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 or gspencer@nycourts.gov.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

January 3 thru January 5, 2023

State of New York
Court of Appeals

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To be argued Tuesday, January 3, 2023

No. 1 Matter of Town of Southampton v NYS Department of Environmental Conservation

Sand Land Corporation owns a sand and gravel mine on a 50-acre parcel in the Town of Southampton, Suffolk County. The mine has been in continuous operation on 31.5 acres of the property for more than 60 years. In 1972, the Town re-zoned the parcel to a residential district where mining is prohibited, but the mine continued to operate as a prior nonconforming use. The State Department of Environmental Conservation (DEC) issued Mined Land Reclamation Law permits for the mining operation beginning in 1981. In 2011 and 2016, the Town issued certificates of occupancy to Sand Land that said the mine was a pre-existing nonconforming use. In 2019, the DEC renewed the mining permit, increasing the footprint of the mine site to 34.5 acres. The DEC also granted Sand Land's separate application to modify its permit by increasing the depth of the mine by 40 feet, concluding the deeper mine would not significantly affect the quality of the groundwater drinking supply.

The Town of Southampton, neighboring landowners, and civic and environmental organizations immediately brought this article 78 proceeding to nullify both permits against Sand Land, its mine operator Wainscott Sand and Gravel Corp. (collectively Sand Land), and the DEC. They contended that DEC's approvals violated section 23-2703(3) of the Mined Land Reclamation Law (MLRL), which was enacted in 1991 and applies only to Long Island. The law provides, "No agency of this state shall consider an application for a permit to mine as complete or process such application for a permit to mine ... if local zoning laws or ordinances prohibit mining uses within the area proposed to be mined." A companion amendment to ECL 23-2711(3) requires that when DEC receives "a complete application for a mining permit, for a property not previously permitted pursuant to this title," the DEC must contact the relevant municipality to determine "whether mining is prohibited at that location."

Supreme Court dismissed the suit, agreeing with the DEC and Sand Land that ECL 23-2703(3) applies only to applications for a new permit or a substantial modification. It said this "interpretation is consistent with the language of the statute which states that it applies to an 'application for a permit to mine.' In the court's view, it would be nonsensical to interpret the statute to apply to modification applications such as this one which *only proposes mining deeper* within an existing disturbance footprint/area where mining is already otherwise authorized."

The Appellate Division, Third Department reversed on a 4-1 vote and annulled the permits, saying, "ECL 23-2703(3) is not vague or ambiguous; it is concise and clear.... There is no qualification on what type of permit applications must be put on hold; rather, by its certain language, the statute applies to all applications." It concluded, "ECL 23-2703(3) clearly recognizes that the local laws of the municipality are determinative as to whether an application can be processed. Here, where it is unchallenged that the Town's laws prohibit mining, DEC cannot process the application, let alone issue the permit."

The dissenter said Sand Land has "a constitutionally protected prior nonconforming use 'within the area proposed to be mined'" and argued that ECL 23-2703(3) only applies to new mines and "to expansions that exceed the established prior nonconforming use of an existing mine." Applying the statute to all mining permits "could render the law unconstitutional" because, while a town could use its zoning power to exclude new mines "and could even reasonably curtail and amortize prior nonconforming uses, it cannot terminate these uses in a wholesale fashion without running afoul of the Takings Clause." He said the DEC did not violate the statute by allowing Sand Land to increase the depth of its mine by 40 feet because the "expansion is within the existing footprint and clearly within the existing vertical reserves."

For appellants Sand Land and Wainscott: Gregory M. Brown, Syracuse (315) 399-4343
For respondents Southampton et al: David H. Arntsen, Nesconset (631) 366-2700
Robert S. Smith, Manhattan (212) 833-1125

State of New York
Court of Appeals

To be argued Tuesday, January 3, 2023

No. 2 State of New York v Vayu, Inc.

