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 Wednesday, January 14, 2015

No. 11 People v Adam Crowder

Adam Crowder, facing burglary and criminal mischief charges in Schenectady County Court in 2011, was offered a plea bargain that would permit him to plead guilty to a reduced charge of attempted burglary in the second degree and receive a sentence of two years in prison. The court also informed him that the prison term would be followed by a period of postrelease supervision (PRS) ranging from one and a half to three years. However, when Crowder entered his guilty plea three days later, the court made no mention of PRS. After Crowder failed twice to appear for sentencing, the court sentenced him in absentia to an enhanced prison term of five years followed by three years of PRS. The court later confirmed the sentence in Crowder's presence.

Crowder appealed, arguing that his conviction must be vacated under People v Catu (4 NY3d 242) because County Court failed to advise him of his PRS term at the time of his plea. Catu held that a court's failure to advise a defendant of a statutorily-required term of PRS renders a guilty plea involuntary.

The Appellate Division, Third Department affirmed Crowder's conviction, finding that his Catu claim was unpreserved. "Although the court omitted mention of postrelease supervision during the plea colloquy, defendant was aware of that component of the sentence prior to entering his plea, as the court had advised him of it during a previous appearance where the plea offer was described, defense counsel was present when the court imposed a sentence on defendant in absentia that included such a term, and the court mentioned the term of postrelease supervision at the outset of the confirmation hearing," it said. "Because defendant was aware of and advised that the court intended to impose a term of postrelease supervision despite not having mentioned it during the plea colloquy, but he did not object on that ground to raise the issue when it could have been addressed before the sentence was confirmed, the issue is not preserved for appellate review...."

Crowder argues, "The issue in this case is not of preservation but instead of voluntariness." He urges the Court to adopt a "bright line rule" that "the direct consequences of [a defendant's] plea should be clearly and unequivocally stated at the time of the plea" and a court's failure to do so "should result in a vacating of the plea.... To parse otherwise could lead to an untold number of factually different scenarios that render any rule ineffective." He says, "In this case, while the defendant was made aware of a range of possible post-release supervision sentences days prior to the plea, there was no mention of any post-release supervision during the actual plea. If the lower court decision is allowed to stand, it could invite other attempts to move further away from what was once a central concept."

For appellant Crowder: Lee Kindlon, Albany (518) 434-1493
For respondent Schenectady County District Attorney: Counsel Gerald A. Dwyer (518) 388-4364

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To be argued Wednesday, January 14, 2015

No. 18 Graham Court Owner's Corp. v Taylor

In 2004, Kyle Taylor entered into an unregulated lease for a Manhattan apartment owned by Graham Court Owner's Corp. Five months later, Taylor filed a rent overcharge complaint which resulted, in January 2007, in a ruling that the apartment was rent-regulated and Taylor was overcharged. Graham Court terminated the lease in May 2007, alleging that Taylor violated the lease by making improvements without prior written consent, then commenced this summary holdover proceeding to obtain possession of the apartment and "legal fees in the amount of $3,000." In his answer, Taylor asserted a defense of retaliatory eviction under Real Property Law § 223-b and counterclaims for attorneys' fees and damages.

Civil Court dismissed the holdover proceeding, finding that Taylor had obtained consent for the improvements and that Graham Court commenced the proceeding in retaliation for his successful overcharge claim. It awarded attorneys' fees to Taylor pursuant to section 223-b. The Appellate Term, First Department modified by reversing the award of attorneys' fees and otherwise affirmed. It rejected Taylor's alternative claim that he was entitled to attorneys' fees under Real Property Law § 234, which states that when a lease provides for a landlord's recovery of attorneys' fees resulting from a tenant's failure to perform any covenant under a lease, a reciprocal covenant "shall be implied" for the landlord to pay attorneys' fees incurred by the tenant "in the successful defense of any action or summary proceeding commenced by the landlord against the tenant arising out of the lease."

Taylor appealed, arguing that paragraph 15 of his lease triggered the landlord's implied obligation to pay attorneys' fees under section 234. Paragraph 15 states that, if a tenant defaults, the landlord may cancel the lease, "use eviction or other lawsuit method to take back the Apartment," and re-rent the apartment. It also states, "Any rent received by Landlord for the re-renting shall be used first to pay Landlord's expenses..., including ... reasonable legal fees...."

