State of New York Court of Appeals

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To be argued Thursday, February 15, 2024

No. 25 Matter of Colon v Teachers' Retirement System of the City of New York

New York City school teacher Louis Barcelo died of COVID-19-related causes in April 2020 and his registered domestic partner, Anne Marie Colon, was his designated beneficiary to receive the ordinary death benefit under his Teachers' Retirement System (TRS) pension plan. At that time, his death did not qualify for the pension plan's accidental death benefit, which has a greater monetary value and may be claimed only by the plan member's "eligible beneficiary" as defined by Retirement and Social Security Law (RSSL) § 601(d), which would be Barcelo's teenage daughter. In May 2020, the State Legislature amended the law to extend accidental death benefits, which had been limited to cases where members died as a result of their work, to include members who died as a result of COVID-19 infection. The amendment (RSSL § 607-i) was made retroactive to March 1, 2020, and provided that if the ordinary death benefit had already been paid, the statutory or "eligible beneficiary" would receive the difference between that and the accidental death benefit.

Colon attempted to file a claim for ordinary death benefits in June 2020, but found TRS had frozen her account based on the enactment of RSSL § 607-i. In August 2020, TRS determined that "if TRS receives a valid application for a[n] ... accidental death benefit from a statutory beneficiary, which we expect, the accidental death benefit will be paid out in lieu of the [ordinary] death benefit." In September 2020, the guardian of Barcelo's daughter filed for accidental death benefits on her behalf. The following month, Colon filed this suit to annul TRS's determination, arguing that its application of the amendment to deny her claim and give priority to the statutory beneficiary violated the Pension Impairment Clause of the State Constitution (article V, § 7[a]).

Supreme Court granted Colon's petition and ordered TRS to pay her the ordinary death benefit and to pay the enhanced amount of the accidental death benefit to Barcelo's daughter. "I think we can read the statute, so that it is not unconstitutional..., and that would be to acknowledge that a designated beneficiary of the ordinary death benefit could still get their benefit and just reduce the accidental death benefit that then goes to the statutory beneficiary ... so that all rights are protected...," it said. "People take care of things they think they need to take care of, and they designate beneficiaries accordingly. So here, [Barcelo] designates a beneficiary, he dies, he can no longer make alternative arrangements. And, then,... six weeks later, a statute is enacted, which basically negated the actions that he took."

The Appellate Division, First Department reversed. "Applying the plain language of the statute, the decedent's statutory beneficiary was entitled to unreduced accidental death benefits because [Colon], the designated beneficiary, had not yet been paid any ordinary death benefits. Supreme Court's interpretation that the statute required payment of ordinary death benefits to designated beneficiaries who 'should have been paid' improperly 'amend[ed the] statute by inserting words that are not there'.... The suspension of [Colon's] application for ordinary death benefits to afford the statutory beneficiary an opportunity to file a claim for accidental death benefits was appropriate. [TRS's] interpretation of the amended statute as prioritizing statutory beneficiaries' claims was not irrational and entitled to deference...." It rejected Colon's claim that TRS's application of the amended statute violated the Pension Impairment Clause because she 'failed to show that the retirement benefits and associated rights were 'diminished or impaired'...."

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To be argued Thursday, February 15, 2024

No. 26 Matter of Agramonte v Local 461, District Council 37, American Federation of State, County and Municipal Employees

Edwin Agramonte, Omer Ozcan and Raphael Sequiera are challenging their union's conduct of a 2021 election of officers for Local 461, District Council 37, AFSCME, which represents 1,200 lifeguards employed by the New York City Department of Parks and Recreation. The unincorporated union is composed of 30 year-round lifeguards, including Agramonte, and 1,170 seasonal lifeguards who generally work from Memorial Day to Labor Day. In early February 2021, Local 461 President Jason Velasquez issued notices of meetings to nominate candidates and to elect officers on Feb. 25 and 26; he sent the notices to year-round members, but not to seasonal members of the Local. At the nominations meeting, Agramonte nominated himself for president and several seasonal members, including Sequiera and Ozcan, for other offices. The Local's Election Committee ruled that only Agramonte was eligible to run and struck the rest of his slate because seasonal members do not pay dues during months they are not paid and, thus, they were not in good standing at the time of the election. Agramonte lost the election among year-round lifeguards; then he and his fellow petitioners commenced this proceeding to annul the election and compel Local 461 to allow seasonal lifeguards to vote and run for office in a new election. They alleged violations of the Local's own constitution and internal rules, but did not allege that all members authorized the challenged actions.

