

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, September 12, 2012

No. 175 Knapp v Hughes

This case stems from a dispute over title to 12 acres of land beneath Perch Pond in the Town of Colesville, Broome County, and with the title, the right to swim, fish and otherwise make use of the pond. In the early 1960s, all of the property involved in this case, including the 12 acres underlying the western half of the pond, belonged to Charles Juriga. In 1968, Juriga sold more than 100 acres abutting the pond's west side to Anthony Furlano. Furlano's deed stated that the parcel bordered "along the edge of Perch Pond" and, in a separate clause, said Juriga "further conveys any rights which he may have in and to the lands under the waters of Perch Pond which bound and abut onto the lands hereinabove conveyed." In 1973, Furlano sold most of this property, including 1,500 feet of lakefront, to two partners doing business as Robil. The "Robil deed," which is the focus of this case, described the boundaries as running "to a point at the waters edge" and "along the waters edge of Perch Pond." It used the same language to describe the small parcel reserved to Furlano. Plaintiffs James and Linda Knapp, who subsequently purchased the Furlano parcel, trace their deed to the 1973 Robil deed, as do the ten defendants who own the adjoining waterfront parcels.

In 2003, the Knapps brought this action under Real Property Actions and Proceedings Law (RPAPL) article 15, claiming they own sole title to the land beneath the pond and, thus, have the exclusive right to use the pond. The defendants counterclaimed, asserting that they own the pond bottom abutting their respective properties

Supreme Court granted summary judgment in favor of the defendants, saying, "[T]here is a presumption that lands under waters of ponds belong to the owners of the adjoining lands and that a transfer of land adjacent to a pond conveys title to that abutting landowner running from shore line to center of the pond as an incident of ownership.... This presumption may only be rebutted by express reservation...." It said the use of the words "waters edge" in the 1973 Robil deed "clearly establishes a description running to the water line and, in the absence of any express reservation, thereby result[ed] in a transfer of pond rights." It said the provision of the Robil deed reserving Furlano's parcel "reserved those same pond rights..., but no more."

The Appellate Division, Third Department modified by reversing the order granting summary judgment to the defendants and partially granting the Knapps' motion. It held that the defendants' deeds, as traced to the Robil deed, "did not convey littoral rights" to the pond. The court acknowledged the presumption that land beneath a pond belongs to the adjoining landowners, "unless otherwise specifically and clearly restricted." However, it said "a boundary description which runs the title along dry land, such as the bank or the shore, constitutes such a restriction and excludes or reserves title to the body of water.... Here, the description contained in all the conveyances emanating from the 1973 Robil deed clearly set the boundaries at the edge of the pond, a phrase which touches the land and not the water...."

For appellant defendants Hughes et al: Brian Shoot, Manhattan (212) 732-9000

For respondent Knapps: Patrick J. Kilker, Binghamton (607) 238-1176

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No. 176 Whitebox Concentrated Convertible Arbitrage Partners, L.P. v Superior Well Services, Inc.

The plaintiffs, Whitebox Concentrated Convertible Arbitrage Partners, L.P. and 14 other investors, own 54,000 shares of preferred stock issued by Superior Well Services, Inc. in November 2008. The certificate of designations for the stock, a contract governed by Delaware law, provides that in the event of a "fundamental change," Superior Well must make an offer to repurchase the preferred stock at a price of \$1000 per share plus accrued dividends. Its definition of "fundamental change" includes, in clause (i), the acquisition by a person or group of more than 50 percent of the company's common stock, "provided that this clause ... shall not apply to a transaction covered in clause (iii) below, including any exception thereto." Clause (iii) provides that fundamental change occurs when Superior Well merges or consolidates with another entity, "other than a merger, consolidation or other transaction in which [Superior Well] is the surviving entity." In August 2009, Superior Well and Nabors Industries, Ltd. announced a merger and acquisition agreement under which Nabors would make a tender offer for Superior Well's common stock through Diamond Acquisition Corp., a subsidiary Nabors had created two weeks earlier. Once Diamond acquired more than 90 percent of the common stock, it merged into Superior Well and ceased to exist. Superior Well, which had been a publicly traded company, emerged as a wholly-owned subsidiary of Nabors.

The preferred stock investors brought this action against Superior Well, seeking a declaration that Nabors' acquisition of Superior Well was a "fundamental change" under the contract and, therefore, it was required to make an offer to repurchase their preferred stock. Superior Well moved to dismiss, arguing the transaction was not a fundamental change because it involved a merger with Diamond that left Superior Well as "the surviving entity."

Supreme Court denied the motion to dismiss in an oral ruling, observing that "the net result of the transaction ... was that Nabors ends up owning one hundred percent of Superior." It said the defense would argue on appeal "that no matter what the ultimate transaction was[,] because there was a merger with Diamond that they get an out of jail free card."

The Appellate Division, First Department reversed and dismissed the suit, saying, "Defendant established by documentary evidence that the acquisition of more than 50% of its stock and the subsequent merger with Diamond ... did not constitute a 'Fundamental Change' as defined in the certificate of designations.... The tender offer for common shares and defendant's subsequent merger into Diamond, with defendant being the surviving entity, were two consecutive steps in a single, integrated transaction...."

The investors argue the contract's use of the term "transaction" is ambiguous and the Appellate Division "failed to give [them] the benefit of every doubt as required on a motion under CPLR 3211." Even if this case involves a "transaction" under clause (iii), they say the acquisition of Superior was still a "fundamental change" because Nabors emerged as the owner of all of its common stock and Superior was not the sole "surviving entity."

