State of New York
Court of Appeals

To be argued Tuesday, September 10, 2019

No. 72 Henry v Hamilton Equities, Inc.

Carol Henry, a licensed practical nurse, suffered a fractured hip while working at the Grand Manor Nursing & Rehabilitation Center in the Bronx in 2011, when she slipped and fell in a puddle of water on the floor, which allegedly resulted from a recurring leak in the roof. She brought this negligence action against the building's owners, Hamilton Equities, Inc. and related entities (collectively "Hamilton"), among other defendants. Hamilton moved for summary judgment dismissing the complaint against it on the ground that, as an out-of-possession landlord, it could not be held liable for unsafe conditions on the premises.

Hamilton built the facility and leased it to Grand Manor in 1974. The lease required Grand Manor to "maintain and keep all parts of the leased premises ... in a good state of repair and condition." The lease gave Hamilton the right to enter the property to make repairs if Grand Manor failed to do so, but stated that this provision would not make it "obligatory upon the part of [Hamilton] to make such repairs or perform such work." The lease also acknowledged that Hamilton might finance the project through the U.S. Department of Housing and Urban Development (HUD), which it did, and the lease provided that if any regulatory agreements related to the financing were inconsistent with the lease, the "regulatory agreements [would] prevail and govern the rights of the parties." Hamilton's regulatory agreement with HUD required Hamilton to "maintain the mortgaged premises ... in good repair and condition," and required it to establish a reserve fund to cover "replacement of structural elements[] and mechanical equipment." Henry argued that, under Putnam v Stout (38 NY2d 607 [1976]), Hamilton could be held liable for her injuries because the regulatory agreement imposed a non-delegable duty on Hamilton to maintain the facility.

Supreme Court granted Hamilton's motion to dismiss the suit, saying, "While it is axiomatic that a contractual obligation to repair and maintain the premises can serve to hold an out-of-possession landlord liable for negligence, it appears to be a question of first impression whether a contract such as the regulatory agreement, to which the tenant [Grand Manor] is not a party nor an intended beneficiary, will suffice. The court finds that the contractual obligation upon the landlord, for purposes of this exception, arises when the landlord has contracted with *the tenant* ... to repair or maintain the premises." It said the regulatory agreement with HUD was not meant to benefit Grand Manor, but was "solely to protect HUD's interest" in the property.

The Appellate Division, First Department affirmed, saying the purpose "of the HUD Agreement was to protect the integrity of the building that was subject to the mortgage guaranteed by HUD. Thus, the intention was to benefit HUD and the bank, not third-parties injured on the premises.... The social policy considerations cited by the Court of Appeals in Putnam ... are promoted only where the landlord had a contractual obligation directly to the tenant."

Henry argues, "A plain reading of this Court's decision in Putnam demonstrates that the holding was not limited to contracts directly between owners and lessees for the maintenance of leased property. In fact, this Court explicitly stated that the doctrine was premised on a 'covenant in the lease or otherwise to keep the land in repair." She says the lower courts also "erred by adding another element to the Putnam rule" by requiring that the owner's agreement to repair "must specifically contemplate protection to third parties." In any case, she says, "HUD itself was created to benefit third-parties by strengthening communities and improving quality of life" through such projects as the Grand Manor facility and its agreement with Hamilton provided for health and safety inspections by HUD, and so "the Agreement also contemplated protection to third-parties."

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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 Tuesday, September 10, 2019

No. 73 He v Troon Management, Inc.

Xiang Fu He alleges that he was injured in January 2007 when he fell on ice and snow on the sidewalk in front of his workplace on Flushing Avenue in Brooklyn. The building had been leased to his employer, SDJ Trading, Inc., by the landlord, Flushing-Thames Realty Co. He brought this negligence action against Flushing-Thames, individual owners and their managing agent, Troon Management, Inc.

