State of New York
Court of Appeals

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To be argued Tuesday, February 9, 2021 (arguments begin at 2 pm)

No. 11 CIT Bank, N.A. v Schiffman

Pamela Schiffman took out a $326,000 loan in 2008, with the note secured by a mortgage given by her and her husband Jerry Schiffman on their home in Brooklyn. The mortgage was subsequently acquired by CIT Bank and, in October 2014, the Schiffmans executed a loan modification agreement, with both of them listed as "borrower," which increased the balance owed to $406,481.10. The Schiffmans failed to make mortgage payments on or after December 1, 2014, and CIT initiated a foreclosure action in federal court in October 2016.

U.S. District Court granted summary judgment to CIT Bank, rejecting the Schiffmans' arguments that the bank failed to prove that it complied with the pre-foreclosure notice requirements of RPAPL § 1304 and the pre-foreclosure filing requirements of RPAPL § 1306. RPAPL § 1304 requires that lenders give notice by mail to borrowers at least 90 days before commencing legal action against them. Lenders can show compliance with the statute with proof of the actual mailings or with proof that they have a standard office procedure to ensure that notices are properly addressed and mailed. CIT submitted a sworn affidavit from one of its employees which described the bank's standard mailing procedure and said the 90-day notices and addressed envelopes "are created upon default." RPAPL § 1306 requires lenders to file with the superintendent of financial services, within three business days of mailing a section 1304 notice, information about a foreclosure that includes "the name, address, last known telephone number of the borrower, and the amount claimed as due" on the mortgage.

The Schiffmans argued on appeal that CIT's proof of compliance with section 1304 fell short because its affidavit said its notices and envelopes "are created upon default," but the notices purportedly sent to them were dated November 18, 2015, nearly a year after they defaulted. They said this shows that CIT's standard procedure was not followed in their case and, therefore, there is no presumption that their notices were mailed. They also argued that CIT's financial services filing did not comply with section 1306 because it listed only Pamela Schiffman as the borrower and did not mention Jerry Schiffman.

The U.S. Court of Appeals for the Second Circuit, finding that neither the language of the statutes nor prior New York court rulings make clear whether CIT demonstrated its compliance with sections 1304 and 1306, is asking the New York Court of Appeals to resolve the key issues in this case with a pair of certified questions: "(1) Where a foreclosure plaintiff seeks to establish compliance with RPAPL § 1304 through proof of a standard office mailing procedure, and the defendant both denies receipt and seeks to rebut the presumption of receipt by showing that the mailing procedure was not followed, what showing must the defendant make to render inadequate the plaintiff's proof of compliance with § 1304? (2) Where there are multiple borrowers on a single loan, does RPAPL § 1306 require that a lender's filing include information about all borrowers, or does § 1306 require only that a lender's filing include information about one borrower?"

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State of New York
Court of Appeals

To be argued Tuesday, February 9, 2021 (arguments begin at 2 pm)

No. 12 Matter of Estate of Youngjohn v Berry Plastics Corporation

Norman Youngjohn injured his arms in a work-related accident at a production facility of his employer, Berry Plastics Corporation, in December 2014, and he applied for workers' compensation benefits. His treating physicians raised the issue of permanency and schedule loss of use (SLU) of both arms, and an independent medical examination was conducted on behalf of Berry Plastics' workers' compensation carrier. The medical experts agreed that Youngjohn had reached maximum medical improvement for both arms, but disagreed about the appropriate SLU percentages. In March 2017, before the issue was resolved, Youngjohn died of a heart attack unrelated to his workplace accident. He left no surviving spouse or dependents.

Youngjohn's estate and Berry's carrier subsequently stipulated to SLU percentages for both arms; but the estate contended it was entitled to the entire amount of Youngjohn's compensation award, while the carrier argued that it was required to pay only the 113.2 weeks of SLU benefits that had accrued from the date of the accident to Youngjohn's death. Workers' Compensation Law (WCL) § 33 generally provides that when an injured worker who was owed "any compensation" under the WCL dies without a surviving spouse or dependents, the remaining benefits are payable to his or her estate. However, in the case of SLU awards under the same circumstances, WCL § 15(4)(d) provides that remaining SLU benefits be paid to the deceased's estate "in an amount not exceeding reasonable funeral expenses." Youngjohn's estate argued that under 2009 amendments to WCL §§ 15(3)(u) and 25(1)(b), which authorized full payment of SLU awards in one lump sum at the request of the injured worker, Youngjohn's entire SLU award accrued at the time of his accident and must be paid to his estate.