This case arises from a September 2016 agreement by the State University of New York at Stony Brook to purchase two unmanned aerial vehicles (UAVs or drones) from Vayu, Inc., a drone designer and manufacturer based in Michigan. The agreement provided for the UAVs to be delivered to SUNY Stony Brook's Global Health Institute in Madagascar, where they were to be used to deliver medical supplies and specimens in remote areas of the country. A professor at SUNY Stony Brook said in an affidavit that he contacted Vayu's chief executive officer in 2015 in hopes of creating a business relationship between the school and Vayu to develop medical supply drones. He said they pursued the potential deal in a series of phone calls and emails and, when agreement was reached, SUNY Stony Brook remitted payment to Vayu's bank account in Michigan. He said the parties envisioned that the relationship would continue, with Vayu providing training and technical support for the drone program. Vayu and the school jointly submitted a grant proposal to fund the manufacture, use and maintenance of medical supply drones in developing countries. After Vayu delivered the two UAVs to Madagascar in November 2016, school officials complained they were defective. In September 2017, Vayu's CEO met with the professor in New York to discuss the problems. SUNY Stony Brook subsequently returned the drones to Vayu in Michigan. When Vayu failed to replace them or refund the $50,000 purchase price, New York State filed this breach of contract action on behalf of SUNY Stony Brook against Vayu.

Vayu moved to dismiss the suit for lack of personal jurisdiction. The State argued that jurisdiction was established under the long-arm statute, CPLR 302(a)(1), which provides that "a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent ... transacts any business within the state."

Supreme Court dismissed the suit, saying the State failed to show that Vayu or its CEO initiated the transaction of any business in New York.

The Appellate Division, Third Department affirmed in a 3-2 decision, saying, "The various communications between the parties were twofold: first, to discuss the ongoing issues with the UAVs that SUNY Stony Brook purchased and, second, to create a relationship and to submit grants for projects that would take place entirely and solely outside of New York. Regardless of the quantity of defendant's communications with SUNY Stony Brook, these communications did not result in more sales in New York or seek to advance defendant's business contacts within New York.... Rather, the business transacted – specifically the sale of the UAVs to SUNY Stony Brook for use in Madagascar – was a one-time occurrence that resulted after the professor ... contacted the CEO.... The visit by the CEO to New York in 2017 was for the purpose of discussing issues regarding the completed purchase of the UAVs, rather than seeking additional business ... in New York."

The dissenters said, "Although the two [UAVs] that were purchased by [SUNY Stony Brook] were shipped to Madagascar, SUNY Stony Brook was in New York, the purchase price was billed to New York and the payment was made from New York.... The emails between the professor and the CEO both leading up to and following [their 2017 meeting in New York] demonstrate that the initial September 2016 sales transaction was not simply a 'one-time occurrence' but was contemplated as part of an ongoing business relationship ... that was intended to blossom into further business relations involving, among other things, expanded UAV sales and applications, ongoing UAV technical support and flight training services. Although the relationship between SUNY Stony Brook and defendant ended without the execution of any additional contracts, in our opinion, defendant's contacts in New York were nevertheless purposefully intended to create a continuing business relationship and, therefore, the first prong of obtaining long-arm jurisdiction was established...."

For appellant State: Assistant Solicitor General Dustin J. Brockner (518) 776-2017

State of New York
Court of Appeals

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To be argued Tuesday, January 3, 2023

No. 3 Hetelekides v County of Ontario

Demetrious Hetelekides (decedent) was the sole owner of a parcel of land and a restaurant, The Akropolis, in the Town of Hopewell until his death in August 2006, when his wife Krystalo Hetelekides inherited the property. Decedent did not pay property taxes on the parcel for 2005 and in November 2005, nine months before his death, Ontario County placed his property on the list it filed of properties affected by delinquent tax liens. In October 2006, two months after his death, County Treasurer Gary Baxter commenced a tax foreclosure proceeding against the property and sent notices of foreclosure to decedent by certified and first class mail pursuant to Real Property Tax Law (RPTL) 1125, which requires that notice be given to "each owner and any other person whose right, title, or interest was a matter of public record as of the date the list of delinquent taxes was filed." An employee of the restaurant signed the certified mail receipts and none of the first class mailings were returned to the county. The deadline for paying off the tax debt to redeem the property was January 12, 2007, and Baxter called the restaurant on January 9 and 10 in an effort to notify an owner or manager of the impending deadline, but he was told no one was available. He visited the restaurant on January 11 and again asked to speak to an owner or manager, but was told no one was available. The property was not redeemed by the deadline, a default judgment of foreclosure was entered, and the property was sold at auction for $160,000. The buyer assigned his bid to Krystalo Hetelekides, who brought this action against Ontario County and Baxter, contending that their failure to notify her of the foreclosure proceeding violated her due process rights.

