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 Wednesday, June 3, 2015

No. 120 Greater New York Taxi Association v New York City Taxi and Limousine Commission

The New York City Taxi and Limousine Commission (TLC) has regulated the City's taxi industry since 1971, including periodically adopting standards and specifications for new vehicles approved for use as medallion taxicabs. These specifications might match a particular car model, but the TLC allowed medallion owners to purchase and alter other vehicles to meet its specifications, a process called "hacking up." The TLC took a new approach beginning in 2008 with its "Taxi of Tomorrow" program, in which it would work with a single manufacturer to design a vehicle meeting all of its specifications. The City received proposals from seven manufacturers and the TLC chose three finalists in 2010. After further evaluation, including a public opinion poll, the TLC chose the Nissan NV200 as the Taxi of Tomorrow. In 2012, the TLC adopted new "Taxi of Tomorrow Rules" requiring medallion owners to buy the Nissan vehicle beginning in October 2013, and the City entered into a 10-year contract granting Nissan the exclusive right to manufacture taxicabs and parts. The rules were struck down in a prior lawsuit because they did not allow owners to use hybrid electric cars as taxis, as required by a 2005 law enacted by the City Council. In 2013, the TLC adopted Revised Taxi of Tomorrow Rules giving owners the option to buy the Nissan NV200 or an approved hybrid. The Greater New York Taxi Association and a fleet owner brought this action to challenge the revised rules.

Supreme Court declared the Revised Taxi of Tomorrow Rules invalid, finding the TLC exceeded its authority. "[T]he power to contract and compel medallion owners to purchase the Nissan NV200 ... does not exist in the City Charter. This is not a form of regulation, but a binding and enforceable obligation" imposed on owners "without input or direct negotiations from the medallion owners in the terms of the agreement." The court also found the rules violate the separation of powers doctrine. "The notion that New York City should have one exclusive 'iconic' New York City taxicab is a policy decision that is reserved for the City Council."

The Appellate Division, First Department reversed on a 3-1 vote and declared the rules valid, saying they were "a legally appropriate response to the agency's statutory obligation to produce a twenty-first century taxicab consistent with the broad interests and perspectives that the agency is charged with protecting.... The agency's selection ... of a specific, specially designed model as the exclusive model for New York City taxis was well within the agency's purview of establishing the policy governing taxi service." Regarding separation of powers, it said "the Legislature had clearly articulated its policy regarding the TLC's assigned task, namely, the goal of ensuring ... the comfort of riders, while protecting the public, the environment, the drivers, and the rights of medallion owners." Even if adoption of the rules was policy-making, "the parameters of that policy-making were set by the City Council in the City Charter."

The dissenter said, "[D]espite the delegation to TLC of broad policy-making powers ... to regulate and supervise the taxi industry, in issuing the ... rules, TLC exceeded its statutory authority in a manner that infringed on the City Council's legislative domain.... TLC's authority under the Charter to make rules with respect to vehicle design is limited to rules regulating 'standards' of design, and this does not include the power to issue rules mandating the exclusive use of one purpose-built vehicle manufactured by a single company."

For appellants Taxi Association et al: Mitchell Berns, Manhattan (212) 878-7900
For respondent TLC: Assistant Corporation Counsel Elizabeth I. Freedman (212) 356-0836
For intervenor-respondent Nissan: Peter J. Brennan, Chicago (312) 222-9350

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To be argued Wednesday, June 3, 2015

No. 110 People v Kareem Washington
No. 111 People v Cleveland Lovett

The common question in these unrelated appeals is whether a trial court, in reviewing a defendant's pro se motion for assignment of new counsel, must assign new counsel on the motion if the current defense attorney denies the defendant's allegations of ineffective assistance. The defendants argue their attorneys became advocates against them, in violation of their right to conflict-free counsel, so new attorneys must be appointed to represent them on their motions.

