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, November 14, 2012 (noon)

No. 222 Mac Naughton v Warren County

W. James and Andrea Mac Naughton bought a vacant parcel in the Town of Chester, Warren County, for $29,000 in 1988. On the deed, they listed their home address in South Orange, New Jersey, and the Town sent their annual property tax bills to South Orange. In 1993, they moved to nearby Millburn, New Jersey, but did not notify the Town of Chester. Their 1994 tax bill was sent to South Orange and was forwarded by the Postal Service to their new Millburn address. The Mac Naughtons paid the bill and they testified in this action that they also notified the Town of their new address orally and in writing, but Warren County denies having any record of the new address and the tax bills continued to be mailed to South Orange. The mail forwarding order expired in late 1994, so the Mac Naughtons did not receive the bills and the taxes went unpaid.

In January 1998, Warren County sent a letter by first class mail to the Mac Naughtons' former South Orange address stating that it would commence foreclosure proceedings if the taxes were not paid and explaining their right to redeem the property. The letter was returned as undeliverable. The County commenced a foreclosure proceeding in April 1998, sent a copy of the petition to the South Orange address by certified mail, and published a notice of the proceeding in a local newspaper. After the petition was returned as undeliverable and the Mac Naughton's failed to appear in the proceeding, the County was awarded a default judgment. In December 1999, Charles, John and Tim Asendorf bought the property at auction for $3,700.

The Mac Naughtons subsequently brought this action against the County and the Asendorfs under RPAPL article 15 for a declaration that they are owners of the property, arguing they were not given constitutionally adequate notice of the tax foreclosure proceeding. Supreme Court granted the County's motion for summary judgment dismissing the complaint. It said the County met its obligation "to search only public records when the statutorily required mailings were returned unclaimed and the County established as a matter of law that plaintiffs' current mailing address was not stated anywhere in the public records.... [T]he County was not required to search the Internet or other similar sources in an effort to locate plaintiffs."

The Appellate Division, Third Department affirmed, saying the County "complied with RPTL requirements in effect when this tax foreclosure proceeding was commenced" by publishing notice of the proceeding in a newspaper and mailing a copy of the petition to the owners at the address listed on their deed. "Moreover, since 'there is no evidence that a [further] search of the public record would have yielded any further information,' due process was provided by the County in the efforts it took to notify plaintiffs of this proceeding...." It said the Mac Naughtons "have not provided any documentation" for their claim that they notified the Town of their new address.

The Mac Naughtons argue that they "were denied equal protection of the law when Warren County failed to personally serve them in the same manner as [County] residents," and that they "were denied due process when the only 'notice' Warren County provided was a search of Warren County records." They say the lower courts made adverse factual findings "based on guesses, speculation and the affidavit of an attorney with no personal knowledge."

For appellants Mac Naughton: W. James Mac Naughton (*pro se*), Newton, NJ (732) 634-3700
For respondent Warren County: Elena DeFio Kean, Albany (518) 452-1800
For respondents Asendorf: John M. Silvestri, Chestertown (518) 494-3404

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No. 87 Matter of EchoStar Satellite Corporation v Tax Appeals Tribunal

EchoStar Satellite Corporation, which provides satellite television service under the name "Dish Network," is challenging a determination of the State Tax Appeals Tribunal that it must pay sales and use tax on its purchases of satellite dishes and other equipment needed for its customers to receive the programming. EchoStar supplied the equipment to customers for a $5 monthly fee that was bundled into its programming charge and it required them to return the equipment when they canceled the Dish service. The equipment could not be used to receive any other company's signal. EchoStar did not pay sales tax on its equipment purchases, but instead collected about $2 million in sales taxes from its customers based on the monthly equipment fee from March 2000 through February 2004. After an audit, the Division of Taxation concluded that EchoStar was required to pay the tax, not its customers, and it assessed the company nearly $1.8 million in sales taxes for the same period. On administrative appeal, EchoStar argued its equipment purchases were exempt from sales tax under Tax Law § 1101(b)(4)(i)(A) as purchases "for resale as such," which includes rentals.

The Tax Appeals Tribunal sustained the Division's determination, finding EchoStars's equipment purchases were not exempt because they "were purely incidental to [EchoStar's] primary business of selling satellite television programming services to its customers." It said EchoStar "is not in the business of selling the subject parts and equipment; it is in the business of selling its satellite television programming service."

The Appellate Division, Third Department affirmed. It said "an item is purchased for resale within the meaning of the statute when the purchaser 'acquires [the] item for the purpose of sale or rental,'" citing M/O Albany Calcium Light Co. v State Tax Commn. (44 NY2d at 987). It said, "In our view, the Tribunal rationally determined that [EchoStar] did not acquire the equipment for the purpose of rental to its customers. Rather..., [its] primary purpose is to provide satellite television service and it used the equipment to supply that service to its customers."

EchoStar, citing Burger King v State Tax Comm. (51 NY2d 614), argues,"The proper test for 'resale as such' treatment is whether the property purchased is a 'critical element' of the final product sold to the customer, but not 'inseparably connected' with the sale or service that the purchaser furnishes to its customer." Contending its purchases were exempt under that test, it says the equipment it "leased to customers was a critical element of its satellite programming services, but was not 'inseparably connected' with those services because: (i) the equipment retained its physical form when leased to customers, and (ii) Appellant's customers paid a separate rental fee for the equipment pursuant to written lease agreements."

