State of New York Court of Appeals

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To be argued Thursday, March 21, 2013

No. 76 Sanchez v National Railroad Passenger Corp.

Teresa Sanchez, a custodian employed by American Building Maintenance (ABM), filed this personal injury action against the National Railroad Passenger Corp. (d/b/a Amtrak) on February 6, 2008, seeking damages for injuries sustained in a fall that she contends occurred on February 10, 2005, while she was working at Penn Station. Amtrak moved for summary judgment dismissing the complaint as time-barred, contending the accident occurred on February 5, 2005 and, therefore, the three-year limitations period had expired. Amtrak submitted an affidavit from Sanchez's supervisor at ABM, Angela Mendez, who said Sanchez reported on February 6, 2005 that she had fallen the previous day. Attached to the affidavit were Mendez's injury report dated February 6; payroll records showing Sanchez worked on February 5 and 6, but not on February 10, 2005; and ABM's C-2 report of a work related accident on February 5, 2005, which it filed in her workers' compensation case. The Workers' Compensation Board's decisions in Sanchez's case say the accident occurred on February 10, 2005.

Supreme Court granted Amtraks's motion to dismiss, saying, "[I]n view of Ms. Mendez's accident report and the plaintiff's inability at her deposition to recall the date of the accident, the court is constrained to find the accident occurred not on February 10, 2005, but on February 5."

The Appellate Division, First Department affirmed in a 3-2 decision, saying, "Plaintiff's complaint fails to raise a question of fact as to whether the accident occurred, as she contends, on February 10, 2005. It conflicts with unequivocal documentary evidence, completed within days of plaintiff's accident by an objective third party, that the accident occurred on February 5, rendering the action time-barred. Plaintiff's deposition testimony is similarly insufficient to raise a triable issue of fact since it is both equivocal and self-contradictory as to the date of the accident.... The totality of plaintiff's submissions create only a feigned issue of fact, and they are therefore insufficient to defeat defendant's motion."

The dissenters said, "In the complaint and bill of particulars, which plaintiff herself verified in January and April 2008 respectively, the date of occurrence is recited as February 10, 2005.... Citing CPLR 105(u), this court has held on a number of occasions that a verified pleading is the statutory equivalent of a responsive affidavit for purposes of a motion for summary judgment.... Accordingly, the verified complaint and bill of particulars suffice to raise an issue of fact as to the date of the occurrence." They said Sanchez's "uncertainty" about the date at her 2009 deposition "does not invalidate plaintiff's verified pleading as the statutory equivalent of an affidavit ... and does not eliminate an existing issue of fact. The majority improperly engages in a credibility determination by rejecting plaintiff's verified pleadings simply because they conflict with documents generated by her employer."

For appellant Sanchez: Arnold E. DiJoseph, III, Manhattan (212) 344-7858
For respondent Amtrak: David Samel, Manhattan (212) 587-9690

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To be argued Thursday, March 21, 2013

No. 77 People v Terrance Monk

Terrance Monk was charged with robbing a woman at knife point in the driveway of her home in Harrison, Westchester County, in March 2004. He agreed to a plea bargain in which he would plead guilty to attempted robbery in the first degree in return for a sentence of ten years in prison. At Monk's plea allocution, County Court informed him that his prison term would be followed by a mandatory five year period of post-release supervision (PRS), but said nothing more about PRS.

Prior to sentencing, Monk moved to withdraw his plea on various grounds, including a claim that the plea was not knowing, intelligent and voluntary because the court had not advised him that a violation of any of the conditions of PRS could subject him to as much as five more years of incarceration beyond his ten-year prison term. County Court denied the motion, saying that while a defendant who pleads guilty must be informed of the PRS component of the sentence under People v Catu (4 NY3d 242) because PRS is a direct consequence of the plea, "the consequences of a defendant's violation of [PRS] are collateral to a defendant's plea" and need not be explained. The court later imposed the promised sentence.

The Appellate Division, Second Department affirmed, ruling that trial courts "need not allocute on the ramifications of violating the conditions of [PRS], as those ramifications are mere collateral consequences of the conviction and the court's failure to explain them to the defendant does not render the plea infirm. This result makes sense, since the ramifications of violating the conditions of [PRS] are subject to the discretion of the Board of Parole, rendering them, by nature, merely collateral to pleas and sentences."

