State of New York
Court of Appeals

To be argued Tuesday, February 13, 2024

No. 15 Matter of Jaime v City of New York
No. 16 Matter of Orozco v City of New York

New York City is appealing court orders that allowed two men who claim they were intentionally harmed by City employees to file late notices of claim against the City. It contends the claimants failed to show that it had actual knowledge of the essential facts underlying their claims, a principal factor in determining whether to allow a late notice of claim under General Municipal Law § 50-e(5).

Luis Jaime alleges that, while he was being held in pre-trial detention at Rikers Island in 2019 and 2020, City correction officers repeatedly assaulted him and denied him access to adequate medical care. Jaime claims assault, battery and negligence based on "deliberate indifference" to his safety. Adan Orozco alleges that officers of the New York Police Department, with support of personnel from the Special Narcotics Prosecutor for the City, used a fraudulently obtained warrant to arrest him on drug charges in 2018. He was held in custody for nearly five months until the charges were unconditionally dismissed. Orozco claims false arrest, false imprisonment and malicious prosecution. Both men failed to file notices of claim with the City within 90 days after their claims arose, as required by GML § 50-e(1)(a), and they sought permission to file late notices of claim.

Supreme Court granted both requests, finding the City had actual knowledge of the facts constituting the claims within 90 days after the claims arose. In Orozco, it said actual knowledge could "be imputed to the City" because the City's officers investigated the case and "the NYPD possessed all essential facts."

The Appellate Division, First Department affirmed both orders. In a 4-1 decision in Orozco, it said the City "is deemed to have actual notice of the claim by virtue of the fact that its employees participated and were directly involved in the conduct giving rise to petitioner's claims and are in possession of records and documents relating to the incident.... [The City's] agents procured the allegedly false warrant upon attestations as to probable cause, executed the allegedly false arrest, and generated the reports pertaining thereto; the prosecutor would have had access to those same records and examined same in connection with preparing its opposition to defendant's motions and in preparing more generally for trial.... [The City's] actual knowledge may be presumed by the very nature of the action and the allegations."

The dissenter in Orozco said, "The majority assumes, based on the presence and agents of the NYPD at the time of petitioner's arrest and the existence of investigatory procedures and record-keeping, that actual knowledge of the circumstances constituting petitioner's claims for false arrest, false imprisonment, and malicious prosecution can be imputed to [the City]. However, this assumption is unsubstantiated by the record presented on appeal. Petitioner did not submit his own affidavit, or the affidavit of anyone else with personal knowledge, or any documentary evidence in support of his argument that [the City] had actual knowledge.... The mere alleged existence of police reports and other records arising from an investigation, without evidence of their content, is insufficient to impute actual knowledge to" the City.

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For respondents Jaime and Orozco: Sang J. Sim, Bayside (718) 281-0400

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No. 17 Favourite Limited v Cico

Upper East Side Suites, LLC (UESS), a Delaware limited liability company, was formed in 2007 as a vehicle for investment in Manhattan real estate with more than $4.5 million in capital contributions from its members. In May 2016, after its real estate ventures collapsed, UESS and its members brought this action to recover their lost investments in UESS from the company's two managers, siblings Benedetto and Carla Cico, alleging self-dealing and deficient management by the Cicos.

In November 2016, the Delaware secretary of state cancelled UESS's certificate of formation for failure to replace its registered agent. In February 2018, Supreme Court dismissed the original complaint, including UESS's direct claims, but allowed UESS members to file their first amended complaint to replead their claims derivatively. In April 2018, a UESS member obtained a Delaware Certificate of Revival for the company and, in June 2018, the company's members approved a resolution authorizing UESS to file a second amended complaint to include it as a plaintiff. In June 2019, Supreme Court denied the Cico's motion to dismiss the second amended complaint except for certain time-barred claims.

The Appellate Division, First Department reversed, denied the motion to file a second amended complaint, and dismissed the action. It said UESS had no "capacity or standing" to sue because it had been cancelled and was not properly revived. It said the individual plaintiff who obtained the certificate of revival lacked authority to act on the company's behalf.

The plaintiffs sought to correct this defect in December 2020 by filing a certificate of correction in Delaware to nullify the 2018 certificate of revival and then filing a new certificate of revival based on the members' vote to authorize prosecution of the action in June 2018. Then they moved to file a third amended complaint.