Supreme Court dismissed the suit, which alleged breach of contract and violation of the common law of elections, due to the petitioners' failure "to sufficiently plead that the individual members of Local 461 authorized or ratified the purportedly unlawful conduct," citing Martin v Curran (303 NY 276 [1951]). It said "the Martin Court concluded that, because a labor union is a voluntary unincorporated association, the plaintiff was required to plead and prove that each member of the union authorized or ratified the alleged wrongful conduct...."

The Appellate Division, First Department affirmed based on Martin. "[T]he law is well settled that suits for breaches of agreements or for tortious wrongs against officers of unincorporated associations, including unions, are limited to situations in which 'the individual liability of every single member can be alleged and proven,'" it said, quoting Martin.

The Agramonte petitioners argue that Martin does not apply to this case because they are not seeking money damages, but instead have "requested injunctive relief to address the unlawful conduct of an election in a local public employees' union, the Lifeguards' Union. Petitioners-Appellants alleged that the officer election held by their union had been conducted in a manner which undercut the basic ability of members to get a fair election, which we assert is a fundamental right under New York law. The basic problem: Only 2.5% of the members of the union were allowed to run for office or vote in the union's 2021 election." They say this case "is akin to union disciplinary cases, guided by the Court of Appeals' decision in Madden v Atkins (4 NY2d 283 [1958])," which created an exception to the Martin rule for cases involving wrongful expulsion from a union.

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For respondent Local 461: Hanan Kolko, Manhattan (212) 563-4100

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To be argued Thursday, February 15, 2024

No. 27 Taxi Tours Inc. v Go New York Tours, Inc.

Go New York Tours, Inc., and the other parties in this antitrust case are engaged in the "hop-on, hop-off" tour bus business in New York City, running buses on fixed routes past popular tourist attractions and allowing customers to "hop off" to visit an attraction and then "hop on" another of the company's buses to visit the next site. The sightseeing companies also offer "multi-attraction passes" that provide customers admission to various sites at discounted rates. The three major competitors in New York – Go New York Tours; Gray Line New York Tours and its related companies; and Big Bus Tours Ltd. and its affiliates – each negotiate their own agreements with tourist attractions to create their bundled passes.

When Taxi Tours Inc., a Big Bus entity, brought this unfair competition suit against Go New York in 2019, Go New York asserted counterclaims against the Gray Line and Big Bus groups for violation of the Donnelly Act, New York's primary antitrust statute, and a related claim for tortious interference with business relations. Go New York alleged that its competitors disparaged it to various attractions, such as the Empire State Building, One World Observatory, and the Intrepid museum; and conspired to use their market power to threaten the attractions with losing their relationships with Gray Line and Big Bus if they did business with Go New York. The Donnelly Act prohibits "every contract, agreement, arrangement or combination whereby ... [c]ompetition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained."

Supreme Court dismissed the antitrust claims for failure to state a cause of action, saying the fact "that some attractions have relationships with the counterclaim defendant[s] ... but choose not to do business with [Go New York] doesn't suffice for an inference of conspiracy to move forward. And there are no allegations of unlawful concerted actions by any particular counterclaim defendants.... Conspiracy can't be the only reason" the attractions would not contract with Go New York, "and it's just not sufficient to support a Donnelly Act claim."

