State of New York
Court of Appeals

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NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

October 16 and 17, 2019

State of New York
Court of Appeals

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To be argued Wednesday, October 16, 2019

No. 81 Haar v Nationwide Mutual Fire Insurance Company

Dr. Robert D. Haar, an orthopededic surgeon, submitted claims to Nationwide Mutual Fire Insurance Company in 2012 seeking payment for his medical treatment of patients injured in accidents involving vehicles insured by Nationwide. The insurer denied one claim in full based on a Peer Review Report which found there was "no cause and effect relationship" between the injuries treated and the alleged accident. Nationwide partially denied three other claims on the ground that the amounts billed exceeded the limits of the No Fault fee schedule. Nationwide also filed a complaint with the New York State Office of Professional Medical Conduct (OPMC) about Haar's conduct involving all four claims. The OPMC notified Haar in 2017 that it had concluded its investigation and would take no disciplinary action against him.

Haar then filed this suit against Nationwide seeking damages under Public Health Law § 230(11)(b) for allegedly filing false complaints in bad faith to the OPMC. Section 230(11)(b) states, "Any person, organization, institution, insurance company, osteopathic or medical society who reports or provides information to the [OPMC] in good faith, and without malice shall not be subject to an action for civil damages or other relief as the result of such report."

U.S. District Court dismissed Haar's claim, finding that section 230(11)(b) does not create a private right of action to recover for bad faith or malicious complaints to the OPMC. The court said that, "for the reasons stated in Lesesne v Brimecome (918 F Supp 2d 221)" and the Appellate Division, Second Department's decision in Elkoulily v NYS Catholic Healthplan, Inc. (153 AD3d 768 [2017]), it "agrees that the New York Court of Appeals, were it faced with the question, would hold that this statute does not create a private right of action."

The U.S. Court of Appeals for the Second Circuit observed that the Appellate Division, First Department reached the opposite conclusion in Foong v Empire Blue Cross & Blue Shield (305 AD2d 330 [2003]), which held that a "plaintiff has an implied right of action under Public Health Law § 230(11)(b)." The Second Circuit is asking this Court to resolve the issue in a certified question: "Does the New York Public Health Law Section 230(11)(b) create a private right of action for bad faith and malicious reporting to the Office of Professional Medical Conduct?"

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State of New York
Court of Appeals

To be argued Wednesday, October 16, 2019

No. 82 Matter of Walsh v New York State Comptroller

Patricia Walsh was a Nassau County correction officer in March 2012, when she and another officer were assigned to pick up an unruly female inmate at Hempstead District Court and bring her back to the county jail. They handcuffed the inmate, who appeared to be intoxicated by alcohol or drugs and needed assistance climbing up the two steps into the back of the transport van. When they arrived at the jail and directed the inmate to step out of the van, she tripped and fell forward onto Walsh, who tried to break her fall. Walsh was knocked to the ground, suffering a torn rotator cuff and neck injury with required surgery.

Walsh applied for performance of duty disability retirement benefits under Retirement and Social Security Law § 607-c, which provides benefits for correction officers who suffer disabling injuries "as the natural and proximate result of any act of any inmate." Her application was denied on the ground that her disability "was not the result of an act of any inmate."

The State Comptroller accepted the determination and denied the application for benefits, saying, "The courts have ruled the statute is not to be construed to require demonstration of 'an intentional overt act of an inmate,'" but it does "require demonstration of 'some "affirmative act on the part of the inmate...." The Comptroller concluded that "the involuntary nature of the inmate's fall ... precluded consideration of the event as an act of an inmate."

The Appellate Division, Third Department confirmed the decision to deny benefits. "The phrase 'any act of any inmate' is not statutorily defined...," it said, "but we have interpreted this language to require a showing that the claimed injuries ... were 'caused by some affirmative act on the part of the inmate'.... An 'affirmative act' need not be intentionally aimed at the officer..., but does need to be volitional or disobedient in a manner that proximately causes his or her injury...." It said Walsh's "injuries did not ... 'occur contemporaneously with, and flow[] directly, naturally and proximately from, ... [any] disobedient and affirmative act' on the part of the inmate.... Indeed, by all accounts, the inmate in question could barely walk or stand unassisted..., and the hearing testimony reflects that she simply lost her footing and fell...."

