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.

To be argued Monday, June 1, 2015

No. 104 Commonwealth of Pennsylvania Public School Employees' Retirement System v Morgan Stanley & Co., Incorporated

Morgan Stanley & Co. assembled and marketed a structured investment vehicle (SIV) named the Cheyne SIV beginning in 2004. The Cheyne SIV, managed by Cheyne Capital Management, contained assets with a variety of risk profiles, including subprime residential mortgage-backed securities, but received an overall triple-A rating from credit rating agencies. When the housing market collapsed in 2007, so did the Cheyne SIV, declaring bankruptcy in the fall of 2007. Commerzbank AG, a German bank, was among 15 large institutional investors that brought this federal action for fraud and negligent misrepresentation against Morgan Stanley, the rating agencies and other defendants involved in the SIV. The plaintiffs alleged that Morgan Stanley pressured the rating agencies to provide fraudulently high ratings on notes issued by the Cheyne SIV, which it included in promotional documents distributed to investors.

In response to a defense motion for summary judgment, Commerzbank said it acquired some of its Cheyne SIV notes in its 2009 merger with Dresdner Bank AG. It said Dresdner had purchased those notes from the original purchaser, Allianz Dresdner Daily Asset Fund (DAF) at face value in 2007, after which DAF was "wound down." DAF could not have retained any interest in the notes, including the right to sue, when the notes were sold to Dresdner, it said; and under German law, "all of Dresdner's assets, liabilities, rights and obligations passed automatically by operation of law to Commerzbank" in the 2009 merger.

U.S. District Court dismissed Commerzbank's claims, finding it lacked standing to sue under New York law on the notes acquired from DAF. For a subsequent holder of a note to have standing to sue for fraud, it said, the prior holder must assign its tort claims at the time of transfer -- a simple transfer of the note will not suffice. While Commerzbank offered evidence that it acquired any rights of action possessed by Dredner, it "provided no evidence that DAF assigned its rights of action to Dresdner." The court also dismissed fraud claims against Morgan Stanley on the ground that the only alleged misstatements were made by the rating agencies and were not attributable to Morgan Stanley. It said the company could not be held liable for fraud based on third-party misstatements under New York law.

The U.S. Court of Appeals for the Second Circuit found the question of Commerzbank's standing to sue and the question of Morgan Stanley's liability for the allegedly fraudulent ratings turn on unresolved issues of New York law. "It is unclear whether the intent of parties to transfer a whole interest [in a note], combined with the absence of limiting language, suffices to transfer an assignor's tort claims, or whether an additional, more specific statement of an intent to transfer tort claims is required," it said. Also unclear is whether Morgan Stanley may be held liable for false ratings it influenced and disseminated. The Second Circuit is asking this Court to resolve both issues in a pair of certified questions.

For appellant Commerzbank: Joseph D. Daley, San Diego, CA (619) 231-1058
For respondents Morgan Stanley et al: James P. Rouhandeh, Manhattan (212) 450-4000

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No. 105 Amalgamated Bank v Helmsley-Spear, Inc., and Schneider & Schneider, Inc.

Amalgamated Bank retained Helmsley-Spear, Inc. in 2006 to appraise a Yonkers office building before it approved a mortgage. Lynn C. Schneider was president of Helmsley-Spear at the time and owned 99 percent of Helmsley's shares. In 2009, after its borrower defaulted on the mortgage, the bank brought a negligence action against Helmsley and its appraiser, claiming the Yonkers building was worth substantially less than the value determined by the appraisal. Helmsley never answered the complaint or appeared in the action and in 2011 Supreme Court entered a default judgment for $2,289,600 plus interest against Helmsley.

During post-judgment discovery, Amalgamated Bank learned Helmsley had transferred its assets to Schneider and her company, Schneider & Schneider, Inc., for no consideration in October 2007, and Schneider sold the bulk of those assets to a real estate developer for $3,205,000. Amalgamated Bank commenced this supplemental proceeding in 2012 to enforce its default judgment by collecting the proceeds of the 2007 sale of Helmsley's assets from Schneider, alleging the sale was a fraudulent transfer that left Helmsley judgment-proof. Schneider and her company moved to intervene in the Helmsley action and to vacate the default judgment.

Supreme Court permitted Schneider to intervene and vacated the judgment. Citing Oppenheimer v Westcott (47 NY2d 595), the court said she had a sufficient interest to intervene because Amalgamated Bank "is using the default judgment against Helmsley as a predicate for liability against [Schneider and her company] in the Supplemental Proceeding." It said they "established that they are capable of putting forth a meritorious defense without the need to delay the trial.... Consequently, plaintiff will not be prejudiced by further discovery or delay."

The Appellate Division, First Department reversed and reinstated the judgment, saying Amalgamated Bank "did not obtain the default judgment through fraud or through any other wrongdoing.... Rather..., the default judgment resulted from Helmsley's decision not to answer the complaint or otherwise appear in the action because it apparently believed itself to be judgment-proof.... Accordingly, intervenors cannot show that Helmsley had a reasonable excuse for the default...." It said Oppenheimer allowed intervention based on the intervenors' interest in vacating a default judgment, but did not vacate the judgment on that basis alone. "[T]he Oppenheimer Court also found that plaintiff had obtained the default judgment through fraud or wrongdoing, and indeed, the fraud or wrongdoing was the reason for the vacatur.... By contrast..., no wrongful acts precipitated the default judgment in this case."

Schneider argues, "It is the well-settled policy of the New York courts 'to allow matters to proceed to trial on the merits.' In overturning the trial court's decision which permitted Appellants to intervene, vacate a default judgment, and defend the underlying action on the merits, the First Department has undermined this established principle." She says the decision "artificially limits the application of Oppenheimer to circumstances of fraud or other wrongdoing," and permits the bank to pursue "its efforts to obtain a windfall in excess of $2 million without ever having to prove the merits of its claim."

