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.

To be argued Tuesday, September 12, 2017

No. 99 Garthon Business Inc. v Stein

Garthon Business Inc. and Crestguard Limited, both owned by Kazakh businessman Patokh Chodiev, brought this breach of contract, fraud and negligence action against financial advisor Kirill Ace Stein and his company, Aurdeley Enterprises Limited, in December 2014 in state Supreme Court, alleging that their misadvice induced the Chodiev companies to make three unsecured loans totaling $16 million that were never repaid.

The Chodiev group initially retained Stein and Aurdeley in two separate agreements, both effective January 1, 2000. The first, between Chodiev's Quennington Investments Limited and Stein, contained a forum selection clause that said it would be governed by U.S. law and "the Courts of the United States of America shall have exclusive jurisdiction to settle any claim, dispute, or matter of difference, which may arise out of or in connection with this Agreement ... or the legal relationship established by this Agreement." The second, between Chodiev and Aurdeley, was nearly identical to the Quennington agreement, except it was to be governed by English law and the courts of England were to have exclusive jurisdiction over disputes arising from it. Chodiev and Aurdeley later entered into a second consulting agreement, effective July 1, 2009, which expressly terminated the first Aurdeley agreement and also contained a merger clause providing that it "supersedes all prior arrangements, agreements or understandings ... relating to the subject matter of this Agreement." The new Aurdeley contract stated, "Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules." At the same time, Quennington and Stein entered into a new agreement that expressly terminated the original Quennington agreement. It contained an arbitration clause identical to the one in the new Aurdeley agreement.

In response to this suit, Stein and Aurdeley moved for an order compelling arbitration of all the claims in London under the arbitration clauses in the 2009 agreements. Supreme Court granted the motion to compel arbitration.

The Appellate Division, First Department reversed on a 3-2 vote, ruling the claims must be litigated in court. The language of the 2009 arbitration clauses "[a]t best ... indicates that the parties intended only to arbitrate disputes that arose after July 1, 2009.... It does not indicate a clear manifestation that the forum selection clause in the [2000] Quennington agreement had been abandoned," it said. Broader than the arbitration provisions, the forum selection clause "applied to the 'legal relationship established by' the agreement. That relationship survived the Quennington agreement. Since the complaint asserts that Stein breached the fiduciary duty born out of that relationship, the forum selection clause should apply to the complaint."

The dissenters argued that the 2009 arbitration clauses "reserved to the arbitrator the right to determine the issue of arbitrability." They said they "neither agree nor disagree with the majority's conclusion that the later agreements at issue did not negate the effectiveness of the forum selection clause in the earlier Quennington agreement, [We] only conclude that ... the determination of that issue belongs to the arbitrators...."

For appellant Aurdeley Enterprises: Aaron Siri, Manhattan (212) 532-1091
For appellant Stein: Jason A. Grossman, Manhattan (212) 223-3562
For plaintiffs Garthon and Crestguard: Pieter Van Tol, Manhattan (212) 918-3000

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To be argued Tuesday, September 12, 2017

No. 100 People v Ross Campbell *(papers sealed)*

Ross Campbell and several co-defendants were charged with sexually and physically abusing three women and forcing them to work as prostitutes in the Bronx in 2008. At Campbell's trial, prospective juror number 4 said she did not think she "would be a good candidate because I'm a hairstylist, and I probably will lose my job if I did serve on this as a juror." She also said she would have difficulty serving as a juror because "I went out on a date and I was almost raped and -- I mean, after you started to bring this up, then memories started to come back. And then my husband got drunk one night and he also raped me, so there's certain things that, after you start to hear about this, start to bring back memories." She said she would like to speak to the judge about it privately. Later, when the judge met privately with other prospective jurors, he decided not to meet with juror number 4 after discussing the matter with defense counsel. Both mentioned only her employment and the court said "I don't think she wanted to relate anything other than her concern that she's going to lose her job if she's here too long." Defense counsel neither challenged the juror nor sought further inquiry by the court into whether her experiences with sexual violence would affect her ability to serve impartially. She was seated on the jury. Campbell was convicted of rape, sex trafficking, promoting prostitution, criminal sexual act, and kidnapping; and he was sentenced to 25 years in prison.

