State of New York
Court of Appeals

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.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

February 7 thru February 9, 2023

State of New York
Court of Appeals

To be argued Tuesday, February 7, 2023

No. 10 Casey v Whitehouse Estates, Inc.

Kathryn Casey and other tenants of a Manhattan apartment building brought this class action against the building's owner, Whitehouse Estates, Inc., and related entities in 2011, claiming they illegally deregulated 78 rent-stabilized apartments while receiving tax abatements on the building through New York City's J-51 program. Such deregulation had been permitted by the Division of Housing and Community Renewal (DHCR) until 2009, when this Court ruled in Roberts v Tishman Speyer Props. (13 NY3d 270) that apartments in buildings receiving J-51 benefits could not be removed from rent stabilization. The tenants sought a declaration that their units were rent-stabilized, recovery of rent overcharges, and other relief. In 2012, Whitehouse filed retroactive registrations with DHCR which registered 72 of the apartments as rent-stabilized, but with recalculated regulated rents that were higher than it actually charged tenants from 2007 through 2011, the four-year 'look-back period.' The tenants moved for summary judgment declaring that their legal regulated rent must be calculated according to the default formula of the Rent Stabilization Code (RSC) due to the defendants' failure to provide adequate rental history records to establish their maximum legal rent.

Supreme Court granted the motion for summary judgment and referred the matter to a special referee to determine the base regulated rent using the default formula. It said use of the default formula was proper because it found Whitehouse's filing of retroactive rent registrations in 2012 was "a fraudulent attempt" to avoid a court determination that the apartments are rent stabilized and to "impose their own rent calculations, as the presumptively legal rent, for the duration of the statutory four-year look-back period...."

The Appellate Division, First Department affirmed in a 3-1 decision, saying that after the tenants filed their suit, "defendants, without court approval, unilaterally registered rents from the base date forward that were not the rents actually paid, and instead registered rents far higher, without explanation. While these intentional misstatements of fact, which were intended to artificially increase the legal regulated rent, constitute fraud under Grimm," the RSC "also calls for application of the default formula where '(i) the rent charged on the base date cannot be determined; or (ii) a full rental history from the base date is not provided.' Both of those scenarios apply here...." It said the default formula applies based on the defendants' fraudulent conduct and failure to provide records of the actual rents charged on the base date in 2007.

The dissenter said the trial court erred in applying the default formula because the tenants "failed to provide any evidence of defendants' fraud.... Plaintiffs' fraud claim rests almost entirely on uncontroverted evidence that the defendants began treating numerous apartments as deregulated sometime between 1993 and 2011 while receiving tax benefits. This is precisely what Regina [Metro. Co. v New York State DHCR (35 NY3d 332)] instructs is not evidence of willfulness to establish common-law fraud." She said, "The correct way to determine the tenant's legal regulated rent and any overcharge is by using 'the rent actually charged on the base date'" in 2007, and the case should be remanded to Supreme Court for discovery to determine the rents that were actually charged.

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For respondents Casey et al: Ronald S. Languedoc, Manhattan (212) 349-3000

State of New York
Court of Appeals

To be argued Tuesday, February 7, 2023

No. 11 Henry v New Jersey Transit Corporation

Kathleen Henry was a passenger on a New Jersey Transit Corp. bus traveling from Manhattan to New Jersey in 2014, when the bus collided with another vehicle in the Lincoln Tunnel. She suffered a serious shoulder injury and brought this personal injury action against New Jersey Transit and the bus driver. A jury found in her favor in 2018 and awarded damages including $400,000 for past pain and suffering and $400,000 for future pain and suffering. In 2019, New Jersey Transit moved to set aside the verdict or, alternatively, to reduce the damages awarded as excessive. Supreme Court denied the motion.

