant was invalid because it "failed to describe with sufficient particularity the property to be seized" and did not identify any crime to which the search related.

Supreme Court denied the motion to suppress, explicitly relying on the supporting affidavit to find the warrant "was sufficiently specific regarding the areas to be searched and the items to be seized.... There was an ample basis to conclude – based on [V.H.]'s claims that defendant advertised for services over the internet, that she sent him photos of herself to defendant's phone, that she saw images of scantily dressed women on defendant's computer, coupled with the claim she was being help against her will and the fact that defendant was in the possession of another woman's belongings at the time of his arrest – that evidence of kidnapping-related activity might be found on defendant's computers." Baines was convicted at trial of first-degree rape, sex trafficking, and sexual abuse; promoting prostitution, assault, unlawful imprisonment, and related crimes. He was ultimately sentenced to 28½ to 32 years in prison.

The Appellate Division, First Department largely affirmed without directly addressing the validity of the warrant.

Baines argues the warrant was invalid on its face and, under Groh v Ramirez (540 US 551), the trial court erred in relying on the supporting affidavit, which was neither attached to the warrant nor incorporated by reference. The U.S. Supreme Court held in Groh, "The fact that the application adequately described the 'things to be seized' does not save the warrant from its facial invalidity. The Fourth Amendment by its terms requires particularity in the warrant, not in the supporting documents." Baines says the warrant gave police "free reign to search any and all means of communication, written and electronic, and any means of storing information, digital or written..., without mention in the warrant of any alleged criminal activity to curb the police's discretion or delineate the scope of their search."

For appellant Baines: Joseph M. Nursey, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Steve Kress (212) 335-9000