For appellant investors Whitebox et al: John B. Orenstein, Minneapolis, Minn. (612) 436-9800
For respondent Superior Well: Bruce D. Angiolillo, Manhattan (212) 455-2000

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No. 177 Stephenson v City of New York

Jayvaun Stephenson was a 13-year-old Bronx middle school student on October 22, 2003, when he had a fistfight with fellow student Lorenzo McDonald on school grounds. School officials suspended Stephenson for one day and suspended McDonald, who started the fight, for one to two weeks. Neither the school nor Stephenson informed his mother of the incident. Two days later, McDonald and three others assaulted Stephenson two blocks from the school. Two accomplices held his arms while McDonald and the third accomplice repeatedly punched him in the face, fracturing his jaw in two places.

Stephenson's mother brought this action on his behalf against New York City and its Board of Education, alleging that the October 24 assault was a foreseeable continuation of the October 22 fistfight and that school officials were negligent in failing to notify his mother of the initial fight or take other action to prevent the October 24 assault. Supreme Court sanctioned the City for failure to comply with discovery orders, including its failure to provide investigative reports on either incident or McDonald's records, by ruling that "the issue of prior notice to the defendants of the October 24, 2003 incident is resolved in plaintiff's favor and defendants are precluded from raising any issue with respect thereto."

Supreme Court granted Stephenson's motion for summary judgement on liability, saying, "The issue of prior notice has been resolved in plaintiff's favor.... Therefore, defendants were on notice of the previous assault, the threat to plaintiff, as well as the assailant's history of violence" and "it was foreseeable that the assailant would continue the assault and even escalate it." It said, "Normally, where a student is injured off school grounds there can be no breach of duty.... However, defendant breached a duty it had to plaintiff inside the school, during school hours, by never notifying plaintiff's parent of the October 22 incident."

The Appellate Division, First Department reversed and dismissed the suit in a 3-2 decision, saying, "[T]he mother's claim that she could have prevented the assault is entirely speculative. McDonald could have attacked Stephenson at any time, possibly weeks later, or at any place, and the mother's presence would not necessarily have been a deterrent to what after all was a targeted attack." The court found it is "unreasonable to impose a duty on the school to notify a parent about a fight between two students when the school has already affirmatively addressed the misconduct." It said, "Although here the first fight occurred on school grounds..., the risk of danger arose from potential conduct away from school by a third party, not from anything the school did or failed to do."

The dissenters said, "When a student assaults another student during school hours and on school property, and then assaults the same student again two days later off school grounds, the school may, in appropriate circumstances, be liable for the victim's injuries arising from the second assault, if the second incident was foreseeable and the school failed to take appropriate action to prevent it." They said, "[T]he lack of a specific statutory duty requiring schools to inform parents about acts of violence against students does not preclude a common-law obligation. Schools' undisputed common-law duty, arising because they stand in loco parentis, already requires them to take such affirmative steps as a reasonably prudent parent ... would take to protect students in their care."

For appellant Stephenson et al: Jonathan M. Cooper, Cedarhurst (516) 791-5700

For respondent City et al: Assistant Corporation Counsel Susan B. Eisner (212) 788-6775

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No. 178 Matter of County of Erie v Civil Service Employees Association, Local 815

In 2009, Civil Service Employees Association, Local 815 (CSEA) filed a class action grievance on behalf of election clerks at the Erie County Board of Elections alleging that the schedules for clerks working on school board elections were changed to avoid overtime pay in violation of the collective bargaining agreement (CBA). The Board of Elections denied the grievance, and CSEA notified Erie County that it intended to take the grievance to arbitration.

The County brought this special proceeding to permanently stay arbitration and asserted, among other things, that the election clerks were not covered by its contract with CSEA. It cited Election Law § 3-300, which states, "Every board of elections shall appoint, and at its pleasure remove, clerks, voting machine technicians, custodians and other employees, fix their number, prescribe their duties, fix their titles and rank and establish their salaries within the amounts appropriated therefor by the local legislative body and shall secure in the appointment of employees of the board of elections equal representation of the major political parties...."

Supreme Court granted the County's application to stay arbitration. "New York State Election Law gives the Board of Elections the power to appoint and remove employees at its pleasure. It also has the power to fix rules, prescribe duties, determine salaries, etc. In other words, the employees serve 'at will'.... The employees do not work for the petitioner county." It also said "the Board of Elections is not a signatory to the parties[] collective bargaining agreement and therefore not subject to its terms. The Board played no part in the collective bargaining process. The county cannot usurp the authority of the Board of Elections by the simple inclusion [of] election job titles in the parties' agreement." The Appellate Division, Fourth Department affirmed for the reasons stated by Supreme Court.

CSEA, which has represented election clerks in Erie County since 1971, argues that section 3-300 gives boards of elections broad authority to appoint and remove employees, but nothing in it prohibits collective bargaining for election workers on "topics outside of those specifically enumerated in the statute." It says the lower courts' interpretation "is in direct conflict with New York's strong policy of extending coverage under the Taylor Law to all public employees. CSEA also argues that even if the Board of Elections is not bound by the CBA, the County is bound by its contract with CSEA to pay the agreed-to overtime to election clerks. "The County should not be allowed to successfully argue that a statutory provision protects them from providing bargained-for benefits to Election Clerks, when the County freely and knowingly chose to accept the terms of a CBA which explicitly included Election Clerks," it says.

For appellant CSEA: Diane M. Perri Roberts, Buffalo (716) 849-1333
For respondent Erie County: R. Scott DeLuca, Getzville (716) 568-7325