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.

To be argued Wednesday, March 26, 2014

No. 64 Clemente Bros. Contracting Corp. v Hafner-Milazzo

Clemente Bros. Contracting Corp. opened three accounts in 2007 at North Fork Bank, which later merged with Capital One. To meet the requirements of North Fork's rules and as a condition for opening the accounts, Clemente Bros. passed a corporate resolution providing that the bank would not be liable for payments made on altered or forged checks unless Clemente Bros. notified it of the errors within 14 days of receiving its monthly account statements. In 2009, Clemente Bros. obtained a $200,000 loan and $1 million line of credit from Capital One. The loans were personally guaranteed by Jeffrey Clemente, the president of Clemente Bros., and the promissory notes permitted Capital One to demand immediate payment of the unpaid balances based on, among other things, "an event which, in the judgment of the Bank, adversely affects the [borrower's] ... ability to repay." In February 2010, Clemente Bros. notified Capital One that its bookkeeper, Aprile Hafner-Milazzo, had been embezzling funds by forging Clemente's signature to draw on the line of credit and forging his endorsement on checks to take those funds from the company's operating account. Clemente Bros. alleged she took about $386,000 from January 2008 through December 2009. Capital One demanded full payment of both loans. Clemente Bros. and Clemente brought this action against Capital One and Hafner-Milazzo to recover its losses from the forgeries and to prevent the bank from enforcing any claims based on the loans.

Supreme Court granted Capital One's motion for summary judgment, dismissed the complaint against it and awarded it $1,146,262.90 on its counterclaims for payment of the loans. UCC 4-406(4) places a one-year limit on the right of a customer to recover from a bank for payment on a forged check, measured from the date the account statement and canceled check are made available to the customer. The court found that Clemente Bros. and the bank had, by agreement when the account was opened, reduced the one-year statutory period to 14 days, and that Clemente Bros. failed to report any of the forgeries within that period. It also ruled Capital One had established its entitlement to payment of the loans.

The Appellate Division, Second Department affirmed, saying banks and their customers "may shorten the one-year notice period by agreement.... Here, the parties, by agreement, shortened the one-year period to 14 days."

Clemente Bros. and Clemente argue, in part, that the lower court rulings conflict with rulings of the Third and Fourth Departments and with UCC 4-103, which states, "The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care...." They claim Capital One did not exercise ordinary care or comply with its own procedures, which made possible the bookkeeper's thefts. They also urge this Court to rule, on policy grounds, that parties may not reduce the statutory one-year limit on reporting forgeries to 14 days.

For appellants Clemente Contracting et al: Matthew Dollinger, Carle Place (516) 747-1010
For respondent Capital One: Mara B. Levin, Manhattan (212) 592-1400

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To be argued Wednesday, March 26, 2014

No. 65 People v Jonai Washington

Jonai Washington struck and killed a pedestrian with her car on Uniondale Avenue in Nassau County in August 2010. After administering field sobriety tests, Nassau County police officers placed her under arrest at 2:40 a.m. and took her to the Central Testing Section at police headquarters. At about the same time, her family arranged for an attorney, Anthony Mayol, to represent her. At 3:30 a.m., Washington signed a consent form for a chemical breath test to determine her blood alcohol content. At 3:31 a.m., Mayol called the police headquarters, spoke with a dispatcher, and was transferred to a sergeant in the detention unit at 3:32 a.m. Mayol testified at a suppression hearing that he informed the sergeant that he represented Washington and said, "You have to stop all questioning and we're not consenting to any form of testing whatsoever." Washington's breath sample was taken for the chemical test at 3:39 a.m., the same time that Mayol's phone call with the sergeant ended. Washington was charged with second-degree manslaughter, second-degree vehicular manslaughter, and two counts of driving under the influence of alcohol.

Supreme Court granted Washington's motion to suppress the results of the chemical breath test. "There was a denial of access to the lawyer to his client by the police department," the court said. "That is proven beyond a reasonable doubt."

The Appellate Division, Second Department affirmed on a 3-1 vote, saying, "[W]hen the police are aware that an attorney has appeared in a case where a motorist has consented to a chemical breath test, the police are obligated to exercise reasonable efforts to inform the motorist of counsel's appearance if such notification will not substantially interfere with the timely administration of the test." It said Washington's state constitutional right to counsel attached at 3:31 a.m., before the test, when Mayol told the police he represented her, and "safeguarding the right to counsel requires a reasonable effort to provide notification of counsel's appearance.... Where there is no evidence that the police made any efforts to notify a motorist that counsel has appeared in the matter, we must presume that a motorist would have requested to speak with counsel and would have withdrawn her consent to submit to a chemical breath test."

The dissenter argued Washington had no constitutional right to counsel regarding the chemical test, but only a "limited right" to consult with counsel before deciding whether to refuse the test, a right that must be invoked by express request. Since Washington did not request counsel before giving her consent, she "validly waived her qualified statutory right to refuse the test, and her uncounseled waiver provides no basis for suppressing the test results." He said, "In the absence of case law on point, the majority has taken guidance from decisions outside the area of law governing chemical BAC tests which concern the 'indelible right to counsel' under the State Constitution with respect to a suspect's decision to waive his or her privilege against self-incrimination.... [T]his line of cases as no application to ... a motorist's waiver of the qualified statutory right to refuse a chemical test."