The Appellate Division, First Department affirmed. "Defendant's ineffective assistance of counsel claims are generally unreviewable on direct appeal because they involve matters of strategy not reflected in, or fully explained by, the record.... Accordingly, since defendant has not made a CPL 440.10 motion, the merits of the ineffectiveness claims may not be addressed on appeal," it said. "In the alternative, to the extent the existing record permits review, we find that defendant received effective assistance under the state and federal standards.... Defendant has not shown that any of counsel's alleged deficiencies fell below an objective standard of reasonableness, or that, viewed individually or collectively, they deprived defendant of a fair trial or affected the outcome of the case."

Campbell contends he was deprived of effective assistance of counsel and a fair trial. "Because defense counsel failed to remind the judge that this juror had asked to speak in private after revealing that she was a sex crime victim, the court declined the juror's request for a private discussion.... [D]efense counsel also failed to follow up on the juror's job security fears and the potential impact on her impartiality. As a result, the juror never was asked to state that she could be fair and impartial -- even though she, herself, had identified two particular issues -- crime experience and income loss -- that courts have recognized to be problematic.... Moreover, on this record, it is clear that defense counsel had no strategic reasons for allowing the juror to serve."

For appellant Campbell: Abigail Everett, Manhattan (212) 577-2523
For respondent: Bronx Assistant District Attorney Ramandeep Singh (718) 838-7201

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To be argued Tuesday, September 12, 2017

No. 101 People v Vilma Bautista

In 2012, Manhattan prosecutors charged Vilma Bautista with conspiring with two of her nephews to sell four valuable paintings they did not own and conceal the proceeds from tax authorities. Decades earlier, Bautista had served as personal secretary in New York to Philippine First Lady Imelda Marcos, who bought the paintings in the 1970s. After the Marcos regime fell in 1986, the paintings came into Bautista's possession. She sold one of them, Claude Monet's "Le Bassin aux Nymphéas" (Water Lily), to an art gallery for $32 million in 2010. Bautista did not report the sale on her state income tax return, which prosecutors alleged would have made her liable for more than $1 million in New York taxes.

The thrust of her defense was that she had not intentionally sought to evade taxes or falsify tax documents. Her sole witness was a tax attorney who testified that he discussed the sale of the painting with Bautista and Philippine attorney Gavino Abaya, who had represented Marcos for many years and advised Bautista on the sale. The tax attorney said they led him to believe that she sold the painting on behalf of Marcos and he did not advise her that she would owe taxes on any proceeds she kept for herself. He said he later told Abaya that Bautista would have to report on her tax return any commission she received. During summation, the prosecutor repeatedly argued that the tax attorney testified that he told Bautista and Abaya "multiple times" that "any income she earned related to the sale had to be reported" and that "she did not ... follow on the advice given because the advice given was pay your taxes." Defense counsel objected that the prosecutor was misstating the testimony. Supreme Court overruled the objections and told the jury "it's your memory of the witness's words that are important." The court also rejected a defense argument that the notes of police investigators who interviewed Abaya, an unindicted co-conspirator, were exculpatory Brady material that must be disclosed. According to the notes, Abaya told them Marcos gave the Water Lily painting to Bautista and gave her the authority to sell it. Bautista was convicted of first-degree criminal tax fraud and offering a false instrument for filing. She was sentenced to two to six years in prison.

The Appellate Division, First Department affirmed, saying Bautista "was not deprived of a fair trial by the prosecutor's argument in summation that she was told by a tax attorney" to declare her income from the sale. "The tax attorney did not testify that he had directly so advised defendant, but rather testified that he met with defendant and [Abaya] to discuss tax issues..., and that [he] advised [Abaya] two weeks later of defendant's obligation to report the income. It was reasonable to infer that this information was conveyed to defendant." The investigators' notes were not Brady material, it said. "Moreover, there is no reasonable possibility that they would have affected the outcome of the trial..., since the alleged coconspirator presumably would have invoked his Fifth Amendment right against self-incrimination if called by the defense."

Bautista argues, "A prosecutor's repeated factual misstatements ... of a defense witness's crucial testimony cannot be legitimized on the ground that the misstatements constituted a reasonable inference from the evidence when there was insufficient evidence in the record to support such an inference.... A Brady violation cannot be sanctioned based on speculation -- without record support -- that an unindicted co-conspirator would have asserted his Fifth Amendment right ... if the defense, knowing of his exculpatory statements, had called him to the stand."

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For respondent: Manhattan Assistant District Attorney Garrett Lynch (212) 335-9000