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, September 10, 2014

No. 150 Matter of Colin Realty Co., LLC v Town of North Hempstead

In 2011, Manhasset Pizza, LLC sought to convert a vacant storefront on Plandome Road in the Town of North Hempstead into a 45-seat full-service restaurant. The storefront, which most recently housed a gift shop, is in a nonconforming building that has no off-street parking or loading zones. Fradler Realty Corp. has owned the building since 1938. Restaurants are permitted in the relevant zoning district, but require a conditional use permit. Because the current Town Code would require the restaurant, as proposed, to have 24 off-street parking spaces and one loading zone, Manhasset Pizza and Fradler applied to the Town of North Hempstead Board of Zoning and Appeals (ZBA) for variances from the parking and loading-zone requirements and for a conditional use permit.

The ZBA treated the applications as seeking area variances, rather than use variances, and approved them along with the conditional use permit. It found the "benefit in granting the requested variances outweighs the detriment which would be imposed on the community." A use variance would require an applicant to make a stricter showing that zoning regulations have caused "unnecessary hardship." Colin Realty Co., LLC, the owner of an adjacent property, brought this suit against the Town and the ZBA to annul the determination and seeking a judgment declaring that the proposed restaurant required a use variance.

Supreme Court dismissed the suit, finding the ZBA "rationally engaged in the statutorily mandated balancing test by ... 'weighing the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood ... if the variance is granted.'" It said a use variance was not required, since "the proposed restaurant was not a nonconforming and/or prohibited use within the meaning of the Town Code or otherwise.... Rather, restaurants are conditionally permitted in the zone, and therefore deemed presumptively consistent with the basic character of the surrounding community...."

The Appellate Division, Second Department affirmed, saying "the ZBA properly determined that the variances" sought by Manhasset Pizza "were to be treated as applications for area variances under the scheme of the Town Code...."

Colin Realty argues the decisions of the ZBA and lower courts to treat the variances as area variances, rather than use variances, "directly contradict" this Court's ruling in Matter of Off Shore Rest. Corp. v Linden (30 NY2d 160 [1972]). It says the Town Code "irrefutably treats parking and loading zone requirements as 'use' restrictions, given that ... it provides a parking requirement formula which increases the number of parking spaces mandated (and the loading zone mandates) explicitly based on the type of use and the extent of use. In the case of a restaurant..., the [Code] goes so far as to count the number of customer chairs at a table and employees to dictate the number of parking spaces required."

For appellant Colin Realty: Robert M. Calica, Garden City (516) 747-7400
For respondents Manhasset Pizza & Fradler: Bruce W. Migatz, Garden City (516) 248-7000
For respondent North Hempstead: Simone M. Freeman, Garden City (516) 227-6363

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To be argued Wednesday, September 10, 2014

No. 151 Matter of Town of North Hempstead v County of Nassau

This case hinges on whether a county which pays the Fashion Institute of Technology (FIT) for a county resident to attend the school may charge back that cost to the student's home town or city. Education Law § 6301(2) defines "community college" as a school "providing two year post secondary programs," and section 6305(2) provides that, when a community college accepts a student from a different county, the college may charge the student's home county a specified share of its operating costs. Section 6305(5) permits counties that have made such payments to community colleges in other counties to "charge back" those amounts to the cities and towns where the students reside. FIT was established as a community college in Manhattan in 1944 and initially offered only two-year degrees. It began offering four-year degrees in 1975 and added master's degree programs in 1979, greatly increasing the amount it charged to counties. In 1994, to address the financial burden on local governments paying for FIT students, the Legislature enacted Education Law § 6305(10), which requires the State to reimburse counties for their payments to FIT. However, the State has not appropriated funds in its budget for reimbursement of FIT charges since 2001.

In 2010, Nassau County sought for the first time to charge its towns and cities for its payments to FIT. It billed the Town of North Hempstead about $1.2 million for FIT charges and, when the Town refused to pay, it withheld the money from the Town's share of sales tax revenue. The Town brought this suit against the County, contending that FIT was no longer a two-year community college covered by the charge-back provision of section 6305(5).

Supreme Court declared FIT was a community college under the Education Law and the County was entitled to charge the Town the amount it paid for Town residents enrolled in two-year programs at FIT, but not for students in baccalaureate or master's programs. It also ruled the County could offset those charges from the Town's share of sales tax revenue.

The Appellate Division, Second Department modified by ruling the County may charge the Town for all of its FIT students, not just those in two-year programs, but cannot offset the amount from the Town's sales tax share. Because the State has not appropriated funds for its FIT payments since 2001, it said, the statute mandating State reimbursement to counties "has been superseded by the appropriation bills.... Contrary to the Town's contention, the doctrine of legislative equivalency is not implicated, as both Education Law § 6305(10) and the budgets were enacted by the same means." It said the cost of students in four-year and master's programs are covered because section 6302(3), which authorized those programs, provides that FIT "shall be financed and administered in the manner provided for community colleges."