Meanwhile, the U.S. Supreme Court ruled in Franchise Tax Bd. of Cal. v Hyatt (139 S Ct 1485 [2019]) (Hyatt III) that a state cannot be sued in the courts of another state without its consent under the doctrine of interstate sovereign immunity. In this case, New Jersey Transit cited Hyatt III in its appeal to the Appellate Division, contending that Henry's suit must be dismissed based on interstate sovereign immunity because it is an agency of the State of New Jersey and it did not consent to be sued in the courts of New York.

The Appellate Division, First Department affirmed, saying that "New Jersey Transit waived its sovereign immunity defense (see Belfand v Petosa, 196 AD3d 60 [1st Dept 2021] [decided herewith]). It did not place plaintiff or the court on notice of the defense by asserting it in its responsive pleadings, during pretrial litigation, at trial or in its posttrial motion. Indeed, it raised the issue for the first time on appeal. As the defense pre-dates [Hyatt III], and thus was available at the time New Jersey Transit served its answer, '[its] litigation conduct induced substantial reliance on that conduct by plaintiff and our courts, and is inescapably a clear declaration to have our courts entertain this action' (Belfand, 196 AD3d at 73)." It also said the damages awards "do not deviate materially from what would be reasonable compensation...."

New Jersey Transit argues that interstate sovereign immunity is "a fundamental constitutional right," and any waiver of that right "must be express and unambiguous" and cannot be inferred from its litigation conduct in this case. As for its failure to assert a sovereign immunity defense for six years after the suit was filed, it said, "Because sovereign immunity speaks to the Court's subject matter jurisdiction, it may be raised at any time, including for the first time on appeal." It also argues the Appellate Division's rejection of its sovereign immunity defense, "even though New York courts would have granted immunity to the State of New York in similar circumstances," violated the Full Faith and Credit Clause of the U.S. Constitution.

For appellants New Jersey Transit et al: Lawrence McGivney, Manhattan (212) 509-3456
For respondent Henry: Brian J. Isaac, Manhattan (212) 233-8100

State of New York
Court of Appeals

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To be argued Tuesday, February 7, 2023

No. 12 People v Santino Guerra

On St. Patrick's Day in 2016, Santino Guerra got into an altercation with several strangers in the Bronx and stabbed one of them, Dylan Pitt, in the chest with a penknife. Facing charges of attempted murder and assault, Guerra testified at trial that he acted in self-defense and that Pitt initiated the fight by swinging a beer bottle at him. Prosecution witnesses testified Guerra attacked Pitt without provocation. To bolster his claim that Pitt was the initial aggressor, Guerra sought to introduce evidence of Pitt's violent history, including an incident on a previous St. Patrick's Day when Pitt broke a man's jaw and another in which he assaulted a stranger.

Supreme Court barred the evidence based on the 1976 Court of Appeals ruling in People v Miller (39 NY2d 543), which modified the rules of evidence to permit a defendant asserting a justification defense "to introduce evidence of the victim's prior specific acts of violence of which the defendant had knowledge," in order to show whether the defendant had a reasonable belief that he faced imminent danger and his use of force was necessary to protect himself. It said evidence of a victim's past violence remained inadmissible if the defendant had been unaware of it or would use it to show the victim "generally had a poor reputation in the community ... lest a jury find a homicide justifiable for the wrong reason – i.e. that the deceased was unworthy of life." Since Guerra had not been aware of Pitt's criminal history at the time of the stabbing, the trial court allowed evidence of several of Pitt's prior convictions and the fact he was on parole, but only for impeachment and for the jury to evaluate Pitt's credibility, not to determine whether he was the initial aggressor. Guerra was convicted of second-degree assault and sentenced to three years in prison.

The Appellate Division, First Department affirmed. "The court correctly precluded defendant from introducing the victim's prior violent acts for the purpose of proving that the victim was the initial aggressor," it said, citing Miller. Since the acts were unknown to defendant, they were irrelevant to his state of mind at the time of the altercation and cannot establish that the victim was the initial aggressor.... The court providently exercised its discretion in imposing reasonable limits on defendant's cross-examination of the victim, based on its determination that the jury might improperly use information about the victim's prior violent acts to determine the issue of who was the initial aggressor."

