State of New York
Court of Appeals

To be argued Wednesday, March 13, 2024

No. 34 Matter of Walt Disney Company v Tax Appeals Tribunal of New York State
No. 35 Matter of International Business Machines Corp. v Tax Appeals Tribunal of NYS

Walt Disney Company and its consolidated subsidiaries, and International Business Machines Corporation and its combined affiliates, contend that the application of former Tax Law § 208(9)(o) by New York tax authorities to deny their exclusion of royalty income from their corporate franchise tax returns violated the dormant Commerce Clause of the U.S. Constitution. The statute, which was repealed in 2013, required corporations that paid royalties to affiliates within their corporate group to add back those payments to their New York net income for calculating their franchise tax. To avoid taxing both affiliates on the same royalties, the statute allowed affiliates that received royalty payments to deduct them from their own net income "unless such royalty payments would not be required to be added back" by the affiliate that paid them.

In these cases, the state Department of Taxation and Finance determined that the Disney companies and IBM companies improperly deducted royalty payments they received from affiliates in foreign countries that were not subject to New York franchise taxes and, so, were not required to add those payments back on a New York tax return. The Tax Department assessed Disney for an additional $3.9 million in franchise taxes for the tax years 2008 through 2010; and assessed IBM for an additional $64.6 million for 2007 through 2012. The state Tax Appeals Tribunal upheld the assessments in both cases, ruling that a corporation could deduct royalties it received from a related affiliate only if that affiliate was subject to tax in New York. In separate appeals, Disney and IBM argued that the determinations denying their royalty deductions violated the dormant Commerce Clause by discriminating against interstate and foreign commerce.

The Appellate Division, Third Department upheld the Tribunal's determinations in both cases. In Disney, it said there was no discrimination because "the reason why petitioner would be permitted to deduct such royalty payments from its income, if its affiliates were New York taxpayers, is because the affiliate would be paying taxes on that income.... Thus, such royalty income tax would be paid by either the taxpayer or its affiliate – not both. Since similarly situated entities would also be paying taxes on the royalty income once in either scenario, whether or not such commerce is from an out-of-state source, petitioner has failed to show differential treatment between in-state and out-of-state economic interests that rises to the level of unconstitutional discrimination." In IBM, it rejected the corporation's claim that the tax scheme failed the internal and external consistency tests by unfairly apportioning taxes in violation of the Commerce Clause.

For appellant Disney: Marc A. Simonetti, Manhattan (212) 858-1000
For appellant IBM: Jeffrey A. Friedman, Washington, DC (202) 383-0718
For respondents Tribunal et al: Asst. Solicitor General Frederick A. Brodie (518) 776-2317

State of New York
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To be argued Wednesday, March 13, 2024

No. 36 Morrison v New York City Housing Authority

In May 2018, Gregory Morrison took an elevator to the sixth floor of the Baruch Houses in Manhattan to visit a friend. He decided to take a stairway down, but slipped and fell on the top step and seriously injured his knee, which required two surgeries. He brought this personal injury action against the New York City Housing Authority (NYCHA), the owner of the building, alleging that it negligently allowed liquid to accumulate in the stairwells. He said he did not see any liquid on the stairs, but he stepped on "something slippery" when he fell.

After discovery, NYCHA moved for summary judgment dismissing the suit, contending the evidence did not establish that it created or had prior knowledge of a slippery condition on the stairs. A NYCHA building inspection report dated 14 days before Morrison's accident, and three prior inspection reports, noted that "steps & treads" in the building were "unsat[isfactory]," but did not identify which stairways it referred to nor specify the nature of the unsatisfactory condition. NYCHA's janitorial work schedule required its staff to clean the stairs once a week, and to inspect the stairways every morning and report any hazardous conditions to a supervisor.

Opposing the motion, Morrison submitted the affidavit of a professional engineer he retained to investigate the cause of the accident. The engineer said the stairway where Morrison fell had a "coefficient of friction" – when wet – that did not meet industry standards, which he said was consistent with NYCHA's inspection reports describing the stairs treads as unsatisfactory. The engineer concluded that "NYCHA was negligent in allowing their stairway to be dangerously slippery by having [an] inadequate coefficient of friction."