The defendants moved for summary judgment dismissing the complaint, arguing they could not be held liable because they were out-of-possession landlords and their tenant, SDJ Trading, was required to maintain the sidewalk under its lease. The lease provided that SDJ was responsible for keeping the sidewalk "clean and free from ice [and] snow." He responded that the general rule absolving out-of-possession landlords of liability for injuries at their properties did not apply because New York City Administrative Code § 2-710, which was enacted in 2003 to transfer liability for injuries caused by unsafe sidewalks from the City to adjoining property owners, imposed a nondelegable duty on the owners to maintain the sidewalk. Section 7-210 states, in part, "It shall be the duty of the owner of real property abutting any sidewalk ... to maintain such sidewalk in a reasonably safe condition." It further provides that property owners "shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition," including "the negligent failure to remove snow, ice, dirt or other material from the sidewalk."

Supreme Court denied the defense motion to dismiss. It said the defendants failed to show they were out-of-possession landlords because, despite the lease provision obligating SDJ Trading to clear ice and snow from the sidewalk, "property owners are now 'under a statutory nondelegable duty to maintain the sidewalk'" pursuant to section 7-210. "The City ordinance is clear in imposing a duty to maintain the sidewalk in a reasonably safe condition on 'the owner of real property abutting [the] sidewalk'..., including liability for personal injury caused by 'the negligent failure to remove snow, ice, dirt or other material from the sidewalk'...."

The Appellate Division, First Department reversed and dismissed the complaint, saying, "Defendants cannot be held liable for injuries allegedly sustained by plaintiff when he slipped on snow and ice on the sidewalk adjacent to their property, because they were out-of-possession landlords with no contractual obligation to keep the sidewalks clear of snow and ice, and the presence of snow and ice does not constitute a significant structural or design defect...." The court did not mention section 7-210.

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State of New York
Court of Appeals

To be argued Tuesday, September 10, 2019

No. 74 People v Mouhamed Thiam

Mouhamed Thiam was arrested in midtown Manhattan in June 2016 by a police officer who said he saw Thiam holding marijuana in a public place and open to public view "at the south west corner of Broadway & West 29 Street," as the officer wrote in the misdemeanor complaint. He recovered a second bag of marijuana and eight pills from Thiam's pockets and conducted a field test to confirm that both bags contained marijuana. The officer concluded the pills were oxycodone "based on my professional training as a police officer in the identification of drugs, and my prior experience as a police officer making drug arrests," he said in the complaint. Thiam was charged with criminal possession of a controlled substance in the seventh degree (the pills), a class A misdemeanor; criminal possession of marijuana in the fifth degree (public place), a class B misdemeanor; and unlawful possession of marijuana, a violation.

At Thiam's arraignment, defense counsel argued that the complaint was facially insufficient because the factual allegations were inadequate to establish that the pills were oxycodone or that Thiam displayed marijuana in "a public place." Rather than seek dismissal of the complaint, counsel asked Criminal Court for a sentence of time served. Thiam then waived prosecution by information and pled guilty to the top count of criminal possession of oxycodone in exchange for time served.

The Appellate Term, First Department reversed the conviction and dismissed the complaint, saying "the accusatory instrument was jurisdictionally defective" because the top count to which Thiam pled guilty, alleging possession of oxycodone, was facially insufficient. It said, "The police allegations that the pills recovered from defendant were oxycodone ... did not meet the reasonable cause requirement, since the arresting officer presented nothing more in the accusatory instrument than a conclusory statement that he used his experience and training as the foundation in drawing the conclusion that he had discovered illegal drugs.... Absent from the instrument were any facts relied upon by the officer in reaching the conclusion that the substance seized was an illegal drug...." It did not address the facial sufficiency of the second count, alleging possession of marijuana in a public place. The court concluded, "Instead of reinstating the remainder of the accusatory instrument, we dismiss it, as a matter of discretion in the interest of justice, since defendant has completed his sentence and no penological purpose would be served by remanding for further proceedings."

The prosecution argues that the charge alleging marijuana possession in a public place was facially sufficient and, therefore, the misdemeanor complaint was not jurisdictionally defective and the conviction should stand. "Since defendant waived prosecution by information, and was charged in a misdemeanor complaint with at least one facially sufficient misdemeanor count, the Criminal Court had jurisdiction over defendant's prosecution" and "was authorized to accept defendant's guilty plea to the controlled substance charge, even if" that charge was itself facially insufficient. The prosecution says it makes no difference that Thiam pled guilty to an A misdemeanor that was more serious than the B misdemeanor that was facially sufficient.

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