

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 Monday, November 17, 2014

No. 221 Trump Village Section 3, Inc. v City of New York

Trump Village Section 3, Inc. (Trump Village), organized under the Mitchell-Lama Law in 1961, owns a residential cooperative development consisting of three 23-story apartment buildings in Brooklyn. In 2007, Trump Village withdrew from the Mitchell-Lama affordable housing program and, pursuant to Private Housing Finance Law § 35(3), "reconstituted" itself as a for-profit corporation under the Business Corporation Law by amending its certificate of incorporation and bylaws. It also amended its stock certificates by removing language relating to Mitchell-Lama and replacing it with language pertinent to the new bylaws. This freed Trump Village of Mitchell-Lama's affordable housing restrictions and allowed its shareholders to sell their apartments at market rates. The New York City Department of Finance determined that the transaction qualified as "a conveyance of the underlying real property" and that Trump Village owed a real property transfer tax of \$21.2 million, including interest and penalties, pursuant to Tax Law § 1201(b) and Administrative Code § 11-2102(a). Trump Village brought this action against the City, seeking a judgment that the tax did not apply.

Supreme Court granted the City's motion for summary judgment and declared that Trump Village's corporate conversion constituted a taxable conveyance. In Trump Village's voluntary dissolution as a Mitchell-Lama cooperative and reconstitution as a for-profit corporation, it said, the amended certificate of incorporation was a deed that was delivered to the new for-profit entity when the certificate was executed. Noting the value of the apartment buildings increased from \$54 million before the transaction to \$528 million afterward, the court said Trump Village's "dissolution and reconstitution represented a fundamental change in the characteristics of the legal entity that owned the land and buildings. Despite the fact that plaintiff's name and certain other characteristics may have remained the same, the economic reality is that plaintiff, as a reconstituted cooperative, is a completely different entity than it was previously with significant and dramatic substantive changes to the rights, restrictions and financial benefits its shareholders now possess, along with an increase in its market value by many multiples."

The Appellate Division, Second Department reversed and held the tax was improperly imposed because the amended certificate of incorporation was not a deed and Trump Village remained the same entity after its conversion and, thus, there was "no transfer or conveyance of any real property or an interest in real property." It said, "Upon amending its certificate of incorporation, Trump Village remained the same entity, although it was relieved of various restrictions previously imposed upon it by the Mitchell-Lama housing program.... This is so even if we adopt the argument of the City defendants that the word 'reconstitute' is synonymous with the word 'reincorporate'.... Moreover, the Administrative Code's definition of the term '[d]eed' ... does not encompass Trump Village's amendment to its certificate of incorporation."

For appellant City: Assistant Corporation Counsel Frances J. Henn (212) 356-2155
For respondent Trump Village: Daniel A. Ross, Manhattan (212) 806-5400

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No. 218 People v Raul Johnson

Raul Johnson was represented by counsel on burglary charges in the Town of Clarkstown, Rockland County, in 2007, when he offered to provide information about the perpetrator of a 2005 stabbing in Clarkstown. At a proffer meeting attended by his defense attorney, the prosecutor and two detectives, Raul signed a cooperation agreement in which he was offered leniency on the burglary charges in exchange for truthful information about the stabbing. He also agreed to wear a wire to secretly record the potential suspect. Six months later, the detectives met with Johnson at the police station to equip him with a recording device and prepare him to meet with the suspect. Johnson's defense attorney was not present. The detectives questioned him about the stabbing, and Johnson made statements incriminating himself. After a 30-minute break, the detectives read Johnson his Miranda rights, he waived them, and then provided a written confession to the stabbing.

County Court denied Johnson's motion to suppress the statements, finding they were not obtained in violation of his right to counsel. It said his indelible right to counsel had attached for the burglary case, but not the stabbing, because the "proffer meeting was requested by the defendant's lawyer on the pending burglary. The reason for the meeting was to achieve a benefit for the defendant on the burglary charge by providing information about an incident the police were investigating in which neither the police or counsel believed the defendant was a suspect.... The defendant's counsel was not retained or assigned to represent the defendant regarding the stabbing incident." The court said the questioning that led to Johnson's confession did not violate his derivative right to counsel under the related cases rule because "the stabbing was not 'so closely related transactionally, or in space or time' such that questioning regarding the stabbing 'would all but inevitably elicit incriminating responses regarding' the burglary...." In any case, it said, Johnson "tacitly waived" his right to counsel in the stabbing case at the proffer meeting, in the presence of his attorney, "by agreeing to continue to provide information to the police after the conclusion of the meeting."

Convicted at trial of second-degree attempted murder and first-degree assault, Johnson was sentenced to 13 years in prison. The Appellate Division, Second Department affirmed, saying the police "were not barred from questioning [him] about the stabbing despite the fact that he was represented by counsel on a pending burglary charge, as the two charges were unrelated."

Johnson argues his confession to the stabbing was obtained in violation of his right to counsel, which could not be waived in the absence of his attorney. His "right to counsel indelibly attached at the proffer meeting[,], which was directly related to the attempted murder," he says. His attorney's "actions in representing [him] at the proffer session, asking to be contacted by the police after his client was to be fitted with a recording device, and his multiple conversations with the prosecutor after [Johnson] had made inculpatory statements show that he passed beyond the bright-line and entered the proceedings," and "no formal retainer or appointment" of defense counsel in the stabbing case was necessary.