Supreme Court ruled the foreclosure proceeding was "a nullity" and awarded the plaintiff damages of $138,657 plus interest, representing the difference between the $160,000 auction price and the $21,343 in taxes owed. It said the "foreclosure was invalid for two reasons": because the County defendants failed to notify the property owner before the redemption deadline and because they "commenced the foreclosure action against a deceased party." It said, "Defendants concede that 'title to the [P]roperty immediately vested in Plaintiff upon Mr. Hetelekides' death'.... Nevertheless, the Defendants mailed foreclosure notices to the decedent, who had already been deceased for two months," and they "never attempted to serve the Plaintiff or the decedent's estate through any of the methods contained in" RPTL 1125. As for the second ground, it said the defendants commenced the proceeding "six months after Demetrios died" and "at least one month after they definitively learned that Demetrios had died and his wife (the Plaintiff) inherited the Property.... 'It is well established that the dead cannot be sued.'"

The Appellate Division, Fourth Department reversed that portion of the judgment and vacated the damages award, saying RPTL 1125 requires notice only to persons whose interest in a property is "a matter of public record '*as of the date the list of delinquent taxes was filed*'.... Here, the list of delinquent taxes was filed ... when decedent was still alive. Plaintiff was thus not entitled to notice under that statute." If due process required more than the statutory notice, it "would be unreasonable" to require more than Baxter's "three personal attempts to talk to someone with authority at the restaurant and provide that person with actual notice...." As for suing the dead, it said "a tax foreclosure proceeding is not commenced against any person; it is commenced against the property itself. The owners are not necessary 'parties' to the ... proceeding; they are only '[p]arties entitled to notice' of the proceeding.... As a result, the tax foreclosure proceeding was properly commenced even though decedent had died..., and there was no need to substitute someone for the dead owner."

For appellant Hetelekides: Mary Jo S. Korona, Rochester (585) 327-4100
For respondent County and Baxter: Jason S. DiPonzio, Rochester (585) 530-8515

State of New York
Court of Appeals

To be argued Wednesday, January 4, 2023

No. 4 Bank of America N.A. v Kessler

In September 2009, Andrew Kessler obtained a $590,302 loan secured by a mortgage on property in Croton-on-Hudson. Alleging that he defaulted on the mortgage in September 2013, Bank of America (the mortgage holder) mailed a 90-day notice to Kessler one month later pursuant to Real Property Actions and Proceedings Law (RPAPL) 1304. The statute requires lenders, at least 90 days before they foreclose on a borrower's principal residence, to send them a notice informing them of a default and warning they could lose their home to foreclosure if they don't cure the default. The statute specifies the exact language that must be used in the notice, including information about housing counselors and other resources that would be available to assist and advise struggling debtors. RPAPL 1304(2), the focus of this case, requires lenders to mail the notice "in a separate envelope from any other mailing or notice." The notice Bank of America sent to Kessler consisted of six pages of the statutorily required language and a seventh page with the heading "Important Disclosures" containing additional information, in English and Spanish, about protections and benefits available to borrowers in bankruptcy and to members of the military. The bank commenced this foreclosure action in March 2014.

Supreme Court denied the bank's motion for summary judgment and granted Kessler's cross motion to dismiss the complaint, finding the bank violated the "separate envelope" requirement of RPAPL 1304(2). "[A]s it is undisputed that plaintiff provided additional information in the envelope along with the statutorily required information, this court finds that plaintiff did not strictly comply with RPAPL § 1304 and thus, a condition precedent to the foreclosure action was not met," it said.

The Appellate Division, Second Department affirmed on a 3-1 vote, saying "the language of the statute is clear, precise, and unambiguous" and "'contains specific, mandatory language in keeping with the underlying purpose of [the Home Equity Theft Prevention Act] to afford greater protections to homeowners confronted with foreclosure.'" It said, "[W]e hold that inclusion of any material in the separate envelope sent to the borrower under RPAPL 1304 that is not expressly delineated in these provisions constitutes a violation of the separate envelope requirement of RPAPL 1304(2). This strict approach precluding any additional material in the same envelope as the requisite RPAPL 1304 notices not only comports with the statutory language, it also provides clarity as a bright-line rule to plaintiff lenders and 'promotes stability and predictability' ... in foreclosure proceedings." It said a more "flexible standard," requiring a court to determine whether additional material included in the notice envelope was "relevant, helpful, or prejudicial to the borrower," would be "unworkable."

