State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

SEPTEMBER 4 & 5, 2019

State of New York
Court of Appeals

To be argued Wednesday, September 4, 2019

No. 67 Maddicks v Big City Properties, LLC

Theresa Maddicks and 27 other current and former tenants of 11 New York City apartment buildings brought this putative class action against their landlords, alleging that they engaged in a common scheme to charge inflated rents in violation of the Rent Stabilization Law. They claimed the building owners and their predecessors illegally overcharged tenants by failing to offer rent-stabilized leases in buildings that were receiving J-51 tax incentives; inflating the cost of improvements made to individual apartments; failing to register accurate rental information needed to calculate legal regulated rents; and improperly deregulating apartments and inflating the initial fair market rents charged for them. The plaintiffs contend the individual owners of the buildings are all held by Big City Acquisitions LLC and all of the buildings managed by Big City Realty Management LLC.

Supreme Court granted a pre-answer motion by Big City to dismiss the complaint, saying the plaintiffs "failed to properly asserts a class action ... because the questions of law or fact common to the class do not predominate over questions affecting only individual members." The court said "each claim requires fact-specific analysis which precludes class certification. There are different buildings involved, different owners, different dates when the owners acquired the property, different prior owners, different registration periods and since there are different theories of recovery, each theory requires different defenses and evidence."

The Appellate Division, First Department modified in a 3-2 decision and reinstated most of the claims and class action allegations. The majority said the dismissal, "before an answer was filed and before any discovery occurred, was premature.... If discovery were to show that, for example, Big City charged all the tenants the same fraudulent and inflated amounts for claimed improvements, this would support a class action and make one tenant's proof relevant to that of other tenants.... [W]hether individual issues will predominate over class concerns can be fleshed out once plaintiffs make a motion for class certification and defendants oppose it.... At this stage when defendants have not answered, we do not know what documents they have, if any, to justify the increases.... If their defenses are the same for many of the units, then the scheme alleged by plaintiffs may have relevance, and the potential members of the class should not, as a matter of law, be precluded from raising these claims as a group."

The dissenters said, "Although the complaint alleges that the overcharges fall into four broadly similar categories, and that the overcharges were systematically planned, the complaint does not identify any question of law or fact common to the entire proposed class (or to the proposed subclass of current tenants). Stated otherwise, in the end, regardless of any plan by defendants or any overcharges of other tenants, each class member either was or was not overcharged – a question that can be determined only by looking at the evidence concerning that tenant's individual unit.... To be clear, the point I am making is not that the common questions will not predominate; it is that questions common to the class, predominant or otherwise, simply do not exist."

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For respondents Maddicks et al: Roger Sachar, Manhattan (212) 619-5400

State of New York
Court of Appeals

To be argued Wednesday, September 4, 2019

No. 68 People v Michael Cubero *(papers sealed)*

Michael Cubero was a residential counselor for Orange/Sullivan Rehabilitation Support Services, a group home for adults with serious mental illnesses, when he was charged by a special prosecutor for the Justice Center for the Protection of People with Special Needs in a 2014 indictment with sexually abusing a female resident in his care. The Justice Center was created in 2012 to investigate and prosecute crimes involving abuse or neglect of individuals with physical or cognitive disabilities. Cubero was convicted in Sullivan County Court of three felony counts and two misdemeanor counts of sexual abuse and endangerment and was sentenced to eight years in prison.

Cubero did not challenge the constitutional authority of the Justice Center to prosecute him at the trial stage, but on appeal he argued that the State Constitution does not permit an appointed special prosecutor to pursue criminal cases independently of an elected district attorney or state attorney general. In the alternative, he argued the Justice Center's authorizing statute could be viewed as constitutional only if the special prosecutor proceeds with the consent and oversight of the local district attorney, which he said the prosecutor in his case did not do.

The Appellate Division, Third Department affirmed in a 4-1 decision, declining to reach Cubero's unpreserved constitutional claims in the interest of justice. "Even if we could theoretically address the purely legal aspect of defendant's argument, we cannot address the alternative argument ... because that aspect of the argument requires factual findings," and there is no trial record regarding whether the district attorney gave consent, the majority said. "This Court is permitted only to reverse or modify in the interest of justice (see CPL 470.15[3][c]). But a full review of the issue would be impossible without remittal, so, at this point, we do not know if we would ultimately reverse, modify or affirm. Because we do not know what the outcome would be, and since it is possible that the outcome could be to affirm, we find no authority that would permit us to take corrective action with respect to this issue in the interest of justice."

The dissenter said, "In my view, we have the inherent authority to remit this matter for further proceedings to develop the factual record on the consent issue.... Fundamentally, '[a]n appeal from a judgment brings up the question whether justice has been done in the particular case'.... Whether the Special Prosecutor was actually authorized to prosecute this matter presents just such a concern that enables us to remit for further development of the record. Depending on the outcome of such proceedings, we may then address whether to exercise our interest of justice jurisdiction under CPL 470.15(3) (c) and (6). Consequently, I would withhold decision and remit the matter to determine whether the District Attorney consented to defendant's prosecution."