Kareem Washington, charged with first-degree robbery in the Bronx, filed a pro se pre-trial motion for assignment of new counsel, complaining his appointed attorney failed to consult with him on possible legal strategies, inform him of developments, provide him with copies of documents or investigate his witnesses. Supreme Court did not decide the motion until after he was convicted, when his motion papers were found prior to sentencing. After hearing from Washington and his attorney, the court denied the motion as untimely and on the merits, saying defense counsel "tells me he would not have adopted the motion and it's evident to me from what I've heard from you and [defense counsel], that I would not have granted the motion. The things that you say ... about [defense counsel] and what he did and did not do are not true. I accept what [defense counsel] says."

Cleveland Lovett was convicted in Manhattan of criminal possession of a controlled substance in the first and third degrees and reckless endangerment, then made a pro se motion to vacate the conviction on the ground of ineffective assistance of counsel, including failure to object to jury instructions. His assigned counsel submitted an affirmation in which he defended his performance at trial. Supreme Court denied the motion, saying, "I am completely confident in the truthfulness and the accuracy of what [defense counsel] says.... I have some ... experience prior to this motion with you, Mr. Lovett, and some prior experience and subsequent experience with [defense counsel]. I credit entirely what [defense counsel] has told me."

The Appellate Division, First Department affirmed both convictions. In Washington, it said defense counsel's statements in response to the motion for new counsel did not deprive him of his right to conflict-free representation. '"Counsel's remarks outlining his efforts on his client's behalf cannot be compared to a situation where an attorney becomes a witness against his client,'" it said, citing People v Nelson (7 NY3d 883).

The defendants argue that, because a conflict of interest arose when their trial attorneys actively disputed their allegations of ineffective assistance of counsel, they are entitled to new hearings on their motions with new counsel to represent them. They say their attorneys became adverse witnesses and the trial courts, in denying their motions, credited their attorneys' statements over their own, depriving them of their constitutional right to conflict-free counsel.

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For respondent: Bronx Assistant District Attorney Marc I. Eida (718) 838-6144
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For respondent: Manhattan Assistant District Attorney Nicole Coviello (212) 335-9000

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To be argued Wednesday, June 3, 2015

No. 112 JF Capital Advisors, LLC v The Lightstone Group, LLC

JF Capital Advisors, an investment consulting firm, brought this action against The Lightstone Group and affiliated real estate investment companies to recover $480,175 in compensation for financial advisory services it allegedly provided under an oral contract from November 2010 to May 2011. JF Capital claimed it provided financial analysis and modeling, market research, data analysis, due diligence, property tours, site visits and other services to Lightstone in connection with eight potential acquisitions or investments. It asserted causes of action for quantum meruit and unjust enrichment.

Lightstone moved to dismiss on the ground the claims were barred by the statute of frauds, General Obligations Law § 5-701(a)(10), which provides that a contract for "negotiating the purchase, sale, exchange, renting or leasing of any real estate or ... of a business opportunity" is void unless it is in writing. The statute states, "'Negotiating' includes procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction."

Supreme Court dismissed JF Capital's claims relating to three of the investment projects for which it acknowledged assisting in negotiations or preparing bidding documents, finding they were barred by the statute of frauds. It allowed claims relating to the five other projects to go forward "[t]o the extent that [JF Capital's] information was not later used to assist in the negotiation or consummation" of the deals. It said section 5-701(a)(10) "applies to situations where the plaintiff assists in the negotiation or consummation of a business transaction, not to situations where negotiations do not occur at all or where business transactions are not pursued."

The Appellate Division, First Department modified by dismissing the remaining claims. It said the lower court properly dismissed the claims relating to three projects where JF Capital "plainly acted as an intermediary as the statute of frauds contemplates.... That plaintiff provided other services in addition to negotiating deals is not dispositive here. On the contrary, plaintiff undertook those other services to assist defendants' negotiations, largely by determining the value to defendants of pursuing the deal...." As for the investment analysis JF Capital provided for the five remaining projects, the court said, "At the very least, plaintiff's services in this context amount to 'assisting in the negotiation or consummation of the transaction'.... Indeed, investment analyses and financial advice regarding the possible acquisition of investment opportunities 'clearly fall within' General Obligations Law § 5-701(a)(10)...."