Supreme Court granted the motion, saying the Appellate Division dismissed the case without prejudice and "the action was never disposed" because the Cicos never filed a proposed judgment. "It would make no sense ... for plaintiffs to have commenced another separate action under a different index number and then to have moved to consolidate it with this one when this one has always remained active and pending," it said, noting that the plaintiffs had cured the timing defect that led to the Appellate Division's dismissal.

The Appellate Division, on a 3-2 vote, modified by denying the motion to file the third amended complaint. "Given this Court's outright dismissal of the claims based on a finding of lack of standing, there was no action pending when plaintiffs moved for leave to file the third amended complaint. Thus, the trial court lacked any discretion or authority to grant plaintiffs such leave, where we had properly dismissed the second amended complaint before plaintiffs filed the motion to amend...," it said. "Our dismissal order was binding on the parties," and entry of a judgment "is a mere ministerial act." It said expiration of Delaware's three-year statute of limitations "posed a second procedural obstacle that deprived Supreme Court of discretion to grant leave to amend."

The dissenters argued that leave to file the third amended complaint was properly granted because the Cicos failure "to submit a proposed judgment during the 14 months between our dismissal of plaintiffs' complaint and the motion court's decision to grant plaintiffs leave" to amend the complaint "left this action pending, along with defendants' counterclaims...." They said the third amended complaint was not time-barred because the plaintiffs "sought only to add a factual recitation of the steps taken to revive [UESS]. They did not seek to add new causes of action ... or to add new theories of liability...."

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No. 18 Urias v Daniel P. Buttafuoco & Associates, PLLC

Manuel Urias underwent prostate surgery in 2003 and was left in a coma from which he never recovered. His wife, Delfina Urias, retained Daniel P. Buttafuoco and his law firm, Daniel P. Buttafuoco & Associates, to represent her and her family in a medical malpractice action against the physicians and hospital involved, an action that was settled for $3.7 million in 2009. Buttafuoco sought judicial approval of a contingency fee that he calculated to be $864,552, and Supreme Court approved the fee and the settlement. Buttafuoco later agreed to reduce the attorneys' fee to $710,000.

Urias brought this legal malpractice action against Buttafuoco and his firm in 2012, claiming a violation of Judiciary Law § 487, breach of contract and fiduciary duty, and fraud. Judiciary Law § 487 provides that an attorney who is "guilty of any deceit or collusion ... with intent to deceive the court or any party ... forfeits to the party injured treble damages, to be recovered in a civil action." She alleged the defendants had deceived the court in the underlying action regarding the amount of legal fees they were entitled to under Judiciary Law § 474-a, which limits attorneys' fees in medical malpractice actions. She said the defendants misled the court into approving a fee of $710,000 when section 474-a limited the fee to $516,226.

The Buttafuoco defendants moved to dismiss the suit, arguing that it was an improper collateral attack on the settlement in the medical malpractice case and Urias should have moved to vacate the judgment in that case instead of bringing this separate legal malpractice action. Urias argued the Judiciary Law § 487 claim was not a collateral attack on the medical malpractice judgment because the statute authorizes treble damages "to be recovered in a civil action," such as this legal malpractice suit.

Supreme Court granted summary judgment dismissing the legal malpractice suit. It said "the remedy for fraud allegedly committed during the course of a legal proceeding must be exercised in that lawsuit by moving to vacate the civil judgment (CPLR 5015[a][3]) and not by another plenary action collaterally attacking that judgment."

The Appellate Division, Second Department affirmed. For the defendants' allegedly fraudulent conduct in obtaining the attorneys' fee award in the medical malpractice action, it said, "The plaintiff's remedy ... 'lies exclusively in that lawsuit itself, i.e., by moving pursuant to CPLR 5015 to vacate the civil judgment due to its fraudulent procurement, not a second plenary action collaterally attacking the judgment in the original action.'"

The Urias say, "The words 'in a civil action' in [section 487] is the crux of this appeal." They cite the statutory language that an attorney who violates it "is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action." The Urias argue that "the clear wording of the statute ... contemplates two (2) independent remedies. One is a formal criminal prosecution commenced by the district attorney's office. The other is by the injured party commencing a civil action to recover treble damages. The latter is exactly what we have here."

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