State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

September 10 and 11, 2019

State of New York
Court of Appeals

To be argued Tuesday, September 10, 2019

No. 72 Henry v Hamilton Equities, Inc.

Carol Henry, a licensed practical nurse, suffered a fractured hip while working at the Grand Manor Nursing & Rehabilitation Center in the Bronx in 2011, when she slipped and fell in a puddle of water on the floor, which allegedly resulted from a recurring leak in the roof. She brought this negligence action against the building's owners, Hamilton Equities, Inc. and related entities (collectively "Hamilton"), among other defendants. Hamilton moved for summary judgment dismissing the complaint against it on the ground that, as an out-of-possession landlord, it could not be held liable for unsafe conditions on the premises.

Hamilton built the facility and leased it to Grand Manor in 1974. The lease required Grand Manor to "maintain and keep all parts of the leased premises ... in a good state of repair and condition." The lease gave Hamilton the right to enter the property to make repairs if Grand Manor failed to do so, but stated that this provision would not make it "obligatory upon the part of [Hamilton] to make such repairs or perform such work." The lease also acknowledged that Hamilton might finance the project through the U.S. Department of Housing and Urban Development (HUD), which it did, and the lease provided that if any regulatory agreements related to the financing were inconsistent with the lease, the "regulatory agreements [would] prevail and govern the rights of the parties." Hamilton's regulatory agreement with HUD required Hamilton to "maintain the mortgaged premises ... in good repair and condition," and required it to establish a reserve fund to cover "replacement of structural elements[] and mechanical equipment." Henry argued that, under Putnam v Stout (38 NY2d 607 [1976]), Hamilton could be held liable for her injuries because the regulatory agreement imposed a non-delegable duty on Hamilton to maintain the facility.

Supreme Court granted Hamilton's motion to dismiss the suit, saying, "While it is axiomatic that a contractual obligation to repair and maintain the premises can serve to hold an out-of-possession landlord liable for negligence, it appears to be a question of first impression whether a contract such as the regulatory agreement, to which the tenant [Grand Manor] is not a party nor an intended beneficiary, will suffice. The court finds that the contractual obligation upon the landlord, for purposes of this exception, arises when the landlord has contracted with *the tenant* ... to repair or maintain the premises." It said the regulatory agreement with HUD was not meant to benefit Grand Manor, but was "solely to protect HUD's interest" in the property.

The Appellate Division, First Department affirmed, saying the purpose "of the HUD Agreement was to protect the integrity of the building that was subject to the mortgage guaranteed by HUD. Thus, the intention was to benefit HUD and the bank, not third-parties injured on the premises.... The social policy considerations cited by the Court of Appeals in Putnam ... are promoted only where the landlord had a contractual obligation directly to the tenant."

Henry argues, "A plain reading of this Court's decision in Putnam demonstrates that the holding was not limited to contracts directly between owners and lessees for the maintenance of leased property. In fact, this Court explicitly stated that the doctrine was premised on a 'covenant in the lease or otherwise to keep the land in repair." She says the lower courts also "erred by adding another element to the Putnam rule" by requiring that the owner's agreement to repair "must specifically contemplate protection to third parties." In any case, she says, "HUD itself was created to benefit third-parties by strengthening communities and improving quality of life" through such projects as the Grand Manor facility and its agreement with Hamilton provided for health and safety inspections by HUD, and so "the Agreement also contemplated protection to third-parties."

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State of New York
Court of Appeals

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To be argued Tuesday, September 10, 2019

No. 73 He v Troon Management, Inc.

Xiang Fu He alleges that he was injured in January 2007 when he fell on ice and snow on the sidewalk in front of his workplace on Flushing Avenue in Brooklyn. The building had been leased to his employer, SDJ Trading, Inc., by the landlord, Flushing-Thames Realty Co. He brought this negligence action against Flushing-Thames, individual owners and their managing agent, Troon Management, Inc.