Guerra urges this Court to overrule Miller, saying "New York has long barred the jury from considering the complainant's violent character on the issue of initial aggressor.... The overwhelming majority of other jurisdictions – including the federal courts and forty-eight sister states – now admit such evidence in one form or another." He says New York's rule "was grounded in the desire to minimize prejudice to the People" by preventing the use of a victim's poor reputation to justify a defendant's use of force, but "such a rule improperly equates protections to nondefendant witnesses with those afforded to criminal defendants, who face deprivation of liberty." He says the rule violates the "Sixth Amendment right to present a defense. Evidence of the complainant's violent character or specific prior violent conduct – especially where recent, highly related, and provable by prior court adjudications – is exculpatory, highly reliable, and not prejudicial to the complainant or the People."

For appellant Guerra: Kelly A. Librera, Manhattan (212) 294-6700
For respondent: Bronx Assistant District Attorney T. Charles Won (718) 838-7097

State of New York
Court of Appeals

To be argued Wednesday, February 8, 2023

No. 19 James B. Nutter & Company v County of Saratoga

James B. Nutter & Company (JBNC) held a mortgage on property in the Town of Galway, Saratoga County, and in 2015, after the borrowers defaulted, it filed a foreclosure action in Saratoga Supreme Court. JBNC contacted Galway in 2018 to inquire about the tax status of the property, was told that $3,309.92 in taxes were owed, and it paid the amount in full, but it was not informed that delinquent taxes were also owed for prior years. About two months later, Saratoga County filed a petition and notice of foreclosure of $9,330.97 in tax liens on the same property for 2016 and 2017. In December 2018, the County obtained a default judgment awarding it title to the property and it recorded its deed. It then sold the property for $142,500.

JBNC brought this action against the County, the Town and related defendants to vacate the default judgment and the County's deed, contending that it was not served with notice of the tax foreclosure proceeding as required by Real Property Tax Law (RPTL) § 1125, which provides that notice must be sent to any party with an interest in the property by both certified mail and first class mail. The County produced affidavits of mailing of the notice by certified and first class mail to the Kansas City street address listed on JBNC's mortgage, along with the certified mail receipt. JBNC responded that it never received the notice and produced a tracking history generated from the certified mail receipt that indicated the certified mailing was delivered to an unspecified post office box in Kansas City rather than its street address.

Supreme Court granted the County's motion for summary judgment dismissing the suit based on RPTL 1125(1)(b)(i), which states, "The notice shall be deemed received unless both the certified mailing and the ordinary first class mailing are returned by the United States postal service within forty-five days after being mailed." The court said, "While the unexplained tracking information for the certified mailing is troubling," the County established "that neither the first class mailing nor the certified mailing were returned as undeliverable.... Accordingly, notice of the proceeding was deemed received by plaintiff pursuant to" the statute.

The Appellate Division, Third Department affirmed on a 4-1 vote, saying "documentary evidence" that the notices were mailed to JBNC's street address and were not returned demonstrated the County's compliance with RPTL 1125, and the tracking sheet showing the certified mailing went to "an unspecified post office box" did not raise a material issue of fact. It said the "clear and explicit language" of the statute's "deemed received" provision "specified what was minimally required of a party attempting to rebut the presumption of service – i.e., proof establishing that both the certified mailing and the ordinary first class mailing were returned. To permit anything less would render this part of RPTL 1125(1)(b)(i) meaningless.... [A]lthough plaintiff's proof established that the certified mailing was delivered to a different address, delivery to a different address is not the same as the certified mailing being returned."

