State of New York
Court of Appeals

To be argued Tuesday, March 14, 2023

No. 13 Matter of TCR Sports Broadcasting Holding, LLP v WN Partner, LLC

Major League Baseball (MLB) bought the struggling Montreal Expos in 2002, moved the franchise to Washington, D.C. in 2005 and renamed the team the Nationals. The Baltimore Orioles and its broadcasting partner, TCR Sports Broadcasting Holding, LLP, objected that bringing the Nationals into what had been the Orioles' exclusive television market would hurt them financially. MLB and the two ball clubs negotiated an agreement under which TCR would become a two-club television network, doing business as the Mid-Atlantic Sports Network (MASN) and managed by the Orioles, which would televise the games of both teams. The agreement set the telecast fees each team would be paid for 2005 through 2011; required the teams and MASN to negotiate the fair market value of their telecast rights for future years; and provided that, if they could not agree, the value would be set through binding arbitration by MLB's own Revenue Sharing Definitions Committee (RSDC). The parties failed to reach agreement on telecast fees for 2012 through 2016 – the Orioles valued the Nationals' rights at $34 million per year, while the Nationals valued their rights at $110 million per year – and the dispute went to arbitration before the RSDC. The arbitration panel consisted of three officials of MLB clubs appointed by the baseball commissioner, with MLB staff providing analytical and legal assistance. Before the arbitration concluded, MLB paid the Nationals a $25 million advance on their fees for 2012-13, to be repaid from the arbitration award. In 2014, the RSDC issued its decision awarding the Nationals rights fees of $53 million for 2012 and rising by $3 million per year through 2016. The Orioles brought this proceeding to vacate the award, contending the arbitration process was not impartial, and asked the court to remand the matter to a different arbitration forum.

Supreme Court vacated the award due to "evident partiality," a finding it based solely on the participation of Proskauer Rose, the law firm that represented the Nationals in the arbitration, because it also represented MLB and all three arbitrators on the panel in unrelated matters. It denied the Orioles request to order a second arbitration by an impartial panel unaffiliated with MLB, saying that "re-writing the parties' Agreement is outside of [the court's] authority."

The Appellate Division, First Department affirmed. It agreed unanimously that the award was properly vacated for evident partiality, but split 2-1-2 on the question of whether it could, or should, send the arbitration to a forum other than the RSDC. Two justices argued that, "even if this court has the inherent power to disqualify an arbitration forum in an exceptional case, on the record before us there is no basis, in law or in fact, to direct that the second arbitration be heard in a forum other than the industry-insider committee that the parties selected in their agreement..., fully aware of the role MLB would play in the arbitration process.... [T]here has been no showing of bias or corruption on the part of members of the reconstituted RSDC, and the Nationals will use new counsel at the second arbitration." A third justice concurred in the result, but said, "This court may not order that the arbitration take place in a forum other than the one selected by the parties," even though "the conduct of [MLB] and its representatives has been far from neutral and balanced." The two dissenters said the fees dispute should be sent to the American Arbitration Association, arguing that "while the parties' contractual choice to select a particular arbitral forum is entitled to great deference, courts nevertheless retain their inherent judicial power, and their statutory power under 9 USC § 2, to override that choice in the event that the forum is shown to be so corrupt or biased as to undermine the reasonable expectations of the parties to have a fundamentally fair hearing."

In the second arbitration, RSDC awarded the Nationals $54.9 million for 2012, increasing to $62.4 million in 2016. Supreme Court confirmed the award and the Appellate Division affirmed.

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State of New York
Court of Appeals

To be argued Tuesday, March 14, 2023

No. 21 Cordero v Transamerica Annuity Service Corporation

As a young child in New York City, Lujerio Cordero suffered lead poisoning caused by lead paint in his apartment building, which resulted in permanent and substantial cognitive impairment and other debilitating handicaps. In 1996, when he was five years old and acting through his mother, Cordero entered into a structured settlement agreement with his landlord's insurer, which provided that he would be paid $3,183.94 each month for 30 years, beginning when he turned 18. The periodic payments were secured by an annuity contract issued by Transamerica Life Insurance Co. On the same day, Cordero executed a qualified assignment obligating a Transamerica affiliate to make the periodic payments. Both the settlement agreement and the assignment provided that they would be governed by New York Law and, using similar language to protect his interests, stated that the payments "cannot be accelerated, deferred, increased or decreased by [Cordero]..., nor shall [he] have the power to sell, mortgage, encumber or anticipate same ... by assignment or otherwise."

