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 Wednesday, February 14, 2018

No. 32 Rodriguez v City of New York

Carlos Rodriguez, a New York City sanitation worker, was injured in January 2011 at a garage in Manhattan, where he and two co-workers had been assigned to equip sanitation trucks with tire chains and snow plows. While his co-workers backed another truck into a service bay, one driving the truck and the other guiding him from the rear, Rodriguez was walking toward the garage past a car parked behind the truck. When the guide signaled the truck to stop, the driver hit the brake and skidded on ice into the parked car, knocking it into Rodriguez and pinning him against a stack of tires. A sanitation safety officer prepared a report on the accident and recommended disciplinary action for the co-workers, finding they "failed to use the highest degree of attention." The report did not address Rodriguez's actions. Rodriguez brought this personal injury action against the City, contending the negligence of his co-workers was the cause of the accident. The City argued, among other things, that Rodriguez was at fault for walking behind a truck that was backing up.

Supreme Court denied Rodriguez's motion for partial summary judgment on the issue of liability. Even if the City's negligence were established, the court said, "the question of [Rodriguez's] comparative fault must be resolved at trial."

The Appellate Division, First Department affirmed in a 3-2 decision. It said the "vexing" question of "whether a plaintiff seeking summary judgment on the issue of liability must establish, as a matter of law, that he or she is free from comparative fault..., has spawned conflicting decisions between the judicial departments, as well as inconsistent decisions by different panels within this department." The majority said that, rather than grant summary judgment on a defendant's liability and then consider the plaintiff's comparative fault in the damages phase of the trial, "the fairer, and therefore the proper way to proceed" is to have the jury consider the negligence of both parties together at a trial on liability. This "gives both parties a fair opportunity to present their evidence in a unified manner in order to give the jury a complete picture of the incident, the facts of which it must determine."

The dissenters said a plaintiff who can establish the defendant's negligence should not have the burden of disproving his own comparative negligence on a motion for summary judgment. "The affirmative defense of comparative negligence is a partial defense that does not bar a plaintiff's recovery, but merely reduces the amount of damages in proportion to the plaintiff's culpable conduct.... In this case, where plaintiff met his prima facie burden of establishing defendant's negligence..., and defendant failed to raise triable issues of fact with respect to its own negligence, but successfully raised triable issues of fact as to comparative negligence on the part of plaintiff, I would grant plaintiff's motion for partial summary judgment on the issue of [the City's] liability ... and remand for a jury to determine ... the percentage of liability attributable to each party" and the total amount of damages. "This result is warranted by the comparative fault provisions of the CPLR, the case law, the Pattern Jury Instructions, and the record evidence."

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No. 33 Somereve v Plaza Construction Corp.

Michael Somereve was employed as a foreman by Town Masonry Corp. in August 2011, when he was injured on a Brooklyn construction site where a school was being built. He was using a prime mover, a small forklift, to hoist a 1500-pound load of bricks onto a scaffold where bricklayers were working above him. Somereve stood on a platform on the back of the machine to operate it and, when a co-worker on top of the scaffold signaled that the forks with the load were clear of the scaffold, he began to raise the pallet of bricks. When the load was about five feet off the ground, the prime mover flipped forward and ejected Somereve from the operator's platform. He was catapulted up against the ceiling, then fell to the concrete floor.

Somereve brought this Scaffold Law action against Plaza Construction Corp., the general contractor for the project, under Labor Law § 240(1). Plaza's project superintendent said in a deposition that he arrived at the scene shortly after the accident and found nothing wrong with the prime mover, which was placed back into service. Plaza subpoenaed two Town Masonry employees to provide depositions -- a laborer who was a potential eyewitness, and a supervisor who said in an affidavit that, after the accident, he found nothing to indicate that the prime mover malfunctioned or was overloaded. Before the depositions could proceed, Somereve moved for summary judgment on Plaza's liability. Supreme Court granted the motion.