The defendants moved for summary judgment dismissing the complaint, arguing they could not be held liable because they were out-of-possession landlords and their tenant, SDJ Trading, was required to maintain the sidewalk under its lease. The lease provided that SDJ was responsible for keeping the sidewalk "clean and free from ice [and] snow." He responded that the general rule absolving out-of-possession landlords of liability for injuries at their properties did not apply because New York City Administrative Code § 2-710, which was enacted in 2003 to transfer liability for injuries caused by unsafe sidewalks from the City to adjoining property owners, imposed a nondelegable duty on the owners to maintain the sidewalk. Section 7-210 states, in part, "It shall be the duty of the owner of real property abutting any sidewalk ... to maintain such sidewalk in a reasonably safe condition." It further provides that property owners "shall be liable for any injury to property or personal injury, including death, proximately caused by the failure of such owner to maintain such sidewalk in a reasonably safe condition," including "the negligent failure to remove snow, ice, dirt or other material from the sidewalk."

Supreme Court denied the defense motion to dismiss. It said the defendants failed to show they were out-of-possession landlords because, despite the lease provision obligating SDJ Trading to clear ice and snow from the sidewalk, "property owners are now 'under a statutory nondelegable duty to maintain the sidewalk'" pursuant to section 7-210. "The City ordinance is clear in imposing a duty to maintain the sidewalk in a reasonably safe condition on 'the owner of real property abutting [the] sidewalk'..., including liability for personal injury caused by 'the negligent failure to remove snow, ice, dirt or other material from the sidewalk'...."

The Appellate Division, First Department reversed and dismissed the complaint, saying, "Defendants cannot be held liable for injuries allegedly sustained by plaintiff when he slipped on snow and ice on the sidewalk adjacent to their property, because they were out-of-possession landlords with no contractual obligation to keep the sidewalks clear of snow and ice, and the presence of snow and ice does not constitute a significant structural or design defect...." The court did not mention section 7-210.

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For respondent Troon Management et al: Scott Taylor, White Plains (914) 358-4422

State of New York
Court of Appeals

To be argued Tuesday, September 10, 2019

No. 74 People v Mouhamed Thiam

Mouhamed Thiam was arrested in midtown Manhattan in June 2016 by a police officer who said he saw Thiam holding marijuana in a public place and open to public view "at the south west corner of Broadway & West 29 Street," as the officer wrote in the misdemeanor complaint. He recovered a second bag of marijuana and eight pills from Thiam's pockets and conducted a field test to confirm that both bags contained marijuana. The officer concluded the pills were oxycodone "based on my professional training as a police officer in the identification of drugs, and my prior experience as a police officer making drug arrests," he said in the complaint. Thiam was charged with criminal possession of a controlled substance in the seventh degree (the pills), a class A misdemeanor; criminal possession of marijuana in the fifth degree (public place), a class B misdemeanor; and unlawful possession of marijuana, a violation.

At Thiam's arraignment, defense counsel argued that the complaint was facially insufficient because the factual allegations were inadequate to establish that the pills were oxycodone or that Thiam displayed marijuana in "a public place." Rather than seek dismissal of the complaint, counsel asked Criminal Court for a sentence of time served. Thiam then waived prosecution by information and pled guilty to the top count of criminal possession of oxycodone in exchange for time served.

The Appellate Term, First Department reversed the conviction and dismissed the complaint, saying "the accusatory instrument was jurisdictionally defective" because the top count to which Thiam pled guilty, alleging possession of oxycodone, was facially insufficient. It said, "The police allegations that the pills recovered from defendant were oxycodone ... did not meet the reasonable cause requirement, since the arresting officer presented nothing more in the accusatory instrument than a conclusory statement that he used his experience and training as the foundation in drawing the conclusion that he had discovered illegal drugs.... Absent from the instrument were any facts relied upon by the officer in reaching the conclusion that the substance seized was an illegal drug...." It did not address the facial sufficiency of the second count, alleging possession of marijuana in a public place. The court concluded, "Instead of reinstating the remainder of the accusatory instrument, we dismiss it, as a matter of discretion in the interest of justice, since defendant has completed his sentence and no penological purpose would be served by remanding for further proceedings."

The prosecution argues that the charge alleging marijuana possession in a public place was facially sufficient and, therefore, the misdemeanor complaint was not jurisdictionally defective and the conviction should stand. "Since defendant waived prosecution by information, and was charged in a misdemeanor complaint with at least one facially sufficient misdemeanor count, the Criminal Court had jurisdiction over defendant's prosecution" and "was authorized to accept defendant's guilty plea to the controlled substance charge, even if" that charge was itself facially insufficient. The prosecution says it makes no difference that Thiam pled guilty to an A misdemeanor that was more serious than the B misdemeanor that was facially sufficient.

