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 Thursday, January 16, 2014

No. 26 Matter of Gaied v New York State Tax Appeals Tribunal

John Gaied lived in New Jersey and operated two automotive repair shops in Staten Island in 1999, when he bought a three-unit apartment building in the same neighborhood as his businesses. In 2006, after an audit, the State Department of Taxation and Finance determined he was a statutory resident of New York under Tax Law § 605(b)(1)(B), which applies to an out-of-state taxpayer who, among other things, "maintains a permanent place of abode in this state." The Department issued him a notice of deficiency of New York State and City income taxes totaling $253,062 plus interest for tax years 2001 through 2003. Gaied challenged the assessment, arguing that he bought the apartment building as a residence for his elderly parents and as an investment, and that he did not maintain a permanent place of abode there. An Administrative Law Judge (ALJ) upheld the assessment.

The Tax Appeals Tribunal initially reversed the ALJ's decision, but on reargument, the Tribunal reversed itself and upheld the assessment, with one member dissenting. The majority said, "We reject [Gaied's] argument that the [apartment building] was not a permanent place of abode because it was maintained for his parents and he would only stay there at their request to care for his father. As we have stated previously, '[t]here is no requirement that the petitioner actually dwell in the abode, but simply that he maintain it'...."

The dissenter said that, while Gaied maintained the first-floor apartment for his parents and he "had property rights to the building itself, he did not maintain a 'permanent' dwelling because he neither had unfettered access to, nor resided at the [building] during the time at issue." He concluded, "[P]roperty rights are not determinative of permanence, and I would hold that [Gaied] has adduced sufficient evidence to prove that the first floor apartment ... was not his permanent place of abode."

The Appellate Division, Third Department confirmed the determination in a 3-2 decision. The majority said there was substantial evidence to support the Tribunal's determination that Gaied "failed to establish that he kept the apartment exclusively for his parents, and did not prove that he held the property solely for investment purposes" and, thus, that he "maintained a permanent place of abode in New York as that term has been construed and applied under the applicable statute...."

The dissenters said, "Maintaining a dwelling does not necessarily equate to living or residing in such dwelling." They argued that Gaied "demonstrated by clear and convincing evidence that, during the relevant years, he did not live in the dwelling nor did he have any personal residential interest in that Staten Island property" and, therefore, the determination was "irrational and unreasonable."

For appellant Gaied: Timothy P. Noonan, Albany (518) 465-2333
For respondent Tax Commissioner: Asst. Solicitor General Robert M. Goldfarb (518) 473-6053

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 Thursday, January 16, 2014

No. 27 Landauer Limited v Joe Monani Fish Co., Inc.

Landauer Limited, a British company, supplied frozen seafood to Joe Monani Fish Co., Inc., a New York seafood wholesaler, pursuant to a series of contracts in 2007. Each contract provided that "the Courts of England ... shall have exclusive jurisdiction over all disputes which may arise out of this contract." In 2009, Landauer brought a breach of contract action against Monani in the English High Court, alleging nonpayment of its invoices, and served the complaint on Monani's bookkeeper in New York. Monani did not appear in the English action and the court issued a default judgment against it for $368,755.49 plus interest.

Landauer brought this action against Monani in New York to enforce the English judgment and moved for summary judgment in lieu of complaint. Monani opposed the motion, asserting that it was never properly served in the English action and that its bookkeeper was not authorized to accept service of process, although its counsel acknowledged in a letter to Supreme Court that Monani's president was informed of the English action before the default judgment was entered.

Supreme Court denied Landauer's motion and dismissed the action for lack of personal jurisdiction after a traverse hearing, finding that Landauer failed to establish that it properly served Monani in the English action pursuant to CPLR 311(a)(1).

The Appellate Division, First Department affirmed, ruling that Landauer failed to show that it properly served papers in the English action on Monani. It said Landauer's "process servers did not have a reasonable basis for believing that the individuals served were authorized to accept service of process on defendant's behalf...." The court did not address whether Monani had actual notice of the English action.

Landauer argues that, regardless of whether its service of process on Monani was in "technical" compliance with CPLR 311, the English default judgment is enforceable in this action under John Galliano, S.A. v Stallion, Inc. (15 NY3d 75) because Monani agreed by contract to submit disputes to the jurisdiction of the English court and it had actual notice of the English action in time to defend itself.

For appellant Landauer: Diane Westwood Wilson, Manhattan (212) 710-3900
For respondent Monani: N. Ari Weisbrot, Manhattan (212) 878-7900

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 Thursday, January 16, 2014

No. 28 People v Nature G. Finch

Nature G. Finch was arrested three times for trespassing on property of the Parkside Commons housing complex in Syracuse in April and May of 2009. On the last occasion, he was also charged with resisting arrest for attempting to walk away and refusing to place his hands behind his back to be handcuffed. On the date of each arrest, he was at Parkside as an invited guest of tenant Calleasha Bradley, his girlfriend and the mother of his infant son, with whom he often stayed. Parkside was posted with "no trespassing" signs, the property manager had told Finch that he was permitted to be on the property only when he was with Bradley and his son, and police had warned him that he would be arrested for trespass if he was found at Parkside. He was convicted in Syracuse City Court of two counts of third-degree criminal trespass and one of resisting arrest. He was sentenced to 12 months in jail for resisting arrest and consecutive terms of 90 days on each of the trespass counts.

