State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

March 14 thru March 16, 2023

State of New York
Court of Appeals

To be argued Tuesday, March 14, 2023

No. 13 Matter of TCR Sports Broadcasting Holding, LLP v WN Partner, LLC

Major League Baseball (MLB) bought the struggling Montreal Expos in 2002, moved the franchise to Washington, D.C. in 2005 and renamed the team the Nationals. The Baltimore Orioles and its broadcasting partner, TCR Sports Broadcasting Holding, LLP, objected that bringing the Nationals into what had been the Orioles' exclusive television market would hurt them financially. MLB and the two ball clubs negotiated an agreement under which TCR would become a two-club television network, doing business as the Mid-Atlantic Sports Network (MASN) and managed by the Orioles, which would televise the games of both teams. The agreement set the telecast fees each team would be paid for 2005 through 2011; required the teams and MASN to negotiate the fair market value of their telecast rights for future years; and provided that, if they could not agree, the value would be set through binding arbitration by MLB's own Revenue Sharing Definitions Committee (RSDC). The parties failed to reach agreement on telecast fees for 2012 through 2016 – the Orioles valued the Nationals' rights at $34 million per year, while the Nationals valued their rights at $110 million per year – and the dispute went to arbitration before the RSDC. The arbitration panel consisted of three officials of MLB clubs appointed by the baseball commissioner, with MLB staff providing analytical and legal assistance. Before the arbitration concluded, MLB paid the Nationals a $25 million advance on their fees for 2012-13, to be repaid from the arbitration award. In 2014, the RSDC issued its decision awarding the Nationals rights fees of $53 million for 2012 and rising by $3 million per year through 2016. The Orioles brought this proceeding to vacate the award, contending the arbitration process was not impartial, and asked the court to remand the matter to a different arbitration forum.

Supreme Court vacated the award due to "evident partiality," a finding it based solely on the participation of Proskauer Rose, the law firm that represented the Nationals in the arbitration, because it also represented MLB and all three arbitrators on the panel in unrelated matters. It denied the Orioles request to order a second arbitration by an impartial panel unaffiliated with MLB, saying that "re-writing the parties' Agreement is outside of [the court's] authority."

The Appellate Division, First Department affirmed. It agreed unanimously that the award was properly vacated for evident partiality, but split 2-1-2 on the question of whether it could, or should, send the arbitration to a forum other than the RSDC. Two justices argued that, "even if this court has the inherent power to disqualify an arbitration forum in an exceptional case, on the record before us there is no basis, in law or in fact, to direct that the second arbitration be heard in a forum other than the industry-insider committee that the parties selected in their agreement..., fully aware of the role MLB would play in the arbitration process.... [T]here has been no showing of bias or corruption on the part of members of the reconstituted RSDC, and the Nationals will use new counsel at the second arbitration." A third justice concurred in the result, but said, "This court may not order that the arbitration take place in a forum other than the one selected by the parties," even though "the conduct of [MLB] and its representatives has been far from neutral and balanced." The two dissenters said the fees dispute should be sent to the American Arbitration Association, arguing that "while the parties' contractual choice to select a particular arbitral forum is entitled to great deference, courts nevertheless retain their inherent judicial power, and their statutory power under 9 USC § 2, to override that choice in the event that the forum is shown to be so corrupt or biased as to undermine the reasonable expectations of the parties to have a fundamentally fair hearing."

In the second arbitration, RSDC awarded the Nationals $54.9 million for 2012, increasing to $62.4 million in 2016. Supreme Court confirmed the award and the Appellate Division affirmed.