For appellant Cubero: George J. Hoffman, Jr., East Greenbush (518) 859-7137
For respondent Justice Center: Assistant Special Prosecutor Caitlin J. Halligan (212) 351-4000
For intervenor Attorney General: Solicitor General Barbara D. Underwood (212) 416-8022

State of New York
Court of Appeals

To be argued Thursday, September 5, 2019 (arguments begin at noon)

No. 69 Matter of Adirondack Wild: Friends of the Forest Preserve v New York State Adirondack Park Agency

In 2012 and 2013, the State acquired roughly 19,000 acres of land in Essex and Hamilton Counties, which was designated the Essex Chain Lakes Management Complex Area and incorporated into the Adirondack Forest Preserve. The Department of Environmental Conservation (DEC), in consultation with the Adirondack Park Agency (APA), adopted a management plan for the area, which had been owned by a paper company for more than a century, in 2016. The management plan would, among other things, allow public snowmobile use on a one-mile stretch of Chain Lakes Road (South) that runs through a protected corridor where the Hudson River is classified as "wild" under the Wild, Scenic and Recreational Rivers System Act (Rivers Act). Two environmental groups – Adirondack Wild: Friends of the Forest Preserve and Protect the Adirondacks! Inc. – brought this lawsuit alleging that allowing public motorized use of a road within a wild river corridor would violate the Rivers Act and the more restrictive Adirondack Park State Land Master Plan, which prohibits the use of motor vehicles in wilderness areas regardless of prior uses. The Rivers Act generally prohibits the use of motor vehicles in wild river areas, but includes an exception that provides "existing land uses within the respective classified river areas may continue, but may not be altered or expanded." The DEC and APA contended that the Rivers Act governs the case and that snowmobiles are permitted on the road as a continuation of a preexisting use.

Supreme Court dismissed the suit, saying the agencies properly concluded that "snowmobile use of the Chain Lakes Road (South) constitutes an existing use that will be permitted to continue without expansion or alteration."

The Appellate Division, Third Department affirmed in a 3-2 decision, saying the Rivers Act is controlling and the DEC's determination was rational. "As part of its investigation, DEC considered affidavits that were submitted by 17 individuals who averred that they had personal knowledge of the area" and that the roads there "have been used by snowmobiles during the winter season continuously since the 1950s. Petitioners do not contest the finding that snowmobiles have historically been used on Chain Lakes Road (South); rather, they argue that such use was limited to members of clubs that leased the surrounding property, and that opening a trail to public use would constitute an expansion of the preexisting use. Nonetheless, the record contains a sufficient basis for DEC to have rationally determined that there would be no alteration or expansion of the preexisting use of snowmobiles..., which had included operation by members of the public and an intensity of use commensurate with the proposed use."

The dissenters said "the record does not support a conclusion that members of the general public previously operated snowmobiles on the Chain Lakes Road section in a density commensurate with that which will result from opening it to public use.... Although the affidavits include a number of references to 'public' use, when read in context, most of these are in fact describing use by club members and their guests ... and some apparently describe use by trespassers. The fact that some persons who had no legal authority to enter the area may previously have taken advantage of its remote character to use it without permission should not serve as the basis for a principled determination that it should now be opened to the general public.... We find that the Rivers System Act requires DEC to consider the increase in volume that results from opening a previously exclusively private road to unlimited use by the public in determining whether a previous use may continue," which they say DEC did not do.

For appellants Adirondack Wild et al: Christopher Amato, Earthjustice (518) 860-3696
For respondents DEC et al: Assistant Solicitor General Laura Etlinger (518) 776-2028

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To be argued Thursday, September 5, 2019 (arguments begin at noon)

No. 70 Cayuga Nation v Campbell and County of Seneca

This case arises from a long-standing dispute between two political factions within the Cayuga Nation over which of them is the lawful governing body of the sovereign Indian Nation, a member of the Iroquois Confederacy located in Cayuga and Seneca Counties. The Cayuga Nation Council, led by Clint Halftown, had been recognized by the federal Bureau of Indian Affairs (BIA) as the Cayuga's governing body for purposes of federal funding and other interactions between the Cayuga Nation and the federal government. In 2014, the opposing faction led by William Jacobs and Samuel Campbell (the Jacobs Council) seized property where the Nation's offices and security center, as well as a Nation-owned cannery, gas station/convenience store, and ice cream store, are located and took control of the operation of those offices and businesses. In 2016, the two factions submitted to the BIA competing requests for federal funding, including funding for the Nation's seized offices. When the BIA failed to negotiate a settlement between the parties, the BIA Regional Director asked them to submit material supporting their respective claims to legitimate authority. The Jacobs Council presented evidence that it represented the Nation's leadership under its traditional governing structure of chiefs and citizens appointed by clan mothers. The Nation Counsel presented evidence from a survey, conducted by mail, in which a majority of Cayuga citizens responded that they supported it as the lawful leadership of the Nation. In 2017, the BIA recognized the Cayuga Nation Council as the lawful governing body. The Regional Director said "a significant majority of the Cayuga citizens have stated their support for" the Nation Council in the survey and he considered himself "obligated to recognize the result of that tribal process." The Nation Council then brought this suit against Samuel Campbell and 13 other members of the Jacobs Council, claiming they were trespassing on Nation property. The suit sought money damages and recovery of the seized properties. The defendants moved to dismiss the suit on the ground that the court lacked subject matter jurisdiction over internal government disputes of an Indian Nation.