The dissenter said that, while "there was no proof that the relevant mailings were returned to defendants and, as such, were 'deemed received by plaintiff..., this is merely a rebuttable presumption" and the statute does not require JBNC to prove "that both mailings were returned to the County to rebut this presumption." Noting that "statutes authorizing tax sales are to be liberally construed in the owner's favor because tax sales are intended to collect taxes, not forfeit real property," he said JBNC's evidence – including the tracking sheet for the certified mailing "which raises troubling questions of fact that are best resolved at trial," and its payment of the 2018 tax bill which "strongly suggests that plaintiff did not intend to forfeit the property" – successfully rebutted the presumption of receipt.

For appellant JBNC: Gregory N. Blase, Manhattan (212) 536-3900
For respondents County et al: Karla Williams Buettner, Glens Falls (518) 792-2117

State of New York
Court of Appeals

To be argued Wednesday, February 8, 2023

No. 14 People v Dakota W. Baldwin
No. 15 People v Mamadou Ba

The appellants in these cases challenge the standards set by two intermediate appellate courts for invoking their interest of justice jurisdiction to reduce an allegedly harsh or excessive sentence under CPL 470.15(6)(b). They say those standards create barriers to sentence review that go beyond the terms of the statute, which gives the intermediate courts interest of justice power to determine whether "a sentence, though legal, was unduly harsh or severe."

Dakota Baldwin was charged with assaulting a correction officer at the Chemung County Jail in 2018. Baldwin had threatened to hang himself and then attacked an officer who was attempting to remove his bed sheets from his cell. Baldwin pled guilty to a reduced charge of attempted assault in the second degree in exchange for a sentence of two to four years.

The Appellate Division, Third Department affirmed, saying County Court "reviewed the presentence investigation report, which, in addition to setting forth defendant's mental health issues and struggles with substance abuse, also detailed defendant's criminal history and the nature of his attack upon the correction officer at issue. We are mindful that defendant was sentenced – as a second felony offender – to the maximum term of imprisonment for [the crime], but find no extraordinary circumstances or abuse of discretion warranting a reduction of the sentence imposed in the interest of justice...."

Mamadou Ba was arrested in 2016 for selling counterfeit designer handbags without a vendor's license in midtown Manhattan. He pled guilty to a misdemeanor charge of unlicensed general vending in exchange for a $500 fine. Ba argued on appeal that his sentence was excessive, particularly in view of the announcement by the district attorney's office less than a year after his plea that it would stop prosecuting unlicensed street vendors because they "pose no public safety risk."

The Appellate Term, First Department affirmed the sentence, saying "We perceive no basis for reducing the fine. Defendant received the precise sentence for which he had bargained, which was within the permissible statutory range...."

Baldwin and Ba argue that the standards set for sentence reduction by both courts – the Third Department's requirement of "extraordinary circumstances or abuse of discretion" and the Appellate Term's exclusion of legal sentences based on negotiated pleas – have no basis in CPL 470.15(6)(b) and conflict with the practices of intermediate courts in other areas of the state. They say both courts created improper barriers to sentence review since the sole standard for sentence reduction set by the statute is "unduly harsh or severe."

No. 14 For appellant Baldwin: Clea Weiss, Rochester (607) 351-3967
For respondent: Chemung County Asst. Dist. Atty. Zachary S. Persichini (607) 737-2944
No. 15 For appellant Ba: Lauren E. Jones, Manhattan (917) 922-7829
For respondent: Manhattan Asst. District Attorney Meghan McLoughlin (212) 335-9000

State of New York
Court of Appeals

To be argued Thursday, February 9, 2023

No. 16 Anderson v Commack Fire District

Courtney Anderson was injured in June 2012, when the car she was driving collided with a fire truck owned by the Commack Fire District and driven by volunteer firefighter John Muilenburg. The truck was responding to a fire alarm with its emergency lights and siren activated. Muilenburg testified that he stopped briefly at a red light, then drove slowly into the intersection where Anderson struck the fire truck broadside. She brought this personal injury action against the Commack Fire District and Muilenburg.