For appellants TCR & Baltimore Orioles: Carter G. Phillips, Washington DC (202) 736-8000
For respondents WN Partner & Washington Nationals: Derek L. Shaffer, Manhattan (212) 849-7000

State of New York
Court of Appeals

To be argued Tuesday, March 14, 2023

No. 21 Cordero v Transamerica Annuity Service Corporation

As a young child in New York City, Lujerio Cordero suffered lead poisoning caused by lead paint in his apartment building, which resulted in permanent and substantial cognitive impairment and other debilitating handicaps. In 1996, when he was five years old and acting through his mother, Cordero entered into a structured settlement agreement with his landlord's insurer, which provided that he would be paid $3,183.94 each month for 30 years, beginning when he turned 18. The periodic payments were secured by an annuity contract issued by Transamerica Life Insurance Co. On the same day, Cordero executed a qualified assignment obligating a Transamerica affiliate to make the periodic payments. Both the settlement agreement and the assignment provided that they would be governed by New York Law and, using similar language to protect his interests, stated that the payments "cannot be accelerated, deferred, increased or decreased by [Cordero]..., nor shall [he] have the power to sell, mortgage, encumber or anticipate same ... by assignment or otherwise."

In 2012, when Cordero was 22 and living in Florida, he entered into the first of six structured settlement transfer agreements with two factoring companies, which offer tort victims receiving periodic payments a lump-sum cash payment in exchange for the right to receive the future payments, often on very unfavorable terms. Through the six transfers executed over a period of 22 months, Cordero assigned all of his periodic payment rights to the factoring companies, receiving $263,130 from the companies in exchange for his right to future payments totaling $959,834. Transamerica consented to the transfers without contacting Cordero, and the factoring companies paid Transamerica a $750 fee for its review and approval of each transfer. Florida state courts then approved the transfers after hearings at which Cordero did not appear and was not represented by counsel, finding the agreements were "fair, just and reasonable."

Cordero brought this breach of contract action against Transamerica in federal court in Florida, contending that he could not read or understand the transfer documents and that Transamerica had an obligation to enforce the anti-assignment clause in the settlement agreement on his behalf. When it failed to enforce the clause and prevent the transfers, he said, the company breached its contractual duty of good faith and fair dealing. Transamerica moved to dismiss the suit, arguing that Cordero failed to allege a breach of contract because the anti-assignment clause was meant for its benefit, not his, and it had no obligation to enforce it.

U.S. District Court dismissed the suit, saying Cordero's "claims fail because Defendants had no affirmative obligation to prevent [him] from assigning his annuity benefits." The anti-assignment clause "exists for Defendants' benefit and may be exercised at their discretion," it said, and Cordero's "assertion that Defendants should have prevented the state court-approved transfers are nothing more than attempts to 'imply obligations inconsistent with other terms of the contractual relationship...'."

The U.S. Court of Appeals for the 11th Circuit is asking this Court to resolve the key issue by answering a certified question: "Does a plaintiff sufficiently allege a breach of the implied covenant of good faith and fair dealing under New York law if he pleads that the defendant drastically undermined a fundamental objective of the parties' contract, even when the underlying duty at issue was not explicitly referred to in the writing?"

For appellant Cordero: Scott A. Eisman, Manhattan (212) 277-4000
For respondents Transamerica et al: John Neiman, Philadelphia, PA (215) 206-6485

State of New York
Court of Appeals

To be argued Tuesday, March 14, 2023

No. 22 Singh v City of New York

Taxi fleet owner Richard Chipman purchased 14 yellow cab medallions at an auction held by New York City and its Taxi & Limousine Commission (TLC) in 2013, paying from $1.1 million to $1.3 million per medallion on behalf of seven of his taxi companies. In 2017, Chipman's taxi companies brought this action against the City asserting claims for deceptive business practices in violation of General Business Law (GBL) § 349 and contract claims alleging breach of the implied covenant of good faith and fair dealing. They contended that, before the auction, the City overstated the present and future value of the medallions. And they said the City's actions after the auction, which included allowing a "surge" in licenses for "so-called black cars," for-hire vehicles that operate without medallions, and allowing those black cars "to accept street hails in direct and illegal competition with medallion taxis," caused the value of their medallions to plummet by 90 percent.

Supreme Court dismissed the taxi companies' GBL § 349 claims based on General Municipal Law (GML) § 50-e, which requires that, in "any case founded upon tort," a notice of claim must be filed within 90 days after the claim arises as a condition precedent to commencing an action against the City. "Considering the purpose of GBL § 349 and the statute's similarity with the traditional tort of fraud, a violation of the statute should be categorized as a tort," the court said, and the plaintiffs' failure to file a notice of claim was fatal. Alternatively, it said GBL § 349 "applies only against a person, firm, corporation or association; that statute does not expressly or by implication apply to municipal defendants." It refused to dismiss the breach of contract claims.