Walsh argues that "the plain language of the statute applies to injuries caused by "*any* act of *any* inmate'..., and the recognized rules of statutory construction in New York hold that general language such as 'any' must be construed broadly and given its full meaning.... Where a correction officer's response to an inmate's act – in this case, attempting to exit a high-risk van – forces her to risk disabling injury as a matter of duty, then she should be protected by the statute when such risk comes to pass." She says, "Neither the statutory text ... nor anything in the legislative history supports a judge-made limitation of 'any act of any inmate' to only 'volitional or disobedient' acts," and therefore, when "an intoxicated inmate performs an act that causes disabling injuries to a correction officer, such act is an 'act of an inmate' within the meaning of [section] 607-c without needing to also be 'volitional or disobedient.'"

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State of New York
Court of Appeals

To be argued Wednesday, October 16, 2019

No. 83 Town of Delaware v Leifer

Ian Leifer owns 68 rural acres in the Town of Delaware, Sullivan County, and in August 2014 he began holding an annual three-day outdoor music festival called "The Camping Trip," which offered live music, food vendors, and camping and was attended by several hundred people. The festival was focused on observance of Shabbat and no musical performances were scheduled during the Jewish Sabbath itself, which runs from sunset Friday to sunset Saturday. The property is located in a "rural district" under the Town's zoning code, which prohibits theaters in rural districts. The zoning code defines 'theater" as: "Any building or room or outdoor facility for the presentation of plays, films, other dramatic performances, or music." Town officials advised Leifer in 2016 that the festival violated the prohibition against theaters in the area and he would need a use variance. When he did not seek a variance, the Town brought this action for a permanent injunction barring him from holding such festivals on his land.

Supreme Court granted the Town's motion for summary judgment and permanently enjoined Leifer for holding the festivals, rejecting his argument that the zoning restriction was unconstitutional. It allowed Leifer to pursue "uses consistent with the single family residence situate on the Premises."

The Appellate Division, Third Department affirmed, saying the theater restriction is consistent with the First Amendment because it "does not target specific speech or ideas and instead regulates the time, place and manner in which expressive activity may occur," and it is "narrowly tailored to serve ... a substantial government interest in preserving the character of the area and preventing threats to that character, such as excessive noise." The zoning code expressly allows uses "customarily conducted entirely within a dwelling," it said, so residents of the rural district can "worship, watch films, play music, have family and friends visit and engage in other private behavior customarily conducted by homeowners.... The theater restriction only prevents a property owner in the same zoning district from setting up facilities for a cultural presentation, such as an outdoor music festival where hundreds of paid ticket holders" attend. It said the restriction is not void for vagueness because it "is limited by its language to indoor and outdoor facilities where cultural performances are staged."

Leifer argues the theater restriction "is not a valid time, place and manner regulation" because it is not narrowly tailored "to achieve the identified governmental interest of preventing" excessive noise. "The 'theater' prohibition applies equally to loud music as it does to silent films and mime acts. This governmental interest could have been achieved by simply enacting a noise ordinance.... [T]he 'theater' prohibition enjoins all aspects of Mr. Leifer's gathering, not just the amplified music. It enjoins the Sabbath observance during which no music is played.... It enjoins the playing of daytime non-amplified music, the singing of songs and dancing." He contends the restriction is unconstitutionally vague because, under "a literal reading" of the code, "it is a crime to perform music or plays in any room or house" in the rural district; "it is a crime to sing songs around a campfire; it is a crime to play music during a backyard party or backyard wedding; it is a crime for people to sing in prayer according to their religion."