The dissenter said the additional material in the notice envelope addressing the rights of debtors in bankruptcy or in military service "did not violate any of the content provisions" of RPAPL 1303. "Nor did the additional language frustrate the statute's overarching purpose or intent. Since the additional language was relevant to, and in fact clarified, the warnings and instructions mandated by the statute, it did not constitute a separate 'mailing or notice'..., and was properly included in '[t]he notice[] required by this section. In the absence of an explicit prohibition against such additional language in a valid RPAPL 1304(1) notice, the statute should not be extended beyond its plain language in a manner that renders every inconsequential addition fatal."

For appellant Bank of America: Suzanne M. Berger, Manhattan (212) 541-2000
For respondent Kessler: Charles Wallshein, Melville (631) 824-6555

State of New York
Court of Appeals

To be argued Wednesday, January 4, 2023

No. 5 Matter of State of New York v NYS Public Employment Relations Board

The State Department of Civil Service (DCS) announced in 2009 that, for the first time in at least 10 years, it would begin charging applicants fees to take the civil service promotional and transitional examinations. Public sector unions – including the Civil Service Employees Association (CSEA), District Council 37, and New York State Correctional Officers and Police Benevolent Association (NYSCOPBA) – filed an improper practice charge with the Public Employment Relations Board (PERB), contending DCS violated the Taylor Law by imposing the fees without collective bargaining. The State responded, in part, that the exam fees were not a term or condition of employment subject to bargaining. It cited Civil Service Law § 50(5)(a), which provides that "Every applicant for examination ... shall pay a fee to" DCS, and subsection (b), which authorizes DCS "to waive application fees ... or to establish a uniform schedule of reasonable fees different from those prescribed in" subsection (a).

An administrative law judge ultimately ordered the State to negotiate the fee issue with the unions and PERB upheld the ruling, saying DCS's prior policy of not charging fees for the exams was an "economic benefit" afforded to workers that it could not unilaterally take away without negotiation. PERB said section 50(5) "contains no express prohibition on bargaining" and did not "expressly vest the employer with such unilateral discretion" as to "foreclose negotiation." The State brought this proceeding to annul the decision.

The Appellate Division, Third Department confirmed PERB's determination, saying the application fees were a term or condition of employment because "the employees at issue received an economic benefit by not having to pay an application fee promotional examinations," and the employees "had a reasonable expectation that the practice of not charging fees would continue." The court said section 50(5) "contains no express prohibition on the bargaining of application fees.... The statute also gives [DCS] discretion to charge or abolish fees..., and, therefore, is not 'so unequivocal a directive to take certain action that it leaves no room for bargaining'...."

The State argues that application fees are not terms and conditions of employment that must be negotiated because they are "neither salary nor wages" nor other conditions of an applicant's current job, but instead are paid by applicants "to sit for examination to demonstrate fitness for a future, not yet realized, employment position." It contends that "the plain language" of section 50(5) "demonstrates the Legislature's intention that the determination of the appropriate examination application fee be placed in the hands of [DCS,] the agency statutorily required to administer the merit and fitness system mandated under the NYS Constitution." While unions could "demand" negotiation of the fees, the State says such negotiation cannot be mandatory under the statute.

For appellant State: Clay J. Lodovice, Albany (518) 473-1416
For respondent PERB: Michael T. Fois, Albany (518) 457-2578
For respondent CSEA: Steven M. Klein, Albany (518) 257-1443
For respondent District Council 37: Erica C. Gray-Nelson, Manhattan (212) 815-1450
For respondent NYSCOPBA: Kevin P. Hickey, Albany (518) 462-0110

