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 Tuesday, March 25, 2014

No. 71 Golden v Citibank, N.A.

The issue here is whether Citibank -- which issued a $300,000 cashier's check payable to "Richard Golden as attorney" in December 2009 -- must honor the cashier's check in the absence of fraud, or may it refuse payment on a showing that it received no consideration for issuing the check and that the party demanding payment, Golden, was not a holder in due course.

The cashier's check was obtained from Citibank by XOX Solutions Inc., and it was to be drawn upon the proceeds of a $335,600 check that XOX had deposited in its account at Citibank. The next day, Golden deposited the cashier's check into his attorney escrow account at JP Morgan Chase Bank, to be held for the benefit of his client, James Tilton. Golden also drew a $102,083 check at Tilton's request to satisfy an overdue mortgage. At about the same time, XOX's $335,600 check was dishonored due to an improper endorsement, and Citibank stopped payment on the $300,000 cashier's check that was issued to Golden. As a result, his $102,083 check for the mortgage payment was returned for insufficient funds in his escrow account, which triggered an investigation by the attorney grievance committee. Six days later, XOX's $335,600 check was redeposited with proper endorsement, but Citibank says an XOX official made other arrangements to pay Golden's client and did not ask it to issue another cashier's check to him.

Golden brought this action against Citibank to compel payment of the $300,000 cashier's check, among other things. He argued that Citibank could not stop payment on the check in the absence of fraud and that its only remedy was to recover the funds from XOX. Citibank argued it properly stopped payment because it received no consideration from XOX for issuing the check and because the payee, Golden, had given no value for it and, thus, was not a holder in due course. Supreme Court denied Golden's motion for summary judgment as premature, since discovery had not been completed.

The Appellate Division, Second Department reversed and granted Golden's motion. "Once a bank issues a cashier's check, it cannot thereafter stop payment, even upon a request from its customer, unless there is evidence of fraud...," it said. Golden was entitled to summary judgment based on "evidence of the existence and due issuance of the cashier's check, that it was drawn by Citibank, on itself, and made payable to [Golden], and that the check was deposited into his Chase attorney escrow account, but that it ultimately was not paid to him because Citibank improperly issued a stop payment order.... In opposition, Citibank did not submit any evidence that the check was fraudulently issued or obtained...."

Citibank argues, "It is well established both in New York and other jurisdictions that a bank has the legal right to stop payment on a cashier's check when there has been a failure of consideration to the bank for the issuance of the cashier's check, and the party seeking the proceeds of such check is not a holder in due course because he gave no value for it. This well-established defense to payment was recognized by the Third Department in" Gates v Manufacturers Hanover Trust Co. (98 AD2d 829 [1983]), which "is in accord with case law from other jurisdictions outside of New York."

For appellant Citibank: Barry J. Glickman, Manhattan (212) 223-0400
For respondent Golden: Richard N. Golden (pro se), Forest Hills (718) 261-2600

State of New York Court of Appeals

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To be argued Tuesday, March 25, 2014

No. 72 People v Raphael Golb

Raphael Golb, a lawyer and writer with a doctorate in comparative literature, was accused of impersonating and harassing scholars in an academic dispute over the origin of the Dead Sea Scrolls that he waged over the Internet from 2006 to 2009, when he was arrested at his Greenwich Village apartment. His father, Norman Golb, a University of Chicago professor and expert on the ancient scrolls, espoused a theory that the texts had been gathered from libraries in Jerusalem around 70 A.D. and hidden in caves near Qumran to protect them during a Roman invasion. This challenged the more widely held theory that the scrolls were produced by a Jewish sect called the Essenes. Using a wide array of pseudonyms, Raphael Golb produced a stream of online comments, blogs and emails to support his father's views and undermine his detractors. He also sent emails in the names of rival scholars, including one purporting to be sent from a New York University professor to his colleagues and students in which he appeared to admit plagiarizing ideas of Golb's father 15 years earlier.

Golb was convicted of two felony counts of second-degree identity theft and multiple misdemeanor counts of criminal impersonation, forgery, aggravated harassment, and unauthorized use of a computer. He was sentenced to six months in jail.