Monk argues that PRS "increases the maximum permissible term of incarceration well beyond the underlying determinate sentence. The increased sentencing exposure is a direct consequence of a guilty plea to a violent felony offense and the range of exposure can be determined at the time of the guilty plea. Accordingly, since the exposure to an increased term of incarceration was a direct penal consequence, the trial court was duty bound, as a matter of due process, to ensure that ... Monk was aware of the fact, length and effect of [PRS] on his determinate sentence before accepting his guilty plea." Even if the court's failure to explain did not violate due process, he says, it erred in summarily denying his motion to withdraw the plea before "it made an appropriate finding that Monk's claimed ignorance of this significant consequence did not impact on his decision to plead guilty."

For appellant Monk: Scott B. Tulman, Manhattan (212) 661-3080
For respondent: Westchester County Assistant District Attorney Laurie Sapakoff (914) 995-3497

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To be argued Thursday, March 21, 2013

No. 78 Hastings v Sauve
No. 79 Bloomer v Shauger

The common issue here is whether owners of large domestic animals may be held liable for injuries caused by their livestock without proof the owner had actual or constructive notice that their animal had a propensity for the kind of dangerous behavior that caused the injury. Both plaintiffs ask the Court to adopt a common law negligence standard of liability.

Karen Hastings was injured in September 2007 when, driving at night, she struck a black cow on County Route 53 in North Bangor, Franklin County. The cow had wandered onto the road after escaping from a fenced pasture on a farm owned by Laurier Sauve, who allowed others to keep cattle on his property. Hastings sued Sauve and two alleged owners of the cow, William Delarm and Albert Williams, claiming they had been negligent in not properly confining the cow. Supreme Court granted motions by Sauve and Delarm for summary judgment dismissing the complaint based, in part, on Hastings' failure to prove they had actual or constructive knowledge "of the cow's 'vicious' propensities to escape and wander into the road."

Robert Bloomer was injured in March 2008 while helping a neighbor, Christine Shauger, bury a horse named Topper in a paddock on her property in West Hurley, Ulster County. Topper had been put down by a veterinarian earlier in the day. Another horse in the paddock, Whiskey, had been Topper's companion for more than 20 years and was visibly upset. As Bloomer crouched next to Topper, Whiskey rested her chin on his shoulder and Bloomer grasped her halter. Shauger approached with a lead line, which Whiskey was known to dislike, and when Shauger tried to attach the lead to the halter, Whiskey spooked and pulled her head back sharply. Bloomer's finger was caught in the halter and was severely injured, requiring surgery. Supreme Court dismissed the suit on summary judgment, saying Shauger proved "that she was unaware of any propensity" of Whiskey to "violently" pull her head back.

The Appellate Division, Third Department affirmed both rulings under the strict liability standard for injuries inflicted by domestic animals. But in Hastings, a unanimous panel said, "[W]e must note our discomfort with this rule of law as it applies to these facts -- and with this result. There can be no doubt that the owner of a large animal such as a cow or horse assumes a very different set of responsibilities" than do owners of household pets. It said dangerous propensity "played no role in this accident, yet, under the law as it now exists, defendants' legal responsibility for what happened is totally dependent upon it. For this reason, we believe in this limited circumstance, traditional rules of negligence should apply...."

The court expressed similar "discomfort" in Bloomer, and split 4-1 on whether Shauger could be strictly liable. The majority said she was not liable because "Whiskey's history of avoiding a lead line" did not demonstrate "vicious propensity." It cited a veterinarian's testimony that Whiskey pulling her had back was "normal behavior ... for any animal when a person reaches for the animal's throat or face," and said normal behavior "is not indicia of a vicious propensity." The dissenter argued, "The horse had previously 'walked away' to avoid the lead line because it had apparently been free to do so. Here, however, plaintiff was restraining the horse with his hand in the halter; as it was unable to walk away, the horse instead 'spooked' and 'violently ripped [her] head back.' The behavior at issue -- avoiding lead lines -- is nonetheless 'the very behavior that resulted in plaintiff's injury'...."

