

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 Tuesday, October 21, 2014

No. 201 Matter of Merry-Go-Round Playhouse, Inc. v Assessor of City of Auburn

Merry-Go-Round Playhouse, Inc., a not-for-profit corporation that operates a professional summer musical theater and a year-round youth theater in the Auburn area, purchased two apartment buildings in the City of Auburn in 2011 to house its professional actors and staff. The buildings are not open to the public and Merry-Go-Round receives no rental income from them; it instead provides the housing to actors and staff as part of their compensation. The organization says this is customary for seasonal theaters and, for 40 years before it purchased the buildings, it rented housing for the same purpose. It applied for property tax exemptions for both buildings. When the City denied the applications, Merry-Go-Round brought this Real Property Tax Law (RPTL) article 7 proceeding, seeking a determination that it was entitled to the exemptions under RPTL 420-a(1)(a).

Supreme Court granted summary judgment to Auburn and ruled that Merry-Go-Round did not qualify for the tax exemptions. The court said the organization's operation of the youth theater program supported the conclusion that it was "organized or conducted exclusively for one or more of the exempt purposes," the first requirement under RPTL 420-a(1)(a), but said it "failed to establish that its professional summer stock theater ... is an exempt purpose." Regarding the statute's second requirement, the court said Merry-Go-Round's use of the buildings to house actors and staff was not "necessary and reasonably incidental" to carrying out an exempt purpose because "petitioner's ability to fulfill its intended purposes would not be seriously undermined without its ownership of housing for its seasonal actors and staff."

The Appellate Division, Fourth Department reversed and granted Merry-Go-Round's motion for summary judgment seeking tax exemption for both buildings. It said, "Here, there is no dispute that petitioner ... is organized exclusively for an exempt purpose," in that it "was founded for the purpose of promoting and presenting theatrical arts, i.e., for purposes of education and the moral and mental improvement of men, women and children." The court said Merry-Go-Round also established that "the use of the properties at issue is reasonably incidental to the primary or major purpose of petitioner..., i.e., the properties are intended to house staff and actors who work in petitioner's theaters and to help cultivate petitioner's community amongst its artists."

For appellants Auburn et al: Andrew S. Fusco, Auburn (315) 255-4176

For respondent Merry-Go-Round Playhouse, Inc.: Charles H. Lynch, Jr., Auburn (315) 253-0326

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 Tuesday, October 21, 2014

No. 202 Matter of Maetrem of Cybele, Magna Mater, Inc. v McCoy

Maetrem of Cybele, Magna Mater, Inc. is a not-for-profit religious corporation that owns three acres in the Town of Catskill, Greene County. The property includes a three-story twelve-bedroom house (a former inn), a caretaker's cottage, several outbuildings, and an outdoor temple. Maetrem is the corporate entity for the Cybeline Revival, a pagan faith founded in 1999 by Cathryn Platine that worships the mother goddess, Cybele. Platine and three other women purchased the property in 2002 to provide affordable housing for transsexual women. In 2004, after Platine and two other owners belonging to the religion began practicing their faith on the property, the fourth owner sold her interest to a Cybeline adherent. In 2005, the owners dedicated the property as the home of their religion and transferred the title to Maetrem. Maetrem, which received tax-exempt status from the Internal Revenue Service, applied for a property tax exemption in 2009, 2010, and 2011. Catskill officials denied the applications, and Maetrem brought these RPTL article 7 proceedings to challenge the determinations.

Supreme Court dismissed Maetrem's petitions, saying it failed to demonstrate that the principal uses of the property were in furtherance of its religious mission, as required by RPTL 420-a(1)(a). "Rather..., the court finds that the primary and predominant use of the property was to provide cooperative housing for a small group of individuals, with the religious and charitable uses of the property merely incidental to this residential use.... Here, only a de minimus portion of the Maetrem's property is dedicated to religious activities -- principally those of the property's residents -- and 'personal use' of the 12-bedroom main house predominates over any claimed religious uses." The court said it was "significant that the same small group of individuals who enjoy use and occupancy of the property are, by and large, the same small group who financially support the property and who engage in religious activities thereupon.... The apparent absence of an external congregation also supports the court's finding...."

The Appellate Division, Third Department reversed and granted the petitions, finding that Maetrem demonstrated that it uses the property primarily for its religious and charitable purposes. "The testimony established that the Cybeline Revival stresses communal living among its adherents, as well as providing hospitality and charity to those in need, and the members consider this property the home of their faith.... They also conduct religious and charitable activities throughout the property on a regular basis. Accordingly, petitioner has satisfied the legal requirements in order to receive a real property tax exemption for 2009, 2010 and 2011...."

For Town of Catskill appellants: Daniel G. Vincelette, Albany (518) 608-6569

For respondent Maetrem of Cybele: Deborah Schneer, Kingston (845) 658-7578

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 Tuesday, October 21, 2014

No. 197 Kimso Apartments, LLC v Gandhi

In the 1990s, Mahesh Gandhi and two partners, Arlington Filler and Darshan Shah, formed Kimso Apartments and other corporations to purchase apartment buildings on Staten Island. In 1997, the corporations made shareholder loans of \$2.97 million to each of the partners which were to be paid back over 30 years. The partnership broke up acrimoniously in 2001, Filler and Shah removed Gandhi as daily manager of the corporations, and the former partners filed several lawsuits against each other. Gandhi stopped making payments on his loan in August 2001. In 2002, the estranged partners entered into a settlement of all their litigation. Under its terms, Gandhi sold his interest in the corporations to Filler and Shah for \$1.648 million, to be paid in 120 monthly installments of \$20,000. The settlement contained a broad release provision through which the parties discharged each other from any and all claims.

