State of New York
Court of Appeals

To be argued Wednesday, October 18, 2023

No. 77 Brettler v Allianz Life Insurance Company of North America

In this federal case, the parties contest the current validity of an $8 million life insurance policy issued in 2008 by Allianz Life Insurance Company of North America to the Zupnick Family Trust 2008A to insure the life of Dora Zupnick of Brooklyn. A policy provision governing assignments states that the owner "may assign or transfer all or specific ownership rights of this policy. An assignment will be effective upon Notice." The policy defines "Notice" as the receipt by Allianz "of a satisfactory written request."

The Zupnick Trust sold the policy to Miryam Muschel in April 2012, and the Trust gave Allianz written notice of the assignment. A year later, Muschel decided she no longer wanted to own the policy and pay the premiums. In May 2013, the Trust resumed paying the premiums on the understanding with Muschel that the policy would eventually be transferred back to the Trust, but Allianz was not notified of any assignment from Muschel to the Trust. On May 4, 2013, Allianz sent Muschel a grace period notice stating that $117,811 in premiums was due by June 8, or the policy would lapse. The Trust sent Allianz a check for that amount on June 7, but the bank dishonored the check. The bank subsequently notified Allianz that the check should have been honored and its failure to do so "was a bank error," and the Trust offered a replacement check, but Allianz declared the policy lapsed for nonpayment. In May 2016, Muschel and the Trust executed an agreement to transfer the policy back to the Trust, but Allianz was not notified of the assignment until September 2016, when Herman Brettler filed this suit in his capacity as trustee of the Zupnick Trust, seeking a declaratory judgment that the policy remained in full force.

U.S. District Court granted Allianz's motion to dismiss the suit for lack of standing "because, under New York law, '[o]nly the policy owner has standing to sue based on an insurance policy.'" It rejected Brettler's argument that the Trust owned the policy because Allianz received and retained premium payments from the Trust, rather than Muschel, which put Allianz on notice of the transfer. The court said there was no indication that the Trust's checks "in any way requested reassignment of the policy.... The checks, consequently, failed to provide actual, much less contractually adequate notice. Therefore, as of the commencement of this action, the Trust did not own the policy and lacked a right to sue under New York law."

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve the key issue in the case by answering a certified question: "Where a life insurance policy provides that 'assignment will be effective upon Notice' in writing to the insurer, does the failure to provide such written notice void the assignment so that the purported assignee does not have contractual standing to bring a claim under the Policy?"

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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 18, 2023

No. 78 People v Lance Rodriguez

Lance Rodriguez was riding a bicycle in Far Rockaway, Queens in December 2014, when three police officers in an unmarked car pulled up beside him and called out, "Hold up, police." He continued riding and they repeated the order, which he obeyed. One of the officers later testified at a suppression hearing that Rodriguez had been riding recklessly in the middle of the street, causing two or three cars to stop or swerve to miss him. He said Rodriguez had his right hand on the handlebars and his left hand at his side holding a "bulky" object. When Rodriguez stopped, the officer said he asked him if he had anything on him, and Rodriguez said he did. The officer said he got out of the car and asked what he had, and Rodriguez replied that he had a gun in his waistband. The officer said he held up Rodriguez's arms while another officer opened his jacket and recovered a loaded handgun. Rodriguez testified at the same hearing that he had not been swerving or riding recklessly and that the only car that passed him was the police car. He said he had been holding his cell phone in his left hand, listening to music, and denied he said anything to the officers before they frisked him and found the gun.

Rodriguez moved to suppress the gun and other evidence obtained after the stop, contending the police lacked the justification required to stop him on a moving bicycle. He said it amounted to a level three forcible stop and detention under People v De Bour (40 NY2d 210), which required a "reasonable suspicion" that he had committed or was about to commit a crime. Supreme Court denied his motion, treating the encounter as a level two inquiry under De Bour, which required only that the officers have "a founded suspicion that criminal activity is afoot." Rodriguez then pled guilty to attempted criminal possession of a weapon in the second degree and was sentenced to two years in prison.