Supreme Court dismissed the suit, saying NYCHA demonstrated its lack of notice of a hazardous condition and Morrison failed to raise a question of fact "because he improperly tried to introduce a new theory of liability through the opinion of his expert."

The Appellate Division, First Department affirmed, saying NYCHA demonstrated "that it did not have constructive notice of the alleged condition" and Morrison "failed to raise an issue of fact, as the building inspection reports neither indicate specific staircases or floors with unsatisfactory conditions nor set forth the specific nature of the unsatisfactory condition." It said, "Although plaintiff's expert did not, as ... the court found, raise a new theory of negligence regarding the claim of inadequate coefficient of friction; the expert nonetheless failed to raise an issue of fact to rebut defendant's prima facie showing that it neither created nor had notice of the transient condition of a wet or slippery substance at the specific incident location and that it followed a proper and reasonable inspection and cleaning schedule."

Morrison argues the Appellate Division improperly "construed the facts in the light least favorable to Morrison," the non-moving party, "while failing to recognize that an issue of fact existed as to whether NYCHA's application of paint to the treads caused inadequate friction coefficiency under wet conditions in violation of ASTM and UL standards." He says the lower court based its ruling on "contradictory proof" from NYCHA: "inspection records that not only failed to eliminate issues of fact but, conversely, supported inferences that it had actual knowledge of a dangerous condition in its staircase."

For appellant Morrison: Si Aydiner, Mineola (212) 471-5108
For respondent NYCHA: Diana Neyman, Manhattan (212) 732-2000

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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 Wednesday, March 13, 2024

No. 37 Russell v New York University

Suzan Russell was an adjunct faculty member at New York University (NYU) in March 2015, when she commenced an employment discrimination action in federal court in the Southern District of New York against the university and two of its professors. Russell, a Jewish woman who is gay and over the age of 40, claimed she was harassed by the professors beginning in 2013 via mail, email and online posts targeting her gender, age, religion and sexual orientation. She alleged that she received unsolicited mail including an AARP membership invoice, a "Healthy Aging" newsletter, a copy of the Koran, information on converting to Christianity, and materials related to heart conditions and arthritis, urinary incontinence pads, vaginal lubricants, and pornographic depictions of same-sex encounters, among other things. U.S. District Court referred her case to mediation in September 2015, but no resolution was reached. One month later, in October 2015, NYU terminated her employment for the stated reason that she had contacted a professor who was a potential witness in the federal case, in violation of a confidentiality order from the District Court. Russell then amended her federal complaint to add a retaliation claim based on her termination.

In July 2017, U.S. District Court dismissed Russell's federal claims on the merits. The U.S. Court of Appeals for the Second Circuit affirmed.

While her Second Circuit appeal was pending, Russell commenced this action in State Supreme Court asserting claims for discrimination, hostile workplace, and retaliation against NYU and the professors under the New York State and New York City Human Rights Laws, based on the same factual allegations as in the federal action.

Supreme Court dismissed the suit, finding that Russell's State and City Human Rights Law claims were barred by the doctrine of collateral estoppel based on the factual determinations of the federal courts..

The Appellate Division, First Department affirmed in a 3-2 decision. The majority said, "In light of the particular express facts that the federal courts found were conclusively demonstrated by the record on the summary judgment motions before the district court; the nature of the allegations underlying plaintiff's State and City Human Rights Law claims in this action and the manner in which plaintiff has litigated those claims; and the relevant collateral estoppel case law..., we conclude that, even affording the City Human Rights Law claims the liberal analysis to which they are entitled, plaintiff's claims under both the State and City Human Rights Laws were properly dismissed under the doctrine of collateral estoppel."