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For respondent Thiam: Will A. Page, Manhattan (212) 577-3442

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To be argued Wednesday, September 11, 2019

No. 75 People v Rong He

Rong He was accused of slashing and stabbing two men on the floor of a Brooklyn nightclub in February 2011. He was arrested six months later when one of the victims, Chun Zhang, recognized him on the street, followed him to his Brooklyn apartment building, and called 911. Detectives entered the building through an open door, apprehended He on the third floor outside his apartment door and took him down to the street, where Zhang identified him as the assailant. He was handcuffed and taken to the 68th Precinct, where a detective who had investigated the nightclub incident processed his arrest. The detective interviewed Zhang about how he spotted and followed He on the street and directed the police to the apartment building. About 4½ hours after his arrest, and after he was given and signed Miranda warnings, He gave a statement in which he admitted slashing two men at the nightclub, but claimed they were the aggressors and said he acted in self-defense.

Supreme Court denied He's motion to suppress his statement. The court found that his warrantless arrest in the hallway outside his apartment was unlawful under Payton v New York (445 US 573), but ruled that the statement was attenuated from the illegal arrest. A jury found He guilty of two counts of second-degree assault and one of fourth-degree weapon possession, and he was sentenced to 11 years in prison.

The Appellate Division, Second Department affirmed in a 3-1 decision, saying, "Supreme Court's determination that the defendant's statement was attenuated from his illegal arrest is supported by the record. The defendant was not interviewed by the police until approximately 4½ hours after his arrest, and no questioning occurred until after ... the defendant initialed and signed the Miranda sheet.... The interview was conducted in a different location than the arrest, and by police personnel who were not involved in the arrest.... In addition..., the record supports the court's finding that there was no flagrant misconduct.... There is no indication that the conduct of the arresting officers was motivated by bad faith or a nefarious police purpose...." The Appellate Division unanimously rejected He's claim that prosecutors committed a Brady violation by refusing to disclose the contact information of potential witnesses.

The dissenter said, "Cases that have found sufficient attenuation between an unlawful arrest and a custodial statement have generally involved an intervening event, which could be deemed the precipitating cause of the statement, other than: (1) the passage of several hours; (2) the fact that the statement was elicited by a detective who was not one of the arresting officers; and (3) the fact that Miranda warnings ... were given.... Here, there was no such intervening event.... [T]he showup identification that occurred immediately after the arrest cannot be deemed an intervening event because the showup identification ... flowed directly from the arrest.... Finally..., I believe that the police misconduct identified by the Supreme Court was flagrant. The court's finding that the arrest was illegal was not based solely on the court's conclusion that the arrest was made in the defendant's home in violation of Payton," but "was also based on its conclusion that, at the time of the arrest, the police lacked probable cause to believe that the defendant had committed a crime...."

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For respondent: Brooklyn Assistant District Attorney Seth M. Lieberman (718) 250-2000

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To be argued Wednesday, September 11, 2019

No. 76 People v Manuel Rodriguez

Manuel Rodriguez opened a checking account in his own name at a Manhattan branch of J.P. Morgan Chase Bank with a $60 deposit on August 13, 2009. The next day, an unidentified man deposited a check – which was stolen from the accounting firm of Konigsberg, Wolfe, and Company (KWC), forged in the amount of $11,340, and made payable to Manuel Rodriguez – into Rodriguez's new account. The bank's surveillance video established that the depositor was not Rodriguez. A day later, on August 15, Rodriguez withdrew $11,000 from the account in a series of three transactions, making withdrawals of $4,000 and $3,000 from two Chase branches in Manhattan and a $4,000 withdrawal from a Chase branch in Brooklyn. He was arrested seven months later and charged with third-degree grand larceny, which applies to a defendant who "steals property" worth more than $3,000. Penal Law § 155.05(1) provides, "A person steals property and commits larceny when, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from an owner thereof."

Rodriguez moved to dismiss the charge for insufficient evidence, which he said established that someone else stole the check from KWC and deposited it into his account, while he withdrew money from his own account. He said the proof might show he was guilty of criminal possession of stolen property, but not that he committed grand larceny by taking "property from an owner." Supreme Court denied the motion. Rodriguez was convicted of third-degree grand larceny and sentenced to 1⅓ to 4 years in prison.