In 2003, Kimso and other corporations filed this action seeking a declaration that the amount Gandhi allegedly owed on his shareholder loan could be offset against the amount owed to him under the settlement for his interest in the corporations. In September 2004, the corporations ceased making monthly payments to Gandhi under the settlement agreement. In 2005, Gandhi filed an amended answer asserting 18 counterclaims, but he did not assert a claim for back payments under the settlement. At trial in November 2010, a plaintiff's attorney questioned Gandhi about his negotiations with Filler and Shah over the buy-out provision in the settlement and submitted the agreement into evidence, and Gandhi later testified about the payments he was promised under the settlement. At the end of the trial, Gandhi moved to conform his pleadings to the proof to assert a counterclaim for payments due for his buy-out under the settlement.

Supreme Court held the broad release in the settlement agreement extinguished Gandhi's obligation to repay his shareholder loan; and it granted his request to conform the pleadings to the proof, saying his claim for payments owed him under the settlement "has been an intrinsic counterclaim since the onset of this litigation." It said, "Plaintiffs claim that they were entitled to withhold payments under the Settlement Agreement because they were entitled to payment under the Notes [for the shareholder loan].... The inverse of that argument would then state that if this court does not find the Corporations are entitled to repayment under the Notes, the Settlement Agreement payments must be due. Based upon this logic, the issue of the past due Settlement Agreement payments was present in the litigation from the very start ... and thus amendment of the answer is not prejudicial." It awarded Gandhi \$2,186,787, including interest.

The Appellate Division, Second Department modified by denying Gandhi's motion to conform his pleadings to the proof to assert the counterclaim for payments due under the settlement, saying the trial court "improvidently exercised its discretion." It said, "[I]n view of [Gandhi's] extensive delay in moving to assert his counterclaim, his lack of a reasonable excuse for the delay..., and the fact that he was fully aware of the facts underlying the amendment sought during the entire time this action was pending, the trial court should have denied his application as barred by the doctrine of laches.... The belated amendment of [Gandhi's] answer prejudiced the plaintiff corporations, since they had no opportunity to present defenses to the counterclaim."

For appellant Gandhi: Eli Feit, Manhattan (212) 685-7600

For respondents Filler and Shah: Robert A. Spolzino, White Plains (914) 323-7000

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 Tuesday, October 21, 2014

No. 198 People v Costandino Argyris

No. 199 People v John A. DiSalvo

No. 210 People v Eric R. Johnson

The primary issue in these appeals is whether information given to police by anonymous callers was sufficiently reliable to provide the reasonable suspicion necessary to justify stopping a vehicle.

Costandino Argyris and John DiSalvo were arrested in Queens in 2007, after an anonymous caller told a 911 operator that he had just seen four "big bully white guys" get into a new black Mustang at a particular intersection in Astoria. The caller said one of the men put a "big gun" in the back of the car, provided the license plate number, and said a gray van was traveling with the Mustang. An officer stopped the Mustang a short time later and, after additional officers arrived, arrested the men at gunpoint. DiSalvo had a revolver in his waist band. Argyris was wearing a bulletproof vest and had a blackjack and switchblade in his pockets. Officers found a .38 caliber handgun under the driver's seat and a box of 9-millimeter ammunition on the back seat. After Supreme Court denied their motions to suppress, the defendants pled guilty to multiple weapon possession charges. DiSalvo was sentenced to 6 years in prison and Argyris to 3½ years.

The Appellate Division, Second Department affirmed, saying in Argyris that the police had reasonable suspicion to stop the Mustang "based on the description of the vehicle and its license plate number..., and the observation of the Mustang in close geographical and temporal proximity to the scene where the defendant was first observed.... [T]he report of the 911 caller, which was based on the contemporaneous observation of conduct that was not concealed, was sufficiently corroborated to provide reasonable suspicion for the stop...."

Eric Johnson was arrested for driving while intoxicated in Ontario County in 2011, after a 911 dispatcher relayed a report from an anonymous caller about a "sick or intoxicated" driver to a Yates County sheriff's deputy. The caller provided a description of the driver's blue BMW, its location and its plate number. The deputy crossed into Ontario County before spotting the BMW, followed it until Johnson made a "hasty" turn, then stopped him to determine if he was intoxicated. An Ontario County deputy made the arrest. Johnson pled guilty to a misdemeanor DWI charge after Naples Town Court denied his motion to suppress.

Ontario County Court affirmed, saying, "The 911 call, together with the traffic infraction provided [the Yates County deputy] with more than a hunch ... and therefore, the deputy possessed the requisite reasonable suspicion to stop the vehicle."

The defendants argue these anonymous tips could not provide reasonable suspicion because the police did not have enough information to judge the reliability of the 911 callers or the basis of the callers' knowledge. Johnson says the identity of the tipster was unknown and the deputy offered no testimony "that the caller personally observed the purported operation of the motor vehicle or that the information was reasonably current." Argyris and DiSalvo argue it was unreasonable for police to rely on the anonymous tip "in the absence of a scintilla of 'predictive' information," and they say "nothing in the information provided by the informant offered the slightest assurance that he was not making this up."

198 & 199: For appellants Argyris & DiSalvo: Steven R. Kartagener, Manhattan (212) 732-9600

For respondent Queens District Attorney: Donna Aldea (718) 286-6100

210: For appellant Johnson: Edward L. Fiandach, Rochester (585) 244-8910

For respondent: Ontario County Assistant District Attorney Jeffrey L. Taylor (585) 396-4010