State of New York
Court of Appeals

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To be argued Wednesday, May 7, 2014

No. 111 People v Jamel Walston

Jamel Walston was charged with murder for the fatal shooting of Bertrand Jocelyn outside the Sumner Houses in Brooklyn in July 2008. In statements to the police, Walston said a friend was in a fistfight with Jocelyn and when Jocelyn gained the upper hand and began beating his friend, Walston fired a revolver at Jocelyn's legs at a distance of about 15 feet. Jocelyn was struck five times in the head, torso and thigh. Walston denied that he intended to kill Jocelyn and said he meant to shoot him only in the legs.

At trial, Supreme Court granted defense counsel's request to submit first-degree manslaughter to the jury as a lesser included offense of second-degree murder. During deliberations, the jury sent a note asking for a readback: "Power Point -- Judges directions on Manslaughter/Murder in the Second Degree (Intent)". The court told the attorneys, "They want the Judge's directions on manslaughter and murder in the second degree," but the court did not mention the word "intent." The court then re-read its instructions on murder and manslaughter. In response to a subsequent note from the jury, the court gave instructions on intent. The jury acquitted Walston of murder and convicted him of first-degree manslaughter and second-degree criminal possession of a weapon. He was sentenced to 20 years in prison.

The Appellate Division, Second Department affirmed, finding Walston did not preserve his claim that the trial court failed to afford him meaningful notice of a jury note and committed a mode of proceedings error under People v O'Rama (78 NY2d 270) by paraphrasing the jury's note without mentioning that it specified "intent." The Appellate Division also found that his attorney's failure to request submission of second-degree manslaughter did not deprive him of effective assistance of counsel "because there is no reasonable view of the evidence that would have supported a finding that the defendant acted recklessly in repeatedly shooting the victim."

Walston argues, "The court's failure to reveal the exact contents of the note deprived appellant of meaningful notice under [CPL] 310.30, prevented defense counsel from participating meaningfully in this critical stage of the trial, violated his right to due process, and constituted a mode of proceedings error." He says, "Had counsel known the full contents of the note, he could have provided input on an appropriate response..., for example, suggesting that the court read the detailed intent instruction it had given during the final charge." He also contends he was deprived of effective assistance of counsel.

The prosecution argues, "[I]n light of the presumption of regularity, it is presumed that the trial court complied with the requirements of [CPL] 310.30 by showing the note to defense counsel, and the record does not contain substantial evidence to overcome that presumption. Thus, the record does not show that the court did, in fact, fail to disclose to defense counsel the exact content of the jury's note."

For appellant Walston: Kendra L. Hutchinson, Manhattan (212) 693-0085
For respondent: Brooklyn Assistant District Attorney Rhea A. Grob (718) 250-2480

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No. 112 Quadrant Structured Products Co., Ltd. v Vertin

This Delaware case stems from a dispute among investors in Athilon Capital Corp. (Athilon), a Delaware corporation formed in 2004 to sell credit default swaps to large financial institutions. To finance its operations, Athilon raised $600 million by issuing securities covered by two identical trust indentures governed by New York law, one created in 2004 between Athilon and Deutsche Bank Trust Company Americas as indenture trustee, and one created in 2005 between Athilon and The Bank of New York as indenture trustee. The securities included $350 million in senior subordinated notes, $200 million in subordinated notes, and $50 million in junior notes. After the financial crisis of 2008 disrupted Athilon's business, EBF & Associates, LP acquired a large position in Athilon's junior notes at a significant discount. In 2010, EBF acquired all of Athilon's equity and replaced its board of directors. Quadrant Structured Products Co., Ltd. acquired a share of Athilon's senior and subordinated notes in 2011, then brought this action in the Delaware Court of Chancery against Athilon and its board of directors, EBF and an EBF affiliate, Athilon Structured Investment Advisors, alleging that Athilon's board, installed by EBF, is pursuing risky strategies designed to benefit EBF and its affiliates at the expense of other classes of note holders.