JF Capital argues the Appellate Division ruling "extends the Statute of Frauds well beyond the intent of the Legislature ... to prevent claims for brokerage and finder's fees based on oral testimony" and "beyond the scope of any prior decision of this Court," creating "a per se category of services subject to the Statute of Frauds in violation of this Court's admonitions against such 'sweeping generalizations'...." "It is undisputed that JF Capital provided over 1,400 hours of financial advisory services to and exchanged over 7,000 e-mails with Lightstone...," it says, and "the parties had agreed that JF Capital would be paid for such work, independent of whether Lightstone pursued any such Project...."

For appellant JF Capital: Jason Stern, Melville (631) 549-2000
For respondents Lightstone et al: Elizabeth S. Saylor, Manhattan (212) 763-5000

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To be argued Wednesday, June 3, 2015

No. 114 Eric M. Berman, P.C. v City of New York

New York City has regulated debt collection agencies by local law since 1984 and requires all such agencies to obtain a license from the Department of Consumer Affairs (DCA). The original statute exempted "any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client." The City Council amended the law to strengthen its consumer protections in 2009 by enacting Local Law 15, which also revised the definition of "debt collection agencies" to exclude "any attorney-at-law or law firm collecting a debt in such capacity on behalf of and in the name of a client solely through activities that may only be performed by a licensed attorney, but not any attorney-at-law or law firm or part thereof who regularly engages in activities traditionally performed by debt collectors, including, but not limited to, contacting a debtor through the mail or via telephone with the purpose of collecting a debt or other activities as determined by rule of the commissioner." Local Law 15 also expanded the definition of collection agency to "include a buyer of delinquent debt who seeks to collect such debt either directly or through the services of another by, including but not limited to, initiating or using legal processes or other means to collect or attempt to collect such debt." Two debt-collection law firms -- Eric M. Berman, P.C., and Lacy Katzen, LLP -- filed this federal action in the Eastern District of New York to challenge Local Law 15 on several grounds, including preemption by the New York Judiciary Law.

U.S. District Court ruled "Local Law 15 is in direct conflict with ... Judiciary Law §§ 53 and 90 and, thus, is preempted to the extent it seeks to regulate attorney conduct. Section 53 authorizes the New York Court of Appeals to adopt rules for the admission of attorneys, and section 90 gives the Supreme Court and its appellate Division the power to regulate the practice of law and to discipline attorneys for misconduct. "Under Local Law 15, no attorney or law firm may regularly represent creditors seeking to recover on consumer debts without first obtaining a DCA license and ... complying with DCA licensing requirements," it said. "But it is simply not within the DCA's power to license attorneys or regulate their professional conduct.... Rather, when an attorney contacts a debtor on behalf of a client, she acts as an officer of the court, and is subject to the supervision and control of the New York judiciary." It found the local law also violates City Charter § 2203(c), which gives the DCA commissioner the power to grant and revoke "all licenses and permits, except in the cases with respect to which and to the extent to which any of said powers are conferred on other persons or agency by laws."

The U.S. Court of Appeals for the Second Circuit said Local Law 15 "does not, on its face, appear to regulate an attorney who is collecting a debt in her representative capacity as a licensed attorney, in the name of a client, and through activities that only a licensed attorney can perform," but "appears to cover attorney conduct, such as calling a debtor on the telephone, when it is not performed in the name of a client and in a manner reserved solely for licensed attorneys." The Second Circuit said it is not "entirely clear" how the law applies to attorneys and it is asking this Court, in a pair of certified questions, to determine whether Local Law 15 conflicts with the Judiciary Law and encroaches on the state's authority to regulate attorneys and, if it is not preempted by state law, whether it violates the City Charter.

For appellant City: Assistant Corporation Counsel Janet L. Zaleon (212) 356-0860
For amicus curiae State: Assistant Solicitor General Karen W. Lin (212) 416-6197
For respondent Law Firms: Max S. Gershenoff, Uniondale (516) 357-3000