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To be argued Thursday, October 17, 2019 (arguments start at noon)

No. 84 Deutsche Bank National Trust Company v Barclays Bank PLC
Deutsche Bank National Trust Company v HSBC Bank USA, National Association

In 2007, affiliates of Barclays Bank and HSBC Bank USA, National Association each conveyed a pool of residential mortgages to Deutsche Bank National Trust Company to be held in separate trusts for sale to investors in residential mortgage-backed securities (RMBS). The pooling and servicing agreement (PSA) for each trust contained a New York choice-of-law clause. Barclays and HSBC made representations and warranties regarding the nature and quality of the underlying mortgages, and agreed to cure or repurchase any defective loans. In late 2012 and 2013, after investigations by investors (certificateholders) of both trusts found that many of the mortgage loans were defective, Deutsche Bank demanded that Barclays and HSBC repurchase those loans. When Barclays and HSBC refused, Deutsche Bank, in its capacity as trustee of the trusts, brought these breach of contract actions against Barclays (in April 2013) and HSBC (in June 2013). The defendants moved to dismiss the suits on the ground that, because Deutsche Bank's principal place of business is in California, the contract claims were barred by California's four-year statute of limitations under New York's borrowing statute, CPLR 202. They conceded the claims would be timely under New York's six-year statute of limitations.

Supreme Court denied the motions to dismiss the suits as time-barred, saying the defendants failed to show that Deutsche Bank's claims accrued in California. "While the parties do not cite any authority that applies the New York borrowing statute to a case brought by an RMBS trustee, courts applying the borrowing statute to cases brought by non-RMBS trustees have repeatedly rejected the trustees' residence as determinative of the place of accrual of the causes of action" and instead applied the multi-factor test adopted in Maiden v Biehl (582 F Supp 1209 [SD NY 1984]), it said. "Here, the California residence of the trustees is not a reliable indicator of the place where the injury occurred. The trusts were established in the PSAs, pursuant to New York law.... [T]he rights of the parties to the PSAs are governed by New York law.... The trustees hold the mortgage loans on behalf of the trusts, for the benefit of the certificateholders," and it is the trusts, not the trustee, that were "allegedly diminished as a result of the loss in value of the loans." Other Maiden factors "do not ... point to California."

The Appellate Division, First Department reversed and dismissed the suits, saying "we need not decide whether the plaintiff-residence rule or the multi-factor test [of Maiden] applies in this context because, even under the multi-factor test, we find that the injury/economic impact was felt in California and the claims are thus deemed to have accrued there.... [T]he subject trust in each action comprises a pool of mortgage loans, originated by California lenders and encumbering California properties, either exclusively (in the Barclays case) or predominantly (in the HSBC case), and ... administered in California by plaintiff,, a California-based trustee.... [T]he alleged breaches of representations and warranties occurred in 2007, when allegedly nonconforming mortgage loans were deposited into the trust pools, and these actions were not commenced until 2013. Under California law, plaintiff's claims for the alleged breaches accrued 'at the time of the sale'...."

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To be argued Thursday, October 17, 2019 (arguments start at noon)

No. 85 Lubonty v U.S. Bank National Association

Gregg Lubonty obtained a $2.5 million loan from American Home Mortgage Acceptance, Inc. (AHMA) in 2005, securing it with a mortgage on property he owned in Southampton, Suffolk County. Lubonty defaulted on his mortgage payments and AHMA commenced a foreclosure action in June 2007, accelerating the mortgage and demanding payment of the full amount due. Two weeks later, Lubonty filed for Chapter 11 bankruptcy, triggering an automatic stay of the foreclosure proceeding. Lubonty's bankruptcy petition was voluntarily dismissed in November 2009 and AHMA's foreclosure action was dismissed as abandoned in September 2010. AHMA later assigned the mortgage to U.S. Bank National Association and, in June 2011, U.S. Bank commenced a second foreclosure action against Lubonty. In October 2011, Lubonty filed for Chapter 7 bankruptcy, again triggering a statutory stay of the foreclosure. The bankruptcy stay was lifted in November 2013. U.S. Bank's foreclosure action was dismissed in October 2014 for lack of personal jurisdiction due to improper service.

In November 2014, Lubonty brought this action to discharge the mortgage on his property, arguing that enforcement of the mortgage was barred by the expiration of the six-year statute of limitations, which began to run when AHMA commenced the first foreclosure action in June 2007. U.S. Bank moved to dismiss the suit, arguing that the limitations period had not expired. It said that when Lubonty filed a bankruptcy petition shortly after the commencement of each foreclosure action, he triggered statutory stays which tolled the running of the statute of limitations under CPLR 204(a). CPLR 204(a) provides, "Where the commencement of an action has been stayed by a court or by statutory prohibition, the duration of the stay is not part of the time within which the action must be commenced." Lubonty responded that CPLR 204(a) does not apply here because the foreclosure actions were commenced before he filed the bankruptcy petitions and triggered the stays. The express language of the statute tolls the limitations clock only "where the commencement of an action has been stayed," he said, and says nothing about a stay that prevents the continuation of an action.