The Appellate Division, First Department vacated one felony identity theft conviction for lack of proof of intent to defraud anyone of property in excess of $1,000 and otherwise affirmed. It said the evidence established that Golb intended the recipients of his deceptive emails to believe "the purported authors were the actual authors" and "intended that the recipients' reliance on this deception would cause harm to the purported authors and benefits to defendant or his father.... The [trial] court was under no obligation to limit the definitions of 'injure' or 'defraud' -- terms used in the forgery and criminal impersonation statutes -- to tangible harms such as financial harm.... [T]he evidence established that defendant intended harm that fell within the plain meaning of the term 'injure,' and that was not protected by the First Amendment, including damage to the careers and livelihoods of the scholars he impersonated.... Defendant was not prosecuted for the content of any of the emails, but only for giving the false impression that his victims were the actual authors of the emails."

Golb argues the trial court's failure to limit the criminal statutes to tangible injuries and benefits rendered them void for vagueness and violated his free speech rights. "The trial court's definition of the terms 'benefit,' 'harm,' and 'fraud' required the jury to find Raphael Golb guilty precisely because his online impersonations called attention to, condemned, and mocked alleged wrongdoing on the part of the Scroll monopolists and exhibitors..., thereby 'benefitting' Raphael Golb's view that these people were perpetuating a fraud on the American public and the academic community, and 'harming' those whom he perceived to be mendacious and engaged in unethical conduct. These types of benefits and harms are fully protected by the First Amendment; they are not legally cognizable in the criminal justice system."

For appellant Golb: Ronald L. Kuby, Manhattan (212) 529-0223
For respondent: Manhattan Assistant District Attorney Vincent Rivellese (212) 335-9000

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To be argued Wednesday, March 26, 2014

No. 64 Clemente Bros. Contracting Corp. v Hafner-Milazzo

Clemente Bros. Contracting Corp. opened three accounts in 2007 at North Fork Bank, which later merged with Capital One. To meet the requirements of North Fork's rules and as a condition for opening the accounts, Clemente Bros. passed a corporate resolution providing that the bank would not be liable for payments made on altered or forged checks unless Clemente Bros. notified it of the errors within 14 days of receiving its monthly account statements. In 2009, Clemente Bros. obtained a $200,000 loan and $1 million line of credit from Capital One. The loans were personally guaranteed by Jeffrey Clemente, the president of Clemente Bros., and the promissory notes permitted Capital One to demand immediate payment of the unpaid balances based on, among other things, "an event which, in the judgment of the Bank, adversely affects the [borrower's] ... ability to repay." In February 2010, Clemente Bros. notified Capital One that its bookkeeper, Aprile Hafner-Milazzo, had been embezzling funds by forging Clemente's signature to draw on the line of credit and forging his endorsement on checks to take those funds from the company's operating account. Clemente Bros. alleged she took about $386,000 from January 2008 through December 2009. Capital One demanded full payment of both loans. Clemente Bros. and Clemente brought this action against Capital One and Hafner-Milazzo to recover its losses from the forgeries and to prevent the bank from enforcing any claims based on the loans.

Supreme Court granted Capital One's motion for summary judgment, dismissed the complaint against it and awarded it $1,146,262.90 on its counterclaims for payment of the loans. UCC 4-406(4) places a one-year limit on the right of a customer to recover from a bank for payment on a forged check, measured from the date the account statement and canceled check are made available to the customer. The court found that Clemente Bros. and the bank had, by agreement when the account was opened, reduced the one-year statutory period to 14 days, and that Clemente Bros. failed to report any of the forgeries within that period. It also ruled Capital One had established its entitlement to payment of the loans.

The Appellate Division, Second Department affirmed, saying banks and their customers "may shorten the one-year notice period by agreement.... Here, the parties, by agreement, shortened the one-year period to 14 days."

Clemente Bros. and Clemente argue, in part, that the lower court rulings conflict with rulings of the Third and Fourth Departments and with UCC 4-103, which states, "The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care...." They claim Capital One did not exercise ordinary care or comply with its own procedures, which made possible the bookkeeper's thefts. They also urge this Court to rule, on policy grounds, that parties may not reduce the statutory one-year limit on reporting forgeries to 14 days.

For appellants Clemente Contracting et al: Matthew Dollinger, Carle Place (516) 747-1010
For respondent Capital One: Mara B. Levin, Manhattan (212) 592-1400