State of New York Court of Appeals

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To be argued Tuesday, March 21, 2017

No. 46 Connaughton v Chipotle Mexican Grill, Inc.

Kyle Connaughton, a well-known chef, conceived an idea for a fast food restaurant chain that would serve ramen cuisine in 2010, and he presented the concept to Chipotle Mexican Grill, Inc. and its founder and chief executive officer, Steven Ells. In January 2011, Chipotle hired Connaughton as its culinary director to develop and implement the concept under an at-will employment agreement that gave both parties the option of ending his employment "at any time, with or without notice or cause." The contract provided him with a base salary and a promise that he would receive a substantial amount of company stock after three years. At the end of his first year, he received an annual bonus and additional stock grants, and in September 2012 a lease was signed for a flagship ramen restaurant in Manhattan. Connaughton alleges that one month later he learned from Chipotle executives that Ells had entered into an agreement in 2008 with David Chang, the owner of Momofuku Noodle Bar in Manhattan, to develop a similar ramen restaurant concept and that a nondisclosure agreement required Ells to keep Chang's business plans confidential. Connaughton says the executives told him that, after the agreement with Chang fell apart, Chipotle took his design work without payment for its own use and that Chang would sue when Ells opened Connaughton's restaurant. Connaughton confronted Ells, who ordered him to proceed with his planning. He was terminated in November 2012.

Connaughton sued Chipotle and Ells for fraudulent inducement, claiming that by failing to disclose their prior agreement with Chang, the defendants omitted a material fact that would undermine his ability to implement his own ramen concept. He alleged that Chipotle staff must have communicated to him plans and ideas developed by Chang, thus involving him in their violation of the nondisclosure agreement and threatening to ruin his professional reputation by creating the appearance that he had stolen Chang's ramen concept. He sought compensatory damages for his promised Chipotle stock and for lost business opportunities, as well as punitive damages. Supreme Court granted the defendants' motion to dismiss the suit under CPLR 3211.

The Appellate Division, First Department affirmed in a 3-2 decision, saying Connaughton did not adequately allege that he suffered actual damages due to fraud. "When a claim sounds in fraud, the measure of damages is governed by the 'out-of-pocket' rule, which states that the measure of damages is 'indemnity for the actual pecuniary loss sustained as the direct result of the wrong'...," it said. "Here..., the allegations at best suggest that, depending on the future actions of Chang and Momofuku, plaintiff might suffer injury. Not only is there no suggestion or indication that actual pecuniary damages were sustained..., but the complaint does not allege facts from which actual damages can be inferred...."

The dissenters argued, "[D]amages need not be demonstrated at the pleading stage as long as the possibility of damages may reasonably be inferred.... Here, it is implicit from the allegations contained in the ... complaint ... that the position in which plaintiff was placed due to defendants' conduct may cause him, or may have already caused him, compensable damages, particularly the possibility of damage to his reputation, and perhaps even future legal expenses."

For appellant Connaughton: Daniel J. Kaiser, Manhattan (212) 338-9100
For respondents Chipotle and Ells: Jean-Claude Mazzola, Manhattan (646) 663-1860

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To be argued Tuesday, March 21, 2017

No. 36 Kimmel v State of New York

In 1995, former State Trooper Betty Kimmel brought this action under New York's Human Rights Law against the State and the Division of State Police, alleging that she had been subjected to gender discrimination and to sexual harassment and retaliation throughout her 15-year career. In 2007, after 12 years of litigation and multiple appeals to the Appellate Division, Fourth Department, a jury awarded Kimmel $798,000 in compensatory damages. In 2008, Kimmel and her former counsel in the case, Emmelyn Logan-Baldwin, moved for attorneys' fees and expenses under CPLR article 86, the Equal Access to Justice Act (EAJA).

The EAJA provides that "a court shall award to a prevailing party ... fees and other expenses incurred by such party in any civil action brought against the state, unless the court finds that the position of the state was substantially justified or that special circumstances make an award unjust" (CPLR 8601[a]). The statute defines "action" as "any civil action or proceeding brought to seek judicial review of an action of the state as defined in subdivision (g) of [CPLR 8602], including an appellate proceeding, but does not include an action brought in the court of claims" (CPLR 8602[a]).

Supreme Court denied the motions for attorneys' fees, ruling that the EAJA "does not apply to a situation where a plaintiff has recovered compensatory damages for tortious acts of the State and its employees," but instead "permits recovery only in those cases where a party 'seeks judicial review of an action of the state.'"