The Town argues section 6305(10), mandating State reimbursement of FIT costs to counties, removed that obligation from towns and cities and "left counties with no alternative remedy" if the State refuses to pay. "While an appropriation bill can suspend the State's reimbursement obligation, it cannot restore county chargeback authority that was previously removed by an amendment to the Education Law, particularly where, as here, it expresses no intent to do so. Only a subsequent amendment ... can accomplish such reinstatement, and no such amendment has ever been adopted." The County argues that it may offset its FIT charges from a locality's sales tax share.

For appellant-respondent Town: Richard S. Finkel, Garden City (516) 267-6300
For respondent-appellant County: Robert F. Van der Waag, Mineola (516) 571-3056
For amicus curiae SUNY: Assistant Solicitor General Valerie Figueredo (212) 416-8019

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To be argued Wednesday, September 10, 2014

No. 152 People v Earl Coleman

In 2000, Earl Coleman was convicted in Sullivan County of two counts of criminal sale of a controlled substance in the third degree, a class B felony, and sentenced as a persistent felony offender to 15 years to life in prison. In 2009, he filed a motion for resentencing under the Drug Law Reform Act of 2009 (CPL 440.46). The statute generally permits a person who is serving a sentence for a class B drug felony to apply for a reduced sentence unless he falls within one of the exceptions in CPL 440.46(5), which excludes "any person who is serving a sentence on a conviction for ... an exclusion offense." The subdivision defines "exclusion offense" as a violent felony or "any other offense for which a merit time allowance is not available pursuant to [Correction Law § 803(1)(d)(ii)]." Correction Law § 803(1)(d)(ii) provides, in part, that a "merit time allowance shall not be available to any person serving an indeterminate sentence authorized for an A-1 felony offense."

County Court denied the motion, finding Coleman was ineligible for resentencing because he had been sentenced as a persistent felony offender and, thus, could not earn merit time. The court cited the Appellate Division, Second Department decision denying resentencing under similar circumstances in People v Gregory (80 AD3d 624 [2011]).

The Appellate Division, Third Department reversed in a 3-1 decision, ruling Coleman was eligible for resentencing and expressly rejecting Gregory. "Although defendant, having been sentenced pursuant to his drug offense convictions as a persistent felony offender, is serving a sentence that would preclude him from earning merit time pursuant to Correction Law § 803...," it said, "he was not convicted of an 'offense for which a merit time allowance is not available,'" as stated in CPL 440.46(5). The court said Coleman's "offense and his sentence are ... two separate components that we decline to conflate for purposes of depriving an otherwise eligible person of the benefits of the remedial legislation that we are tasked with interpreting here."

Citing Gregory, the dissenter said Coleman, "having been sentenced as a persistent felony offender upon his convictions for criminal sale of a controlled substance in the third degree, is serving indeterminate sentences authorized for an A-1 felony offense.... Accordingly, in my view, defendant is unquestionably serving a sentence on a conviction for an 'exclusion offense' -- that is, an offense for which a merit time allowance is not available (see CPL 440.46[5][a][ii] -- and is therefore ineligible for resentencing under the Drug Law Reform Act...." She said Correction Law § 803(1)(d)(ii) "broadly defines merit time eligibility in terms of the particular sentence imposed, regardless of the specific offense of which the defendant was convicted."

For appellant: Sullivan County District Attorney James R. Farrell (845) 794-3344
For respondent Coleman: Jane M. Bloom, Monticello (845) 791-8167

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To be argued Wednesday, September 10, 2014

No. 153 Powers v 31 E 31 LLC

In August 2008, Joseph W. Powers fell 25 feet from a narrow setback roof outside a friend's Manhattan apartment and suffered severe brain and spine injuries. He had been out drinking with several friends before they decided to go onto the roof, which was five feet wide, and his blood alcohol content was 0.15 percent an hour after the accident. There was no door, so they climbed through a window to reach the roof, which had gutters, but no railing. When his friends went back inside, they noticed Powers was not with them. No one saw him fall. His guardian brought this personal injury action against the building's owner, 31 E 31 LLC, and the managing agent, B & L Management Co., Inc., claiming they violated a common law duty and building codes by failing to install a railing, fence or parapet on the setback roof.