The Appellate Division, Second Department modified the order by dismissing the breach of contract claims, ruling the taxi companies failed to state a cause of action. It said the official bid form the companies signed for the auction "included an acknowledgment that the City had 'not made any representations or warranties as to the present or future value of a taxicab medallion, the operation of a taxicab as permitted thereby, or as to the present or future application or provisions of the rules of the [TLC] or applicable law, other than a warranty of clear title to such medallion.' Based upon this language, no reasonable person in the position of the plaintiffs would believe that the defendants would act or refrain from acting in any manner in order to guarantee the value of their medallions, since this would be inconsistent with the terms of the official bid form." The court affirmed the dismissal of the claim for deceptive business practices under GBL § 349 due to the plaintiffs' failure to file a notice of claim, saying it "was a claim sounding in tort, and therefore was subject to the requirements of [GML] § 50-e, as a cause of action sounding in fraud...." It did not address Supreme Court's ruling that municipalities cannot be sued under GBL § 349.

The taxi companies argue the lower courts erred in dismissing their deceptive practices claim under GBL § 349 for their failure to file a notice of claim because "GML § 50-e applies only to traditional common-law tort claims, not to violations of remedial statutes, such as the GBL, enacted for the protection of the public." They also say their contract claims should be reinstated because "a boilerplate disclaimer of representations and warranties" in the bid form "cannot and does not disclaim or negate the implied covenant of good faith and fair dealing, which is implicit in every contract."

For appellant taxi companies: Mark C. Rifkin, Manhattan (212) 545-4600
For respondent City: Assistant Corporation Counsel Jesse A. Townsend (212) 356-2067

State of New York
Court of Appeals

To be argued Wednesday, March 15, 2023

No. 23 Grady v Chenango Valley Central School District
No. 24 Secky v New Paltz Central School District

In these cases, two public school athletes were injured at practice in 2017 while participating in drills that did not adhere to the standard rules of their sport, and both sued their school and coaches for negligence. Both are appealing decisions of the Appellate Division, Third Department, which ruled that the assumption of risk doctrine barred their claims.

Kevin Grady was an 18-year-old varsity baseball player at Chenango Valley High School when the varsity and junior varsity teams combined at practice for what they called the "Warrior Drill." Two coaches stood near home plate and one of them hit grounders to the third baseman, who threw the ball to the first baseman. At the same time the other coach hit balls to the shortstop, who flipped them to the second baseman, who relayed the balls to a player at "short first base," a few feet from the first baseman and in a direct line between him and second base. A screen was placed between the two players to protect the first baseman from balls thrown from second base, since he would be focused on throws from third base. Grady was playing behind the screen at first base when an errant throw from second missed the screen and struck him in the right eye, causing a permanent loss of vision.

Jaxson Koebel-Secky was a 14-year-old junior varsity basketball player at New Paltz High School when he was injured at practice during a rebounding drill. The coach told the players that they were to disregard the court's boundary lines and use the entire gym floor and that only hard fouls would be called. The bleachers were retracted against the wall. Koebel-Secky was chasing a ball outside the court boundary when another player struck him from behind and knocked him into the bleachers, injuring his shoulder.

The Appellate Division, in separate decisions, ruled that both players had assumed the risks inherent in their sport and dismissed their suits. The 3-2 majority in Grady said, "Having more than one ball in play may not be an inherent risk in a traditional baseball game, but the record indicates that it is a risk inherent in baseball team practices." It said Grady "was an experienced baseball player" who was familiar with the Warrior Drill from previous seasons, and his testimony established that "he did not rely upon the screen for safety but, rather, thought that the drill was unsafe even in the presence of the screen. Thus, the conditions were 'as safe as they appear[ed] to be'...." The 4-1 majority in Secky said eliminating boundary lines for the Warrior Drill "did not unreasonably increase the inherent risks of the drill or playing basketball."

