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 Thursday, January 15, 2015

No. 21 Platek v Town of Hamburg

When a water main ruptured and flooded their home in the Town of Hamburg in 2010, Frederick and Mary Platek sought coverage under their homeowner policy from Allstate Indemnity Company. Allstate disclaimed coverage based on a policy exclusion, "item 4," which provides that Allstate does not cover losses "caused by: ... 4. Water ... on or below the surface of the ground, regardless of its source. This includes water ... which exerts pressure on, or flows, seeps or leaks through any part of the residence." The Plateks sued Allstate for breach of contract, citing an exception to the exclusion in Allstate's policy which states, "We do cover sudden and accidental direct physical loss caused by fire, explosion or theft resulting from items 1 through 4 listed above." They argued the exception applies because their losses were caused by an "explosion" of the water main. Supreme Court granted summary judgment to the Plateks.

The Appellate Division, Fourth Department upheld the award of summary judgment on liability in a 3-2 decision. Because the parties offered conflicting interpretations of the exclusion, and the court found both interpretations were reasonable, it concluded that the exception is ambiguous and thus should be construed in favor of the insureds. It said the plaintiffs "submitted evidence ... sufficient to establish as a matter of law that there was an 'explosion' of the water main abutting their property caused by the build up of pressure therein; that the pressure in the water main 'result[ed] from' the conditions set forth in item 4, i.e., '[w]ater ... below the surface of the ground'; and that the explosion of the water main caused 'sudden and accidental direct physical loss' to plaintiffs' property."

The dissenters argued the language of the policy is "clear and unambiguous" and does not cover the Plateks' water damage. "In our view, the exception should not be construed as intending to create coverage for water intrusion inasmuch as such a reading of the exception would supplant the water loss exclusion.... Rather, we agree with Allstate that the exception is properly characterized as an 'ensuing loss provision,' excluding from coverage any initial loss to the insured's property caused by '[w]ater ... on or below the surface of the ground,' but covering secondary or ensuing loss caused by fire, explosion or theft that occurs as the result of an excluded water event...."

For appellant Allstate Indemnity Co.: Robert H. King, Jr., Chicago, IL (312) 876-8000
For respondent Plateks: Patrick J. Mackey, Buffalo (716) 849-1333

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To be argued Thursday, January 15, 2015

No. 22 Matter of Manouel v Board of Assessors

Mehran and Sepideh Manouel, owners of a single-family home in Great Neck, sought to challenge their property tax assessment through a small claims assessment review (SCAR) proceeding in 2010. They did not reside in the house; it was occupied by Mehran Manouel's mother, who did not pay rent. At the hearing, Nassau County objected that the Manouels did not qualify for the SCAR program under the Real Property Tax Law, which requires that a property be "improved by a one, two or three family owner-occupied structure used exclusively for residential purposes" (RPTL 730[1][b][i]). The hearing officer denied the Manouels' petition for SCAR review on the ground the house was not owner-occupied, saying "SCAR jurisdiction does not extend to properties occupied by family members."

The Manouels brought this article 78 proceeding against the County, arguing that a house qualifies as owner-occupied when a relative lives in it rent-free. They said the purpose of the owner-occupancy requirement was to exclude income-producing properties from the SCAR program. Supreme Court dismissed the suit, finding the hearing officer's determination was not arbitrary and capricious. The Manouels provided no evidence that the mother's occupancy was temporary, it said, and "the hearing officer rationally applied an actual owner occupancy rather than income production [test]."

The Appellate Division, Second Department affirmed. "Where statutory language is clear and unambiguous, a reviewing court may not depart from its plain meaning...," it said. "In this case, pursuant to the plain meaning of RPTL 730(1)(b)(i), the owners did not reside at the property." It distinguished Matter of Masters v Board of Assessors (188 AD2d 471), in which the Second Department found a property qualified for SCAR where the house was for sale and the owner allowed his father-in-law to live in it rent-free until it sold. Here, the court said, "there is no evidence that the mother's residence at the property was temporary."

The Manouels argue that small claims assessment review is remedial in nature -- "designed to afford speedy and inexpensive relief to homeowners seeking review of their property tax assessments " -- and it should be liberally construed in order to carry out the legislative purpose of sparing homeowners the time and expense of conventional tax certiorari proceedings. They say, "Although the subject property herein is not, strictly speaking, occupied by the owner, the close familial relationship between the owners and occupant, coupled with the fact that there is no rent charged for the use of the premises, should satisfy a broad definition of the words 'owner-occupied.'"

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For respondent Nassau County: Martin Valk, Mineola (516) 571-3015

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To be argued Thursday, January 15, 2015

No. 23 Matter of Dunn, an Attorney

Albany attorney Jill A. Dunn represented a family trust set up by David Smith, a partner in the investment firm McGinn, Smith & Co., when the U.S. Securities and Exchange Commission (SEC) brought a civil enforcement action against the firm and its principals in U.S. District Court for the Northern District of New York in 2010. The trust intervened in the SEC action to lift a temporary restraining order that froze its assets and, in the course of that litigation, an issue arose regarding the existence of a private annuity agreement that governed assets of the trust. On September 3, 2010, Dunn filed an affidavit with the court denying that she had any knowledge of the annuity agreement prior to July 27, 2010. On November 15, 2010, she filed a corrective affidavit stating that she had recently discovered a July 21, 2010 email containing references to the annuity agreement and that her prior affidavit was incorrect.