Supreme Court denied the defendants' motion for summary judgment, saying, "[T]here is a question of whether or not defendants were liable for the creation of a dangerous condition on the setback roof. There is a question of foreseeability. There is also an issue of plaintiff's comparative fault, should it be determined that the defendants had failed a duty to keep the premises in a reasonably safe condition. Defendants have not ... established prima facie on this motion that plaintiff's negligence was the sole proximate cause of his accident, despite his intoxicated state and familiarity with the setback roof. Nor have defendants established ... that plaintiff's actions were a 'superseding cause' of his injuries." The building was built in 1909, when the building code of 1895 did not require railings on a roof if it had gutters, but the court said there was insufficient proof the original building had gutters. It also said alterations to the building in 1979 might have required the owners to comply with the 1968 building code.

The Appellate Division, First Department reversed and dismissed the suit. "Given the nature and location of the setback, it was unforeseeable that individuals would choose to access it, and thus defendant had no duty to guard against such an occurrence...," it said. "Indeed, defendants' superintendent testified that he had never been on the setback, nor had he ever observed anyone using it. Regarding allegations of statutory violations, defendants demonstrated that the building, constructed as a loft in 1909 and converted to a multiple dwelling in 1979, was grandfathered out of the 1968 and 2008 Building Codes by submission of the 1979 Certificate of Occupancy.... Furthermore, the Certificate of Occupancy satisfied defendants' burden of showing that the Multiple Dwelling Law was not violated, since the 1979 certificate provided that the building 'conform[ed] substantially ... to the requirements of all applicable laws, rules and regulations for the uses and occupancies specified herein.'"

For appellant Powers: Alani Golanski, Manhattan (212) 558-5500
For respondents 31 E 31 LLC and B&L: Linda M. Brown, Manhattan (212) 471-8500

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To be argued Wednesday, September 10, 2014

No. 154 People v Samuel McLean

Samuel McLean was jailed on robbery charges in Schenectady in 2003 when his attorney, Steven Kouray, negotiated a plea deal that required his cooperation in an unrelated murder case. Kouray accompanied him to meetings with Schenectady Detective John Sims to discuss the 2002 murder of Leonder Goodwin -- consulting with McLean as he prepared his written statement, viewed photo arrays, drew diagrams of the murder scene, showed detectives where to look for the gun -- and was with him when he testified before the grand jury investigating the murder. In 2004, McLean was sentenced to 12 years in prison for robbery. In 2006, Sims and another detective re-interviewed McLean in prison about the Goodwin murder and, in the absence of counsel, obtained an incriminating statement from him. When his motion to suppress the statement as involuntary was denied, he pled guilty to second-degree murder and was sentenced to 21 years to life. The Appellate Division, Third Department rejected his claim that the 2006 police interview violated his indelible right to counsel, saying "the record is bereft of material evidence sufficient to permit appellate review of this claim." After this Court affirmed the murder conviction (15 NY3d 117), McLean filed a CPL 440.10 motion to vacate the judgment, claiming that his right to counsel was violated and that he was denied meaningful representation because his trial attorney did not raise the issue.

At a hearing in 2011 to develop a full record, Sims testified the district attorney told him in 2006 to re-question McLean, but to first ask Kouray if he still represented him. Sims said he told Kouray he wanted to talk to McLean about "the Goodwin case." He conceded he did not use the word "murder" at the meeting. Kouray testified he was unaware McLean had become a suspect in the murder and when Sims asked if he still represented McLean, he replied that he did not: "I said, 'He's been sentenced. The robbery case is over.'" Kouray said Sims did not ask if he represented McLean in the murder investigation. County Court denied McLean's motion.

The Appellate Division, Third Department affirmed on a 3-1 vote, saying the police "fulfilled their obligation to resolve the ambiguity [about whether McLean was represented by counsel in 2006] by determining that Kouray's representation of defendant had terminated prior to questioning him.... Having received an unequivocal answer from Kouray that he no longer represented defendant, we cannot conclude that the police had an obligation to inquire further.... Defendant's further argument that Kouray could not unilaterally withdraw from representing him on the homicide is similarly misplaced because it, too, presupposes that Kouray's representation of defendant on the homicide investigation was independent of his representation on the robbery. The hearing testimony does not support such a conclusion...."

The dissenter argued the police "did not meet their burden of resolving ambiguity regarding defendant's representation by counsel prior to questioning him, thereby violating his indelible right to counsel." He said McLean's "right to counsel with respect to the ... murder investigation indelibly attached in 2003" and was independent of the robbery case. "[G]iven the coy questioning and lack of candor by the investigators, the investigators acted in bad faith or without sufficient deference to defendant's rights when asking Kouray about his representation of defendant." He also argued that "an attorney's unilateral statement that he or she no longer represents a defendant does not allow the police to disregard that defendant's previously invoked right to counsel."

For appellant McLean: Danielle Neroni Reilly, Albany (518) 366-6933
For respondent: Schenectady County Asst. District Attorney Gerald A. Dwyer (518) 388-4364