State of New York
Court of Appeals

To be argued Tuesday, November 19, 2019

No. 99 Vanyo v Buffalo Police Benevolent Association, Inc.

Ann Vanyo, who became a Buffalo police officer in 1998, was charged with a series of disciplinary violations between 2009 and 2014, including a charge that she publically threatened a romantic rival while on duty and in uniform. The charges were referred to arbitration in accordance with the contract between the City of Buffalo and the Buffalo Police Benevolent Association (PBA). The arbitrator found Vanyo guilty of the charges and recommended termination. The City terminated her employment on October 16, 2014.

In February 2015, Vanyo commenced an action against the City and the PBA by filing a summons and complaint, alleging, among other things, that the PBA breached its duty of fair representation and the City breached the contract by firing her. However, she did not serve the defendants with the original complaint. The statute of limitations expired in March 2015. On May 21, 2015, Vanyo filed an amended complaint, which she served on the defendants five days later. It included the four causes of action contained in the original complaint and added a fifth against the City for gender discrimination. The defendants moved to dismiss the amended complaint. Before Supreme Court ruled on their motions, Vanyo moved under CPLR 306-b to extend the time for her to serve the original complaint on the defendants and to deem the original complaint timely served.

Supreme Court, in separate orders, denied Vanyo's motion for additional time; and dismissed the original complaint and amended complaint.

The Appellate Division, Fourth Department affirmed in a 3-2 decision. It agreed unanimously that Supreme Court did not abuse its discretion in denying Vanyo's motion for an extension of time to serve the original complaint, but it split on the dismissal of the first and second causes of action alleging the PBA breached its duty of fair representation and the City breached the contract. The majority said Vanyo's claims were untimely because they accrued when she was fired, "but the amended complaint, i.e., the only pleading with which defendants were served, was filed well beyond the applicable four-month limitations period." Rejecting Vanyo's argument that her claims were timely because they relate back to the original complaint, the majority said the original complaint "was never served on defendants" and "thus did not give defendants notice of the transactions or occurrences to be proved pursuant to the amended complaint. The claims in the amended complaint, therefore, are measured for timeliness by [filing] of the amended complaint."

The dissenters argued that, because "CPLR 306-b contains no authority for the court to dismiss a complaint on its own motion..., the court clearly exceeded its authority in dismissing the [original] complaint without a motion by defendants." They said the first and second causes of action were not time-barred because Vanyo filed the original complaint within the four-month limitations period. "This filing commenced the action and tolled the statute of limitations.... A party may amend a pleading without leave of court at any time before the period for responding to it has expired.... [P]ursuant to CPLR 203(f) the amended complaint, which only added a new cause of action and not a new party, relates back to the timely commencement of the action by the filing of the original complaint."

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State of New York
Court of Appeals

To be argued Tuesday, November 19, 2019

No. 100 Matter of Franklin Street Realty Corp. V NYC Environmental Control Board

Franklin Street Realty Corp. and three other corporations, which separately own five buildings in Brooklyn and Queens, brought these CPLR article 78 proceedings to annul determinations by the New York City Environmental Control Board (ECB) which found they engaged in unauthorized outdoor advertising in 2014 and imposed fines totaling $380,000. All four corporations are owned by attorney John J. Ciafone or his wife. All five buildings displayed signs on their facades advertising the "Law Offices of John J. Ciafone, Esq." The corporations were charged with violating the Administrative Code by posting outdoor signs promoting Ciafone's law practice, Ciafone, P.C., without obtaining permits or complying with other rules.

The ECB sustained the charges. It found the corporations were acting as outdoor advertising companies under Administrative Code § 28-502.1, which defines the business as "making space on signs situated on buildings and premises within the City of New York available to others for advertising purposes." The ECB has construed the statute to allow building owners to advertise their own business on their buildings, but it said it had clarified in a series of cases "that if the company being advertised and the owner of the building are two separate corporate entities, even though there may be an overlapping of principals, the building owner was making space available to others" and the exception does not apply.

