State of New York
Court of Appeals

To be argued Wednesday, May 2, 2018

No. 69 Matter of Brookford, LLC v New York State Division of Housing and Community Renewal

Margaret Schuette Friedman and her husband lived in a rent-controlled apartment at 315 Central Park West until March 2005, when her husband moved to an assisted living facility. He died there in November 2006 without returning to the apartment, and Friedman succeeded him as tenant of record. The owner of the building, Brookford, LLC, served an income certification form (ICF) on Friedman in April 2006. Two months later, Brookford filed a petition with the Division of Housing and Community Renewal (DHCR) seeking luxury decontrol of the apartment's rent under the Rent Regulation Reform Act of 1993, which permitted deregulation of apartments with monthly rents of more than $2,000 if the total annual income of the occupants exceeded $175,000 in each of the two years preceding the petition. Rent Control Law (RCL) § 26-403.1(a)(1) provides that "annual income shall mean the federal adjusted gross income as reported on the New York state income tax return. Total annual income means the sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence...."

Friedman and her husband had filed joint tax returns for 2004 and 2005, the years to which the ICF applied, and their joint adjusted gross income would have exceeded the threshold for deregulation. However, Friedman contended her husband's share of the income on their joint returns should be excluded from the ICF because he no longer resided in the apartment when it was served, and so only her share of the adjusted gross income should be considered for the deregulation petition. DHCR agreed and, after verifying with the Department of Taxation and Finance (DTF) that Friedman's income did not exceed $175,000, DHCR denied Brookford's deregulation petition.

Supreme Court dismissed Brookford's suit challenging the decision, saying "the Legislature intended that only the income of occupants of a housing accommodation be taken into account in determining whether an apartment should be deregulated." It said, "Contrary to Owner's argument, the fact that, under federal and State tax law, neither the income, nor the resulting tax liability, listed on a joint return may be apportioned between the filers does not bar such apportionment in connection with deregulation proceedings.

The Appellate Division, First Department affirmed, saying the income of Friedman's husband was properly excluded based on the RCL's definition of total annual income "as the 'sum of the annual incomes of all persons who occupy the housing accommodation as their primary residence.' The record is clear that [Friedman's] husband was not an occupant of the apartment at the time the ICF was served." Since the Friedmans filed joint returns, "a calculation had to have been made as to the income of the sole occupant of the apartment," it said, and a memorandum of understanding between DHCR and DTF "was properly used" in determining that Friedman's income was below the threshold for deregulation.

Brookford argues, "The Legislature defined 'annual income' by using the well-settled term 'federal adjusted gross income as reported.' One of the most basic concepts in federal and New York State tax law is that jointly reported income cannot be divided and is wholly ascribable to *each* joint filer. The joint income is thus properly considered to be [Friedman's] income." It says apportionment of the jointly reported income "nullifies the as reported provision, because the 'apportioned' income was never reported to any taxing authority," and "also nullifies those statutory provisions that bar DHCR from demanding confidential tax information from tenants" and "nullifies those provisions ... that vest DTF with exclusive jurisdiction to verify tenant income."

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State of New York
Court of Appeals

To be argued Wednesday, May 2, 2018

No. 70 Matter of Lemma v Nassau County Police Officer Indemnification Board

Nicholas Lemma was a detective in the Nassau County Police Department (NCPD) when he was assigned to investigate a robbery, for which Raheem Crews was arrested in May 2005. Crews spent four months in jail, until prosecutors discovered that Crews had been in jail when the robbery occurred. Crews was released and the robbery charges were dismissed. Crews then sued the NCPD, Lemma, and others in federal court for false imprisonment and other alleged civil rights violations. In 2006, the Nassau County Police Officer Indemnification Board (the Board) determined that Lemma was entitled to defense and indemnification in the federal action pursuant to General Municipal Law § 50-1, which provides that Nassau County must indemnify its police officers in civil actions "from any judgment ... for damages, including punitive or exemplary damages, arising out of a negligent act or other tort of such police officer committed while in the proper discharge of his duties and within the scope of his employment."

In 2009, when Lemma was deposed for the Crews lawsuit, he revealed for the first time that he had learned five days after Crews was arrested that Crews was in jail on the date of the robbery and, therefore, had a complete alibi. Asked what he did with that information, Lemma testified, "I kept it to myself and said 'Let the chips fall where they may.'" Based on this admission, the Board reopened its original determination and, after a hearing, denied defense and indemnification to Lemma, finding the claims against him were not for actions in the proper discharge of his duties and within the scope of his employment, as required by the statute. Lemma filed this suit against the County, the Board and the NCPD to challenge the decision.

