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 Thursday, October 17, 2019 (arguments start at noon)

No. 84 Deutsche Bank National Trust Company v Barclays Bank PLC
Deutsche Bank National Trust Company v HSBC Bank USA, National Association

In 2007, affiliates of Barclays Bank and HSBC Bank USA, National Association each conveyed a pool of residential mortgages to Deutsche Bank National Trust Company to be held in separate trusts for sale to investors in residential mortgage-backed securities (RMBS). The pooling and servicing agreement (PSA) for each trust contained a New York choice-of-law clause. Barclays and HSBC made representations and warranties regarding the nature and quality of the underlying mortgages, and agreed to cure or repurchase any defective loans. In late 2012 and 2013, after investigations by investors (certificateholders) of both trusts found that many of the mortgage loans were defective, Deutsche Bank demanded that Barclays and HSBC repurchase those loans. When Barclays and HSBC refused, Deutsche Bank, in its capacity as trustee of the trusts, brought these breach of contract actions against Barclays (in April 2013) and HSBC (in June 2013). The defendants moved to dismiss the suits on the ground that, because Deutsche Bank's principal place of business is in California, the contract claims were barred by California's four-year statute of limitations under New York's borrowing statute, CPLR 202. They conceded the claims would be timely under New York's six-year statute of limitations.

Supreme Court denied the motions to dismiss the suits as time-barred, saying the defendants failed to show that Deutsche Bank's claims accrued in California. "While the parties do not cite any authority that applies the New York borrowing statute to a case brought by an RMBS trustee, courts applying the borrowing statute to cases brought by non-RMBS trustees have repeatedly rejected the trustees' residence as determinative of the place of accrual of the causes of action" and instead applied the multi-factor test adopted in Maiden v Biehl (582 F Supp 1209 [SD NY 1984]), it said. "Here, the California residence of the trustees is not a reliable indicator of the place where the injury occurred. The trusts were established in the PSAs, pursuant to New York law.... [T]he rights of the parties to the PSAs are governed by New York law.... The trustees hold the mortgage loans on behalf of the trusts, for the benefit of the certificateholders," and it is the trusts, not the trustee, that were "allegedly diminished as a result of the loss in value of the loans." Other Maiden factors "do not ... point to California."

The Appellate Division, First Department reversed and dismissed the suits, saying "we need not decide whether the plaintiff-residence rule or the multi-factor test [of Maiden] applies in this context because, even under the multi-factor test, we find that the injury/economic impact was felt in California and the claims are thus deemed to have accrued there.... [T]he subject trust in each action comprises a pool of mortgage loans, originated by California lenders and encumbering California properties, either exclusively (in the Barclays case) or predominantly (in the HSBC case), and ... administered in California by plaintiff,, a California-based trustee.... [T]he alleged breaches of representations and warranties occurred in 2007, when allegedly nonconforming mortgage loans were deposited into the trust pools, and these actions were not commenced until 2013. Under California law, plaintiff's claims for the alleged breaches accrued 'at the time of the sale'...."

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To be argued Thursday, October 17, 2019 (arguments start at noon)

No. 85 Lubonty v U.S. Bank National Association

Gregg Lubonty obtained a $2.5 million loan from American Home Mortgage Acceptance, Inc. (AHMA) in 2005, securing it with a mortgage on property he owned in Southampton, Suffolk County. Lubonty defaulted on his mortgage payments and AHMA commenced a foreclosure action in June 2007, accelerating the mortgage and demanding payment of the full amount due. Two weeks later, Lubonty filed for Chapter 11 bankruptcy, triggering an automatic stay of the foreclosure proceeding. Lubonty's bankruptcy petition was voluntarily dismissed in November 2009 and AHMA's foreclosure action was dismissed as abandoned in September 2010. AHMA later assigned the mortgage to U.S. Bank National Association and, in June 2011, U.S. Bank commenced a second foreclosure action against Lubonty. In October 2011, Lubonty filed for Chapter 7 bankruptcy, again triggering a statutory stay of the foreclosure. The bankruptcy stay was lifted in November 2013. U.S. Bank's foreclosure action was dismissed in October 2014 for lack of personal jurisdiction due to improper service.