A federal magistrate judge granted the SEC's motion to sanction Dunn for the false statements in her September 3 affidavit. The court ordered her to disgorge to the trust $5,355 in legal fees she had received, admonished her for "deliberately filing a false declaration," and referred the matter to the Committee on Professional Standards for the Third Judicial Department. Based on the magistrate's decision, the Committee charged Dunn with engaging "in fraudulent conduct prejudicial to the administration of justice adversely reflecting on her fitness as a lawyer by making false statements under oath in written declarations filed in federal court."

The U.S. Court of Appeals for the Second Circuit dismissed Dunn's appeal of the sanction order for lack of jurisdiction, finding the order was not a final determination and, thus, was not appealable. It said she must wait until the underlying SEC action ended before she could appeal. The Committee then moved at the Appellate Division, Third Department for an order declaring there were no factual issues and finding Dunn guilty of misconduct. It argued the magistrate's findings should be given preclusive effect under the doctrine of collateral estoppel. Dunn argued collateral estoppel should not apply because she had not yet been able to appeal the magistrate's decision and, therefore, did not have a full and fair opportunity to contest it.

The Appellate Division granted the Committee's motion and found Dunn guilty of professional misconduct based on the magistrate's sanction order. It said the factual issues decided by the magistrate were identical to the issues in the disciplinary proceeding and Dunn "was allowed and availed herself of a full opportunity to contest the allegations." It held that "the appellate status of the Magistrate Judge's order does not preclude the application of collateral estoppel." After a hearing on mitigation, the court found censure was the appropriate discipline in view of Dunn's "otherwise unblemished disciplinary record, and her commendable professional reputation...."

Dunn argues collateral estoppel was improperly applied to preclude her from contesting the Committee's factual allegations because the magistrate's order was not appealable. "This Court's precedents consistently hold that only *final* orders and judgments -- orders and judgments that have been appealed or could have been appealed but were not -- may be given collateral estoppel effect in subsequent proceedings. Since the magistrate judge's decision is not appealable until the conclusion of the underlying civil case..., it should not have been given collateral estoppel effect."

For appellant Dunn: Benjamin Zelermyer, White Plains (914) 761-4200
For respondent Committee on Professional Standards: Michael G. Gaynor, Albany (518) 285-8350

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To be argued Thursday, January 15, 2015

No. 24 Matter of Solla v Berlin

This appeal of a counsel fee award stems from a September 2010 decision by the New York City Human Resources Administration (HRA) to reduce the monthly shelter allowance of Luz Solla, a Brooklyn resident, from $1,391 to $1,182. Solla challenged the reduction at a fair hearing before the State Office of Temporary and Disability Assistance (OTDA), which ordered HRA to retroactively restore Solla's benefits in November 2010. Solla's attorney notified OTDA in March 2011 that the benefits had not been restored and asked the agency to enforce its order. OTDA replied that HRA "has taken appropriate action to comply" and OTDA considered the matter "satisfactorily resolved." In May 2011, when her benefits were still not restored, Solla brought this article 78 proceeding against both agencies, seeking enforcement of OTDA's order and an award of attorneys' fees under the state's Equal Access to Justice Act (EAJA). Two weeks later, HRA retroactively restored Solla's benefits.

New York's EAJA (CPLR article 86) 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." It defines "prevailing party" as "a plaintiff or petitioner in the civil action against the state who prevails in whole or in substantial part where such party and the state prevail upon separate issues."

Supreme Court dismissed Solla's suit as moot, and it denied her application for attorneys' fees on the ground she was not a prevailing party because she did not obtain an enforceable judgment. It rejected her argument that she was entitled to counsel fees under the "catalyst theory" because her suit was not moot when filed and was only rendered moot when the agencies restored her benefits as a result of the filing. While Solla's lawsuit "appears undoubtedly to have been the catalyst for [HRA's] compliance," it said, she was not entitled to fees under Auguste v Hammons (285 AD2d 417 [1st Dept 2001]), which adopted the U.S. Supreme Court's reasoning in Buckhannon Board & Care Home v West Virginia Dept. of Health & Human Resources (532 US 598 [2001]) to reject the catalyst theory.

The Appellate Division, First Department reversed on a 4-1 vote, granted the application for counsel fees and remanded for a hearing on the amount of the fees. Rejecting Auguste, it found the catalyst theory was necessary to achieve the legislative intent behind the EAJA. Without it, "aggrieved but impecunious parties would be hard-pressed to find qualified attorneys to commence cases for them, since they would have no assurance of being compensated. It would be inconsistent with the laudatory goals of the State EAJA to interpret the legislation as depriving plaintiffs of attorneys' fees simply because the State decided to concede its position."

The dissenter said the majority "advanced no compelling reason" to overturn Auguste. He argued, "[T]he adoption of the catalyst theory constitutes a policy decision aimed not at harmonizing the competing interests of the EAJA but at giving precedence to an essentially open-ended method of encouraging actions against municipal agencies and their treasuries. This is not the function of the judiciary."

For appellant OTDA: Cecelia C. Chang, Special Counsel to Solicitor General (212) 416-8808
For respondent Solla: Peter A. Kempner, Brooklyn (718) 237-5574