Supreme Court granted Muilenburg's motion for summary judgment dismissing the suit based on Vehicle and Traffic Law (VTL) § 1104, which allows operators of authorized emergency vehicles to drive through red lights and disregard other specified traffic laws. However, section 1104(e) provides that the statute "shall not relieve the driver ... from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others." The court said Muilenburg's conduct did not meet the reckless disregard standard.

The court denied the Fire District's motion to dismiss, finding it could be liable under General Municipal Law (GML) § 205-b, which states that "fire districts ... shall be liable for the negligence of volunteer firefighters duly appointed to serve therein in the operation of vehicles owned by the fire district..., provided such volunteer firefighters, at the time of any accident or injury, were acting in the discharge of their duties." The court said the district "has not eliminated the triable issue of whether Firefighter Muilenburg's actions constitute [ordinary] negligence and expose the Fire District to liability therefore."

The Appellate Division, Second Department affirmed in a 3-1 decision. Pursuant to GML § 205-b, the Fire District "was not limited to liability for conduct rising to the level of 'reckless disregard' under [VTL] § 1104(e), and could be held liable for the ordinary negligence of a volunteer firefighter operating the Fire District's vehicle...," it said. "Here, the defendants failed to eliminate triable issues of fact as to whether Muilenburg was negligent in the operation of the fire truck and if any such negligence contributed to the accident."

The dissenter argued that claims against the Fire District should be dismissed because "the reckless disregard standard of care under [VTL] § 1104(e) applies not only to the driver of the emergency vehicle, but also to those parties who are alleged to be vicariously liable for the driver's conduct.... [GML] § 205-b does not establish any particular standard of care for the operation of vehicles, and therefore, has no application to the determination of the vicarious liability claim against the Fire District.... The purpose of the statute is to 'immunize volunteer firefighters from civil liability for ordinary negligence'..., and to 'shift liability for such negligence to the fire districts that employ them'.... Thus, [GML] § 205-b functions merely as a liability shifting statute...." She said applying the reckless disregard standard to Muilenburg's conduct "compels the conclusion that there is no liability of Muilenburg for which to hold the Fire District vicariously liable."

For appellant Commack Fire District: Timothy C. Hannigan, Delmar (518) 869-9911
For respondent Anderson: Scott Szczesny, Woodbury (516) 746-8100

State of New York
Court of Appeals

To be argued Thursday, February 9, 2023

No. 17 People v Mark A. Hartle

Mark Hartle was convicted at trial in 2016 of four counts each of first-degree rape, criminal sexual act, sexual abuse and multiple related crimes stemming from his repeated rape of a 15-year-old girl in St. Lawrence County during the summer and fall of 2014, when he was 48 years old. He was ultimately sentenced to 43 to 50 years in prison.

After the judgment was affirmed on direct appeal, Hartle moved to vacate his convictions under CPL 440.10 based on claims of newly discovered evidence and ineffective assistance of counsel. He said the new evidence consisted of numerous sexual photographs and text messages he and the victim had exchanged in the summer and fall of 2014; that he had deleted those materials from his phone before his arrest because he "did not want anyone to see them" and other messages sent via Snapchat were automatically deleted; and that the deleted texts and photos were recovered in 2018 using newly developed technology. He submitted an expert's affidavit indicating that the technology needed to recover the deleted materials had not been available at the time of trial. Hartle had asserted his actual innocence at trial and claimed he had no sexual contact with the victim, but on this motion he argued that the recovered messages and photographs could have been used at trial to impeach the victim's testimony and to refute any claim of forcible compulsion.

` County Court denied the motion without a hearing, finding the materials recovered from Hartle's phone were not newly discovered evidence because he "concedes that he knew that the media existed prior to trial and that he actively endeavored to delete the evidence from his cell phone."

