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 or gspencer@nycourts.gov.

To be argued Wednesday, May 31, 2017

No. 78 **Matter of Estate of Hennel**

Decedent owned a four-unit rental house in Schenectady, New York and lived in one of the units. In 2006, after decedent tired of maintaining the property and dealing with tenants, petitioners, his grandsons, agreed to assume those responsibilities. Decedent and petitioners met with the long-time family attorney and decedent executed a deed to the property that reserved to him a life estate and granted the remainder interest to petitioners. Decedent assured petitioners that they would not be burdened by the mortgage when they fully possessed the property, and decedent contemporaneously executed a will directing that the mortgage on the property be paid from the assets of his estate upon his death. Petitioners maintained the property, including collecting the rents and paying the mortgage out of the rents collected. Decedent executed a will in 2008 that revoked the prior will and made no provision for discharging the mortgage. Decedent died in 2010.

Decedent's widow and executor of his estate admitted the 2008 will to probate. Petitioners filed a notice of claim, asserting that they had entered into a valid agreement with decedent and it was understood that they would maintain and care for the property during decedent's lifetime in exchange for receiving the property free and clear of the mortgage upon his death.

Surrogate's Court, Schenectady County, granted summary judgment to petitioners and ordered the estate to pay the outstanding mortgage balance from the assets of the estate. The Appellate Division, Third Department, with two Justices dissenting, affirmed. The court noted the settled principle that wills are ambulatory in nature and the testator is generally free to alter or revoke its provisions prior to death, but acknowledged that a testator may validly surrender such right, so long as there is "a showing of clear and unambiguous evidence of the intent to do so." Thus, petitioners had to demonstrate that decedent's promise was made and understood "as the assumption of a binding obligation in consideration of a promise given by petitioners in return, or of performance by petitioners of a stipulated act." The majority held that, based on the testimony of the family attorney, petitioners paying the mortgage out of the rents they collected, and the numerous documents that were simultaneously created to effectuate the agreement, petitioners demonstrated that decedent acknowledged a legal obligation to satisfy the mortgage out of estate assets in return for management services performed by petitioners during his lifetime. Further noting that promissory estoppel is generally unavailable to bar a statute of frauds defense, the court held that an application of the statute of frauds would produce an unconscionable result in this case, and that the executor was properly estopped from invoking such a defense.

On appeal to this Court, the executor argues that (1) wills are ambulatory and promises not to alter or revoke a will are required to be in writing pursuant to EPTL 13-2.1; (2) the doctrine of promissory estoppel requires reasonable and foreseeable reliance by the party to whom the promise is made – and there is no valid reliance by petitioners in this case; and (3) reliance upon promissory estoppel by the promisee so as to avoid the application of the statute of frauds requires a showing of unconscionability – and petitioners suffered no unconscionable detriment.

For appellant Hazel Hennel &c.: Peter V. Coffey, Schenectady (518) 370-4645
For respondents Gregory Hennel et al.: Robert L. Adams, Troy (518) 272-6565

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 or gspencer@nycourts.gov.

To be argued Wednesday, May 31, 2017

No. 80 **People v David Lofton (Papers Sealed)**

Defendant was convicted by a jury of first degree criminal sex act and second degree burglary, for unlawfully entering a residence through a window at 3 a.m. in Rochester, New York and committing a criminal sex act upon its occupant. Defendant was 15 years old at the time of the crime and 16 years old when sentenced. At sentencing, in response to a recommendation in the Pre-Sentence Investigation Report and defense counsel's request that defendant be adjudicated a youthful offender, the trial court commented "[t]hat [youthful offender treatment] is certainly outside the realm of this court's consideration following trial." In affirming his conviction, the Appellate Division, Fourth Department found that the trial court's statement constituted a determination on the record that defendant was not an eligible youth for youthful offender treatment. Defendant however argues that this pronouncement does not satisfy the requirement "to determine on the record if he was an eligible youth due to the existence of one or more of the factors set forth in CPL 720.10 (3)."

For appellant Lofton: Brian Shiffrin, Rochester (585) 423-8290
For respondent: Monroe County Assistant District Attorney Scott Myles (585) 753-4541

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 or gspencer@nycourts.gov.

To be argued Wednesday, May 31, 2017

No. 81 **People v Kevin Minemier**

Defendant was convicted, upon a guilty plea, of one count of attempted murder in the second degree, two counts of assault in the first degree and one count of assault in the second degree. While walking through a local supermarket, defendant took a cheese knife from a display rack and repeatedly stabbed a woman in the face, head and eye, causing wounds that required more than 100 stitches to close. Defendant also stabbed a man who tried to stop the attack. Defendant was 18 years old and had no prior convictions.

On appeal, the Appellate Division, Fourth Department, initially concluded that County Court failed to determine whether defendant should be adjudicated a youthful offender and it sent the case back to County Court "'to make and state for the record a determination whether defendant should be granted youthful offender status.'" The Appellate Division also noted that County Court reviewed written statements that were not disclosed to defendant, and directed County Court "to make a record of what statements it reviewed and to state its reasons for refusing to disclose them to defendant."

After receiving the case, County Court stated in its decision: "At the time that [defendant] was sentenced, the Court did seriously consider a youthful offender adjudication. I did consider all the information that I had at my disposal at that time. The Court has reviewed the letter dated January 7, 2015 from [defendant's parents], as well as the attached articles that they had submitted to [the newspaper]. Based upon all of that information and the information that has been provided here today in court, the Court will not adjudicate [defendant] a youthful offender. With regard to the other issue, and that is regarding what statements the Court reviewed; at the time of sentencing, the Court did review the last page of the Pre-Sentence Investigation. The last page was titled Confidential to the Court. I would note for the record that that information was provided to the Probation Department on the promise of confidentiality," and so the Court did review it, but did not require disclosure to the defendant.

The Appellate Division then affirmed, rejecting defendant's contention that "the court erred in failing to state its reasons for not adjudicating him a youthful offender.... Although CPL 720.20(1) requires the sentencing court to determine on the record whether an eligible youth is a youthful offender, ... the statute does not require the court to state its reasons for denying youthful offender status to the defendant." Further, the Appellate Division concluded that County Court sufficiently identified what statements it reviewed at sentencing, and that defendant was not entitled to disclosure of any confidential information.

Defendant argues that County Court erred when it summarily denied his request for a youthful offender adjudication and failed to make a record of the factors relevant to its decision. Defendant also argues that County Court's summary refusal to disclose statements to the defense that were reviewed and considered by the court for sentencing violated both the requirements of CPL 390.50 and defendant's right to due process.

For appellant Minemier: Donald M. Thompson, Rochester (585) 423-8290
For respondent: Monroe County Assistant District Attorney Leah R. Mervine (585) 753-4354