No. 78 For appellant Hastings: Matthew H. McArdle, Malone (518) 481-5000
For respondent Delarm: Danielle N. Meyers, Albany (518) 465-0400
For respondent Sauve: John W. VanDenburgh, Albany (518) 862-9292
No. 79 For appellant Bloomer: John G. Rusk, Kingston (845) 331-4100
For respondent Shauger: P. David Twichell, Syracuse (315) 424-7209

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To be argued Thursday, March 21, 2013

No. 80 People v Tyrone Prescott

Tyrone Prescott and three co-defendants were charged with beating a man outside a Buffalo nightclub in April 2004. One of the co-defendants, Calvin Martin, took a plea bargain and testified against Prescott at his non-jury trial. Prescott was convicted of assault and gang assault in the first degree and sentenced to 20 years in prison.

Prescott obtained appellate counsel in 2005 for his appeal to the Appellate Division, Fourth Department. About four weeks later, Prescott's appellate counsel represented Martin at sentencing, seeking leniency based on Martin's testimony at Prescott's trial, among other things. Prescott's appeal was perfected in 2009. The Fourth Department affirmed Prescott's conviction, rejecting the arguments of his appellate counsel that the verdict was against the weight of the evidence and that Prescott was denied due process at sentencing.

Prescott filed a pro se motion for a writ of error coram nobis to vacate the Appellate Division order on the ground of ineffective assistance of appellate counsel. He alleged that his appellate counsel never informed him that he represented Martin at sentencing at the same time he was representing Prescott on appeal. The Fourth Department denied his application without opinion.

Prescott argues he is entitled to a new appeal because an actual conflict of interest arose from his appellate counsel's simultaneous representation of Martin, who was both "an important prosecution witness" and "a co-defendant." He argues reversal is also warranted because his appellate counsel and the prosecutor "failed in their absolute duty to disclose the conflict" to him and the Appellate Division, depriving the court of the opportunity to determine that he was aware of the risks of proceeding with conflicted counsel and knowingly waived the conflict.

For appellant Prescott: Thomas F. Gleason, Albany (518) 432-7511
For respondent: Erie County Assistant District Attorney Matthew B. Powers (716) 858-2424

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To be argued Thursday, March 21, 2013

No. 81 People v Christopher Oathout

Robert Taylor was strangled and stabbed to death in his Albany apartment in October 2006. Christopher Oathout had been living in the same building and was questioned several times by the police, but he was not arrested until two months later, when Oswaida Lugo told investigators that she saw Oathout kill Taylor. Lugo, a police informant with a record of prostitution and drug crimes, initially denied any knowledge of the murder, but ultimately said that she and Oathout went to Taylor's apartment to perform an act of prostitution to get money to buy crack and that Oathout killed Taylor during a fight over the payment.

During pretrial proceedings, the prosecutor made a motion asking County Court to inquire into defense counsel's competence in criminal law and to consider appointing stand-by counsel, citing the defender's apparent lack of experience in criminal cases. The court did not decide the motion on the record, did not appoint stand-by counsel, and only briefly inquired of defense counsel if Oathout wanted to continue with his representation, to which he answered yes. No physical or forensic evidence connected Oathout to the murder, but the prosecutor presented the testimony of Lugo and of a jailhouse informant who said Oathout had admitted the crime. Oathout was convicted of second-degree murder and sentenced to 25 years to life in prison.

On appeal, Oathout argued that he was denied effective assistance of counsel and raised an array of alleged shortcomings, including defense counsel's failure to object to testimony of several prosecution witnesses that Oathout was a habitual crack user and "a gay prostitute for old men," which he said bolstered Lugo's testimony. Defense counsel also raised no objection during summation when the prosecutor theorized that the murderer was left handed and pointed out that Oathout took notes with his left hand during the trial, although no evidence had been presented to show that Oathout or the murderer were left handed.

The Appellate Division, Third Department affirmed the judgment. "While we agree that counsel's representation of defendant may, at times, have been unorthodox, it was not, when the record is viewed as a whole, ineffective," the court concluded.

Oathout reiterates his allegations of deficient representation by his trial counsel and contends, "Counsel's errors and omissions, some individually, but certainly in totality, deprived defendant of meaningful representation and violated his constitutional right to the effective assistance of counsel."

For appellant Oathout: Cheryl Coleman, Albany (518) 436-5790
For respondent: Albany County Assistant District Attorney Steven M. Sharp (518) 487-5460