The Appellate Division, Third Department affirmed, saying Hartle's recovered messages were not "newly discovered" evidence because he "knew about their existence long before the trial.... Defendant focuses on the technological advances that have occurred since the trial that have made it possible to recover the text messages and photographs. However, although those technological advances themselves and their ability to recover the deleted material may be 'newly discovered,' that does not negate that defendant knew about the existence and content of the material from the time he received them.... [T]he 'new' technology allowed retrieval of the text messages and photographs that defendant himself deleted to avoid detection. To hold otherwise would create the rule that a defendant can destroy evidence he or she deemed inculpatory and then subsequently benefit from advances in technology to resurrect that evidence if it later appears beneficial."

Hartle argues "the elements of newly discovered evidence ... have been fully satisfied: the deleted text messages and photographs could not have been recovered before trial...;" they "were material to the issue of the relationship between appellant and [the victim]...;" they "were not merely impeachment or contradictory material, but substantive evidence relevant to elements of the charged crimes...; and the recovered text messages and photographs, had they been available and completely investigated by [prosecutors], would not only have resulted in a more favorable verdict for appellant, but may have resulted in no prosecution at all."

For appellant Hartle: John A. Cirando, Syracuse (315) 474-1285
For respondent: St. Lawrence County Asst. Dist. Attorney Matthew L. Peabody (315) 379-2225

State of New York
Court of Appeals

To be argued Thursday, February 9, 2023

No. 18 People v Andrew Regan

In August 2009, a female acquaintance accused Andrew Regan of having sexual intercourse with her without her consent after a night of bar hopping in the Town of Potsdam. The complainant reported the incident to the State Police the same day and a nurse collected DNA evidence during a hospital examination. In interviews with investigators and later through his attorney, Regan declined to provide a DNA sample and denied having sexual contact with the complainant. In November 2012, prosecutors applied for a search warrant to obtain Regan's DNA and the warrant was approved the same day. Regan was arrested in February 2013, days after the State Police forensic lab matched his DNA profile to the rape kit sample. A month later a prosecutor inquired through defense counsel if Regan would waive his speedy trial rights so she could prepare a plea offer, and he agreed with the "understanding" that a plea offer would be extended. No plea offer was ever made. Regan was indicted for rape in August 2013 and the prosecution declared its trial readiness two weeks later.

County Court denied Regan's motion to dismiss the indictment for violation of his constitutional and statutory rights to a speedy trial, although it found the pre-indictment delay was extensive and the prosecution's explanations – including "unfamiliarity with the ... procedure for obtaining a DNA sample from a prospective defendant" – "do not establish a good reason." The court said, "This procedure has been the law in this state since 1982, and is neither novel nor complicated," but it found "the seriousness of the charge and the absence of any demonstrated prejudice [to the defense] to be the paramount factors" in denying the motion.

Regan was convicted at trial of first-degree rape in 2015. He was sentenced to 12 years in prison.

The Appellate Division, Third Department affirmed the judgment in a 3-2 decision, splitting only on the constitutional speedy trial issue. The majority said "the preindictment delay of four years was lengthy and the reasons for the delay proffered by the People certainly left something to be desired. However, the People's submissions established that the investigation was ongoing, that they were acting in good faith and that there were valid reasons for portions of the delay.... In our view, the seriousness of the offense, the fact that defendant was not incarcerated pretrial and the absence of any demonstrated prejudice [to the defense] outweigh the four-year delay and the shortcomings in the People's reasons therefor...."

The dissenters argued that Regan's constitutional speedy trial rights were violated because "the People failed to proffer a good reason for the delay." They said, "Even if any unfamiliarity with the warrant application process to obtain defendant's DNA could be credited, the People still failed to adequately explain why, after the victim's initial report, more than three years passed before an order for defendant's DNA was sought.... Although the People ... represented that it was their first time applying for a search warrant for a DNA sample, there is no indication in the record that the People tried to educate themselves about the process or that they encountered any difficulties in preparing the application.... [T]o accept the People's excuse would be to sanction their ignorance of the investigative process, all at defendant's expense."

For appellant Regan: Matthew C. Hug, Albany (518) 283-3288
For respondent: St. Lawrence County Asst. Dist. Attorney Matthew L. Peabody (315) 379-2225