The defendants moved to dismiss on the ground Quadrant's claims are barred by the no-action clause in the trust indenture, which states, "No holder of any Security shall have any right by virtue or by availing of any provision of this Indenture to institute any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Indenture..., or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default," among other conditions. It is undisputed that Quadrant did not comply with those conditions.

The Court of Chancery dismissed the suit. On appeal, the Delaware Supreme Court remanded the case with instructions to analyze "the significance (if any) under New York law of the differences between the no-action clauses" that bar remedies "with respect to this Indenture or the Securities," and the no-action clause in this case, which bars remedies "with respect to this Indenture," but makes no reference to remedies pertaining to securities. The Court of Chancery concluded that the Athilon no-action clause bars enforcement only of contractual claims arising under the indenture, and that Quadrant's claims as a note holder should be reinstated.

In a certified question, the Delaware Supreme Court is asking the New York Court of Appeals to determine "whether, under New York law, the absence of any reference in the no-action clause to 'the Securities' precludes enforcement only of contractual claims arising under the Indenture, or whether the clause also precludes enforcement of all common law and statutory claims that security holders as a group may have." It also asks whether the Court of Chancery's conclusion in its Report on Remand is a correct application of New York law.

For appellant Quadrant: Sabin Willett, Boston, MA (617) 951-8000
For respondents Athilon et al: Kathleen M. Sullivan, Manhattan (212) 849-7000

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No. 113 Hamilton v Miller
No. 114 Giles v Yi

Christopher Hamilton and Shawn Giles brought these actions seeking damages from landlords for injuries they allegedly sustained as a result of exposure to lead-based paint in apartments rented by their families in Rochester when they were children. The plaintiffs claimed they suffered neurological damage and related cognitive and behavioral problems, but disclosed no medical diagnoses linking their injuries to lead exposure. Prior to conducting independent medical examinations (IMEs) under CPLR 3121, six defendant landlords moved, pursuant to 22 NYCRR 202.17, to compel the plaintiffs to produce any medical reports diagnosing them with the alleged injuries and causally relating those injuries to lead exposure.

Supreme Court granted the defense motions, ordering the plaintiffs to produce medical reports diagnosing their injuries and linking them to lead, "or Plaintiff[s] shall be precluded from introducing any proof concerning injuries alleged to have been sustained." The court said it would be "fundamentally unfair and contrary to the spirit and intent of the medical report disclosure rules" in 22 NYCRR 202.17 "to force defendants to conduct IMEs in a vacuum." In Hamilton, it also rejected the plaintiff's request that it take judicial notice of 42 USC § 4851, the congressional findings underlying the Residential Lead-Based Paint Hazard Reduction Act of 1992, saying the statute did not apply to the issues in his case.

The Appellate Division, Fourth Department affirmed both orders. In a 4-1 ruling in Giles, it said Supreme Court "did not abuse its broad discretion" in ordering the plaintiff to produce a diagnosis linking his injuries to lead. "Although the dissent is correct that CPLR 3121 and 22 NYCRR 202.17 to not require the disclosure directed in this case, they likewise do not preclude"it, and the order is not "unduly burdensome." Where the records produced by a plaintiff "contain no proof of medical causation..., it is not an abuse of discretion for a trial court to determine that 'defendants should not be put to the time, expense and effort of [conducting an IME] without the benefit of [a] report [or reports] linking the symptoms or conditions of plaintiff to defendants' alleged negligence'...." It said, "[T]he purpose of CPLR 3121(a) is to afford the examining party the 'opportunity to present a competing assessment'" of the plaintiff's condition, "which presumes that the examining party has received from the plaintiff medical reports concerning the plaintiff's claimed injuries and theory of causation...."