One dissenter in Grady said there was "a question of fact as to whether plaintiff could have assumed the risk of participating in the Warrior Drill due to the use of an inadequate safety measure, specifically, the deflecting screen," while the other argued more broadly that "the risks assumed must be risks inherent to the sport itself, not risks inherent to the drill." The dissenter in Secky said "whether the elimination of boundaries and the relaxation of foul calls unreasonably enhanced the risk of the drill ... is a question of fact to be determined by a jury."

No. 23: For appellant Grady: Robert A. O'Hare Jr., Manhattan (212) 425-1401
For respondent Chenango Valley CSD: Giancarlo Facciponte, East Syracuse (315) 234-9900
No. 24: For appellant Secky: Steven A. Kimmel, Washingtonville (845) 614-0124
For respondent New Paltz CSD: Christopher K. Mills, Clifton Park (518) 373-9900

State of New York
Court of Appeals

To be argued Wednesday, March 15, 2023

No. 25 People v Yermia Solomon

Yermia Solomon was a 24-year-old police officer with the Monticello Police Department in November 2016, when he allegedly engaged in oral sex with a 15-year-old girl. He was indicted by a grand jury on three counts of third-degree criminal sexual act and two counts of third-degree rape, crimes that apply where the victim is under the age of 17. The indictment alleged that Solomon had engaged in sexual misconduct with a person less than 17 years old, but it incorrectly stated that the victim's date of birth was June 2, 1999, which would have made her 17 at the time of the crimes. She was actually born in March 2001.

Sullivan County Court granted the prosecution's motion to amend the indictment to correct the victim's birth date, saying the amendment was permissible under CPL 200.70 because it "corrects a typographical error and does not change the People's prosecutorial theory.... Amending the date of birth conforms the Indictment to the evidence that was presented to the Grand Jury to accurately reflect the criminal acts for which the Grand Jury indicted the Defendant...." Solomon subsequently waived prosecution by indictment and agreed to plead guilty under a superior court information (SCI) to a misdemeanor count of endangering the welfare of a child, which also applies where the victim is under the age of 17. The SCI, however, repeated the same error that was contained in the original indictment, stating that the victim was born in June 1999 rather than in March 2001. Solomon pled guilty to child endangerment, waived his right to appeal, and was sentenced as promised to three years of probation and a $1,000 fine. He argued on appeal that the SCI was defective, due to the incorrect birth date, because consensual sex with an 18-year-old is not a crime in New York.

The Appellate Division, Third Department reversed and dismissed the superior court information, ruling it was jurisdictionally defective because its inclusion of the incorrect birth date for the victim negated its allegation that the victim was under the age of 17. It said, "Inasmuch as the offense of endangering the welfare of a child requires that the victim be less than 17 years old, we find that the [SCI] was jurisdictionally defective because it failed to effectively charge defendant with the commission of a crime where the date of birth indicated that the victim was 17 at the time of the offense." It said the jurisdictional issue "survives his unchallenged appeal waiver and is not subject to preservation rules." The court further held that County Court was not authorized to correct the victim's birth date in the original indictment under CPL 200.70, which states that an indictment may not "be amended for the purpose of curing ...[a] failure thereof to charge or state an offense ... or ... [l]egal insufficiency of the factual allegations."

The prosecution argues, "Where a superior court information charged the defendant with a crime, and alleged acts constituting every material element of that crime, and sufficiently provided the defendant with precise notice of the crime for which he stood accused, a typographical error regarding the victim's date of birth, an error that defendant had actual knowledge of, should not constitute a nonwaivable jurisdictional defect that can be raised for the first time on appeal."