In a 3-2 decision, the Appellate Division, First Department modified by granting Taylor's claim for attorneys' fees under section 234. "We interpret the remedial scheme of paragraph 15 to permit the landlord, in the event of a lease default by the tenant, to cancel the lease and regain possession of the premises via the means of a summary holdover proceeding, and then recoup the attorneys' fee incurred in the litigation by re-renting the premises.... Paragraph 15, thus, literally fits within the language of" section 234. It said, "[W]e concur with the Second Department in holding that the type of lease clause at issue here is sufficient 'to trigger the implied covenant in the tenant's favor'" under section 234.

The dissenters argued, "[U]nder the reciprocal provisions of [section] 234, a tenant may recover attorneys' fees only where the lease provides for the landlord's recovery of such fees (a) in an action or special proceeding or (b) as additional rent. Neither situation is present here.... Nothing in [paragraph 15] provides for tenant's payment of attorneys' fees. The language merely provides for an offset of rents collected in the event of a reletting. Therefore, Real Property Law § 234 is inapplicable."

For appellant Graham Court: Nativ Winiarsky, Manhattan (212) 869-5030
For respondent Taylor: Mark H. Bierman, Manhattan (212) 232-2055

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To be argued Wednesday, January 14, 2015

No. 19 Front, Inc. v Khalil

After working for eight years as director of engineering for Front, Inc., a design and consulting firm, Philip Khalil resigned in March 2011 to join one of Front's competitors, Eckersley O'Callaghan Ltd. (EOC). Front accused him of taking its confidential and proprietary information and using it to divert work for Apple Inc., including a project for the Apple Store on Broadway in Manhattan, from Front to Khalil and EOC. Front retained attorney Jeffrey A. Kimmel and his law firm, Meister Seelig & Fein LLP, to pursue the matter. In April 2011, Kimmel wrote to Khalil to address, among other things, "your recent attempt to steal Front's confidential and proprietary information" and "the illegal competing side business that you conducted" for Front's competitors while employed by Front, and accused Khalil, a British citizen, of violating the terms of his resident alien status and professional codes of conduct. Kimmel also wrote to EOC, enclosing his letter to Khalil and charging that Khalil "conspired with [EOC] to breach his fiduciary duty to Front and engaged in other illicit activities."

In October 2011, Front brought this action against Khalil and EOC alleging misappropriation of trade secrets, civil conspiracy, and unfair competition. Khalil brought a third-party action against Kimmel and his law firm, asserting claims for libel and tortious interference with business relations. Kimmel and his firm moved to dismiss the third-party complaint for failure to state a cause of action, claiming the attorney's statements in the letters to Khalil and EOC were entitled to an absolute privilege because they were made in preparation for litigation. Khalil argued the statements were not protected by an absolute privilege because they were made before the judicial proceeding was commenced.

Supreme Court granted Kimmel's motion to dismiss the third-party complaint, concluding the letters to Khalil and EOC were absolutely privileged. "While the letter ... may well have been rambling and inartful, it clearly relates to the litigation initiated by Front" and "the demands made in the letters ... substantially reflect the causes of action and relief requested" in the main action, it said. "The fact that the litigation was not initiated until approximately six months after the letters were sent does not alter the court's conclusion."

The Appellate Division, First Department upheld the dismissal of Khalil's libel claims, holding that "an absolute privilege attaches to the statements made by [Front's] counsel in the April 2011 letters, because they were issued in the context of 'prospective litigation'...." It further found that "the third-party complaint and the documentary evidence fail, absent the libel claims, to allege the 'malice' or use of 'improper or illegal means' required to state a cause of action for tortious interference with business relations...."

Khalil argues, "The First Department's holding that absolute privilege attaches to statements made in the context of 'prospective litigation' is clearly erroneous, disregards essential policy and equitable considerations, contradicts prior case law on this issue," and conflicts with precedent in the Second and Third Departments. He says, "No reasoning was advanced for the notion that an attorney should be afforded absolute immunity for libelous statements made outside the ambit of judicial proceedings, and under essentially undefined circumstances."

For appellant Khalil: Neil G. Marantz, Rye (914) 925-6700
For respondents Kimmel et al: Lisa L. Shrewsberry, Hawthorne (914) 347-2600