State of New York
Court of Appeals

To be argued Tuesday, January 9, 2024

No. 1 Tax Equity Now NY LLC v City of New York

Tax Equity Now NY (TENNY), an association of residential property owners and renters in New York City, brought this action against the City and State of New York in 2017, alleging that the City's property tax assessment system violates state tax statutes, federal anti-discrimination law, and the state and federal constitutions by taxing similar properties at different percentages of value. TENNY claimed that tax abatements and caps on assessment increases for certain residential properties and policies favoring condominiums and cooperatives over rental housing adopted in the state's Real Property Tax Law (RPTL) in 1981, during the last comprehensive redrafting of the City's property tax system, "provides for radically different tax treatment of equally valuable properties, depending on the use of the property and the form in which it is owned" in violation of RPTL § 305(2), which provides, "All real property in each assessing unit shall be assessed at a uniform percentage of value." It claimed the provisions impose a disparate impact on predominately minority neighborhoods by taxing owners of rental properties there at higher effective tax rates than owners of condos and co-ops in predominately white neighborhoods in violation of the federal Fair Housing Act. And it claimed the system, in which "similarly valued properties ... are arbitrarily assessed and taxed at amounts bearing no rational basis to their true market value," violates the state and federal equal protection and due process clauses.

Supreme Court denied the City's motion to dismiss the claims against it, finding that TENNY had adequately pleaded those claims. The court dismissed all but TENNY's due process claims against the state.

The Appellate Division, First Department modified by dismissing the entire suit, ruling the complaint failed to state a cause of action on any claim. It further found that the assessment caps, tax abatements and other provisions, adopted to prevent a significant shift of the tax burden from businesses to homeowners and "to protect homeowners from sudden dramatic tax increases which would make continued home ownership more burdensome and unaffordable for many," were not arbitrary or discriminatory and were "rationally related to the achievement of a legitimate governmental purpose."

TENNY argues that its claims were adequately pled and its suit should not have been dismissed at the pleading stage, "thereby cutting off discovery and the opportunity to crystallize the legal principles at issue here." It says its complaint "demonstrates with the City's own data and Defendants' longstanding admissions that the City assesses and taxes properties within the same class at different rates, so that homes worth identical amounts are assessed at wildly disparate amounts and receive dramatically different tax bills. The complaint further shows that the City's minority neighborhoods are assessed and taxed at vastly higher rates than its majority-white neighborhoods...."

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State of New York
Court of Appeals

To be argued Tuesday, January 9, 2024

No. 2 Matter of Clifton Park Apartments, LLC v New York State Div. of Human Rights

CityVision Services, Inc., a non-profit advocate for fair housing, employs "testers" to approach apartment buildings as potential tenants to determine whether they are complying with anti-discrimination laws. In 2016, a CityVision tester called the leasing agent for Pine Ridge II Apartments in Saratoga County, a complex owned by Clifton Park Apartments, LLC. She reported that when she told the agent she would be moving in with her three young daughters, the agent referred her to a different apartment complex. CityVision filed a complaint with the State Division of Human Rights (DHR), alleging that Pine Ridge illegally discriminated against its tester "because of familial status" by "steering" her to a different property upon learning she had three children. DHR investigated and then dismissed the complaint, finding no probable cause to believe Pine Ridge had violated the Human Rights Law.

A short time later, an attorney for Pine Ridge sent a letter to CityVision and the tester saying it considered the complaint "false, fraudulent and libelous;" that it expended employee resources and counsel fees to defend against the allegations and it expected compensation; and if there was no response within 10 days, "we will assume that you do not intend to take responsibility for these actions and will proceed accordingly." CityVision then filed another complaint with DHR, claiming the letter was illegal retaliation for its first complaint.

An administrative law judge (ALJ) found that Pine Ridge engaged in unlawful retaliation, saying it was "difficult to see how [the letter] can be viewed as anything other than a threat" because it "clearly sought damages for the money" Pine Ridge spent as a result of CityVision's first complaint. The ALJ recommended that Pine Ridge be fined $2,500 and ordered to pay $4,775 in damages to CityVision. DHR adopted the ALJ's recommendation as its final order, but amended it to award CityVision $10,988 for attorney's fees.

The Appellate Division, Third Department annulled DHR's order and dismissed the complaint, saying the evidence did not support a finding that Clifton Park Apartments "took adverse action against CityVision" as required for a retaliation claim under the Human Rights Law. It said the attorney's letter "simply stated his view that the allegations of discrimination against his client were false, and that Pine Ridge intended to seek compensation for the costs incurred in defending those false allegations. There was no evidence that petitioners took any additional actions against CityVision. We cannot conclude that ... the mere sending of the letter rose to the level of retaliation. That is, there was no showing that the letter had any 'materially adverse effect' upon CityVision, nor was it 'of sufficient magnitude to permit a finding of intimidation, coercion, threats or interference.'"

DHR argues, "The Third Department exceeded its extremely narrow judicial review authority and instead substituted its judgment for that of the Division regarding the question of fact of whether respondents' threatening letter constituted a retaliatory adverse action." It says the court's decision "that discounted the threat is an error of law that will have a chilling effect on the willingness of persons who believe they are victims of discrimination to come forward with their charges."