Supreme Court granted U.S. Bank's motion to dismiss the suit, saying "the filing of a petition in bankruptcy results in a tolling for the entire period of the stay" under CPLR 204(a). "[D]ue to plaintiff's two bankruptcy filings," it said, CPLR 204(a) "effectively tolled the statute of limitations for a period of four years, five months and fourteen days, thereby extending the limitation period to December 25, 2017."

The Appellate Division, Second Department affirmed, saying, "Pursuant to CPLR 204(a), the Bankruptcy Code's automatic stay tolls the limitations period for foreclosure actions.... Therefore, U.S. Bank's right to commence a foreclosure action in this matter was extended until December 2017.... The plaintiff's contention that CPLR 204(a) does not apply here because the earlier foreclosure actions had already been commenced when the petitions in bankruptcy were filed is without merit...."

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State of New York
Court of Appeals

To be argued Thursday, October 17, 2019 (arguments start at noon)

No. 86 People v Stan XuHui Li

Dr. Stan XuHui Li, an anesthesiologist and specialist in pain management, opened a pain management clinic in Flushing, Queens, in 2004. The clinic was open one day a week (on weekends), appointments were not necessary, and all payments were required to be made in cash. He saw as many as 90 patients a day and charged a base fee of $100 per visit, but charged more for patients who sought multiple prescriptions or early renewal of a monthly prescription. Investigators found that, from 2008 until his arrest in November 2011, Li wrote more than 21,000 prescriptions for controlled substances, more than half of them for the opioid oxycodone and more than a quarter for Xanax, which can depress respiration when taken together. Two of Li's patients died of drug overdoses shortly after visiting his clinic – Joseph Haeg in 2009 and Nicholas Rappold in 2010 – with pills prescribed by Li in their possession.

Li was charged with two counts of second-degree manslaughter, based on the deaths of Haeg and Rappold, and more than 200 other counts including reckless endangerment, criminal sale of a prescription, fraud, grand larceny and false filing. The prosecution's expert, the Director of Pain Medicine at New York University, testified at trial that Li's files showed that he issued prescriptions without confirming a patient's medical history, ordering appropriate tests or conducting an adequate physical exam to diagnose the causes of pain, or exploring nonopioid treatment options. The expert said Li prescribed addictive opioids in much higher dosages than were reasonable and engaged in practices that fostered addiction and endangered the lives of patients. Li was convicted of both manslaughter counts as well as 196 other charges. He was sentenced to an aggregate term of 10 to 20 years, which included 5 to 15 years for manslaughter.

Li argued on appeal that, under the Penal Law, a doctor cannot be convicted of a homicide for prescribing a controlled substance where, if taken as prescribed, the dose would not have been fatal. He cited People v Pinckney (38 AD2d 217 [2d Dept 1972], affd 32 NY2d 749 [1973]), which said there are no Penal Law provisions "which set forth that the illegal sale of a dangerous drug which results in death to the user thereof constitutes manslaughter or criminally negligent homicide." He also argued there was legally insufficient evidence that his conduct was a sufficiently direct cause of the victims' deaths.

The Appellate Division, First Department affirmed the convictions. Rejecting Li's first argument, it said, "Nothing in Pinckney suggests that one who provides a controlled substance, whether it be heroin by a street dealer, or opioids by a medical doctor, can never be indicted on a manslaughter charge.... At bottom, all that was needed for the manslaughter charge to be sustained was for the People to satisfy its elements," including proof the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that death would occur. It found there was also sufficient evidence to support the manslaughter convictions. "Based on [the expert's] testimony, it was reasonable for the jury to infer that [Li] was using his prescriptions not to treat legitimate pain but to feed an addiction to opioids," to infer that he knew both victims would exceed the prescribed dosages to achieve a narcotic high, and that he consciously disregarded the foreseeable risk that they could die.

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