State of New York
Court of Appeals

To be argued Wednesday, January 4, 2023

No. 6 People v Michael Myers

In October 2015, a Buick collided in a Syracuse intersection with a car driven by Dominic Lobasco, who was fatally injured. The driver of the Buick left the scene without reporting it. Syracuse police found the Buick the same night about a mile away and determined that it was owned by Dudley Harris, a cousin of defendant Michael Myers, but Myers was not directly linked to the hit-and-run until investigators heard his voice on a recorded phone call in February 2016. An inmate at the Onondaga County Justice Center placed the call to Harris, who made it a three-way call by patching in Artel Clark, whose phone was subject to an eavesdropping warrant for a drug investigation by the state Attorney General's Office. Clark handed his phone to Myers and, when Harris mentioned the collision and told him Lobasco had died, Myers responded, "I don't got nothing to do with that, he ran the red light." Investigators conducting the attorney general's wiretap alerted the Syracuse Police to the call and local officers obtained a copy of the call from the county jail, which had a policy of recording all inmate calls.

After he was charged, Myers moved to preclude prosecutors from using the recorded call at trial on the ground that they failed to comply with the notice requirement of CPL 700.70, which states, "The contents of any intercepted communication, or evidence derived therefrom, may not be received in evidence or otherwise disclosed upon a trial of a defendant unless the people, within fifteen days after arraignment and before the commencement of the trial, furnish the defendant with a copy of the eavesdropping warrant."

County Court ruled CPL 700.70 did not apply and denied the motion, saying "the recorded telephone calls from the Justice Center are not 'intercepted communications' because the sender and receiver of calls made from the Justice Center consent to the intentional overhearing and/or recording of the telephonic communication." Myers was convicted of leaving the scene of an incident resulting in death without reporting. He was sentenced to 2⅓ to 7 years.

The Appellate Division, Fourth Department affirmed. "The definition of an intercepted communication does not include a communication that is recorded with the consent of one of the parties thereto...," it said. "Here, the inmate who placed the call was aware that the call was being monitored and recorded by the Onondaga County Justice Center, and the call was thus recorded with his implied consent.... Therefore, no warrant was required to record that conversation..., and the People were not required to comply with CPL 700.70 before using the recording at defendant's trial."

Myers argues, "The call recorded by the Attorney General's wiretap on Artell Clarke's phone fits squarely within the definition of 'intercepted communication' under CPL 700.05(3)," and it was the wiretap recording that "'alerted' the prosecution team to the Justice Center recording" and "was the source and means of identifying the parties to Mr. Myers's intercepted conversation" in the jail recording. "Thus, the Justice Center evidence was derived from – or obtained because of – the wiretap.... The Justice Center recording accordingly fits squarely within the plain language meaning of 'evidence derived' from the wiretap" under CPL 700.70, so the notice requirement should apply.

For appellant Myers: Philip Rothschild, Syracuse (315) 422-8191 ext. 179
For respondent: Onondaga County Asst. District Attorney Kenneth H. Tyler, Jr. (315) 435-2470

State of New York
Court of Appeals

To be argued Thursday, January 5, 2023

No. 7 Matter of Brookdale Physicians' Dialysis Associates, Inc. v Department of Finance of the City of New York

The New York City Department of Finance (DOF) is appealing a decision that requires it to reinstate a property tax exemption for a two-story Brooklyn building owned by the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund (Schulman Fund), a not-for-profit corporation that provides funding for two other non-profits, Brookdale Hospital Medical Center and the Schulman and Schachne Institute for Nursing and Rehabilitation (Nursing Institute). Since 1996, the Schulman Fund has leased the first floor and basement of its building to Brookdale Physicians' Dialysis Associates (Brookdale Dialysis), a for-profit corporation that is staffed by physicians and other employees of Brookdale Hospital and pays the hospital a fee for the staffing. Brookdale Dialysis also pays for and provides all dialysis services for patients at the hospital and Nursing Institute. The lease required Brookdale Dialysis to pay 60.9 percent of any property taxes that "become payable" and, when DOF revoked the building's tax exemption for the 2015-16 tax year, the company applied to DOF to reinstate it pursuant to Real Property Tax Law (RPTL) 420-a, which provides a tax exemption for property owned by a charitable organization and "used exclusively" for its charitable purposes. DOF denied the application, saying the building was not eligible for the exemption because the Schulman Fund was making a profit through its rental income under the lease and Brookdale Dialysis was profiting by operating its for-profit business in a tax-exempt building. Brookdale Dialysis and the Schulman Fund brought this proceeding to annul the determination.