The Appellate Division, Second Department affirmed, saying, "Although the stop of a motor vehicle generally constitutes a seizure requiring reasonable suspicion that a crime has occurred..., case law has uniformly evaluated police encounters with bicyclists under the De Bour analysis applicable to pedestrians.... The Court of Appeals has held that an officer's instruction to a pedestrian to 'stop' requires only a common-law right of inquiry and does not constitute a seizure.... Supreme Court properly determined that the officer's statements to the defendant to 'hold up' constituted a level two encounter under De Bour, and that the officers were justified in making a common-law inquiry based upon their observations of the manner in which the defendant was riding his bicycle, as well as their observation of a 'bulky' object that the defendant was holding at his waistband."

Rodriguez argues, "[A]n investigative police stop of a moving bicycle should be treated the same as an equivalent police car stop, not as a pedestrian encounter. The factors that make car stops De Bour Level 3 seizures – such [as] the anxiety created, the requirement of submission to authority, and the intrusive interference with the momentum and path of a vehicle – apply with equal force to police stops of moving bicycles, but not to police-pedestrian encounters. New York's Vehicle and Traffic Law also treats bicyclists more like motorists than pedestrians ... and other jurisdictions have already recognized police bicycle stops as akin to car stops...."

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State of New York
Court of Appeals

To be argued Wednesday, October 18, 2023

No. 81 Matter of Rochester Police Locust Club, Inc. v City of Rochester

The Rochester City Council is attempting to reinstate a 2019 City Charter amendment that created a civilian-controlled Police Accountability Board to investigate and resolve misconduct complaints against city police officers and to impose penalties without regard to negotiated disciplinary procedures in the collective bargaining agreement between the city and the police union, the Rochester Police Locust Club. The union brought this action for a declaration that the amendment was invalid and unenforceable because it violates the collective bargaining requirements of the Taylor Law. The lower courts ruled for the union.

The Second Class Cities Law (SCCL) created a standard charter for Rochester and other cities of similar size in 1907, including provisions giving local officials control over police discipline. In 1967, the State Legislature amended the Civil Service Law to enact the Taylor Law, which requires collective bargaining over "the terms and conditions of employment" for public employees and over "the determination of, and administration of grievances," but Rochester's 1907 charter provisions giving city officials control of police discipline had grandfathered status as preexisting law and exempted the city from the new bargaining requirement. In 1985 the City Council repealed the police discipline provisions of the charter "for the reason that this subject matter is covered in the Civil Service Law," and the city began negotiating the terms of police discipline with the union. The 2019 charter amendment creating the Police Accountability Board was approved in a public referendum, with 75 percent of the votes cast in favor of it, but without any negotiation with the union.

Supreme Court ruled the 2019 charter provision establishing civilian control of police discipline was invalid because it conflicted with the Taylor Law's bargaining requirement. "Until 1985, the City of Rochester unquestionably possessed unfettered, exclusive authority to regulate matters of police discipline" under its 1907 charter, "and the City's authority was 'grandfathered' in...," it said. "However, in 1985, the City Council explicitly submitted [police] discipline matters to state law when it repealed the police discipline portion" of the 1907 charter. "This ended the City's 'grandfather' exemption" and made it subject to mandatory bargaining. The court said it could find no legal precedent "supporting the proposition that, once a local authority deliberately abdicated its 'grandfathered' status, it can revive that status decades later."

The Appellate Division, Fourth Department affirmed the ruling. It said "the preexisting law in question must be 'in force' when the municipality refuses to collectively bargain over police discipline" and Rochester's 1907 charter provision was no longer "in force" after the City Council repealed it in 1985 and "explicitly surrendered its grandfathered prerogative to exempt police discipline from collective bargaining.... [T]he City Council's 1985 decision to repeal the 1907 provision simply cannot be undone in the manner attempted in 2019."

The Council argues that the 1907 charter established a State policy to delegate control of police discipline to City officials, and because the State has never reversed that policy, it remains in force and the City is not subject to mandatory bargaining over police discipline. It says "Rochester lacked both the power and the intent to nullify the 1907 policy of the State by Local Law" because "the Municipal Home Rule Law, and the doctrine of preemption, forbid municipalities from nullifying the Legislature's policy judgments, including those expressed in the 1907 Charter." It says the charter prohibits, rather than exempts, the City from bargaining over police discipline.

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