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State of New York
Court of Appeals

To be argued Tuesday, January 9, 2024

No. 12 People v Danny Novas

Danny Novas had been drinking with friends at a bar in upper Manhattan in February 2018 and left at about 3 am to drive them back to his apartment. It was dark and raining; elevated train tracks and double-parked cars along 10th Avenue limited visibility. Maximo Gomez, intoxicated and wearing dark clothing, left the bar at around the same time and ran across the avenue mid-block to hail a cab. Novas's right front bumper struck Gomez's left lower leg, breaking both bones. Gomez also struck the side-view mirror and fell to the street. Novas continued driving. He told his front-seat passenger that Gomez had slapped his side-view mirror and she pushed it back into place. His three passengers said they did not see or feel any impact.

Novas was convicted of a felony charge of leaving the scene of an accident without reporting under Vehicle and Traffic Law (VTL) § 600(2)(a), which requires proof that a driver left the scene while "knowing or having cause to know that personal injury has been caused to another person."

Supreme Court granted Novas's motion to set aside the verdict, finding there was insufficient evidence to prove Novas knew or had cause to know that he had injured Gomez. The court said, "Gomez's testimony supports the view that Gomez got knocked over as Novas drove by, but his description of the accident does not give any basis for inferring that Novas must have seen Gomez get hit and fall. By Gomez's own account, he ran across the street mid-block in the rain, dressed in dark clothing, had a blood alcohol level far above the threshold of intoxication, came into contact with a side view mirror, and the driver kept going as if nothing had happened. Gomez' account establishes no factual basis for an inference that Novas knew he had caused physical injury to a person because nothing he says happened would have been seen by an ordinary driver." Pedestrians "often slap side view mirrors, side view mirrors move easily, and no driver assumes that he may have caused physical injury to a pedestrian merely because some pedestrian has slapped and moved the mirror."

The Appellate Division reversed, reinstated the verdict and remitted for sentencing, saying there was sufficient evidence that Novas "knew or had 'cause to know' that personal injury had been caused to the victim. Testimony established that defendant knew, at least, that he was involved in an incident during which a pedestrian came into contact with his white Mercedes GLA.... Medical records established that [Gomez] sustained comminuted fractures to the left leg which indicated significant force.... [S]hortly after the contact, defendant asked the front passenger 'to push back out' the side view mirror and asked his passengers whether they felt anything or felt the car stop.... [W]hile the surveillance video introduced at trial does not depict the actual accident, it does show [Gomez] running into the street and a white car pass through the frame without stopping. Individuals are then seen running toward where [Gomez] had run. The totality of the evidence leads to the inference that defendant saw [Gomez] and felt the impact when he hit him.... Finally..., defendant's statements falsely denying to police that anything happened on his way home from a café or that he had been drinking suggest that he knew he hit someone, causing injury, and sought to conceal that fact."

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State of New York
Court of Appeals

To be argued Tuesday, January 9, 2024

No. 4 People ex rel. Rankin v Brann

In September 2020, Tyrone Waller was charged with two counts of criminal possession of a weapon in the second degree (a "qualifying offense" for bail) and lesser crimes. He was released after posting $10,000 bail. He was arrested three more times for violent felony offenses while out on bail: in July 2021 in Queens for first- and second-degree robbery; in August 2021 in Brooklyn for possession of a loaded weapon; and in September 2021 in Queens for second-degree assault. In October 2021, Queens prosecutors applied to Supreme Court to revoke his $10,000 bail and remand him into custody "for good cause shown," under CPL 530.60(1), based on his subsequent violent felony arrests. Waller argued that CPL 530.60(2)(a) applied to the prosecution's request, requiring the court to hold an evidentiary hearing to determine whether there was "reasonable cause" to believe that he had committed the subsequent offenses.

Supreme Court ruled that CPL 530.60(1) applied and remanded Waller into custody without a hearing or the submission of any evidence. The court said the legislature intended that subdivision 2 of CPL 530.60 apply, and require a hearing before revoking bail, where the underlying offense did not qualify for bail because "the legislature was concerned about defendants being held on non-qualifying offenses and wanted to do away with cash bail for what it viewed as less serious offenses." If such a defendant committed a subsequent crime, it said, "subdivision 2 allowed for a mechanism to hold a hearing so that bail could be considered in those circumstances." But the court said subdivision 2 "does not take away any of the power of the court to set bail or to modify bail with respect to qualifying offenses" without a hearing under subdivision 1. Waller then filed this habeas corpus petition at the Appellate Division, Second Department.

The Appellate Division held that subdivision 2 applied and remitted the matter for a hearing based on the history and "unambiguous language" of CPL 530.60(2), which states that whenever "a defendant charged with the commission of a felony is at liberty as a result of an order of ... bail ... it shall be grounds for revoking such order that the court finds reasonable cause to believe the defendant committed one or more ... violent felony offenses." The Appellate Division said "CPL 530.60(2)(a) clearly applies to the circumstances here. Since the People applied for remand on the sole basis that [Waller] was accused of committing violent felony offenses while at liberty on the underlying felony charges, the court was required to apply the standard in CPL 530.60(2)(a) and to conduct the hearing mandated in CPL 530.60(2)(c)."

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State of New York
Court of Appeals

To be argued Tuesday, January 9, 2024

No. 5 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."

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