For appellant: Sullivan County Assistant District Attorney Danielle K. Blackaby (845) 794-3344
For respondent Solomon: Nathaniel Z. Marmur, Manhattan (212) 257-4894

State of New York
Court of Appeals

To be argued Thursday, March 16, 2023

No. 26 Matter of the Estate of Maika

Anne and Philip Maika are two of Frank Maika's 12 children and they were his primary caregivers for more than seven years after he suffered several strokes and then the death of his wife in 2009. In 2010, Frank Maika executed a power of attorney appointing five of his children, including Philip Maika (Philip), as attorneys-in-fact to act on his behalf in real estate transactions and other matters if a majority of them agreed on the action. The power of attorney did not authorize them to make major gifts on his behalf. In March 2017, Philip and two of his sisters, acting in their capacities as attorneys-in-fact, conveyed their father's home in Manlius to Philip and Anne as compensation for their home care services. Frank Maika died in July 2017, leaving a will that would have bequeathed his home in equal shares to all of his children. Cora Alsate, as the appointed administrator of his estate, subsequently brought this SCPA 2103 proceeding against Philip and Anne, contending the property had been improperly transferred to them and should be returned to the estate.

Supreme Court granted summary judgment to the administrator and set aside the deed that conveyed the Maika home to Philip and Anne. It ruled the transfer was an improper gift, based largely on the presumption that where parties are related, services were rendered in consideration of love and affection, without expectation of payment.

The Appellate Division, Fourth Department reversed on a 3-2 vote and dismissed the administrator's suit, holding that even if the presumption of impropriety applied, the respondents Philip and Anne rebutted it with "clear, convincing and satisfactory evidence" that there was an agreement by the attorneys-in-fact that their services would be compensated and that "the transfer of property was not a gift." The evidence included "affidavits from the two attorneys-in-fact who voted with Philip to transfer the property. Each averred that the transfer was intended to compensate respondents for their continued care of decedent and that respondents' services allowed decedent to remain in his home. Each further averred that she agreed to the transfer knowing that it would diminish her own share of decedent's estate." It said Philip and Anne also "established that the attorneys-in-fact acted within the authority delegated to them by decedent to transfer real property for his benefit, i.e., as compensation for the services that permitted him to remain in the home in accordance with his expressed wishes."

The dissenters argued that "when an attorney-in-fact child, whose action or vote is necessary to approve a transfer of property allegedly as compensation for services rendered to a parent, is an interested party who stands to receive such alleged compensation, the attorney-in-fact child must rebut the presumption with evidence of the parent's intent to transfer the property as compensation," which the respondents failed to do. "In any event..., we conclude that respondents failed to submit clear and convincing evidence that there was an agreement between respondents and the attorneys-in-fact" that they would be compensated. "Respondents rely only on self-serving statements in their own affidavits and after-the-fact, hearsay statements in the affidavits of two of respondents' siblings who were attorneys-in-fact recounting prior conversations among the attorneys-in-fact, without any contemporaneous evidence to substantiate that the property transfer – which occurred during the terminal months of decedent's illness even though his will would have passed the property equally to all of his children – was intended to compensate respondents for their care of decedent."

For appellant Alsate (estate administrator): Mary L. D'Agostino, Syracuse (315) 565-4500
For respondents Anne and Philip Maika: Daniel R. Rose, Syracuse (315) 422-1152

State of New York
Court of Appeals

To be argued Thursday, March 16, 2023

No. 27 People v Anthony Debellis

Anthony Debellis was arrested for possession of a weapon in 2018 after he was stopped by police on the Bronx River Parkway for driving with an expired car registration. The officer saw a shiny object in his hand and Debellis said it was a gun magazine, but he denied having a gun with him. The officer found a loaded pistol under the driver's seat floor mat.

Defense counsel sought to establish at trial that DeBellis's possession of the firearm was temporary and lawful based, in part, on Debellis's testimony that he had been driving to a police precinct to turn in the pistol for cash under the NYPD's gun buyback program. He also testified that his gun license had been revoked more than a year before his arrest. Defense counsel did not ask the court to instruct the jury on the defense of voluntary surrender of a firearm under Penal Law § 265.20(a)(1)(f). Supreme Court denied the defense request to charge the jury on the temporary possession defense because Debellis admitted he had owned the gun for more than a year. He was found guilty of second-degree criminal possession of a weapon and related counts.

At sentencing, defense counsel told the court Debellis had just given him a pro se motion to set aside the verdict due to ineffective assistance of counsel. When the court asked if he would adopt the pro se motion, defense counsel said he would not and declared, "I am not going to argue that I was ineffective. I think I was very effective." The court read the pro se motion into the record, denied it on the merits, and sentenced Debellis to seven years in prison.