A Workers' Compensation Law Judge agreed with the estate, held that Youngjohn was entitled to 335.8 weeks of benefits, and ordered the carrier to pay the full SLU award of $206,532.46, less payments already made, to the estate. The Workers' Compensation Board modified the decision, ruling that WCL § 15(4)(d) limited the SLU award payable to the estate "to reasonable funeral expenses in an amount up to $10,500."

The Appellate Division, Third Department modified by ruling the estate was entitled to SLU benefits that "accrued up to the time of decedent's death," but not to the full amount of the SLU award. It said "the 2009 statutory amendments did not alter the long-standing rule that, where an injured employee dies without leaving a surviving spouse ... or dependent, only that portion of the employee's SLU award that had accrued at the time of the death is payable to the estate, along with reasonable funeral expenses.... Nor did, as claimant contends, the amendments alter the rate at which an SLU award accrues to an injured employee who is posthumously awarded SLU benefits. Absent clear statutory language or an indication of statutory intent, we cannot conclude that, in granting the option of a lump-sum payment, the Legislature intended for the employee's estate to collect any portion of the posthumous SLU award that had not accrued prior to death."

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State of New York
Court of Appeals

To be argued Tuesday, February 9, 2021 (arguments begin at 2 pm)

No. 13 Matter of People Care Inc. v City of New York Human Resources Administration

The question raised in this appeal is whether New York City's Human Resources Administration (HRA) has the authority to audit and recoup payments made under the Health Care Reform Act (HCRA) from personal care service companies such as People Care Inc., which provide home care workers to assist elderly or disabled Medicaid recipients with feeding, bathing, administration of medications and other activities. HRA has for many years administered the Medicaid program in the city under authority delegated by the state Department of Health, and in 2001 it entered into a contract with People Care to provide home care services using general Medicaid funds. The contract gave HRA the right to audit People Care and recoup unspent or misspent funds. In 2002, the State Legislature enacted Public Health Law § 2807-v (1)(bb), which amended HCRA to create a Worker Recruitment and Retention Program to increase the pay of home care workers by using money from the state's tobacco control and insurance initiatives pool to cover "adjustments to Medicaid rates of payment for personal care services." The statute gave DOH audit and recoupment authority over providers funded through HCRA. The state agency's memorandum of understanding (MOU) with HRA for the new program did not address any audit and recoupment authority for HRA. After an audit HRA completed in 2008, it demanded that People Care repay nearly $7 million in unspent HCRA funds the company received in 2003 and 2004.

People Care brought this suit to challenge the determination, contending HRA lacked authority to audit and recoup HCRA funds. Supreme Court dismissed the suit, but the Appellate Division, First Department reinstated the petition and remanded the case to further develop the record. On remand, Supreme Court granted People Care's petition to annul HRA's decision.

The Appellate Division, First Department affirmed on a 3-2 vote, finding HRA had no authority to audit or recoup HCRA funds from People Care. While HRA had broad authority under its contract with People Care to audit and recoup Medicaid funds, the majority said, Public Health Law § 2807-v(1)(bb) authorizes DOH "to audit each [personal care] provider to ensure compliance with the [HCRA] and recoup" misspent funds. "[N]either [the statute] nor the MOU between DOH and HRA ... contains any language delegating DOH's auditing and recoupment authority to HRA or any other agency." It said references to Medicaid rate adjustments in the HCRA statute and the MOU "do not compel the conclusion that HCRA funds are to be treated as general Medicaid funds earmarked for a special purpose."

The dissenters said, "Although neither People Care nor the majority takes issue with HRA's contractual authority to audit and recoup Medicaid funds generally, they argue that the HCRA funds are somehow different from those Medicaid funds governed by the contract.... HRA has persuasively shown that the HCRA funds are merely a subset of the contractual Medicaid funds.... The statute contains no language that vests the power to audit and recoup HCRA funds exclusively with DOH. Nor does the statute prohibit local social services districts, like HRA, from conducting their own audits and recoupment proceedings under existing contracts."

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