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 Wednesday, October 9, 2013

No. 180 Expedia, Inc. v The City of New York Department of Finance

Expedia, Orbitz, Travelocity and other online travel companies brought this action against New York City and its Department of Finance to challenge the constitutionality of Local Law 43, a 2009 amendment that extended the City's hotel room occupancy tax to include service or booking fees the plaintiffs charge for hotel reservations. The companies argued the City had no authority to impose the tax on the fees they charge their customers until 2010, when the State Legislature expressly authorized expansion of the occupancy tax to "room remarketers" such as the plaintiffs.

Supreme Court granted the City's motion for summary judgment dismissing the state constitutional claim, holding that "the plain language" of enabling legislation enacted by the State Legislature in 1970 "clearly and unambiguously provides the City with broad taxation powers to enact" Local Law 43. "On its face, the statute provides the City with the power to impose a tax 'such as the legislature has or would have the power and authority to impose on persons occupying hotel rooms...,'" the court said, and it "clearly provides that 'any tax imposed shall be paid by the person liable therefor to the owner of the hotel room occupied or to the person entitled to be paid the rent or charge for the hotel room....'" The court said the travel companies argue the enabling legislation "'does not authorize a new tax on travel booking services...,' but fail to cite any language in the [statute] that supports that conclusion."

The Appellate Division, First Department reversed and declared that Local Law 43 violates the State Constitution. "[T]he plain language of the enabling legislation did not clearly and unambiguously provide the City with broad taxation powers with respect to imposing a hotel occupancy tax. Rather, it permitted the City to impose the tax on 'hotel occupants,'" the court said. "Given the well-established rule that a statute that levies a tax 'must be narrowly construed' and 'any doubts concerning its scope and application are to be resolved in favor of the taxpayer...,' the plain meaning of this phrase did not encompass the service fees charged by the travel intermediaries and the legislation may not be extended so as to permit the imposition of the tax in a situation not embraced by it. To extend the tax to cover these fees requires action by the State Legislature, such as that taken in 2010...."

The City argues, "A plain reading of the Enabling Act undeniably authorizes the City to enact a local law imposing the [occupancy tax] on the *entire* amount paid for a hotel room by the occupant of such room. This is true notwithstanding how that occupant chooses to pay for the room, be it through a hotel operator, a room remarketer, or otherwise. Moreover, the unambiguous language of the Enabling Act expressly provides for the possibility that an entity other than a hotel operator can be required to collect and pay over the entirety of the tax due, never mind a fraction thereof."

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For respondents Expedia et al: Todd R. Geremia, Manhattan (212) 326-3939

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To be argued Wednesday, October 9, 2013

No. 181 Matter of Lancaster v Incorporated Village of Freeport
Matter of Glacken v Incorporated Village of Freeport

In March 2009, the Village of Freeport Board of Trustees adopted a resolution pursuant to Public Officers Law § 18 authorizing the Village to defend and indemnify current and former officials named in two federal lawsuits brought against it by Water Works Realty Corp. and its owner, Gary Melius. The federal actions alleged that Village officials had conspired to illegally deprive Water Works of real property through a fraudulent sale of tax liens. In November 2009, the Village agreed to settle the federal actions for $3.5 million, and Water Works agreed to discontinue the actions against the individual officials without any cost or admission of wrongdoing if they signed stipulations of settlement that contained non-disparagement clauses. Those clauses required them to agree "not to ever interfere, nor challenge or criticize the terms of [the settlements] in any manner." When some officials refused to sign the stipulations, the Village Board passed a resolution terminating its defense and indemnification of them in January 2010 due to their alleged failure to cooperate in obtaining a global settlement.

The affected officials -- including former Mayor William Glacken, Trustee William White, former Trustees Donald Miller and Renaire Frierson-Davis, former Treasurer Vilma Lancaster and former Village Attorney Harrison Edwards -- filed these suits to overturn the Village's determination to end their defense and indemnification. The officials, one of whom had argued the Village did nothing improper in its tax dispute with Water Works and should not settle, contended the determination violated their constitutional free speech rights and violated the Village's obligation to defend its officials and employees under Public Officers Law § 18.

Supreme Court dismissed the suits, finding the Village had been diligent and reasonable "in seeking to bring about the petitioners' cooperation in agreeing to the settlement" and the petitioners had been "willful" in refusing to consent. Rejecting the free speech claim, it said, "The court finds the condition of non-disparagement of the settlement reasonable, given the benefits achieved by the petitioners from the settlement."

The Appellate Division, Second Department affirmed, saying the determination was not arbitrary, capricious, or an abuse of discretion. "The [petitioners'] conduct, after their cooperation in the defense of those actions was diligently sought, was one of willful and avowed obstruction...." Regarding the constitutional claim, it said, "[U]nder the circumstances of this case, nondisparagement clauses set forth in the stipulations of settlement ... negotiated on their behalf in the underlying civil actions did not constitute prior restraints on free speech...."

