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 Thursday, March 26, 2015

No. 49 ACA Financial Guaranty Corp. v Goldman, Sachs & Co.

ACA Financial Guaranty Corp. alleges that Goldman, Sachs & Co. fraudulently induced it to provide financial guaranty insurance for an investment, a collateralized debt obligation called ABACUS, in 2007 by misrepresenting that Goldman's client, the hedge fund Paulson & Co., would be an equity investor taking a "long" position in ABACUS, which would align its interests with those of the insurer. Instead, ACA claims Goldman knew that Paulson, which had a role in selecting the portfolio of securities underlying ABACUS, was actually a short seller that would profit if the portfolio performed poorly and knew that ABACUS was designed to fail.

Supreme Court denied Goldman's motion to dismiss ACA's claims for fraudulent inducement and fraudulent concealment. Among other things, the court rejected Goldman's argument that ACA failed to adequately plead that it reasonably relied on Goldman's alleged misrepresentations about Paulson's role in ABACUS and about the investment position Paulson intended to take. It said, in part, that even if the disclaimers in the offering circular addressed the specific misrepresentations alleged by ACA, "'a purchaser may not be precluded from claiming reliance on misrepresentations of fact peculiarly within the seller's knowledge, notwithstanding the execution of a specific disclaimer.'"

The Appellate Division, First Department reversed in a 3-2 decision and dismissed the fraud claims. "While we agree that plaintiff adequately pleaded all of the requisite elements comprising a fraud claim..., plaintiff's amended complaint nevertheless fails to establish justifiable reliance as a matter of law. Indeed, plaintiff fails to plead that it exercised due diligence by inquiring about the nonpublic information regarding the hedge fund with which it was in contact prior to issuing the financial guaranty, or that it inserted the appropriate prophylactic provision [in their agreement] to ensure against the possibility of misrepresentation...."

The dissenters argued that ACA's "duty to perform due diligence was fulfilled, when ... plaintiff asked defendant about Paulson's position, defendant made specific and detailed representations that conformed with the industry standard for a similarly situated transaction, and defendant's misrepresentation was not discoverable through any public source of information." They said "there is no general release or similar agreement" between the parties and the relationship between plaintiff, a monoline bond insurance company..., and defendant, an investment bank, is not an adversarial one.... Thus..., plaintiff's fraud claim does not fall within the purview of cases holding that such a claim is barred where the parties failed to insert an appropriate prophylactic provision in their agreement...."

For appellant ACA: Marc E. Kasowitz, Manhattan (212) 506-1700
For respondent Goldman Sachs: Richard H. Klapper, Manhattan (212) 558-4000

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 Thursday, March 26, 2015

No. 17 Doerr v Goldsmith
No. 66 Dobinski v Lockhart

The primary issue in these appeals is whether a plaintiff, injured in an accident caused by a dog or other household pet interfering with traffic, may recover from the animal's owner for ordinary negligence. The plaintiffs in both cases cite this Court's ruling in Hastings v Suave (21 NY3d 122 [2013]), which held that "a landowner or the owner of an animal may be liable under ordinary tort-law principles when a farm animal ... is negligently allowed to stray from the property on which the animal is kept." The Court did not address whether the same rule applies to household pets, saying "that question must await a different case."

Case no. 17 arose in May 2009, as Wolfgang Doerr was riding his bicycle on the Central Park loop road in Manhattan. Dog owner Julie Smith was on one side of the road and her boyfriend was on the other side, holding her dog. When Smith called the dog to her, it ran into the road and Doerr collided with it, landing on the pavement and injuring his face. Smith moved to dismiss Doerr's personal injury suit on the ground she could not be held liable without proof she was aware her dog had a propensity to interfere with traffic. Supreme Court denied her motion, saying Doerr did not claim his injuries "were caused by the misconduct of the animal," but instead by "the conduct of Smith in directing the dog's movement in an unsafe manner that posed a foreseeable risk of harm to others."

The Appellate Division, First Department affirmed in a 3-2 decision, saying the case is not governed by Hastings. "[T]his case is different from the cases addressing the issue of injury claims arising out of animal behavior, because it was defendants' actions, and not the dog's own instinctive, volitional behavior, that most proximately caused the accident." The dissenters argued that, unless the Court of Appeals extends Hastings to injuries caused by domestic pets, "the sole viable claim is for strict liability, and here there is no evidence that the defendant had knowledge that her dog had a propensity to interfere with traffic."

In case no. 66, Cheryl Dobinski and her husband were riding their bicycles on Salamanca Road in the Town of Franklinville in May 2012. As they rode past the farm of George and Milagros Lockhart, two of the Lockharts' German shepherds ran into the road and she collided with one of them, flipped over the handlebars and landed on her back. She sued, asserting claims for ordinary negligence and strict liability.

Supreme Court denied a defense motion to dismiss, holding that "ordinary negligence principles apply." It quoted Hastings, which said barring negligence claims for wandering farm animals "would be to immunize defendants who take little or no care to keep their livestock out of the roadway or off of other people's property," and it cited Doerr. It said, "Here, in addition to the developing case law, there are questions of fact as to the negligence of the owners in containing, controlling and training of their dogs in regards to chasing or pursuing vehicles both on and off the property." The Appellate Division, Fourth Department reversed and dismissed the suit without discussing the ordinary negligence claim. It said the Lockharts established that "they lacked actual or constructive knowledge that the dog had a propensity to interfere with traffic."