Supreme Court dismissed Lemma's suit, finding the Board's decision was not arbitrary and capricious. It said the "'proper discharge of duties' is performing one's duties correctly or appropriately.... The factual basis for the Board's determination that his actions were not in the proper discharge of his duties ... is found in Lemma's admission he knew Crews could not have committed the crime and, several days after Crews was arrested, chose to keep that information to himself. This was not an 'unintentional lapse' in the discharge of his duties but a conscious choice."

The Appellate Division, Second Department affirmed, saying, "The phrases 'proper discharge of his duties' and 'within the scope of his employment' were not intended to be interchangeable.... Rather, the word 'proper' was intentionally added to this statute ... to exclude indemnification for intentional misconduct.... Numerous letters in support of the bill reflected the worry that juries could improperly impose punitive damages on officers despite the fact that they 'acted with unquestioned good faith'.... Accordingly, the Board's interpretation of the statute ... was consistent with the statute and its legislative intent."

Lemma argues the decisions of the Board and the lower courts would "effectively repeal § 50-1" because the statute expressly provides for indemnification of punitive damages, and "no act that is so outrageous as to justify punitive damages could ever be determined to be proper." The statute does not require that an officer acted both "within the scope of his employment" and "in the proper discharge of his duties," he says, but instead "the terms must be applied interchangeably for the legislative intent to have full effect.... That the statute covers even conduct giving rise to punitive damages evinces the legislative intent not to restrict the benefits of the statute to employees performing their duties 'correctly' or 'appropriately.'"

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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, May 2, 2018

No. 71 People v Princesam Bailey

Princesam Bailey and two fellow gang members were charged with assaulting another inmate at the Manhattan Detention Complex in October 2011. At their joint trial, Bailey's defense attorney repeatedly asked the victim during cross-examination whether one of the co-defendants had referred to him with an inflammatory racial epithet by calling him an "old n....r" prior to the assault. A juror suddenly interrupted the proceedings with an outburst directed at Bailey's attorney. As the judge tried to quiet her, the juror said, "Please, I am not going to sit here ... and having you say that again. Don't say it again or I am leaving.... I find it very offensive." After regaining control, the judge told the juror, "Ma'am, that's not appropriate from you;" and then instructed the attorney, "I don't want to hear it again.... You don't ask the same question over and over and over again. Move on." After a colloquy with counsel, Supreme Court said, "I don't believe [the juror] is grossly disqualified. The application for a mistrial is denied. The application to discharge is denied.... [I]f you look at the Court of Appeals decisions ... in [People v Mejias (21 NY3d 73)]..., unless it's clear on its face that a juror is grossly disqualified, that there is no need to question the individual juror.... I don't think there would be any basis to remove the juror without first establishing that she can't be fair and impartial. I don't think her statement indicates that she could not be, only that she found the repeated use of the phrase distasteful." The court gave the jury a curative instruction. Bailey was convicted of second-degree assault and sentenced to seven years in prison.

The Appellate Division, First Department affirmed, rejecting Bailey's claim that People v Buford (69 NY2d 290) required the trial court to inquire into the juror's fitness to serve. It cited its prior decision affirming the conviction of a codefendant, People v Wiggins (132 AD3d 514), which said the trial court "properly determined, based on its own observations, that no inquiry was necessary.... The juror's brief outburst telling the codefendant's counsel not to use a racial epithet 'again' ... demonstrated that she was bothered by the repeated use, at least four times, of the phrase, rather than by counsel's initial line of questioning.... In any event, a juror's mere annoyance with a question or with counsel would not be a basis for discharge...." The court also said the claim was unpreserved.

Bailey says the juror's outburst, "at the very least, required an inquiry into the juror's ability to be fair and impartial, and the court's failure to conduct one is reversible error that warrants a new trial. The juror's explosive reaction indicated more than mere annoyance. Instead, there is a grave risk that the juror was biased against Mr. Bailey based on his attorney's repeated use of what is almost certainly the most repugnant racial epithet in the United States." He acknowledges that a juror's mere annoyance would not be a "basis for discharge," but says his claim "is not focused on the question of 'basis for discharge' but rather the *basis for inquiry*. And again, without an individualized inquiry, there was insufficient information for the conclusion that the juror expressed 'mere annoyance,' as opposed to strong offense and bias that would seep into deliberations."

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