

# 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 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Tuesday, April 18, 2023

**No. 32 Lukasz Gottwald v Kesha Rose Sebert**

**No. 33 Lukasz Gottwald v Kesha Rose Sebert**

Likasz Gottwald, an established music producer using the name Dr. Luke, signed 18-year-old aspiring singer Kesha Rose Sebert to an exclusive recording contract in 2005, a contract that gave his KMI production company the rights to her first six albums. Kesha's debut album in 2010 and follow-up albums produced by Gottwald were successful, but disagreements arose in 2012 and 2013 and Kesha sought to end her agreement with him or to obtain better terms. When settlement negotiations failed to resolve the dispute, she filed a lawsuit against Gottwald in California in 2014 alleging, in part, that he had sexually abused her shortly after the contract was signed in 2005. She alleged that he took her to two parties where both were drinking and that he then drugged her, took her to his hotel, and raped her. On the same day Kesha filed the California suit, Gottwald filed this defamation action against her in New York, alleging that her statements were false and that she made them knowing they were false in an effort to pressure him into relinquishing his contractual rights. He also alleged that Kesha, her mother, her attorneys and her public relations firm orchestrated a press and social media campaign to publish "false and shocking" accusations against him to increase the pressure. He further alleged that in 2016, after this suit was filed, Kesha falsely claimed in a text conversation with Lady Gaga that Gottwald had raped her and another female artist and that Lady Gaga then spread negative messages about him in the press.

Supreme Court granted partial summary judgment to Gottwald, ruling that he is not a public figure and, thus, is not required to prove that Kesha made false statements with actual malice; and that her text message to Lady Gaga was defamatory per se. The court also ruled a jury must decide whether Kesha's statements relating to her California lawsuit are protected by the litigation privilege because "there are sharply disputed questions of fact" about whether that suit was brought in good faith "or whether it was a 'sham' intended to ... defame Gottwald and obtain business leverage."

The Appellate Division, First Department affirmed on a 3-2 vote, splitting on the public figure issue. The majority said, "The record demonstrates that, while Gottwald is an acclaimed and influential music producer, he does not occupy a position of 'such pervasive fame or notoriety that he [has] become[ ] a public figure for all purposes and in all contexts' and that he did not 'become[ ] a public figure for a limited range of issues' by 'voluntarily inject[ing] himself' into the public debate about sexual assault, or abuse of artists in the entertainment industry...." The dissenters said Gottwald is a public figure who must prove actual malice because "over many years Dr. Luke has received broad and extensive press coverage as a music producer and, in particular, as a discoverer and developer of female music talent. He has pervasively sought out this publicity." They said that, "at a minimum, Dr. Luke should be treated as a limited purpose public figure" based on those publicity efforts and because the defamatory statements "directly relate to Dr. Luke's self-publicized professional and personal relationships with his clients, his integrity in business practices, and in attracting new talent...."

Supreme Court subsequently granted Kesha's motion for a ruling that Civil Rights Law § 76-a applied retroactively to claims that were pending when it took effect in 2020, which could have applied the actual malice standard to Gottwald's suit. The Appellate Division reversed, saying "there is insufficient evidence ... that the legislature intended its 2020 amendments to the anti-strategic lawsuit against public participation (anti-SLAPP) law ... to apply retroactively.... The fact that the amended statute is remedial, and that the legislature provided that the amendments shall take effect immediately, does not support the conclusion that the legislature intended retroactive application...."

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For respondents Gottwald (Dr. Luke) et al: Christine Lepera, Manhattan (212) 509-3900

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To be argued Tuesday, April 18, 2023

## No. 43 Matter of St. Lawrence County v City of Ogdensburg

In the midst of a financial dispute with St. Lawrence County in 2021, the City of Ogdensburg unilaterally transferred responsibility for collecting delinquent property taxes from itself to the County by enacting Local Law No. 2 to amend its city charter. For decades, the City had collected delinquent taxes for itself and for the County, a role that required the City to pay the County the delinquent amount it was owed at the end of each fiscal year, with the City then attempting to reimburse itself by collecting the delinquent taxes through foreclosure or other means. Local Law No. 2 sought to reverse those roles by opting into Real Property Tax Law (RPTL) article 11, the “Uniform Delinquent Tax Enforcement Act,” by repealing from the city charter any obligation of the City to enforce the payment of delinquent taxes “with the intent of all foreclosure responsibility defaulting to” the County. The County filed this suit contending that Local Law No. 2 violates article IX, § 2(d) of the State Constitution and Municipal Home Rule Law [MHRL] § 10(5), which provide in similar language that “a local government shall not have the power to adopt local laws which impair the powers of any other local government,” and violates the terms of RPTL article 11.

Supreme Court declared Local Law No. 2 valid and dismissed the County’s claims against the city. Rejecting the asserted violations of the State Constitution and MHRL § 10(5), the court said “the Local Law does not *impair* any *powers* of the County. To the contrary, the Local Law increases the County’s tax enforcement powers with respect to delinquent City taxes.”