The petitioners argue that the free speech provisions of the state and federal constitutions "mean that the government can neither retaliate against an individual for his or her speech nor condition the continued receipt of some government benefit or service on the individual's agreement not to speak." They also say their refusal to accept a settlement conditioned on their silence "is not a failure to cooperate within the meaning of Public officers Law § 18(5)(ii)" and, in any case, the January 2010 resolution is invalid because it was adopted in an executive session held in violation of the Open Meetings Law.

For appellants Lancaster et al: Robert A. Spolzino, White Plains (914) 323-7000
For respondents Freeport et al: Stanley A. Camhi, Garden City (516) 746-8000

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To be argued Wednesday, October 9, 2013

No. 183 People ex rel. Ryan, on behalf of Shaver v Cheverko

In October 2011, Richard Shaver was convicted in White Plains City Court of two counts of petit larceny and one of criminal possession of stolen property in the fifth degree and was sentenced to two consecutive one-year terms at the Westchester County Department of Correction. Eight months later, Shaver was convicted in Westchester County Court of second-degree escape and fourth-degree grand larceny, based on incidents that occurred prior to his October 2011 convictions, and he was sentenced to two consecutive one-year terms, to run consecutively with the terms he was already serving at the same jail.

The question in this case is how Shaver's release date should be calculated under Penal Law § 70.30(2)(b) which states, "If the sentences run consecutively and are to be served in a single institution, the terms are added to arrive at an aggregate term and are satisfied by discharge of such aggregate term, or by service of two years imprisonment..., whichever is less." County correction officials subtracted 592 days of time-served and good-time credit from an aggregate term of four years, which would result in a release date of March 9, 2014, and determined that Shaver was instead entitled to release -- after serving two full years -- on October 24, 2013. Shaver brought an article 78 proceeding against the officials, contending that his time-served and good-time credit must be subtracted from the two-year maximum term provided in Penal Law § 70.30(2)(b), which would result in a release date of November 8, 2012.

Supreme Court dismissed Shaver's suit, saying his "contention that the language 'two year[s] imprisonment' must be read as meaning an aggregate sentence of two years with credit for time served and good time applied to further reduce the two-year term to approximately 16 months is contrary to the plain language of the statutes and is not persuasive.... [A]lthough the petitioner has received credit for time served and good time, he will reach his maximum of two years imprisonment and be released from custody before he serves the portion of his sentence affected by the credit. However unfair this may seem to the petitioner, it is a function of serving four definite one year sentences instead of two."

The Appellate Division, Second Department -- treating the article 78 proceeding as one for a writ of habeas corpus -- reversed the judgment, sustained the writ, and ordered Shaver's immediate release. "When the two-year limit on the aggregate term of consecutive definite sentences provided by this section applies, a person's 'release date must be calculated based on a two-year aggregate term of incarceration,'" it said, citing Matter of Serfaty v Jablonsky (236 AD2d 413). "Any credit for time served or good-time credit must be applied against this two-year aggregate term...." When that is done, "petitioner's release date has passed," it said. "Thus, he currently is being illegally detained and must be discharged forthwith."

For appellant Westchester County: Associate County Atty. Linda M. Trentacoste (914) 995-2839
For respondent Shaver: Anne Bianchi, White Plains (914) 286-3400

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To be argued Wednesday, October 9, 2013

No. 184 People v Franklin Hughes
No. 185 People v Harold Jones

Franklin Hughes was charged with murder for fatally shooting Quentin Roseborough at the apartment of Hughes' girlfriend in Hempstead in July 2007. Hughes admitted shooting Roseborough, who went by the nickname "Maniac Guns," but raised a justification defense. Roseborough confronted him and began to draw a gun, Hughes said, so he drew his own gun and fired first in self-defense. At a bench trial, County Court acquitted him of murder, but found him guilty of criminal possession of a weapon in the second degree (Penal Law § 265.03[3]) and third degree (Penal Law § 265.02[1]) based on his previous misdemeanor conviction for resisting arrest. The statutes criminalize possession of a firearm, even in the home, when the defendant "has been previously convicted of any crime."

The Appellate Division, Second Department affirmed, rejecting Hughes' claim that the statutes are unconstitutional under the U.S. Supreme Court ruling in District of Columbia v Heller (554 US 570), which held that the Second Amendment protects an individual's right to keep arms for self-defense in the home. The Appellate Division said the statutes do not impose "an absolute ban on the possession of firearms" and, thus, are "'not a "severe restriction" improperly infringing upon defendant's Second Amendment rights'...." It also ruled "this statutory scheme is not unconstitutionally overbroad merely because it restricts the Second Amendment ... rights of those who have been convicted of 'any crime,'" but is instead "consistent with the Supreme Court's determination in Heller that, although individuals may have the constitutional right to bear arms in the home for self-defense, this right is not unlimited and may properly be subject to certain prohibitions...."

