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.

To be argued Wednesday, January 3, 2018 (arguments begin at 10 am)

No. 5 Matter of Aponte v Olatoye

After his mother was diagnosed with advanced dementia in 2009 and her doctors said it was unsafe for her to live alone, Jonas Aponte moved into her apartment at the New York City Housing Authority's Sedgwick Houses in the Bronx to care for her. In August 2010, NYCHA denied a permanent permission request to add Aponte as an occupant of his mother's one-bedroom apartment on the ground that it would "create overcrowding conditions." The case manager noted that "tenant is applying to have son live with her as her health is failing and she cannot live alone." In January 2011, the mother submitted an affidavit of income which listed Aponte as an occupant. The housing manager crossed out his name because he was not an authorized resident. In February 2011, NYCHA denied a second permanent permission request to add Aponte to the household, allegedly because the manager believed Aponte had signed the form for his mother. After his mother died in July 2012, NYCHA denied Aponte's request to lease her apartment as a remaining family member and, after a hearing, denied his grievance. Supreme Court upheld NYCHA's determination.

The Appellate Division, First Department reversed on a 3-2 vote and annulled NYCHA's denial of succession rights to Aponte, ruling it was arbitrary and capricious. "NYCHA never considered evidence of petitioner's mother's disability in denying the applications" to add Aponte to the lease, it said. "The ground proffered for the denial, i.e., that adding petitioner to the household would result in overcrowding, creates an unacceptable Catch-22 -- a request to add an additional family member will almost always result in overcrowding [if] NYCHA fails simultaneously to consider transferring the applicant to a larger apartment." Rejecting NYCHA's claim that it could, and effectively did, meet its duty to the mother by granting Aponte temporary residency, without succession rights, the court said, "We can never know what would have constituted a reasonable accommodation of [his] mother's disability under the circumstances. Neither petitioner nor his mother was afforded a meaningful opportunity to demonstrate what would constitute a reasonable accommodation.... NYCHA's determination cannot be deemed rational in light of the absence of a proper inquiry and an opportunity to be heard on the issue...."

The dissenters said, "NYCHA's denial of petitioner's grievance has a rational basis" because "he was not an authorized occupant of the apartment for a one-year period before his mother's death.... [T]he fact that NYCHA properly denied multiple applications to add petitioner to the lease does not make its determination denying petitioner's grievance arbitrary and capricious. Petitioner's mother was repeatedly made aware that she could not add petitioner to her household because it would create overcrowding. She was also given the opportunity to request a reasonable accommodation for her disability but she opted not to do so. Thus, NYCHA cannot be faulted for failing to consider transferring [her] to a larger apartment.... [W]e can state that, had she requested it, [her] disability could have been reasonably accommodated by granting petitioner temporary residency, and further that her disability was accommodated de facto by NYCHA knowingly permitting petitioner to remain in the apartment."

For appellants NYCHA and Olatoye: Jane E. Lippman, Manhattan (212) 776-5259
For respondent Aponte: Leah Goodridge, Manhattan (212) 417-3700

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To be argued Wednesday, January 3, 2018 (arguments begin at 10 am)

No. 6 People v Casimiro Reyes

Casimiro Reyes was a member of a Latin Kings gang in Brooklyn in 2010, when its leaders announced plans to firebomb the apartment of a fellow gang member who was trying to leave the Latin Kings and had assaulted another member of the gang. Reyes attended at least two meetings, along with as many as two dozen other gang members, where leaders discussed plans to break the windows of the apartment and throw Molotov cocktails inside. On the night of the arson attack, Reyes was arrested at a nearby subway station for unrelated misdemeanors -- turnstile jumping and possession of a boxcutter. He told law enforcement authorities in written and videotaped statements that he joined in the attack and threw one of the firebombs himself, but investigators determined that he could not have been present because he was already in police custody when the arson occurred.

Reyes was charged with second-degree conspiracy under Penal Law § 105.15, which states that a person is guilty of the crime "when, with intent that conduct constituting a class A felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct." Convicted at trial, he was sentenced to 6 to 18 years for conspiracy and concurrent one-year terms on the misdemeanor counts.