In 2012, when Cordero was 22 and living in Florida, he entered into the first of six structured settlement transfer agreements with two factoring companies, which offer tort victims receiving periodic payments a lump-sum cash payment in exchange for the right to receive the future payments, often on very unfavorable terms. Through the six transfers executed over a period of 22 months, Cordero assigned all of his periodic payment rights to the factoring companies, receiving $263,130 from the companies in exchange for his right to future payments totaling $959,834. Transamerica consented to the transfers without contacting Cordero, and the factoring companies paid Transamerica a $750 fee for its review and approval of each transfer. Florida state courts then approved the transfers after hearings at which Cordero did not appear and was not represented by counsel, finding the agreements were "fair, just and reasonable."

Cordero brought this breach of contract action against Transamerica in federal court in Florida, contending that he could not read or understand the transfer documents and that Transamerica had an obligation to enforce the anti-assignment clause in the settlement agreement on his behalf. When it failed to enforce the clause and prevent the transfers, he said, the company breached its contractual duty of good faith and fair dealing. Transamerica moved to dismiss the suit, arguing that Cordero failed to allege a breach of contract because the anti-assignment clause was meant for its benefit, not his, and it had no obligation to enforce it.

U.S. District Court dismissed the suit, saying Cordero's "claims fail because Defendants had no affirmative obligation to prevent [him] from assigning his annuity benefits." The anti-assignment clause "exists for Defendants' benefit and may be exercised at their discretion," it said, and Cordero's "assertion that Defendants should have prevented the state court-approved transfers are nothing more than attempts to 'imply obligations inconsistent with other terms of the contractual relationship...'."

The U.S. Court of Appeals for the 11th Circuit is asking this Court to resolve the key issue by answering a certified question: "Does a plaintiff sufficiently allege a breach of the implied covenant of good faith and fair dealing under New York law if he pleads that the defendant drastically undermined a fundamental objective of the parties' contract, even when the underlying duty at issue was not explicitly referred to in the writing?"

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State of New York
Court of Appeals

To be argued Tuesday, March 14, 2023

No. 22 Singh v City of New York

Taxi fleet owner Richard Chipman purchased 14 yellow cab medallions at an auction held by New York City and its Taxi & Limousine Commission (TLC) in 2013, paying from $1.1 million to $1.3 million per medallion on behalf of seven of his taxi companies. In 2017, Chipman's taxi companies brought this action against the City asserting claims for deceptive business practices in violation of General Business Law (GBL) § 349 and contract claims alleging breach of the implied covenant of good faith and fair dealing. They contended that, before the auction, the City overstated the present and future value of the medallions. And they said the City's actions after the auction, which included allowing a "surge" in licenses for "so-called black cars," for-hire vehicles that operate without medallions, and allowing those black cars "to accept street hails in direct and illegal competition with medallion taxis," caused the value of their medallions to plummet by 90 percent.

Supreme Court dismissed the taxi companies' GBL § 349 claims based on General Municipal Law (GML) § 50-e, which requires that, in "any case founded upon tort," a notice of claim must be filed within 90 days after the claim arises as a condition precedent to commencing an action against the City. "Considering the purpose of GBL § 349 and the statute's similarity with the traditional tort of fraud, a violation of the statute should be categorized as a tort," the court said, and the plaintiffs' failure to file a notice of claim was fatal. Alternatively, it said GBL § 349 "applies only against a person, firm, corporation or association; that statute does not expressly or by implication apply to municipal defendants." It refused to dismiss the breach of contract claims.

The Appellate Division, Second Department modified the order by dismissing the breach of contract claims, ruling the taxi companies failed to state a cause of action. It said the official bid form the companies signed for the auction "included an acknowledgment that the City had 'not made any representations or warranties as to the present or future value of a taxicab medallion, the operation of a taxicab as permitted thereby, or as to the present or future application or provisions of the rules of the [TLC] or applicable law, other than a warranty of clear title to such medallion.' Based upon this language, no reasonable person in the position of the plaintiffs would believe that the defendants would act or refrain from acting in any manner in order to guarantee the value of their medallions, since this would be inconsistent with the terms of the official bid form." The court affirmed the dismissal of the claim for deceptive business practices under GBL § 349 due to the plaintiffs' failure to file a notice of claim, saying it "was a claim sounding in tort, and therefore was subject to the requirements of [GML] § 50-e, as a cause of action sounding in fraud...." It did not address Supreme Court's ruling that municipalities cannot be sued under GBL § 349.

The taxi companies argue the lower courts erred in dismissing their deceptive practices claim under GBL § 349 for their failure to file a notice of claim because "GML § 50-e applies only to traditional common-law tort claims, not to violations of remedial statutes, such as the GBL, enacted for the protection of the public." They also say their contract claims should be reinstated because "a boilerplate disclaimer of representations and warranties" in the bid form "cannot and does not disclaim or negate the implied covenant of good faith and fair dealing, which is implicit in every contract."

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