The Appellate Division, First Department upheld the ECB decisions on a 3-2 vote, saying ECB's "creation of a narrow exception for circumstances involving a building owned by an individual who advertises for his or her self" was within its authority, and "both ECB's reading of the statute and its application of its own precedent to this case were rational, and not arbitrary or capricious." It said the conduct of the corporations fell within the statutory definition of outdoor advertising companies because they "made space on signs available to Ciafone's law practice (a professional corporation), a separate and distinct entity. Of course, it is fundamental that individuals, corporations, and partnerships are each recognized as separate legal entities, and in this statutory context constitute 'others' regardless of the common principal ownership or connection between the entities.... The record shows that the building owners are not Ciafone or Ciafone, P.C., but separate corporate entities, and that the advertising signs promoted legal services by Ciafone, not any services of the corporate entities that own the buildings."

The dissenters said, "This disparate treatment between buildings owned by an individual who advertises the services of his or her own corporation, and buildings owned by a corporation that advertises the services of its own principal, is so unrelated to the achievement of the legitimate purposes underlying the outdoor advertising laws as to be irrational, and is, therefore, arbitrary and capricious. In either scenario, at one end of the transaction you have a corporation and at the other end its principal, both of whom are distinct but interrelated legal entities, and it is logically absurd to find that the owner is making an outdoor advertising sign 'available to others' in one instance but not the other."

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State of New York
Court of Appeals

To be argued Tuesday, November 19, 2019

No. 101 People v Ramee McCullum

Ramee McCullum was living in one bedroom of his cousin's Brooklyn apartment in January 2012, when all of the occupants were locked out of the apartment by the execution of a "legal possession" by a city marshal, who changed the locks. The marshal's execution of the warrant gave legal possession of the apartment to the landlord, who had commenced a summary nonpayment proceeding against McCullum's cousin for failure to pay rent. Unlike a full eviction, in which the tenants and their property are removed from the premises, in a legal possession only the tenants are removed and their property remains in the apartment under the control of the landlord as bailee. The tenants, as bailors, have 30 days to retrieve their personal property. Later that day, police officers responded to a report of trespassing in the apartment. After arresting the trespasser the officers searched the apartment and found in McCullum's bedroom eight handguns. He was charged with criminal possession of a weapon.

McCullum moved to suppress the guns on the ground that the warrantless search of his bedroom was improper. He argued that he had standing to challenge the search because he had a reasonable expectation of privacy in his bedroom, where he regularly slept and had installed his own lock. The prosecutor argued that McCullum's reasonable expectation of privacy ended when he was "evicted" and the landlord regained legal possession of the apartment. Supreme Court denied the motion to suppress, implicitly finding that McCullum lacked standing to challenge the search. He was convicted of second-degree weapon possession and sentenced to eight years in prison.

The Appellate Division, Second Department affirmed, rejecting McCullum's claim that when the landlord became the bailee of the occupants' personal possessions, he retained a reasonable expectation of privacy in his possessions during the bailment. The court said it is clear he would have had no legitimate expectation of privacy in his bedroom if he had been evicted, and it said the distinction between an eviction and a legal possession "is a distinction without a difference. Here, the legal possession gave the landlord the right to possess the apartment and remove the tenants and occupants. Although their belongings remained in the apartment, thereby necessarily creating a bailment, the tenants and occupants no longer had a legal right to possess or control" the apartment and "any subjective expectation of privacy he manifested in the bedroom ... was not objectively reasonable.... Where, as here, the occupant has been removed from or locked out of the subject premises, the simple fact that his belongings remained thereafter in the premises does not in itself give him an objective expectation of privacy in the premises...."

McCullum argues he had standing to challenge the search because a legal possession, "which removes the occupants of an apartment but not their property..., creates a bailment by operation of law, with the landlord serving as 'bailee' of the property for a period of 30 days.... The general view among courts at the federal and state levels, as well as legal scholars, is that bailors ... retain a reasonable expectation of privacy in their property during the course of a bailment." He says that he, "like any bailor, had both a proprietary and a possessory interest in his property" during the bailment and remained its "sole owner," while the landlord "had only temporary possession and control" of it. "Because he could sue the landlord for losing or damaging his property, appellant also had at least a *de facto* right to exclude others from access to it.... [W]hat made appellant's expectation of privacy even more likely to be recognized by society as reasonable was that the bailment occurred at his home and encompassed almost all of his personal property."

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