The Appellate Division, Second Department reversed the conspiracy conviction and vacated the sentence, finding there was legally insufficient evidence to establish the agreement element. "Although the People's evidence showed, inter alia, that the defendant was present at gang meetings where the plan to commit the arson was discussed and that he knew the details of that plan, the evidence was legally insufficient to prove that the defendant entered into a conspiratorial agreement," it said.

The prosecution argues there was legally sufficient evidence to prove Reyes' guilt of second-degree conspiracy. "[T]he evidence established that defendant was party to an agreement with other gang members that certain gang members would commit an arson at the home of the family of [the disaffected member], and the evidence also established that defendant had the intent that the arson be committed."

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For respondent Reyes: Allen Fallek, Manhattan (212) 577-3566

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To be argued Wednesday, January 3, 2018 (arguments begin at 10 am)

No. 7 Lohnas v Luzi

Darlene Lohnas was treated by Dr. Frank Luzi Jr., of Northtowns Orthopedics, P.C., in Erie County, for osteoarthritis of her left shoulder beginning in December 1998. Dr. Luzi performed partial joint replacement surgery on the shoulder in January 1999, and he saw her for a series of post-surgery visits ending in January 2000. Lohnas returned to see him in August 2001, complaining of lost motion and increased pain in her left shoulder. Dr. Luzi performed surgery to repair her rotator cuff in January 2002, and saw her for a series of port-operative visits ending in April 2002. Lohnas returned for a check-up in September 2003, reporting that she hurt her left shoulder when she was pushed against a wall. Dr. Luzi diagnosed her as having a strain and contusion of the shoulder, recommended exercises and anti-inflammatory medication, and noted that he would see her "on an as needed basis." Lohnas did not see Dr. Luzi again until April 2006, when she complained of continuing pain and lost motion in her shoulder. He told her he was no longer performing shoulder surgeries, and she began seeing a different surgeon for treatment of her shoulder in July 2006.

Lohnas brought this malpractice action against Dr. Luzi and Northtowns on September 30, 2008, alleging that he negligently performed the surgeries in 1999 and 2002. The defendants moved to dismiss as time-barred all claims based on treatment rendered prior to March 30, 2006 under CPLR 214-a, which states that a medical malpractice action "must be commenced within two years and six months of the act, omission or failure complained of or last treatment where there is continuous treatment for the same ... condition which gave rise to the" claim. Supreme Court denied the motion, finding Lohnas raised triable issues of fact about whether the limitations period was tolled under the doctrines of continuous treatment and equitable estoppel.

The Appellate Division, Fourth Department dismissed her equitable estoppel claim, but in a 4-1 ruling found there were issues of fact regarding the continuous treatment doctrine. Although Lohnas left the 2003 visit without a future appointment and there was "a gap in treatment that exceeds the 2½-year period of limitations" before she next saw Dr. Luzi in 2006, the court said, "The determination whether continuous treatment exists 'must focus on the patient'.... Based on plaintiff's version of the facts, there is support in the record for a finding that plaintiff 'intended uninterrupted reliance' upon defendant's observation, directions, concern, and responsibility for overseeing her progress. Notably, during approximately seven years of treatment with defendant, plaintiff underwent two surgeries, saw no other physician regarding her shoulder, and returned to him for ... a potential third surgery" in 2006. While Lohnas "certainly admitted to being discouraged with defendant" after the 2003 visit, "we cannot conclude that such discouragement renders the continuous treatment doctrine inapplicable as a matter of law."

The dissenter argued that, "because the parties only contemplated treatment after September 5, 2003 on an 'as needed basis,' the continuous treatment doctrine does not apply.... Moreover, inasmuch as plaintiff admitted that the more than 2½-year gap in treatment was because she was discouraged with defendant and she did not expect any actual treatment if she returned, it cannot be said that there existed the 'trust and confidence' that ordinarily marks the physician-patient relationship.... Here, plaintiff's testimony ... established that for over 2½ years she neither believed nor expected that defendant was making, or would make, any continuing efforts to treat her shoulder problems. In my view, under these circumstances, the policy reasons underlying the continuous treatment doctrine are simply not implicated."

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For respondent Lohnas: Brian P. Fitzgerald, Buffalo (716) 852-2000