Hughes argues, "Neither statute withstands strict or intermediate scrutiny. Neither respondent nor intervenor Attorney General offer any substantive argument that anyone convicted of any crime at any time in their life becomes a threat to public safety if permitted to keep a handgun in the home for self-defense."

Harold Jones was charged with second-degree weapon possession under Penal Law § 265.03(3), along with other crimes, after police found a loaded handgun during a search of his Manhattan apartment in May 2009. Jones had a 1978 conviction for felony drug possession. Section 265.03(3) generally exempts a defendant from criminal liability if he possesses a loaded weapon in his "home or place of business," "except as provided in" Penal Law 265.02(1). Section 265.02(1) elevates fourth-degree weapon possession to third-degree when the defendant "has been previously convicted of any crime." Supreme Court found the "home or place of business" exception applied despite Jones' prior felony conviction and reduced the second-degree possession count to third-degree.

The Appellate Division, First Department reversed and reinstated the second-degree possession count, ruling the exception does not apply. It said section 265.03(3), "by referencing Penal Law 265.02(1), criminalizes the possession of a loaded firearm, even in the home, where a defendant has previously been convicted of any crime...."

Jones does not raise a constitutional claim. He argues the reference to section 265.02(1) does not eliminate the "home or place of business" exception in section 265.03(3), but instead "sets forth the means for prosecuting possession of a loaded firearm in one's home. If the possessor has previously been convicted of a crime, he can be prosecuted, 'as provided in subdivision one ... of section 265.02,' for third-degree possession," but not second-degree possession.

184 -- For appellant Hughes: Michael A. Fiechter, Bellmore (718) 902-4492
For respondent: Nassau County Assistant District Attorney Yael V. Levy (516) 571-3806
For intervenor Attorney General: Assistant Solicitor General Nikki Kowalski (212) 416-8370
185 -- For appellant Jones: David J. Klem, Manhattan (212) 577-2523
For respondent: Manhattan Assistant District Attorney David P. Stromes (212) 335-9000

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To be argued Wednesday, October 9, 2013

No. 238 Nash v The Port Authority of New York and New Jersey

Linda Nash is one of hundreds of people injured in the 1993 bombing of the World Trade Center who sued its owner, The Port Authority of New York and New Jersey, for negligence. After terrorists detonated an explosives-laden van in the parking garage beneath the twin towers, the plaintiffs claimed the Authority had breached its proprietary duty to maintain the premises in a reasonably safe condition. Most plaintiffs were represented by counsel for a steering committee, but Nash and some others had separate counsel. All of the cases were consolidated for a liability trial, at which the jury found the Port Authority was negligent and liable for 68% of the fault. The Appellate Division, First Department affirmed, rejecting the Authority's claim that it was entitled to governmental immunity. The cases were separated for the damages phase, in which Nash was awarded $4.5 million plus interest. The Appellate Division affirmed her judgment on June 2, 2011, and the Authority did not appeal to the Court of Appeals.

After damages were awarded to another plaintiff, Antonio Ruiz, the Port Authority took a direct appeal to the Court of Appeals, which also brought up for review the interlocutory liability judgment. The Court of Appeals reversed in Matter of World Trade Center Bombing Litigation (17 NY3d 428) on September 22, 2011, ruling the Port Authority was entitled to governmental immunity and could not be held liable for negligence. On May 11, 2012, Supreme Court granted the Port Authority's motion to vacate Nash's judgment based on this Court's liability ruling.

The Appellate Division affirmed in a 3-2 decision. "Since the judgment in plaintiff's favor was based on an order that had been reversed, the trial court properly vacated the judgment," the court said, even though Nash's judgment "was no longer subject to appeal." It said, "[S]ince the final judgment in this case holds the defendant liable for 'damages in a case in which, as a matter of law as established by the [Matter of World Trade Ctr. Bombing Litig.] decision..., the [defendant] should not be liable at all'..., the judgment should be vacated."

The dissenters argued that the damages award to Nash "stands as a final judgment in plaintiff's favor which may not now be disturbed...." They said, "... Nash's appeal before our court had been submitted, argued, decided, and the time to move for reargument and/or leave to appeal had already expired prior to the Court of Appeals' determination in [Matter of World Trade Center Bombing Litigation]. Nash's case ... was not 'in the pipeline'.... Since the time to appeal from the order finally determining the rights of the parties in Nash had already expired..., Nash's judgment could no longer be disturbed."

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