State of New York
Court of Appeals

To be argued Wednesday, April 20, 2022 (arguments begin at 2 pm)

No. 36 Columbia Memorial Hospital v Hinds
No. 37 Schoch v Lake Champlain OB-GYN, P.C.
Nos. 38-43 Maple Medical, LLP v Scott (and five other cases)

The primary issue here is whether the cash consideration paid as part of the conversion of a mutual insurance company to a stock insurance company belongs to medical employees who were the named policyholders or to the hospitals and clinics that employed them and paid the premiums for the insurance policies. The cases involve medical professionals whose employment agreements required their employers to pay for their malpractice insurance. The employers obtained malpractice policies from the Medical Liability Mutual Insurance Company (MLMIC), named their employees as the sole insured on each policy, and paid the premiums.

In 2016, MLMIC sought permission to convert from a mutual insurance company to a stock insurance company under Insurance Law § 7307. Its conversion plan provided that a total of $2.502 billion would be distributed to eligible MLMIC policyholders, or their designees, in consideration for the extinguishment of their policyholder membership interests. When MLMIC completed its demutualization in 2019, the medical professionals and their employers began to litigate the question of who was entitled to the proceeds. The amounts at stake in these eight appeals range from a high of $412,418.93 in Case No. 36 to a low of $20,000 in Case No. 43.

The Appellate Division ruled for the employees in each case -- the Third Department in Nos. 36 and 37, the Second Department in Nos. 38-43 – declaring they were entitled to the funds regardless of who paid the premiums. In No. 37, the Third Department said the employee was "solely entitled" to the $74,747 distribution based on the language of Insurance Law § 7307(e)(3), which directs that the proceeds be distributed to "each person who had a policy of insurance," and the conversion plan, which provides for payment to "policyholders" and defines "policyholder" as "the Person identified on the declarations page of the Policy as the insured." It rejected the employer's claim that the employee would be unjustly enriched, saying, "The reality is that neither party here bargained for the demutualization proceeds" in the employment contract. The proceeds "were unexpected and will be a windfall to whichever party receives them. The fact that one party will receive these benefits does not mean that such party has unjustly enriched itself at the other's expense."

The employer-appellants rely, in part, on a conflicting decision by the Appellate Division, First Department in Matter of Schaffer, Schonholz & Drossman v Title (171 AD3d 465), which ruled the employer was equitably entitled to the demutualization proceeds. It said, "Although [the employee] was named as the insured on the relevant MLMIC ... insurance policy, [the employer] purchased the policy and paid all the premiums on it" and the employee did not "bargain for the benefit of the demutualization proceeds. Awarding [the employee] the cash proceeds of MLMIC's demutualization would result in her unjust enrichment...."

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State of New York
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To be argued Wednesday, April 20, 2022 (arguments begin at 2 pm)

No. 44 People v Marc Mitchell

A police officer approached Marc Mitchell in February 2016 as he stood on a street corner in Times Square, asking passersby to help the homeless. In a misdemeanor complaint, the officer said Mitchell stood next to a pair of milk crates he had set up as a table, with a black box for donations on top and a laminated sheet of paper with information about city shelters. The officer said Mitchell told him the donations "go to a church on 116th Street," though he could not name the church, and later conceded, "Most of the proceeds actually go to me, because I'm homeless." The officer said, "From my training and experience, I know that the defendant'[s] actions are of a kind commonly used to defraud people of money through a trick or swindle." He also observed that the milk-crate table "blocked the movement of approximately seventy-five pedestrians in that they had to walk around the defendant to continue walking on the sidewalk."

Mitchell was charged with a class A misdemeanor of fraudulent accosting under Penal Law § 165.30(1), which states, "A person is guilty of fraudulent accosting when he accosts a person in a public place with intent to defraud him of money or other property by means of a trick, swindle or confidence game. The Penal Law does not define "accosting."

In Criminal Court, Mitchell pled guilty to fraudulent accosting in exchange for a sentence of time served. Rejecting the prosecutor's request for a 90-day jail sentence, the court said, "I would understand if there were some threatening behavior done to another individual to get an individual to give money. I understand it is a crime, but there is nothing here. It says the only one that even went up to him was the officer...." The court said "there is nothing in this complaint that even says he went up to a tourist, and just used the word accosting. It says he asked pedestrians. I don't know if that rises to the level of accosting."

The Appellate Term, First Department affirmed, rejecting Mitchell's argument that the complaint was jurisdictionally defective because it did not allege facts establishing reasonable cause to believe that he was accosting people by asking passersby to help the homeless. The court said the complaint was jurisdictionally valid because it "recited that defendant was observed ... trying to obtain money from pedestrians by falsely representing that the funds would go to charitable organizations supporting the homeless, when in reality defendant would keep the money himself. Defendant's intent to defraud ... may be inferred from his statements, conduct and the surrounding circumstances.... The accosting element of the offense was satisfied by allegations that defendant 'ask[ed] passing pedestrians to "Help the Homeless"'...."

Mitchell argues, "The plain meaning of the word 'accost' ... contemplates both a physical approach and an element of aggressiveness or persistence, according to dictionary definitions and common usage. The language of the statute, with its express requirement that an offender accost 'a person' with the intent to defraud that particular person, reinforces that accosting requires an approach directed toward a specific individual, rather than the public at large.... Because he was not accused of aggressively or persistently approaching another person – or of approaching anyone at all – the prosecution failed to plead the essential element of 'accost[ing] a person." He also argues the complaint failed to allege sufficient facts supporting an intent to defraud.

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