Supreme Court denied the motion to dismiss, saying "the issue of leadership need not be determined by this Court. The plaintiff ... is simply asking the Court to accept and act upon the determination made by the BIA that Clint Halftown is the recognized representative of the Nation." It issued a preliminary injunction requiring the defendants to vacate the properties.

The Appellate Division, Fourth Department affirmed in a 3-2 decision, saying, "Although we agree with defendants that we may not resolve the Nation's leadership dispute, we are not required to do so in this appeal. Rather, we accord due deference to the BIA's conclusion that the Nation ... has resolved the dispute in favor of plaintiff.... We caution that we do not determine which party is the proper governing body of the Nation, nor does our determination prevent the Nation from resolving that dispute differently according to its law in the future."

The dissenters said the "majority assumes that, once deference is afforded to the most recent BIA decision, Supreme Court has jurisdiction to resolve the claims in the complaint without impermissibly intruding into issues of the Nation's internal governance. We cannot agree." The claims are "based on defendants' allegedly unlawful actions in exercising dominion over Nation property, managing Nation funds, and operating Nation businesses 'without permission or justification.' Each of those causes of action requires proof that the individual defendants acted without any authority or justification with respect to their use and possession of the Nation's property...."

For appellants Campbell et al (Jacobs Council): Margaret A. Murphy, Hamburg (716) 867-1536
For respondent Cayuga Nation Council: David W. DeBruin, Washington, DC (202) 639-6015

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To be argued Thursday, September 5, 2019 (arguments begin at noon)

No. 71 People v M. Robert Neulander

Dr. Robert Neulander was charged after a lengthy investigation with bludgeoning his wife to death in their home near Syracuse in 2012 and attempting to make it appear that she had accidentally fallen in the shower. He was convicted at trial in 2015 of second-degree murder and tampering with evidence. Neulander was sentenced to 20 years to life on the murder count.

After the verdict, a discharged alternate juror told defense counsel that a seated juror, Juror 12, had exchanged text messages about the case with third parties while the trial was underway and received media alerts about the trial on her cell phone. Defense counsel moved to set aside the verdict under CPL 330.30(2), which provides that a verdict may be set aside based on "improper conduct by a juror, or improper conduct by another person in relation to a juror, which may have affected a substantial right of the defendant and which was not known to the defendant prior to the rendition of the verdict." A hearing on the motion established that Juror 12 had exchanged texts with third parties, but not that she had received media alerts. A text from her father said, "Make sure he's guilty!" In other texts, one friend referred to Neulander as the "scary person," and another friend said Neulander's daughter, a defense witness, should be a suspect. Juror 12 did not disclose any of these communications, and instead deleted them and scores of other messages along with her web browsing history before she was ordered to surrender her phone for forensic examination. She also said falsely in a sworn affidavit that she had followed the trial court's instructions "[a]t all times throughout the trial."

County Court denied the defense motion to set aside the verdict, crediting Juror 12's "testimony that she based her ultimate verdict strictly on the evidence that she heard in the courtroom and the law as charged by the Court" and saying "there is no basis in this record to find a likelihood that Juror 12's missteps ... created a substantial risk of prejudice to the defendant." The court said "it is apparent that while Juror 12's actions were imperfect, her intentions were pure and she took her role as a juror seriously.... It is also abundantly and consistently clear that Juror 12 refrained from discussing the specific facts of this case despite the repeated ill-advised and unsolicited inquiries of her friends in the cyberworld."

The Appellate Division, Fourth Department reversed and granted a new trial on a 3-2 vote, saying that, even if Juror 12's "'intentions were pure,' we conclude that the juror's intentions are not relevant to the analysis. '[E]ven well-intentioned jury conduct' may create a substantial risk of prejudice to the rights of the defendant.... Moreover, it was not necessary for defendant to show that the juror's conduct during the trial influenced the verdict inasmuch as, '[i]f it was likely to do so, it was sufficient to warrant the granting of the motion'.... [E]very defendant has a right to be tried by jurors who follow the court's instructions, do not lie in sworn affidavits about their misconduct during the trial, and do not make substantial efforts to conceal and erase their misconduct when the court conducts an inquiry with respect thereto." It concluded the juror's misconduct created a substantial risk of prejudice to Neulander.

The dissenters said, "[T]he juror repeatedly refused to discuss the case in her texts, she indicated that she would not do so until the trial ended, and she expressed her commitment to hearing all the evidence before reaching any conclusion.... We perceive no reason to disturb the [trial] court's credibility determinations, and we agree with its conclusion that reversal is not required here because defendant failed to establish any prejudice, or likelihood of prejudice, from the juror's misconduct...."

For appellant: Onondaga County Assistant District Attorney James P. Maxwell (315) 435-2470
For respondent Neulander: Alexandra A.E. Shapiro, Manhattan (212) 257-4880