The Appellate Division, Third Department affirmed in a 3-2 decision, saying the transfer of tax enforcement responsibility is constitutional and authorized by statute. “By adopting Local Law No. 2, the City amended its charter by deleting the provisions requiring the City to enforce the payment of delinquent taxes, leaving the County with that obligation under RPTL article 11...,” it said. “As a consequence of the amendment, the City is no longer a ‘tax district’ for purposes of RPTL article 11 ... and the County treasurer becomes the enforcing officer.... As such, the County treasurer is statutorily required to credit the City for unpaid delinquent taxes upon the return at the end of the fiscal year (see RPTL 936). This outcome is neither an expansion nor impairment of the County’s powers but simply a consequence of the statutory structure outlined in RPTL articles 9 and 11.”

The dissenters argued the City violated RPTL article 11 by acting unilaterally, rather than by mutual agreement with the County. They said RPTL 1150 “expressly authorized ‘tax districts ... to make agreements with one another with respect to any parcel of real property upon which they respectively own tax liens in regard to the disposition of such liens’” and the property itself. “This provision has been used to accomplish a variety of shared goals regarding delinquent real property taxes..., specifically including the establishment of the exact sort of arrangement that, here, the City unilaterally adopted and imposed upon the County following a breakdown of negotiations.... [T]he City’s circumvention of RPTL 1150 renders Local Law No. 2 inconsistent with a general law, and it is therefore violative of the NY Constitution and the Municipal Home Rule Law.” They argued the Local Law also impairs the powers of the County in violation of the Constitution and MHRL § 10(5) because it increased “the obligations that the County must fulfill with its own revenue and resources.... Local Law No. 2 impairs its power to fully control its own affairs, such as its budget and its workforce, by weakening that power....”

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For respondents City et al: Nicholas S. Cortese, Binghamton (607) 723-9511

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To be argued Tuesday, April 18, 2023

## No. 35 People v Tyquan Johnson

Appealing his convictions for possession of heroin, cocaine, and marijuana, Tyquan Johnson contends that a Rochester police officer recovered the drugs from him during an unlawful search and seizure in 2015 and that the evidence should have been suppressed. The officer testified at the suppression hearing that he saw Johnson, who had been sitting in the driver's seat of a parked car, move to the passenger seat and move his torso from side to side. When he parked behind Johnson and activated his lights, Johnson stepped out through the passenger door and began to walk away, and the officer left his vehicle to follow. Johnson was trying to pull up his pants and buckle his belt as he walked, which the officer said made him concerned that Johnson might be armed because suspects commonly hide weapons in their pants. The officer asked him to "hold-up a minute," but Johnson did not respond. As he got closer, the officer said Johnson appeared to be nervous, but said he was not. The officer asked if he had any weapons and Johnson said he had "nothing." The officer said he became concerned for his safety and conducted a pat-frisk. He found no weapons, but felt what he thought was a bag of drugs in a pocket. Johnson said he had "nothing" in his pocket, but began to throw the contents onto the ground, including two small bags of what appeared to be marijuana, and held onto a clear bag of what appeared to be bundled packages of heroin. The officer arrested him for possession.

Supreme Court denied Johnson's motion to suppress, ruling the officer was justified at all four levels of analysis for police encounters adopted in People v DeBour (40 NY2d 210). The court said Johnson's movements inside the parked car gave the officer "an objective credible reason" to approach and ask for information. It said Johnson's efforts to pull up his pants and buckle his belt while walking away "supported a more intrusive, common-law inquiry." And his apparent nervousness, "combined with the officer's knowledge that armed individuals commonly used belts to secure weapons in the waistband of their pants," gave the officer "a reasonable basis to suspect Defendant posed a threat to his safety" and justified the pat-frisk. The court said Johnson then emptied the drugs from his pocket "on his own volition," providing probable cause for his arrest. Johnson was convicted of two counts of third-degree possession of a controlled substance and one of marijuana possession, and was sentenced to five years in prison.

The Appellate Division, Fourth Department affirmed, saying "the action taken by the police officer was justified in its inception and at every subsequent stage of the encounter...."

Johnson argues that his movements inside the parked car "clearly did not provide the justification necessary for the Level One approach" to request information; and his effort to buckle his pants while walking away did not provide the founded suspicion of criminality needed to justify the level two common law inquiry. He says his apparent nervousness and the officer's concern that grabbing and buckling his pants indicated that he might be armed, "especially in light of the fact that it is undisputed that he did not have a gun," did not provide the reasonable suspicion that he had committed or was committing a crime needed to justify the level three stop and frisk.

For appellant Johnson: Paul B. Watkins, Fairport (585) 377-9747

For respondent: Monroe County Asst. District Attorney Martin P. McCarthy, II (585) 753-4534