For appellant Johnson: Ellen O'Hara Woods, New City (845) 638-5660

For respondent: Rockland County Assistant District Attorney Itamar J. Yeger (845) 638-5001

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To be argued Monday, November 17, 2014

No. 219 People v Clifford Jones

(most papers sealed)

Clifford Jones was convicted of rape in Manhattan in 1980 and murdering a man who confronted him as he fled the scene of the rape. There was no physical evidence against him and the prosecution relied primarily on identification testimony by the rape victim. Jones was released on parole in June 2010, after serving 30 years in prison. Two months before his release, Jones filed a CPL 440.10 motion to vacate his conviction based on newly discovered evidence -- recent DNA testing of 3 of the 18 hairs recovered from a baseball cap the perpetrator left at the murder scene and of fingernail scrapings from the murder victim. Test results for two of the hairs excluded Jones as the source and the third was inconclusive. The genetic profile of one of the fingernail scrapings excluded Jones, a second matched the victim.

Supreme Court denied the motion without a hearing, finding it was unlikely the DNA evidence would have affected the jury's verdict. "The new evidence, if available at the time, is readily explained as inconclusive; it does not establish or even create an inference beyond speculation that some other person committed the crime," the court said. "As well, the absence of a match of the defendant's DNA with the few samples tested does not, in any meaningful way, exclude the defendant as the perpetrator."

The Appellate Division, First Department affirmed in a 3-2 decision, saying the rape victim's "lineup and in-court identifications of defendant were unusually strong and reliable.... She provided a detailed description that included the condition of defendant's teeth (one tooth, she testified, was 'chipped and he had a gap between his teeth').... Given the strength of the evidence, the two portions of the DNA evidence, even when viewed collectively, would not have created the probability of a more favorable verdict. There are multiple explanations for the presence of hairs other than defendant's on the hat found at the scene." The majority said that "even if the reliability of the [DNA] evidence is assumed, defendant still did not establish a legal basis for ordering a new trial. Accordingly, the factual disputes in this case were not material, and defendant was not prejudiced by the absence of a hearing."

The dissenters argued Supreme Court "should have granted defendant further DNA testing and held an evidentiary hearing" before deciding his 440.10 motion. "Defendant's conviction was based solely on an identification by a single witness nearly four months after the event. That witness provided various inconsistent descriptions of the perpetrator immediately after the incident." They said Jones "met his initial burden by offering sworn evidence of mtDNA [mitochondrial DNA] analysis showing that the hairs from the perpetrator's hat were not his. The rebuttal offered by the People, in the form of an attorney's affirmation containing hearsay statements questioning the reliability of the mtDNA test results, is insufficient to discredit defendant's evidence. The question whether ... the laboratory's procedures were flawed or its results were inconclusive is an issue of fact, and should not have been summarily determined."

For appellant Jones: Heather K. Suchorsky, Manhattan (212) 225-2000

For respondent: Manhattan Assistant District Attorney David M. Cohn (212) 335-9000

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No. 220 Gammons v City of New York

Allison Gammons was a New York City police officer in 2008, when she was assigned to load wooden sawhorse-style police barriers onto a flatbed truck in Brooklyn. She stood on the truck with another officer stacking barriers that were handed up by officers on the ground. The flatbed had side rails, but was open at the rear where Gammons was standing. With she and her partner holding opposite ends of a barrier, he sought to move it into position and accidentally pushed it into her chest, knocking her backwards off of the truck. Gammons suffered fractures and other injuries, and was granted a full disability retirement five weeks later.

Gammons brought this action against the City under General Municipal Law § 205-e, which provides a cause of action for police officers injured by another's failure to comply with "any of the statutes, ordinances, rules, orders and requirements of the federal, state" or local governments. She based her claim on Labor Law § 27-a(3)(a)(1), the Public Employee Safety and Health Act (PESHA), which requires public employers to provide "employment and a place of employment which are free from recognized hazards that ... are likely to cause death or serious physical harm ... and which will provide reasonable and adequate protection to the lives, safety or health of its employees." Gammons alleged the City violated PESHA by failing to provide one of its newer, longer flatbeds, which are equipped with tailgates and have room to safely hold two officers and the full length of the police barriers.

The City moved for summary judgment, arguing PESHA was not a proper predicate for a claim under section 205-e because it created an administrative workplace inspection scheme, but not a private right of action. Supreme Court denied the City's motion to dismiss the claim.

The Appellate Division, Second Department affirmed, saying Gammons was not seeking "to recover damages for a Labor Law § 27-a(3)(a)(1) violation. Rather, the plaintiff has alleged that the defendants' Labor Law § 27-a(3)(a)(1) violation is a predicate for her [section] 205-e cause of action." It said, "While Labor Law § 27-a imposes a general duty of care, that duty is nonetheless clear.... A violation of section 27-a(3)(a)(1) may be proved to a trier of fact with, for example, proof of violations of industry-wide standards or accepted practices in the field.... Since section 27-a provides an objective standard by which the actions or omissions of a public employer ... can be measured for purposes of liability, Labor Law § 27-a(3)(a)(1) can serve as a predicate for a section 205-e claim."

The City argues PESHA is not a valid predicate for Gammons' claim "because PESHA established a government workplace inspection scheme in which the State's Commissioner of Labor has exclusive jurisdiction to determine whether a violation of the statute has occurred.... [C]ourts lack subject matter jurisdiction to determine whether a section 27-a violation has occurred since the Legislature exclusively vested that power in the Department of Labor []. Accordingly, Labor Law § 27-a, which does not provide a private right of action for violations of its terms, cannot form the basis for municipal liability under GML § 205-e."

For appellant City: Assistant Corporation Counsel Michael Shender (718) 222-2371

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