The Appellate Division, Fourth Department reversed in a 3-2 decision and remanded the matter for a determination of the amount of fees and costs. The majority said that, "under a plain reading of the statute, the EAJA applies to this action. The EAJA unambiguously applies to 'any civil action brought against the state'.... [T]here is nothing in the text of the EAJA that limits recovery of attorneys' fees to CPLR article 78 proceedings or to declaratory judgment actions.... We conclude that the phrase 'any civil action' ... means just that -- any civil action, including this action seeking relief pursuant to the Human Rights Law." It said "the legislative history of the EAJA does not reveal a clear legislative intent to exclude the instant action...."

The dissenters argued that, "in drafting the EAJA, the Legislature intended that attorneys' fees and expenses be sought only in civil actions that involve the review of the actions of the State that are administrative in nature.... Our research has revealed more than 70 cases in which the EAJA was applied to award attorneys' fees in cases that involved administrative actions of the State, and none that did not." They said, "In our view, when construing the EAJA as a whole..., the 'spirit and purpose of the legislation'..., as gleaned from the statutory context and the legislative history, is to provide redress for litigants contesting the actions of the State in administrative matters...."

On remand, after four more years of litigation, Supreme Court awarded $498,000 in fees for Logan-Baldwin and $320,000 in fees for Kimmel's current counsel Harriet Zunno.

For appellant State: Mitchell J. Banas, Jr., Buffalo (716) 856-0600
For respondents Kimmel and Logan-Baldwin: A. Vincent Buzard, Pittsford (585) 419-8800

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To be argued Tuesday, March 21, 2017

No. 37 Matter of Loehr v Administrative Board of the Courts of New York State

Three State Supreme Court justices brought this suit to challenge a policy adopted in 2013 by the Administrative Board of the Courts, composed of the Chief Judge and the four Presiding Justices of the Appellate Division, which bars retired Supreme Court justices who receive judicial pension benefits from being certified to continue serving as justices beyond age 70. The State Constitution imposes a mandatory retirement age of 70 on judges, but it and Judiciary Law § 115 permit Supreme Court justices to seek certification from the Administrative Board to serve as retired justices until age 76 "upon findings (a) that he has the mental and physical capacity to perform the duties of such office and (b) that his services are necessary to expedite the business of the supreme court." The Board found that granting certification to justices who would receive a full salary and a judicial pension "conveys an impression to the public that the court system is insensitive to and neglectful of the State's current fiscal distress" and "creates difficulties for court administrators and advocates in negotiating effectively with the Legislature and the Executive Branch," which had criticized this double-dipping, on the court system's budget and other issues "of crucial importance to the Judicial Branch," according to an affidavit from the Chief Administrative Judge. The Board concluded that "judges who would be 'double-dipping' following certification were not 'necessary to expedite the business of the court,'" and its policy would require them to defer receipt of their judicial pensions before they could be certified.

Supreme Court dismissed the suit, saying neither the Constitution nor section 115 "precludes [the Board's] ability to impose conditions, such as the one at issue herein, as part of [its] constitutionally and statutorily mandated determination that [a] candidate's services are 'necessary.'" The Board "has 'nearly unfettered discretion in determining whether to grant applications'" for certification, it said, quoting Marro v Bartlett (46 NY2d 674). Rejecting a claim that the policy violates Retirement and Social Security Law § 212, which states that "any retired person may continue as retired and, without loss, suspension or diminution of his or her retirement allowance, earn" a salary "in public service," the court said the statute "provides that a retired person 'may' collect their retirement allowance and return to public service," but "it does not create a right to return to public service nor does it bar [the Board] from considering petitioners' pension statuses in determining whether an appointment will be made." Finding no violation of NY Constitution article V, § 7, which says membership in the state retirement system "shall be a contractual relationship, the benefits of which shall not be diminished or impaired," it said the Board's policy does not "diminish or impair petitioners' right to receive their benefits," but instead "imposes a condition to certification to which petitioners have no right" under Marro.

The Appellate Division, Third Department reversed, finding the policy unconstitutional and illegal. "The language of Retirement and Social Security Law § 212 explicitly allows New York public employees -- including Justices of the Supreme Court -- to retire in place and continue to work while collecting their state pension" and it "grants this right to public employees without mention of employers or an employer's discretion to condition recertification upon suspension of a statutory right...," it said. "While Judiciary Law § 115 provides [the Board] with its power in regard to certification, it does not empower [the Board] to make a certificated judgeship a lesser class of employment than a noncertificated judgeship." It said Marro "is easily distinguishable" because it addressed the certification of one judge "and does not deal with a statewide policy directive. While we can agree that Marro allows for unfettered discretion in ... individual certification decisions, it does not authorize [the Board] to change the requirements for certification" by imposing a condition that applicants defer their pensions. It said pension status is unrelated to a justice's eligibility for certification, which must be based on necessity under the Constitution and Judiciary Law.

For appellant Administrative Board: Lee Alan Adlerstein, Manhattan (212) 428-2150
For respondents Loehr et al: Robert A. Spolzino, White Plains (914) 323-7000

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