

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.

To be argued Wednesday, February 10, 2021 (arguments begin at 2 pm)

No. 14 Herkimer County Industrial Development Agency v Village of Herkimer

In 1988, the Herkimer County Industrial Development Agency (HCIDA) entered into an agreement with a local manufacturer, H.M. Quackenbush, to issue tax-free bonds to finance an expansion of Quackenbush's metal plating and finishing plant in the Village of Herkimer. As part of the transaction, HCIDA took title to Quackenbush's industrial property in the Village and leased it back to the company. Quackenbush continued to operate the factory – using water supplied by the Village of Herkimer – until the company filed for bankruptcy in 2005, leaving the Village's last two years of water rent bills unpaid. The Village included the unpaid water rents in its property tax levies for 2004 and 2005. HCIDA brought this action to declare the tax levies void on the ground that it is tax-exempt. After the tax lien was cancelled in the course of prior litigation, the Village billed HCIDA for the unpaid water charges and asserted a counterclaim that HCIDA was liable for the water rents as owner of the former Quackenbush site.

Supreme Court ultimately granted the Village summary judgment on its counterclaim, ruling that HCIDA was the title owner of the property and, therefore, liable for the water charges.

The Appellate Division, Fourth Department affirmed on the issue of HCIDA's liability in a 3-2 decision. The majority said the Village's water regulations "provide for the imposition of liability on property owners for water consumed on such property and supplied by the Village.... [W]e conclude that HCIDA assented to the Village supplying water to the tenant for use in the facility at a time when the existing law imposed liability on property owners for municipal water service, thereby giving rise to an implied contract for such service between HCIDA and the Village.... [T]he imposition of such liability does not violate common-law principles, nor do the regulations require the property owner to pay the debt of another.... Additionally, unlike the dissent, we do not read the language of the counterclaim so narrowly as to foreclose reliance on the underlying legal theory by which the regulations function to impose liability on HCIDA."

The dissenters said, "[T]he majority strays outside the four corners of the answer and grants a judgment to [the Village] on its counterclaim based on a theory of liability that the Village did not assert therein. Moreover, the majority's analysis conflates in rem liability with personal liability, does not address the principles of contractual privity raised by [HCIDA], and effectively permits a single municipality to rewrite – to its own advantage – the foundational rules governing the enforcement of contracts." They said, "The majority's analysis makes a compelling case for imposing in rem liability against the property at issue, but that is not what the Village sought in its counterclaim. Rather, the Village alleged only ... personal and direct liability against the IDA to recover a debt for which the IDA never contracted. We are constrained by the language of the counterclaim, and we are not free to grant judgment on a theory not pleaded or argued below."

For appellant HCIDA: Charles W. Malcomb, Buffalo (716) 856-4000

For respondent Village of Herkimer: Michael J. Longstreet, Fayetteville (315) 422-9295

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To be argued Wednesday, February 10, 2021 (arguments begin at 2 pm)

No. 15 People v Marina Viviani

No. 16 People v Justin Hope

No. 17 People v Nicole Hodgdon

These appeals turn on whether a statute may give an unelected Special Prosecutor authority concurrent to the power of county district attorneys to prosecute abuse and neglect crimes committed against a certain class of vulnerable persons without violating the State Constitution. In 2012, the State Legislature enacted the Protection of People with Special Needs Act to enhance protections for people “with disabilities or other life circumstances that make them vulnerable” to abuse or neglect in residential facilities and programs supervised by state agencies. Among other things, the Act created the Justice Center for the Protection of People with Special Needs and requires it to employ a Special Prosecutor, appointed by the Governor, to investigate and prosecute criminal offenses involving abuse or neglect of vulnerable persons by employees of certain types of facilities. Executive Law § 552 authorizes the Special Prosecutor to “exercise all the powers and perform all the duties” of a district attorney in such proceedings, but it also states that nothing in the statute “shall interfere with the ability of district attorneys at any time to receive complaints [and] investigate and prosecute any suspected abuse or neglect.”

In these unrelated cases, the Special Prosecutor’s office obtained indictments from Albany County grand juries charging all three defendants – employees of state-supervised facilities – with committing sex crimes against vulnerable persons in their care. Trial courts dismissed all three indictments based on the dissenting opinion in People v Davidson (27 NY3d 1083 [2016]), which said the Legislature cannot grant to an appointed Special Prosecutor in the executive branch powers conferred on elected district attorneys by the State Constitution.

The Appellate Division, Third Department affirmed, agreeing with the Davidson dissent that “the Legislature may not grant independent, ‘concurrent authority with district attorneys’ to prosecute individuals accused of crimes against vulnerable persons.... As a constitutional officer, chosen by election..., a district attorney possesses prosecutorial authority, the essential characteristic of which has been defined as ‘the discretionary power to determine whom, whether and how to prosecute’.... The Legislature has no authority to transfer any essential function of a district attorney ‘to a different officer chosen in a different manner.’” However, it also agreed “with the dissent in Davidson that the Act may be construed to maintain its constitutionality” by reading it to require the Special Prosecutor to obtain “the knowing, written consent of a local district attorney” to prosecute a case, and agreement by the district attorney “to retain ultimate responsibility for the prosecution.” It said the Special Prosecutor had neither knowing consent nor supervision by the district attorney in these cases.

The Justice Center argues “the Act fully comports with the Constitution’s allocation of prosecutorial power” among the district attorneys, attorney general and governor, whose constitutional duty to “take care that the laws are faithfully executed” gives him “broad prosecutorial authority” which the Legislature may authorize him to delegate to the Special Prosecutor. It says the Act’s “grant of concurrent authority to the Special Prosecutor does not strip the district attorneys of any essential attribute of their offices,” since it expressly prohibits interference with their power to investigate and prosecute any crime.

For appellant Justice Center: Caitlin Halligan, Manhattan (212) 390-9000

For respondent Viviani: Michael S. Pollok, Red Hook (845) 758-3676

For respondent Hope: Lee C. Kindlon, Albany (518) 434-1493

For respondent Hodgdon: James R. Bartosik, Jr., Albany (518) 447-7150

For intervenor-respondent Attorney General: Solicitor General Barbara D. Underwood (212) 416-8022