For appellant: Nassau County Assistant District Attorney Yael V. Levy (516) 571-3800
For respondent Washington: Frederick K. Brewington, Hempstead (516) 489-6959

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To be argued Wednesday, March 26, 2014

No. 82 People v V. Reddy Kancharla
No. 83 People v Vincent Barone

Principals and employees of Testwell Laboratories, Inc., once a leading construction materials testing company in the New York City area, were charged in 2008 with criminal schemes to systematically falsify strength tests and inspection reports for concrete and steel used in projects throughout the city, including the Freedom Tower, Jet Blue facilities at JFK Airport, and the new Yankee Stadium. Company officials were accused of using computer-generated estimates, rather than physical testing, to determine the strength of concrete mixtures; altering results and falsifying reports on other concrete strength tests and inspections; and double-billing for inspections of structural steel. V. Reddy Kancharla, the owner and chief executive officer of Testwell, and Vincent Barone, the company's vice president of engineering, were convicted at a joint trial of enterprise corruption and multiple lesser counts including scheme to defraud and offering a false instrument for filing. Kancharla was sentenced to 7 to 21 years in prison and Barone to 5⅓ to 16 years.

The Appellate Division, First Department modified by vacating the enterprise corruption convictions on a 4-1 vote, saying prosecutors "failed to produce any evidence that either defendant knew that test results and inspection reports were fabricated, much less that the defendants spearheaded a criminal enterprise." It vacated two of Kancharla's false filing convictions, but otherwise affirmed the remaining convictions, and it reduced the sentences of both defendants to 1⅓ to 4 years in the interest of justice. Regarding the top count, the majority said, "[T]he evidence necessary to establish the elements of enterprise corruption was wholly missing from the People's proof. Indeed, the entire theory of the People's case is made of conjecture, surmise and innuendo rather than proof beyond a reasonable doubt.... Simply put, the People failed to introduce any evidence of a leadership structure, overall planning of the criminal enterprise, or any communications between Kancharla, Barone, and any of the Testwell employees in furtherance of the criminal enterprise...."

The dissenter on that issue argued the evidence "more than sufficiently established the enterprise corruption counts," showing "a pervasive scheme involving systematic falsification of concrete data testing at many levels of the company, and defendants' participation in the manipulation of the data." She said, "[T]he structure of defendants' enterprise was largely based on the corporate structure of Testwell Laboratories, as is often true of defendants operating within the structure of a legitimate enterprise in order to conceal their crimes.... The fact that defendants were not personally charged in connection with every one of Testwell's schemes or convicted of every count in which they were charged does not mean that they were in the dark about the criminal enterprise.:

Another justice, in a partial dissent, argued the remaining convictions should be reversed due, in part, to the effects of "the People's unsupported (and now vacated) enterprise corruption counts.... This use of Testwell as a criminal enterprise allowed the People to link for the jury all of the individual defendants to crimes with which they were not charged," and "any viable defenses" they had to the actual charges against them "were consumed by the vision conjured by the People of Testwell as a continuing criminal enterprise." He also argued the trial court's refusal to admit evidence that other laboratories employed similar testing methods and that the contractors that retained Testwell were "well aware" of its methods "tainted the entire proceedings."

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For respondent-appellant: Manhattan Asst. District Attorney Amyjane Rettew (212) 335-9000

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To be argued Wednesday, March 26, 2014

No. 77 Matter of Empire Center for New York State Policy v New York State Teachers' Retirement System
No. 78 Matter of Empire Center for New York State Policy v Teachers' Retirement System of the City of New York

The Empire Center for New York State Policy is an Albany-based think tank that posts information about state and local government spending on its website, SeeThroughNY. In 2012, it submitted Freedom of Information Law (FOIL) requests to the New York State Teachers' Retirement System (NYS-TRS) and the Teachers' Retirement System of the City of New York (TRS-NYC) seeking the names of retirees and the amount of their pension benefits, among other things. Both retirement systems provided all of the requested information except the names of retired members. They relied on a FOIL provision, Public Officers Law § 89(7), which states, "Nothing in this article shall require the disclosure of the home address of an officer or employee, former officer or employee, or of a retiree of a public employees' retirement system; nor shall anything in this article require the disclosure of the name or home address of a beneficiary of a public employees' retirement system or of an applicant for appointment to public employment."

The Empire Center challenged the determinations in separate article 78 proceedings. In each case, Supreme Court dismissed the petition based on section 89(7) and prior case law interpreting the provision. In the suit against TRS-NYC, the court also relied on Public Officers Law § 87(2)(b), which exempts from disclosure information that "would constitute an unwarranted invasion of personal privacy."

The Appellate Division affirmed, the Third Department in Case No. 77 and the First Department in Case No. 78. The Third Department said, "Well-settled principles of statutory construction lend support to the interpretation advanced by petitioner.... Yet we are bound by the Court of Appeals' decision in Matter of New York Veteran Police Assn. v New York City Police Dept. Art. I Pension Fund (61 NY2d 659 [1983]), wherein the Court interpreted [section] 89(7) as exempting from disclosure both the names and home addresses of retirees of a public employees' retirement system."

The Empire Center argues the lower courts misread Veteran Police and section 89(7), which "narrowly authorizes taxpayer-funded pension systems to withhold the names of 'beneficiaries' of deceased retirees, but not the names of all 'retirees' currently drawing public pensions. The plain language of the exemption allows only the addresses of 'retirees' to be withheld." It also contends disclosure would not be an "unwarranted" invasion of privacy.

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For respondent NYS-TRS: Assistant Solicitor General Jeffrey W. Lang (518) 474-1394
For respondent TRS-NYC: Assistant Corporation Counsel Elizabeth I. Freedman (212) 356-0836