In November 2014, Lubonty brought this action to discharge the mortgage on his property, arguing that enforcement of the mortgage was barred by the expiration of the six-year statute of limitations, which began to run when AHMA commenced the first foreclosure action in June 2007. U.S. Bank moved to dismiss the suit, arguing that the limitations period had not expired. It said that when Lubonty filed a bankruptcy petition shortly after the commencement of each foreclosure action, he triggered statutory stays which tolled the running of the statute of limitations under CPLR 204(a). CPLR 204(a) provides, "Where the commencement of an action has been stayed by a court or by statutory prohibition, the duration of the stay is not part of the time within which the action must be commenced." Lubonty responded that CPLR 204(a) does not apply here because the foreclosure actions were commenced before he filed the bankruptcy petitions and triggered the stays. The express language of the statute tolls the limitations clock only "where the commencement of an action has been stayed," he said, and says nothing about a stay that prevents the continuation of an action.

Supreme Court granted U.S. Bank's motion to dismiss the suit, saying "the filing of a petition in bankruptcy results in a tolling for the entire period of the stay" under CPLR 204(a). "[D]ue to plaintiff's two bankruptcy filings," it said, CPLR 204(a) "effectively tolled the statute of limitations for a period of four years, five months and fourteen days, thereby extending the limitation period to December 25, 2017."

The Appellate Division, Second Department affirmed, saying, "Pursuant to CPLR 204(a), the Bankruptcy Code's automatic stay tolls the limitations period for foreclosure actions.... Therefore, U.S. Bank's right to commence a foreclosure action in this matter was extended until December 2017.... The plaintiff's contention that CPLR 204(a) does not apply here because the earlier foreclosure actions had already been commenced when the petitions in bankruptcy were filed is without merit...."

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State of New York
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To be argued Thursday, October 17, 2019 (arguments start at noon)

No. 86 People v Stan XuHui Li

Dr. Stan XuHui Li, an anesthesiologist and specialist in pain management, opened a pain management clinic in Flushing, Queens, in 2004. The clinic was open one day a week (on weekends), appointments were not necessary, and all payments were required to be made in cash. He saw as many as 90 patients a day and charged a base fee of $100 per visit, but charged more for patients who sought multiple prescriptions or early renewal of a monthly prescription. Investigators found that, from 2008 until his arrest in November 2011, Li wrote more than 21,000 prescriptions for controlled substances, more than half of them for the opioid oxycodone and more than a quarter for Xanax, which can depress respiration when taken together. Two of Li's patients died of drug overdoses shortly after visiting his clinic – Joseph Haeg in 2009 and Nicholas Rappold in 2010 – with pills prescribed by Li in their possession.

Li was charged with two counts of second-degree manslaughter, based on the deaths of Haeg and Rappold, and more than 200 other counts including reckless endangerment, criminal sale of a prescription, fraud, grand larceny and false filing. The prosecution's expert, the Director of Pain Medicine at New York University, testified at trial that Li's files showed that he issued prescriptions without confirming a patient's medical history, ordering appropriate tests or conducting an adequate physical exam to diagnose the causes of pain, or exploring nonopioid treatment options. The expert said Li prescribed addictive opioids in much higher dosages than were reasonable and engaged in practices that fostered addiction and endangered the lives of patients. Li was convicted of both manslaughter counts as well as 196 other charges. He was sentenced to an aggregate term of 10 to 20 years, which included 5 to 15 years for manslaughter.

Li argued on appeal that, under the Penal Law, a doctor cannot be convicted of a homicide for prescribing a controlled substance where, if taken as prescribed, the dose would not have been fatal. He cited People v Pinckney (38 AD2d 217 [2d Dept 1972], affd 32 NY2d 749 [1973]), which said there are no Penal Law provisions "which set forth that the illegal sale of a dangerous drug which results in death to the user thereof constitutes manslaughter or criminally negligent homicide." He also argued there was legally insufficient evidence that his conduct was a sufficiently direct cause of the victims' deaths.

The Appellate Division, First Department affirmed the convictions. Rejecting Li's first argument, it said, "Nothing in Pinckney suggests that one who provides a controlled substance, whether it be heroin by a street dealer, or opioids by a medical doctor, can never be indicted on a manslaughter charge.... At bottom, all that was needed for the manslaughter charge to be sustained was for the People to satisfy its elements," including proof the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would occur. It found there was also sufficient evidence to support the manslaughter convictions. "Based on [the expert's] testimony, it was reasonable for the jury to infer that [Li] was using his prescriptions not to treat legitimate pain but to feed an addiction to opioids," to infer that he knew both victims would exceed the prescribed dosages to achieve a narcotic high, and that he consciously disregarded the foreseeable risk that they could die.

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