Supreme Court annulled DOF's decision to revoke the tax exemption and the Appellate Division, First Department affirmed, saying the lower court "correctly determined that the building owned by [the Schulman Fund] and used for the provision of a critical healthcare service qualifies for tax-exempt status, notwithstanding the for-profit status of the provider of the service." The Appellate Division said the three non-profits "participate in an arrangement by which Brookdale Dialysis renders a critical healthcare service ... to Brookdale Hospital and the Nursing Institute at little to no direct cost to the non-profit entities. Although the non-profit entities received an ostensible financial benefit, and Schulman's rent receipts exceed its building maintenance expenses, no benefit exists because Schulman placed the profit back into its healthcare-provider affiliates. The provision of dialysis services for Brookdale Hospital and Nursing Institute patients qualifies the building for tax-exempt status, because it is 'reasonably incident' to Schulman's purpose of funding and supporting its healthcare affiliates...."

The DOF argues, "The decision of the Appellate Division directly contravenes the plain language of [RPTL] 420-a, Court of Appeals precedent, and the mandate of the Legislature to construe 420-a tax exemptions strictly and narrowly because it has improperly granted a tax exemption to a not-for-profit entity that does not use or occupy the building, but instead leases it to a for-profit dialysis center which uses the exempt property for its own pecuniary gain."

For appellant Dept. of Finance: Assistant Corporation Counsel Andrea M. Chan (212) 356-2139
For respondent Brookdale Dialysis: Menachem J. Kastner, Manhattan (212) 509-9400

State of New York
Court of Appeals

To be argued Thursday, January 5, 2023

No. 8 Suzanne P. v Joint Board of Directors of Erie-Wyoming County Soil Conservation District

In June 2012, a 14-year-old boy was wading and swimming with friends in Buffalo Creek in the Town of West Seneca when he was washed over a low-head dam, held underwater by the strong current flowing over the dam, and drowned. The boy's mother, Suzanne P,, brought this wrongful death action on behalf of her son's estate against the Joint Board of Directors of Erie-Wyoming County Soil Conservation District (Joint Board) alleging that it was the owner and operator of the dam and had been negligent. The estate also sued Erie County, the Town of West Seneca, and the separate Soil & Water Conservation Districts of Erie and Wyoming Counties (the Districts) on various grounds, including that they shared responsibility for the Joint Board's actions or they failed to warn of a dangerous condition at the dam. The low-head dam was designed and built in the 1950s by a federal agency now known as the Natural Resources Conservation Service (NRCS). The Joint Board, as sponsor of the project, has operated and maintained the dam under contracts and agreements with the NRCS, which the estate contends vested ownership of the dam in the Joint Board.

Supreme Court denied the Joint Board's motion for summary judgment dismissing the suit, saying there were issues of fact about whether the Board owned the dam, "especially in light of the operation and maintenance agreement" with the NRCS. The court dismissed all claims against the other defendants, finding that the Districts were "separate entities" from the Joint Board and were not responsible for the dam; that the County did not own the dam; and that the Town did not own or control the creek. The Appellate Division, Fourth Department affirmed.

After a bifurcated trial on the issue of the Joint Board's ownership of the dam, Supreme Court granted a directed verdict that the Joint Board was an owner of the dam. It said the operation and maintenance agreement between the Board and NRCS vests structures, including the dam, in the project sponsor. "The Sponsor is the Joint Board per the agreement.... This court believes that it's spelled out that the dam vests with the Sponsor, and the conditions to vest are still met to this day.... They may not know that they own it but it vests with them."

The Appellate Division, Fourth Department reversed and dismissed the suit, ruling the Joint Board did not own the dam. It said that "NRCS constructed the dams, which were permanently affixed to land underlying Buffalo Creek.... Thus..., the dams are structures that constitute fixtures annexed to the realty and are part thereof.... Inasmuch as the trial evidence also established the NRCS had no ownership interest in Buffalo Creek or the abutting land, no transfer of ownership of the subject dam by NRCS could have occurred under the terms of the agreement given that '"[a] grantor cannot convey what the grantor does not own"'...."

