State of New York
Court of Appeals

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To be argued Wednesday, October 17, 2018

No. 124 Ferrara v Peaches Café

COR Ridge Road Company, LLC, the owner of a shopping plaza in the Town of Webster, leased space for a restaurant to Peaches Café, LLC in 2008. The lease required Peaches to complete "[a]ll electrical work other than items furnished by" COR; required it to "use only contractors approved" by COR and to obtain COR's approval of its design drawings; and provided that Peaches could not make any improvements to the property "without first obtaining [COR's] consent. The lease stated that "any alterations, additions or improvements" to the property "shall at once become a part of the realty and belong to [COR] and shall be surrendered with the Premises." Peaches hired Quinlan Ferrara Electric, Inc. to perform the electrical work, which was completed in 2009. The restaurant closed shortly thereafter and Peaches stopped making payments to Quinlan, leaving a debt of $50,776.81 for the electrical work. Quinlan filed a mechanic's lien against the property in that amount, naming both Peaches and COR.

In 2011, Quinlan brought this action against COR and others to foreclose on the lien under Lien Law § 3, which provides, "A contractor ... who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner thereof, or of [the owner's] agent..., shall have a lien for the principal and interest, of the value, or the agreed price, of such labor...." Quinlan dissolved in 2012 and assigned the lien to its owner, Angelo Ferrara, who later moved for summary judgment enforcing the lien. He said Cor's "consent" was established by the terms of the lease, which required the electrical work to be done and required its approval or consent for all aspects of the work. COR moved for summary judgment to dismiss, arguing the lien could not be enforced against it because it had no direct contact with Quinlan and did not explicitly consent to the work performed by Quinlan.

Supreme Court granted summary judgment to COR and dismissed the complaint. The court relied on Interior Bldg. Servs., Inc. v Broadway 1384 LLC (73 AD3d 529), in which the Appellate Division, First Department ruled a landlord was not liable for the cost of a tenant's improvements where the work "was performed solely for the tenant's benefit," the contractor dealt almost exclusively with the tenant, and it concluded that "any consent provided by the landlord was that consent required under the lease," and thus, was not consent for purposes of the Lien Law. In Ferrara, Supreme Court said, COR "had even less contact" than the landlord in the First Department case. COR "dealt only with [Peaches' owner], except for limited purposes. As in Interior Building Services, any consent was required under the lease."

The Appellate Division, Fourth Department reversed and granted summary judgment to Ferrara. It relied on Jones v Menke (168 NY 61 [1901]), which says a requirement in a lease that the "tenant shall make certain improvements on the premises is a sufficient consent of the owner to charge his property with claims which accrue in making those improvements;" and on McNulty Bros. v Offerman (221 NY 98 [1917]), which says that, when "the liens have been confined to work called for by the lease..., the landlords' estate may be charged to the same extent as if the owners of that estate had ordered the work themselves." The Fourth Department said, "Jones and McNulty Bros. have not been overturned or disavowed.... We acknowledge that our sister Departments have all concluded ... that a lien under Lien Law § 3 is valid only when the property owner directly authorizes the contractor to undertake the relevant improvements.... In our view, however, those cases cannot be squared with McNulty Bros. and Jones, which, of course, we must follow." Since COR's lease "obligated Peaches to install electrical upgrades on the premises," and "Peaches hired Quinlan ... to perform the electrical work contemplated by the lease," Lien Law § 3 obligates COR "to pay for the 'reasonable value of [Quinlan's] services....'"

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No. 125 People v Rodney Watts

Rodney Watts was indicted on 12 felony counts of criminal possession of a forged instrument in the second degree (Penal Law § 170.25) for allegedly selling counterfeit concert tickets in midtown and upper Manhattan between November 2012 and June 2013. The statute applies to a defendant who "possesses any forged instrument" as defined in Penal Law § 170.10: "... a written instrument which is or purports to be.... A deed, will, codicil, contract, assignment, commercial instrument, credit card ... or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status." Watts moved to dismiss the charges as jurisdictionally defective, arguing that counterfeit tickets to events do not fall within the definition of section 170.10. He was arrested again in February 2014, with a female companion, for allegedly attempting to sell counterfeit tickets to a Knicks basketball game. He was indicted on eight more counts of second-degree possession of a forged instrument.

Supreme Court denied his motion to dismiss the first indictment, saying, "The tickets in this case fall within the meaning of both a written instrument and an 'instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status.' (PL § 170.10) 'Written instrument' is broadly defined in order to cover 'every kind of document and other item deemed susceptible of deceitful use in a "forgery" sense, the main requirement being only that it be "capable of being used to the advantage or disadvantage of some person"'.... A ticket to a theatrical performance is purchased by the holder and in exchange grants the holder the right to enter the venue and view the performance." Another justice denied a similar motion to dismiss the second indictment. Watts pled guilty to two counts of second-degree possession of a forged instrument and was sentenced to 2½ to 5 years in prison.