The dissenters argued the retaliation claim under the City Human Rights Law (HRL) should be reinstated against NYU. "Viewing the record presented to the federal courts in the light most favorable to plaintiff, I would hold that the temporal proximity between the failed mediation and plaintiff's termination, by itself, suffices to support a finding of a causal relationship for purposes of plaintiff's City HRL retaliation claim. This is a crucial distinction from the outcome reached by the federal courts, which, in applying federal law, held that any causal inference would be too weak to rebut the facially nondiscriminatory reason proffered by defendants for plaintiff's termination, i.e., her violation of the Federal confidentiality order. Since invidious reasons may not form any part of an employment action under the City HRL, these factors alone raise issues of fact as to whether plaintiff's termination was effected, at least in part, in retaliation for her decision to continue the prosecution of her Federal discrimination claims."

For appellant Russell: Avram S. Turkel, Manhattan (212) 575-7900
For respondents NYU et al: Joseph C. O'Keefe, Manhattan (212) 969-3000
For respondents Thometz and Meltzer: David M. Alberts, Manhattan (212) 483-9490

State of New York
Court of Appeals

To be argued Wednesday, March 13, 2024

No. 38 People v David Williams

An undercover police officer (UC 322) bought $40 worth of heroin through an intermediary, Todd Elfe, during a buy-and-bust operation in upper Manhattan in December 2016. UC 322 did not meet the seller face-to-face, but said he followed "several feet" behind Elfe and the dealer as they walked along First Avenue near 115th Street, far enough away that he could not hear what they said to each other. After Elfe handed him three glassines of heroin, UC 322 reported to his support team that the "actual dealer" was wearing black pants, a white sweater and a black hat, but did not otherwise describe him. David Williams was arrested nearby minutes later, and UC 322 made a confirmatory identification of Williams as the seller in the precinct parking lot half an hour after the arrest.

At a pretrial hearing, UC 322 testified about his observations during the buy-and-bust and his confirmatory identification of Williams at the precinct after the arrest; and the arresting officer testified about her basis for making the arrest and the circumstances of UC 322's confirmatory identification.. Supreme Court ruled the police lacked probable cause to arrest Williams based on its finding that the arresting officer's testimony was unreliable and "tailored to meet constitutional muster." It suppressed the confirmatory identification and the physical evidence recovered from Williams as tainted by the illegal arrest.

The court denied Williams' request for an independent source hearing to determine whether UC 322 had a sufficient opportunity to observe the seller during the drug transaction to make an in-court identification of Williams admissible, untainted by the illegal arrest and post-arrest identification. It said a separate hearing was not necessary because UC 322's testimony at the probable cause/suppression hearing "demonstrates clear and convincing evidence 'that the undercover's observations before and during the alleged sale provided an independent source for' an in-court identification of Defendant at trial." After UC 322 identified him at trial, Williams was convicted of third-degree criminal sale of heroin and sentenced to six years in prison.

The Appellate Division, First Department affirmed, saying "the hearing court providently exercised its discretion in denying defendant's request for a separate independent source hearing. At the suppression hearing, the undercover officer and an officer present at the identification procedure testified. There was detailed testimony about the undercover officer's ample opportunity to observe defendant at the time of the drug sale, and a description of the standard confirmatory identification that was sufficient to permit the court to make its finding. Accordingly, the officer was properly permitted to identify defendant in court."

Williams argues the trial court violated his due process rights by "denying [him] the opportunity to challenge evidence of an independent source for UC 322's in-court identification." He says the court denied his motion "without hearing the parties' arguments on the question of independent source, without notifying the parties that it would make that determination on the basis of the Dunaway record, and without considering the potential 'causal connection' between the arrest, the precinct identification, and the officer's in-court identification.... UC 322 never testified that he had noticed the seller's facial characteristics, race, height, weight, or hairstyle. The parties never inquired as to those facts, or litigated independent source at all, because the Dunaway hearing was 'limited to the issue of whether there was probable cause [for] arrest.'"

For appellant Williams: Carola M. Beeney, Manhattan (212) 577-2523
For respondent: Manhattan Assistant District Attorney Brent E. Yarnell (212) 335-9000