The estate argues that this Court should reinstate its claims against all of the defendants. Under the language of the contracts between the Joint Board and NRCS, it says ownership of the dam "automatically vested in the Joint Board" upon its completion, without regard to who owned the creek bed or abutting land and with no need for a transfer of ownership, making the Board responsible for posting signs warning about the dangers posed by the dam.

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For respondent Erie County: Jeremy C. Toth, Buffalo (716) 858-2204
For respondent West Seneca: Norman E.S. Greene, Buffalo (716) 856-1344
For respondent Joint Board: Mark P. Della Posta, Buffalo (716) 856-1636
For respondent Erie Soil & Water: Justin L. Hendricks, Buffalo (716) 853-3801
For respondent Wyoming Soil & Water: Breanna C. Reilly, Buffalo (716) 856-1300

State of New York
Court of Appeals

To be argued Thursday, January 5, 2023

No. 9 People v Oscar Sanders

Oscar Sanders was charged with assault in June 2016 after a street fight in Manhattan. The jury deliberated for three days at the end of his trial. When the jury announced it had reached a verdict, Sanders was brought into the courtroom in handcuffs. Defense counsel objected to what he said was the court's "policy" of keeping defendants in handcuffs while jurors render their verdict. He said he planned "to poll the jury with the idea in mind that perhaps the unanimity of the jury can be questioned." He said having the defendant "in handcuffs while they announce that verdict, especially ... if it's a verdict of guilty, lends pressure to anyone who might dissent during that polling to be influenced negatively against anyone in handcuffs.... So I'm asking you to leave him uncuffed during the reading of the verdict for that reason." Supreme Court replied, "All right. The application is denied. Bring in the panel." Sanders was convicted of first-degree attempted assault and second-degree assault.

After the verdict the court said Sanders might qualify for sentencing as a persistent felon. The prosecutor agreed and, two months later, moved for an order sentencing him as a discretionary persistent felony offender. The motion recounted the dates and places of his prior convictions and aspects of his character and criminal history that supported such sentencing. Defense counsel filed a written opposition. At an appearance three months after the prosecutor's motion, the court asked the attorneys if they were ready to proceed with a discretionary persistent felon hearing. Defense counsel objected based on the court's failure to provide the notice required by CPL 400.20, which states that a court "must" file an order directing a hearing at least 20 days prior to the hearing. The court "must" file with the order a statement of the dates and places of the defendant's previous convictions and the "factors in the defendant's background and prior criminal conduct which the court deems relevant" to persistent felon sentencing. The court overruled the objections, saying counsel was aware of the prosecutor's motion and should have been prepared. The court proceeded with the hearing, adjudicated Sanders a persistent felony offender, and sentenced him to 15 years to life in prison.

The Appellate Division, First Department affirmed. "Any error in defendant being handcuffed, without any explanation on the record, during the rendition of the verdict and the polling of the jury was harmless.... The handcuffing could not have contributed to the verdict, which the jury had already reached. Defendant's suggestion that jurors may have been inclined to repudiate their verdicts during polling, but were influenced to refrain from doing so by the sight of defendant in handcuffs, is highly speculative." It said the trial court's sentencing of Sanders as a persistent felon "was a provident exercise of discretion, given defendant's extraordinarily serious criminal history. There was 'substantial compliance' with the requirements of CPL 400.20..., whereby defendant received full notice of, and fully litigated, all relevant matters."

Sanders argues "the trial court erred in keeping Sanders in handcuff restraints visible to the jury ... without making any finding on the record as to the necessity of such restraints.... This error improperly reinforced the prosecution's narrative about Sanders's violent character in a case where the evidence of guilt was far from overwhelming. This Court should confirm that the constitutional prohibition against shackling a criminal defendant during trial without justification during the critical trial stage of verdict reading and jury polling, at which time the verdict is not yet final." He says the trial court failed to comply with CPL 400.20 and the Appellate Division "erroneously declared the court in 'substantial compliance' with the statute, when in fact there was no compliance." The court's failure to provide the required notice of hearing and statement deprived him "of an opportunity to adequately challenge the qualifying convictions or to respond to the specific factors that the sentencing judge deemed relevant."

For appellant Sanders: Chase McReynolds, Manhattan (212) 450-4000
For respondent: Manhattan Assistant District Attorney Philip V. Tisne (212) 335-9000