The Appellate Division, First Department affirmed, saying, "The indictments ... were not jurisdictionally defective. As we determined in an alternative holding in People v Davis, 127 AD3d 614..., such tickets were written instruments that purported to 'evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status' (Penal Law § 170.10[1]). We have considered and rejected [Watts'] arguments for revisiting our determination in Davis."

Watts argues the felony indictments are defective because counterfeit event tickets are not "of the same kind" as a deed, will, contract or other instrument enumerated in section 170.10, and because such tickets "do not affect a legal right, interest, obligation, or status," as required by the statute. "That an event ticket is nothing more than a revocable license privileging its holder to enter a space is a principle that has been chiseled into the stone of New York's jurisprudence for generations. That it does not convey to its holder a right of entry, nor to its issuer an obligation to permit entry, is equally settled." Watts argues the charges should be dismissed or, at the least, reduced to misdemeanor counts of third-degree forgery under Penal Law § 170.05, which applies when, "with intent to defraud, deceive or injure another, [a defendant] falsely makes, completes or alters a written instrument."

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For respondent: Manhattan Assistant District Attorney Lee M. Pollack (212) 335-9000

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To be argued Wednesday, October 17, 2018

No. 126 The Alliance to End Chickens as Kaporos v New York City Police Department

The Alliance to End Chickens as Kaporos is a Brooklyn-based nonprofit that opposes the use of live chickens in the Orthodox Jewish ritual of Kaporos, which is practiced during the days leading up to Yom Kippur. In it, practitioners hold a live chicken and pass it overhead three times while they recite a prayer asking that their sins be transferred to the bird. The chicken is then killed in accordance with kosher dietary laws by cutting its throat. Usually, edible portions of the chicken, or the monetary equivalent, are given to charity. The ritual is performed outdoors, on public streets. The Alliance contends that the way Kaporos is practiced on the streets of Brooklyn is cruel to the animals and presents a public health hazard, and that it violates many laws and regulations including the State Agriculture and Markets Law and the City Administrative Code and Health Code. The Alliance and individual plaintiffs brought this proceeding seeking a writ of mandamus to compel the City of New York, and its Police Department and Department of Health and Mental Hygiene, to enforce the laws and regulations.

Supreme Court dismissed the proceeding, saying, "Mandamus does not lie to compel the enforcement of a duty that is discretionary, as opposed to ministerial.... Enforcement of such provisions implicates the discretionary function of the executive branch..., which ... is permitted to allocate its resources and prioritize police enforcement action as a matter of its discretion."

The Appellate Division, First Department affirmed on a 3-2 vote. It said, "With the exception of Agriculture and Markets Law § 371..., there is nothing in the plain text of any of the laws and regulations ... to suggest that they are mandatory. Nor is there anything in the legislative history.... There is no express provision designating Kaporos as a prohibited act. There are disputes about whether the conduct complained of is in violation of the implicated laws and regulations.... Rituals involving animal sacrifice are present in some religions and although they may be upsetting to nonadherents..., the United States Supreme Court has recognized animal sacrifice as a religious sacrament ... that is protected under the Free Exercise Clause.... Determining which laws and regulations might be properly enforced against [Kaporos participants] without infringing upon their free exercise of religion involves the exercise of reasoned judgment on the part of the City defendants. The outcome cannot be dictated by the court through mandamus." While section 371 says an officer "must" arrest or issue a summons to anyone who violates its animal cruelty provisions, "it is still subject to the definition of animal cruelty as ... 'unjustifiable physical pain, suffering or death'" and, thus, "implicates discretion and is not susceptible to a predictable, mandated outcome."

The dissenters said "the actions at issue are mandatory not discretionary," citing Health Code and City Charter provisions requiring City agencies to enforce the laws and the "must" arrest provision of section 371. "[W]hile the City defendants may exercise discretion in the process of determining whether a violation has occurred and, if so, how to respond to it, they have, at a minimum, an obligation to determine whether or not a reported violation has occurred.... I disagree with the majority that plaintiffs seek to direct the City defendants how to act. The complaint seeks to compel them to issue summonses or make arrests 'where warranted,' and to refrain from 'aiding and abetting' the non-City defendants in violating the law. I view the complaint as seeking to compel the City defendants not to abdicate their mandatory duty."

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For respondents City et al: Assistant Corporation Counsel Elina Druker (212) 356-2609