No. 17 For appellant Smith: Scott T. Horn, Manhattan (212) 425-5191
For respondent Doerr: Dara L. Warren, Brewster (845) 279-7000
No. 66 For appellant Dobinski: Dennis J. Bischof, Williamsville (716) 630-6500
For respondents Lockhart: Mark P. Della Posta, Buffalo (716) 856-1636

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 Thursday, March 26, 2015

No. 67 Walton v Strong Memorial Hospital

Adam Walton was three years old in 1986, when he had cardiac surgery at Strong Memorial Hospital or another division of the University of Rochester Medical Center. At the end of the procedure, polyvinyl catheters were placed in his heart to record atrial pressure. The catheters were removed three days later, although a nurse recorded that the catheter in his left atrium "possibly broke off with a portion remaining" in the patient. In December 2008, when Walton was 25, an echocardiogram revealed a "linear density" in his heart. Doctors performed exploratory surgery and removed a 13-centimeter loop of plastic tubing from his left atrium.

In November 2009, Walton brought this medical malpractice action against the doctors and medical facilities involved in his 1986 surgery, alleging they negligently left a "foreign body" in his heart, which he "could not have reasonably discovered ... prior to December 2008." The defendants moved to dismiss on the ground that the statute of limitations had expired long before. Walton argued his suit was timely under CPLR 214-a, which provides that a malpractice action based on the discovery of a "foreign object" left in the body of a patient "may be commenced within one year of the date of such discovery...." Defendants argued the catheter was a "fixation device," which the statute excludes from the foreign object discovery rule.

Supreme Court granted the motion to dismiss, although it found the catheter was not a fixation device. A suture is a fixation device, it said. "It makes no sense, however, to refer to the catheter here as a 'fixation device' because it served no such purpose and was never intended to do so." Instead, holding that Walton was not entitled to the foreign object exception in CPLR 214-a, the court said "the catheter here is not a 'foreign object' because, in the first instance, it was left in the plaintiff's body deliberately with a continuing medical purpose."

The Appellate Division, Fourth Department affirmed the dismissal, but on the ground that the catheter was a fixation device excluded from the discovery rule of CPLR 214-a. "Fixation devices are 'placed in the patient with the intention that they will remain to serve some continuing treatment purpose' (Rockefeller v Moront, 81 NY2d 560 ...), while foreign objects are 'negligently left in the patient's body without any intended continuing treatment purpose' (LaBarbera v New York Eye & Ear Infirmary, 91 NY2d 207 ...). The polyvinyl catheter here was a fixation device and was not a foreign object because it was intentionally placed inside plaintiff's body to monitor atrial pressure for a few days after the surgery, i.e., it was placed for a continuing treatment purpose."

For appellant Walton: Edward J. Markarian, Buffalo (716) 856-3500
For respondents Strong Memorial et al: Barbara D. Goldberg, Manhattan (212) 697-3122

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 Thursday, March 26, 2015

No. 68 People v Jafari Lamont

In November 2008, a worker preparing to open a Wendy's restaurant in Rochester heard knocking at the back door, which was not a public entrance. He checked a security camera and saw two men "banging" on the door. They wore masks and each held what appeared to be a handgun. When a police officer arrived, he saw two men hiding behind crates at the rear of the restaurant, and they fled in different directions. The officer chased and apprehended Jafari Lamont, who had a backpack but no gun. The other man was never found. The police recovered a black BB gun behind the restaurant and a pellet gun from Lamont's car, which was parked nearby. Lamont was charged with attempted robbery and attempted burglary.

At a non-jury trial, defense counsel moved to dismiss the charges after the prosecutor rested, arguing there was insufficient proof of Lamont's intent to commit robbery or any other particular crime. He said, "The People have the burden of proving not only that there was an attempt to commit a crime, but the attempt to commit what crime.... What's to say that defendant wasn't there to murder somebody, burn the place down, rape somebody?" County Court denied the motion. Lamont was convicted of two counts of second-degree attempted robbery and sentenced to seven years in prison.

The Appellate Division, Fourth Department affirmed in a 3-2 decision, finding there was sufficient circumstantial evidence of intent to commit a robbery. There was no "reasonable possibility" that Lamont intended to commit some other crime, it said. "Because the only weapons possessed by defendant and his accomplice were BB guns, it is not reasonable to infer that they intended to murder anyone inside the restaurant. Similarly, in the absence of evidence that defendant or his accomplice knew any of the Wendy's employees, it is not reasonable to infer that they intended to assault one or more of the employees.... The only reasonable inference to be drawn is that defendant was attempting to gain entry to the restaurant so that he could rob someone."

The dissenters argued, "[T]he evidence is legally insufficient to establish beyond a reasonable doubt that defendant specifically intended to ... 'forcibly steal property from an employee of the Wendy's restaurant,' as opposed to any number of other crimes or misdeeds.... [T]he evidence established only that defendant and a companion knocked on the back door to Wendy's, and that they possessed what appeared to be handguns. There is no evidence of preparation or prior coordination on the part of defendant and his companion, no statements by defendant or his companion that evidence an intent to steal property, and no actions by either individual that specifically reflect a larcenous intent as opposed to general criminal intent...."

For appellant Lamont: Janet C. Somes, Rochester (585) 753-4329
For respondent: Monroe County Assistant District Attorney Erin Tubbs (585) 753-4535