The Appellate Division, Second Department affirmed. "Given the lack of any allegations concerning specific conspiratorial acts or discussions by the alleged coconspirators, the court properly declined to infer the existence of a conspiracy or an unlawful anticompetitive arrangement among Gray Line, Taxi Tours, and the attractions...," it said. "Nor does the record support Go New York's contention that Supreme Court applied the more restrictive federal pleading standard to the Donnelly Act claim." It said the tortious interference claim was properly dismissed because "Go New York failed to state a claim under the Donnelly Act," and "there were no other allegations that counterclaim defendants' conduct amounted to a crime or an independent tort" to show that "wrongful means" were used to reduce competition.

Go New York argues the lower courts "treated the Donnelly Act and the [federal] Sherman Act as essentially mirror images of each other, despite the plain language of the Donnelly Act clearly covering a greater range of anticompetitive relationships as well as anticompetitive action. By requiring that Appellant demonstrate a plausible conspiracy (not merely an arrangement) resulting in a restraint on trade, the lower courts not only applied the Sherman Act standard to the Donnelly Act, but also erroneously applied the Federal 'plausibility' pleading standard ... when they should have applied New York's lower 'notice pleading' standard," which requires that the pleadings give parties fair notice of the nature of the claims.

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For respondents Gray Line et al: Kenneth M. Edelson, Manhattan (212) 999-5800

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To be argued Thursday, February 15, 2024

No. 28 People v Patrick Labate

In the early morning hours of December 10, 2017, Patrick Labate crashed into a parked police car in Queens, spinning it around. He was charged with reckless driving and related charges. The district attorney's office announced readiness for trial on December 28, 2017, and trial was scheduled for September 5, 2018. On September 5, the prosecution said it was not ready for trial, without explaining why, and requested a 12-day adjournment to September 17. Criminal Court instead adjourned the trial for 43 days to October 18. The prosecution was not ready for trial on October 18 and offered no explanation, and the court adjourned the trial to November 28. The prosecution was again not ready for trial on November 28 and gave no explanation.

Labate moved to dismiss the reckless driving charge on speedy trial grounds, contending the prosecution's delays exceeded the 90-day limit of CPL 30.30. He argued that, in view of the prosecution's subsequent unreadiness and failure to explain why, its statement on September 5 that it would be ready for trial on September 17 was illusory and, therefore, it should be charged with all 43 days of the first adjournment from September 5 to October 18, not just the 12 days it had requested.

Criminal Court denied the speedy trial motion, charging the prosecution with only the 12-day delay it requested on September 5 and finding the remaining 31 days of the first adjournment were chargeable to the court. It said, "The established rule is that 'postreadiness delay attributable to the court is not chargeable to the People' (People v Brown, 28 NY3d 392 ...), thus, the period of the adjournment in excess of that actually requested by the People is excluded (id). Moreover, the Defendant failed to show either that the People's initial statement of readiness was illusory or that the People could not, in fact, be ready on the date they requested." Labate was convicted of reckless driving and was given a conditional discharge.

Appellate Term, Second Department for the 2nd, 11th and 13th Judicial Districts reversed and dismissed the reckless driving charge. "In opposition to defendant's speedy trial motions, the People did not provide any explanation, reasonable or otherwise, for their failure to be ready on September 5, 2018, October 18, 2018 or November 28, 2018," it said. "Consequently, we find that defendant met his burden of demonstrating that the People's statement that they would be ready for trial on September 17th, which is 'presumed truthful and accurate," was illusory (Brown, 28 NY3d at 405). Therefore, we agree with defendant's contention that the entire 43 days of post-readiness delay are chargeable to the People for the period from September 5th until October 18th.... Since the addition of those 31 days of chargeable time brings the number of chargeable days to more than 90," Labate's speedy trial motion should have been granted.

The prosecution argues that, under this Court's precedents, when prosecutors answer ready for trial "but then find it necessary to request an adjournment, they will be 'charged' only with the number of days they request, not with any additional days the court or the defense needs or requests." It says the "ultimate burden" is on defendants to show that a statement of readiness is illusory, and Labate "failed utterly to show that the People could not have been ready on the date they requested" (as opposed to the later date set by the court), "and that their choice of that date was somehow illusory. Thus, the Appellate Term incorrectly shifted the burden to the People to explain their subsequent unreadiness...."

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