The Appellate Division, First Department affirmed on a 3-2 vote, ruling that "the failure to provide a proper hoisting device to protect plaintiff violated Labor Law § 240(1)." "Plaintiff was using the prime mover to hoist a load; if the prime mover pitched forward due to the force of gravity, it failed to offer adequate protection and Labor Law § 240(1) applies.... Similarly, if the accident occurred because either the prime mover or scaffold could not support the weight of the brick load, the accident also resulted from the application of the force of gravity to the load during the hoisting operation, and Labor Law § 240(1) applies...." It said "no further discovery or depositions are necessary" because, even if they could "shed light" on the defense theories that Somereve might have overloaded the prime mover or mishandled the hoisting operation, "the testimony would at most touch on the issue of comparative negligence, which is not a defense to a Labor Law § 240(1) claim...." It said, "[T]here is no viable argument that plaintiff was the sole proximate cause of this accident. The record presents no evidence that plaintiff failed or refused to use an available safety device or that he disregarded a supervisor's instructions...."

The dissenters said "summary judgment was prematurely awarded" and criticized the majority's "conclusory reasoning that because the accident involved the use of a safety device enumerated under Labor Law § 240(1), and the worker was injured while operating the device, the worker is entitled to recover for his injuries. In this case, no defect in the [prime mover] is identified. Nor was the platform of the machine from which the worker fell a type of elevation risk requiring protection against the hazard represented by the force of gravity. More significantly, the evidence raises a factual issue as to whether plaintiff's injuries were caused solely by his own negligent operation of the machine. Finally, plaintiff could not give an explanation as to how the incident occurred and there are at least two identified witnesses to the occurrence who were subpoenaed but have not yet been deposed and are in a position to shed light on how it occurred." They said the evidence of Somereve's negligence does not raise an issue of comparative fault, but instead "raises an issue as to whether plaintiff was the sole proximate cause of the accident which would preclude liability under Labor Law § 240(1)...."

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To be argued Wednesday, February 14, 2018

No. 34 People v Teri W. *(papers sealed)*

Teri W. was a 17-year-old runaway in December 2010, when she was arrested on charges that she had participated with her boyfriend in a sexual assault on a 15-year-old girl in Manhattan. Teri pled guilty to one felony count of first-degree sexual abuse in exchange for a promise that she would be given youthful offender status and sentenced to ten years of probation. At her sentencing, Supreme Court vacated the conviction, adjudicated her a youthful offender, and imposed the promised ten-year term of probation.

On appeal, Teri argued that her sentence was illegal under Penal Law § 60.02(2), which provides, "If sentence is to be imposed upon a youthful offender finding which has been substituted for a conviction for any felony, the court must impose a sentence authorized to be imposed upon a person convicted of an E felony." At the time of her offense, Penal Law § 65.00(3)(a)(i) provided, "For a felony, other than a class A-II felony or a class B [drug] felony ... or a sexual assault, the period of probation shall be five years." Based on these statutes, she contended that her ten-year term was twice the maximum probationary sentence allowed for a youthful offender.

The Appellate Division, First Department affirmed, saying the lower court "lawfully imposed a 10-year term of probation rather than a five-year term." It cited its 2003 decision in People v Gray (2 AD3d 275), which said, "The period of probation for a 'felony sexual assault'" under Penal Law § 65.00(3)(a)(iii), "whose definition includes the class E felony of rape in the third degree..., was increased to 10 years in 2001; there is no exception for those who have been adjudicated youthful offenders."

Teri argues that the maximum probationary term authorized in her case is five years because the language of Penal Law § 60.02(2), the statute that governs the sentencing of youthful offenders, applies to "any felony" and makes no distinction in sentencing based on the classification of the underlying felony. "The Legislature's decision to continue to omit any reference to the classification of the substituted felony in Penal Law § 60.02(2) provides dispositive evidence that the Legislature elected to leave a single, unclassified E felony sentencing scheme in place for youthful offenders, rather than one that varies depending on the classification of the substituted felony," she says.

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