Onondaga County Court reversed the trespass convictions, but affirmed the conviction for resisting arrest. It said there was insufficient evidence to sustain the trespass convictions because "Mr. Finch was clearly an invited guest of Ms. Bradley and was therefore licensed or privileged to be in" Parkside, and the trespass convictions "were clearly predicated ... upon the erroneous belief that an arbitrary order or notice by the landlord and/or the police was superior to the inherent right of a tenant to invite guests to her apartment." However, the court ruled there was sufficient evidence that Finch resisted an "authorized arrest" in violation of Penal Law § 205.30. It found the "arresting officer had probable cause to believe ... the defendant was not 'licensed or privileged' to be" at Parkside, "believing that he was in or upon the property in violation of the landlord's order. Additionally, the police officer had arrested the defendant on two prior occasions ... and had personally indicated to him that he was not authorized to be on the property." For an arrest to be authorized, the court said, "the officer need only possess probable cause or reasonable cause to believe that a crime has been committed. There is no requirement that he possess facts that would establish beyond a reasonable doubt that the underlying crime was actually committed."

Finch argues, "The charge of resisting arrest was insufficient as a matter of law because police knew that Mr. Finch was an invitee of a tenant, his trespass arrest was for being at the tenant's apartment complex, and the only basis for that arrest was a police stay-away order to Mr. Finch that police had no authority to issue." "Probable cause to arrest exists if facts and circumstances known to the arresting officer would lead a reasonable person **possessing the officer's expertise** to conclude that it is more probable than not that [a] suspect has committed or is committing a crime," he says, and police expertise "includes a presumed knowledge as to what does and does not constitute a crime.... [T]he police officer's good faith is irrelevant where the known facts still provide insufficient legal proof of the underlying charge. That precludes any finding of probable cause for the initial arrest regardless of the sincerity of [the] officer's belief, and mandates dismissal of the resisting arrest charge...."

For appellant Finch: Philip Rothschild, Syracuse (315) 422-8191 ext. 0179
For respondent: Onondaga County Assistant District Attorney Joseph J. Centra (315) 435-2470

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 Thursday, January 16, 2014

No. 13 People v Christopher Martinez
No. 14 People v Selbin Martinez

Two men in ski masks, one with a handgun and the other with a baseball bat, attempted to rob Armando Irizarry and his son in a hallway of their Bronx apartment building in July 2009. Irizarry said he fought them off with a weapon of his own, a cue ball in a sock, which he used to strike one of them on the head. Later that day, he told police officers that the perpetrators were Christopher and Selbin Martinez, brothers who had lived in the same building for several years. Selbin Martinez had a fresh cut on his head when he was arrested.

At a joint trial, Irizarry testified that he recognized Selbin Martinez by his slim build and "the way he walks," and that he saw part of his face when his ski mask shifted during the struggle. He testified that he recognized Christopher Martinez by the "awkward" way he moved backwards when threatened with the cue ball. A police witness, who was the first to interview Irizarry about the perpetrators, said on cross-examination that he made handwritten notes on the interview. When the prosecutor acknowledged that the officer's notes could not be located, the defense asked Supreme Court to instruct the jury that it could draw an adverse inference from the missing Rosario material. The court refused. Selbin Martinez was convicted of second-degree attempted robbery and sentenced to four and a half years in prison. Christopher Martinez was convicted of third-degree attempted robbery and sentenced to one to three years.

The Appellate Division, First Department affirmed. "The court properly exercised its discretion in declining to deliver an adverse inference charge relating to the loss of the original handwritten version of a police report. There was no evidence of bad faith on the part of the People or prejudice to defendant...," it said in denying Christopher Martinez's appeal.

The defendants argue that the trial court was required to impose at least the "limited sanction" of an adverse inference charge for the failure to preserve the officer's notes. Christopher Martinez says the defendants "suffered sufficient prejudice under the controlling standard set forth in People v Wallace [76 NY2d 953], People v Martinez [71 NY2d 937] and People v Joseph [86 NY2d 565], since the lost Rosario material 'would have been helpful' or 'might have provided useful additional support' to the defense."

For appellant Christopher Martinez: Marisa K. Cabrera, Manhattan (212) 577-2523
For appellant Selbin Martinez: Rahul Sharma, Manhattan (212) 402-4100
For respondent: Bronx Assistant District Attorney Ravi Kantha (718) 838-7568