For appellants Schneider et al: Christopher J. Sullivan, Manhattan (212) 592-1400
For respondent Amalgamated Bank: Tyler J. Kandel, Manhattan (212) 238-3000

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To be argued Monday, June 1, 2015

No. 106   People v William Henderson

William Henderson was charged with fatally stabbing Duncan Chambers in Glens Falls in September 2005. Witnesses testified Henderson, while searching for crack cocaine and cash that had been stolen from his cousin, kicked in the door of Chambers' apartment and began fighting with him. Henderson retreated to the nearby apartment of a friend, told her he was "going to kill him" and grabbed a large kitchen knife, then returned to Chambers' apartment. Witnesses said Henderson struck Chambers on the head with a bottle and stabbed him in the back.

Henderson was convicted of felony murder, based on the theory that he killed Chambers while in the course of committing a burglary. The burglary charge was based on Henderson"s intent to commit a crime -- assault or murder -- when he reentered the apartment. He was also convicted of first-degree manslaughter, second-degree assault and second-degree burglary, and was sentenced to an aggregate prison term of 30 years to life. Henderson argued on appeal that his felony murder conviction was improper under People v Cahill (2 NY3d 14 [2003]) because the predicate burglary was based on his conceded intent to commit an assault.

The Appellate Division, Third Department affirmed. "The Court of Appeals took care to point out that its analysis in Cahill was confined to the capital murder statute.... A felony murder conviction, on the other hand, may properly be based on a burglary as the predicate felony where the intent at the time of entry is to commit an assault or murder," the court said, citing People v Miller (32 NY2d 157 [1973]). "Here, the trial evidence supports the conclusion that defendant entered the apartment the second time with the intent to assault or murder the victim. Accordingly, there is no basis to disturb the verdict finding defendant guilty of felony murder."

Henderson, citing Cahill, argues that the prosecution's proof "improperly uses the same *mens rea* (i.e., intent to commit a homicide) to elevate trespass to burglary and also to elevate manslaughter to felony murder. This 'double counting' of the intent to kill is impermissible and is inconsistent with the purpose of the felony murder statute and its legislative history." He also argues there was insufficient evidence to support the felony murder conviction because "the prosecutor failed to prove that the homicide was 'in furtherance of' the burglary. Indeed, the prosecutor ended up proving the inverse: the burglary was committed to accomplish the homicide."

For appellant Henderson: David M. Abbatoy, Jr., Rochester (585) 348-8081
For respondent: Warren County Assistant District Attorney Jason M. Carusone (518) 761-6405

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To be argued Monday, June 1, 2015

No. 15 People v Matthew Keschner
No. 16 People v Aron Goldman

Matthew Keschner and Aron Goldman were charged with participating in a no-fault insurance fraud scheme in Manhattan from 2002 to 2006. The operation was devised and controlled by Gregory Vinarsky, who employed runners to solicit patients at the scenes of car accidents and employed medical professionals -- including Goldman, an internist, and Keschner, a chiropractor -- to provide diagnosis and treatment. Prosecutors presented evidence that Vinarsky and his alleged accomplices used medical clinics to fraudulently bill no-fault insurers for reimbursement of unnecessary medical tests, procedures and equipment on behalf of accident victims. Most of the tests and procedures were performed at a clinic on St. Nicholas Avenue in Washington Heights rented by Vinarsky, although Goldman was listed as owner of the clinic.

Goldman and Keschner were tried jointly, with Vinarsky testifying against them under a cooperation agreement, and they were convicted of enterprise corruption (Penal Law art 460) and related offenses. Goldman was sentenced to 2½ to 7½ years in prison and an $800,000 fine, Keschner to 1½ to 4½ years and a $750,000 fine. Among other arguments on appeal, they contended there was insufficient evidence to establish the "continuity of existence" element of enterprise corruption (Penal Law § 460.10[3]) because the criminal enterprise could not continue to function without Vinarsky.

The Appellate Division, First Department affirmed. It said a "criminal enterprise" as defined in Penal Law § 460.10(3) need not be "so structured as to permit it to continue its existence without the involvement of one or more key participants" because "the statute expressly requires only 'a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents'..., not criminal 'participants'...." It said Vinarsky's enterprise "embraced more than one clinic, extended over a period of years, and involved a succession of patients" who were used "to facilitate the fraudulent billing of insurers, which paid some $6 million for services allegedly provided by the St. Nicholas clinic. Thus, the jury was warranted in concluding that the criminal enterprise had a continuity that extended beyond any individual patient or transaction."

The defendants argue, in part, that prosecutors failed to prove the "continuity of existence" element of enterprise corruption because Vinarsky was indispensable to the scheme. "Logic dictates that an enterprise devised and controlled by one individual -- who alone possesses the wherewithal to run it -- also does not come within [the statute's] purview," Keschner says. "Regardless of the minions who may also participate under the individual's direction, the entity effectively constitutes an enterprise of one -- rendered a nullity without its all-controlling leader." Goldman says the Appellate Division "rejected the thoughtful decisions of a host of justices and neutered one of the statute's main protections -- the requirement that an enterprise have a 'continuity of existence,' which this Court has described as 'constancy and capacity exceeding the individual crimes committed under the association's auspices."

For appellant Keschner: Susan H. Salomon, Manhattan (212) 577-2523 ext. 518
For appellant Goldman: Matthew S. Hellman, Washington, DC (202) 639-6000
For respondent: Manhattan Assistant District Attorney Susan Axelrod (212) 335-9000