For appellant EchoStar: Paul H. Frankel: Manhattan (212) 468-8000
For respondent Tax Commissioner: Asst. Solicitor General Kathleen M. Arnold (518) 474-3654

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To be argued Wednesday, November 14, 2012 (noon)

No. 223 People v Andrew Spencer

In August 2006, Andrew Spencer got into an altercation with a man named Kendel on the street in front of Police Officer Malcolm Palmer's home in Queens. Officer Palmer, who was off-duty, told other officers that when he went out to the street, Spencer punched him in the face and brandished a gun at him. Palmer subdued Spencer and held him until the other officers arrived to arrest him. At trial, Spencer testified that it was Kendel who had the gun and that Officer Palmer falsely implicated him. Spencer sought to introduce evidence that the officer had a motive to fabricate because he was friendly with Kendel, allowed him to sell drugs in front of his home, and wanted to protect him. Supreme Court precluded the testimony as irrelevant and collateral. Spencer was convicted of second-degree criminal possession of a weapon and lesser charges and was sentenced to 15 years in prison.

The Appellate Division, Second Department affirmed, saying, "[D]efense counsel stated in chambers that the defendant would testify as to his personal observations of [Officer Palmer] drag racing cars with [Kendel], and [Kendel] dealing drugs in front of the complainant's home. Upon that offer of proof, a good faith basis establishing the complainant's motive to fabricate existed.... Contrary to the trial court's conclusion, this proof should not have been excluded on the basis that it was collateral, as such exclusion goes directly to the defendant's constitutional right to present a defense...." However, the error was harmless, it said. "The complainant's testimony was supported by other witnesses who observed the incident, making the evidence of guilt overwhelming...." The court also rejected Spencer's claim that the trial court showed bias against the defense. "Although the trial court sustained a number of objections, most of the objections were properly sustained, and the 'trial court possesses the discretion to become involved in witness examination to the extent necessary to clarify issues and proof, and to ensure the orderly and expeditious progress of the trial'...," it said. "However, we caution the trial court about excessively interfering in the course of the trial, as 'there may be greater risk of prejudice from overintervention than from underintervention'...."

Spencer argues that "the trial judge deprived Mr. Spencer of his due process right to present a defense and his Sixth Amendment right of confrontation when he precluded the defense from presenting evidence that the key prosecution witness had a motive to frame Mr. Spencer for the offense charged." He says the other witnesses who supported Palmer's testimony were friends or relatives of Palmer, and regardless of how many there were, "Mr. Spencer had the right to have his version of events evaluated by the jurors who were chosen for that purpose." He also argues the trial court "denied Mr. Spencer his due process right to a fair trial by displaying an antagonistic attitude towards his counsel and disparaging the manner in which she conducted herself in the course of her representation."

For appellant Spencer: Randall D. Unger, Bayside (718) 279-4500
For respondent: Queens Assistant District Attorney Sharon Y. Brodt (718) 286-7033

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To be argued Wednesday, November 14, 2012 (noon)

No. 224 Guryev v Tomchinsky

Gregory and Marina Tomchinsky own their apartment in 200 Riverside Boulevard at Trump Place Condominium in Manhattan. In 2007, they obtained approval from the condominium's Board of Managers to renovate their unit after signing an alteration agreement, which gave the condominium the authority to reject their choice of contractor, to inspect the work, and to limit the hours that work could be performed, among other things. The Tomchinskys hired YZ Remodeling, Inc. to carry out the renovation. Aleksey Guryev, an employee of YZ Remodeling, was injured while using a nail gun to install base moldings in the apartment when a nail ricocheted and struck his eye.

Guryev brought this personal injury action against the Condominium, the Board of Managers and the managing agent, Trump Corporation (collectively the Condominium defendants), among other parties. His suit included a claim for violation of Labor Law § 241(6) based on Industrial Code (12 NYCRR) § 23-1.8(a), which requires that eye protection be furnished to employees "engaged in any ... operation which may endanger the eyes." Labor Law § 241(6) requires "contractors and owners and their agents" to provide reasonable protection and safety for workers on construction sites. Supreme Court denied all motions for summary judgment, finding there were unresolved questions of fact.

The Appellate Division, Second Department reversed and granted the Condominium defendants' motion to dismiss the claims against them, ruling they were not owners or agents within the meaning of Labor Law § 241. "The Condominium defendants were not entities which 'ha[d] an interest in the property and who fulfilled the role of owner by contracting to have work performed for [their] benefit'...," it said. "The Condominium defendants did not determine which contractors to hire, and were not in a position to control the renovation work or to insist that proper safety practices were followed. None of the opposing parties raised a triable issue of fact as to whether the Condominium defendants were owners or agents of the owner on the project, or controlled or supervised the work."

Guryev argues that the Condominium defendants "are 'owners' or 'agents of owners' pursuant to the Labor Law," saying the Condominium "is the landowner pursuant to the Condominium Law" and the Board of Managers and Trump Corporation "are the agents of the owner." He also argues that the Condominium defendants "'acted in the capacity of an owner' for the purposes of the Labor Law" and that the Appellate Division's ruling "thwarts the purpose of the Labor Law" by exempting condominiums from responsibility for safety practices on construction sites.

For appellant Guryev: Raymond J. Mollica, Brooklyn (718) 996-5600
For respondent Condominium defendants: B. Jennifer Jaffee, Manhattan (212) 225-7700