The Appellate Division, First Department affirmed, finding Debellis was not deprived of effective assistance by "his counsel's failure to request a jury instruction on the exemption from firearms possession laws for a person who voluntarily surrenders a weapon to the police.... There was no reasonable view of the evidence that defendant's conduct satisfied the requirements of that statute...." It further found Debellis had not shown prejudice because his "actions and statements before and during his arrest, including denying having a weapon, were utterly incompatible with his incredible testimony that he happened to be stopped by the police while driving to a police station to surrender his pistol as part of a buyback program." The court also rejected Debellis's claim that his counsel created a conflict of interest by taking an adverse position on his pro se motion, saying the attorney made "a brief and conclusory remark that he believed that he had provided effective assistance. Counsel never went beyond 'defending his performance'...." It said the trial court "'readily recognized the motion's lack of merit, independently of anything said by counsel'...."

Debellis argues he was deprived of effective assistance of counsel because his attorney "conceded weapon possession before the jury but, due to ignorance of the law, failed to present the only applicable defense: voluntary surrender of a firearm under Penal Law § 265.20(a)(1)(f). Instead, counsel went all-in on a baseless temporary-and-innocent possession defense that, as the court correctly held, did not apply as a matter of law. Defense counsel's prejudicial course of conduct effectively directed a guilty verdict against his own client." He also contends his attorney created a conflict by taking an adverse position on the merits of his pro se motion when counsel said, "I think I was very effective."

For appellant Debellis: Matthew Bova, Manhattan (212) 577-2523
For respondent: Bronx Assistant District Attorney R. Grace Phillips (718) 664-2316

State of New York
Court of Appeals

To be argued Thursday, March 16, 2023

No. 28 People v Thomas P. Perdue

Christian Cirilla was shot in the leg as he argued with a woman in the front yard of her Rochester apartment building in 2017. Thomas Perdue was arrested and charged with the crime three weeks later. Only two eyewitnesses identified Perdue as the shooter at his trial five months later. One was Cirilla and the other was a woman who lived in an upstairs apartment of the same building who said she saw the shooting from her window. She called 911 to report the incident that night and said she could identify the shooter, but the police did not conduct an identification procedure – such as a lineup or photo array – with her before the trial. The prosecutor was unaware the witness would identify Perdue until she was on the witness stand, described the shooter, and said she would recognize him if she saw him again. Defense counsel objected and the court held a bench conference. Defense counsel argued that a first-time in-court identification would be unduly suggestive because Perdue would be the only person sitting with her at the defense table. The court, after hearing that no pretrial identification was made, said "that's not really good police work." But the court overruled the objection and allowed the witness to identify Perdue in front of the jury, saying, "She's subject to cross-examination." Perdue was convicted of second-degree assault, two counts of second-degree criminal possession of a weapon, and was sentenced to 12 years in prison.

The Appellate Division, Fourth Department affirmed, saying the unexpected first-time identification at trial did not violate Perdue's right to due process. "Where, as here, 'there has been no pretrial identification procedure [with respect to a witness] and the defendant is identified in court for the first time [by that witness], the defendant is not [thereby] deprived of a fair trial because [the defendant] is able to explore weaknesses and suggestiveness of the identification in front of the jury'" through cross-examination, it said.

Perdue argues that "in-court identifications where the defendant is seated next to counsel at defense table are tantamount to showups, are inherently suggestive and create a substantial likelihood that they are unreliable;" and that the "in-court identification made five months after the shooting" in this case "likely contributed to a mistaken identification which resulted in a wrongful conviction." He says other courts have used pretrial procedures, such as lineups, to test a witness's reliability "when the defense is notified that a witness will make a first-time in-court identification in order to protect the defendant's right to a fair trial, but because notice that the eyewitness would do so at Thomas Perdue's trial was not provided until she was already on the witness stand, her testimony as to identification should have been precluded."

For appellant Perdue: Carolyn Walther, Rochester (585) 753-3480
For respondent: Monroe County Assistant District Attorney Kaylan C. Porter (585) 753-4674