The dissenter said the order "imposes unduly burdensome obligations not contemplated by 22 NYCRR 202.17.... [F]or plaintiff to succeed at trial, he will likely need to retain an expert to review his medical records and render the type of causation opinion contemplated by the majority. However, nothing in the language of 22 NYCRR 202.17 requires plaintiff to make such a disclosure, which is tantamount to an expert disclosure, at this early stage of litigation." The regulation "requires only the disclosure of 'medical reports of those medical providers who have previously treated or examined the party seeking recovery'.... In my view, an expert witness retained to render an opinion as to causation solely for purposes of litigation is not a 'medical provider' as that term is commonly understood...," and the regulation requires disclosure of "only the reports of medical providers who have 'previously treated or examine'" the plaintiff.

For appellants Hamilton and Giles: Mo Athari, Utica (315) 733-9820
For respondents Musinger and Singer (No. 113): Thomas E. Reidy, Rochester (585) 454-0700
For respondent Miller (No. 113): Stanley J. Sliwa (submitted), Buffalo (716) 853-2050
For respondent Breen (No. 114): Gary H. Abelson, Rochester (585) 295-4400
For respondent Yi (No. 114): William Wingertzahn, White Plains (914) 323-7000

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No. 115 Matter of O'Neill v Pfau

The president of the Suffolk County Court Employees Association, Thomas P. O'Neill, and four court officers assigned to Suffolk County courts, brought this article 78 proceeding to challenge aspects of a statewide reclassification of court security job titles adopted by then-Chief Administrative Judge Ann Pfau in 2004. In January 2004, the chief administrative judge (CAJ) abolished the position of Court Officer (JG-16) by administrative order and replaced it with the new position of NYS Court Officer (JG-17). In calculating the salaries of the affected court officers, the CAJ treated the new title as a reclassification pursuant to Judiciary Law § 37(5) instead of a reallocation pursuant to Judiciary Law § 37(3)(c). The petitioners allege this deprived them of a continuous service credit they would have received in a reallocation and that the CAJ's determination lacked a rational basis. On April 7, 2004, affected officers received their first paychecks reflecting the salary increase to JG-17, but no continuous service credit. In December 2004, the CAJ increased the pay grade of NYS Court Officers from JG-17 to JG-18, retroactive to January 2004. The petitioners allege that by making the increase in judicial grade retroactive rather than prospective, the CAJ arbitrarily and capriciously denied them a reallocation benefit to which they were entitled pursuant to Judiciary Law § 37(11).

Supreme Court ruled in favor of the court officers and remitted the matter to the CAJ to recalculate the salaries of affected officers assigned to Suffolk County. Regarding the January 2004 order, the court found the CAJ had no rational basis for treating the change in the court officer title as a reclassification instead of a reallocation of positions. "A comparison of the relevant title standards demonstrates that the Court Officers' duties and responsibilities are sufficiently similar so that a reclassification was not justified," it said. Regarding the December 2004 order, it said retroactive application of the pay grade increase "appears to be inconsistent with the intendment of the governing statutory language."

The Appellate Division, Second Department modified by deleting the provision directing the CAJ to recalculate the salaries of officers assigned to the new job title under the January 2004 order. It ruled the officers' claim for continuous service credit was time-barred. The officers "were affected by the January Order" when "they received their first paychecks reflecting the JG-17 pay rate -- but not the continuous service credit -- on April 7, 2004," and they did not file their suit until July 2005, after the four-month limitations period expired. It said, "Contrary to the petitioners' contention, the December Order did not 'constitute the sort of "fresh, complete and unlimited examination into the merits" as would suffice to revive the Statute of Limitations'...." As for the retroactive pay raise to JG-18 in the December Order, the court said, "[R]egardless of whether the [CAJ] has such authority, the petitioners came forward with evidence that they were financially harmed by the retroactive salary adjustment, and established that no rational basis for retroactivity appears in the record."

For appellants-respondents O'Neill et al: David Schlachter, Uniondale (516) 522-2540
For respondent-appellant Pfau (CAJ): Lee Alan Adlerstein, Manhattan (212) 428-2150