The Appellate Division, First Department affirmed, ruling the verdict was based on legally sufficient evidence. "The 'taking' element was satisfied by proof the defendant 'exercised dominion and control' over the proceeds of the check 'in a manner wholly inconsistent with the owner's continued rights' ... by withdrawing the money from his account for his personal use." Even if there were no evidence linking him to the check, it said, "it would not undermine the conviction because the larceny charge was not based on the theft of the check (i.e., that piece of paper), but the proceeds thereof.... In any event, there was ample circumstantial evidence from which the jury could have reasonably inferred that defendant participated in a scheme, with at least one other person, to steal the check, deposit it, and withdraw its proceeds...."

Rodriguez argues, "Neither the statute nor the case law supports the idea that [he] may be found guilty of grand larceny where he was not connected to the theft of the check from the firm and where he only ever possessed the proceeds of the check that was stolen and deposited by someone else. The evidence might have supported a finding of criminal possession of stolen property or perhaps some other offense related to the proceeds of stolen property. But where his withdrawal of funds from his own account was neither a 'taking' nor a theft 'from an owner,' he was not guilty of grand larceny, and his conviction should be reversed."

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State of New York
Court of Appeals

To be argued Wednesday, September 11, 2019

No. 77 People v Omar Deleon

In January 2016, a joint task force of the U.S. Postal Service and the New York Police Department were conducting surveillance of a sidewalk mail collection box in the Bronx, which had been the site of prior "mailbox fishing" thefts. The task force had placed $3,050 worth of money orders in the mailbox. Omar Deleon and another man placed a fishing device, a plastic water bottle coated with a sticky substance and tied to a string, into the mailbox and walked away. Deleon returned and began to pull the bottle back out of the mailbox, but was apprehended before he could retrieve it. Task force members pulled the bottle out of the box and found four pieces of mail stuck to it, but they did not record any information about what the envelopes contained. Deleon admitted to a postal inspector that he was to be paid $100 for each mailbox he fished. He was indicted on charges of attempted grand larceny in the third degree (for allegedly attempting to steal money orders worth more than $3,000) and fourth degree (for allegedly attempting to steal more than $1,000), as well as possession of burglar's tools.

Supreme Court partially granted Deleon's motion to dismiss the indictment for insufficient evidence by dismissing the third-degree attempted grand larceny count and reducing the fourth-degree count to attempted petit larceny. The court said there was insufficient evidence to establish that Deleon "acted with a specific intent ... to commit the specific crimes of either Grand Larceny in the Third or Fourth Degrees by stealing items of mail valued at $1000.00 or more..., in the absence of any evidence that he knew or believed that mail in that amount could be obtained upon his theft."

The Appellate Division, First Department reversed and reinstated the original grand larceny charges, saying the lower court erred in requiring "proof of intent with regard to the property value elements of attempted grand larceny in the third and fourth degrees. These elements are strict liability aggravating factors when the completed crimes are charged." It said "any ambiguity" about whether a different rule applies to attempted theft crimes "has been resolved by the Court of Appeals' holding in People v Miller (87 NY2d 211 [1995]), that a strict liability aggravating factor of a completed crime is not a 'result' to which an intent requirement attaches when an attempt to commit the completed crime is charged. Accordingly, the mental culpability requirements for an attempt and a completed crime are identical..., and the court erred in finding that the attempted grand larceny charges required evidence of intent to steal property of a certain value."

Deleon argues that this case is not governed by Miller, which held that the defendant was properly charged with first-degree attempted robbery because he actually caused serious physical injury to the victim (the aggravating factor) when he attempted unsuccessfully to steal the victim's property. He says, "Here, Mr. Deleon's intent was to steal property, a petit larceny. But there is no parallel result to Miller here, because Mr. Deleon's 'fishing expedition' did not result in him actually 'catching' any of the money orders that the Joint Task Force had planted in the mailbox." He says the attempted grand larceny charges were properly reduced to petit larceny "because the prosecution did not present any evidence that Mr. Deleon intended to steal property in excess of $1,000, nor that he knew or could have known the value of the contents of the mailbox or of the items attached to the fishing device."

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