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, April 28, 2016 (arguments begin at noon)

No. 79 Dryden Mutual Insurance Company v Goessl

AP Daino Plumbing & Heating sent Stanley Goessl and one of its apprentices to perform plumbing work at a private home in Central Square, Oswego County, in 2009. The house apparently caught fire while Goessl was using a blow torch and the homeowners sued AP Daino and Goessl for negligence, alleging that Goessl was acting as AP Daino's employee.

AP Daino's liability insurer, The Main Street America Group, disclaimed coverage for Goessl on the ground that he was working as an independent contractor. Main Street's policy limited its liability coverage to "employees ... for acts within the scope of their employment by [AP Daino] or while performing duties related to the conduct of your business." Goessl did plumbing work under the name S&K Plumbing, Inc. and had his own business liability policy from Dryden Mutual Insurance Company, which covered him "only with respect to the conduct of a business of which he ... is the sole proprietor." Dryden disclaimed coverage on the ground that Goessl was working as AP Daino's employee at the time of the fire. Dryden brought this action against Main Street and AP Daino, seeking a declaration that Main Street, not Dryden, was obligated to defend and indemnify Goessl.

After a bench trial, Supreme Court declared Main Street must provide coverage because Goessl was AP Daino's employee, not an independent contractor. It cited testimony that Goessl reported to AP Daino's office every morning to receive his assignment, trained its apprentices, used its vehicles and tools, performed the same work as AP Daino employees and usually introduced himself as an employee. "[I]n all respects, [AP Daino] directed the work, told him where to go, told him what to do...," it said. "Regardless of the agreement they may have made, the key issues are the method and manner of employment, the use of tools, the directions, [that determine] whether there was an employer/employee relationship."

The Appellate Division, Fourth Department reversed on a 4-1 vote and ruled Dryden, not Main Street, must provide coverage because Goessl was an independent contractor. It said "the Dryden policy unambiguously provides coverage" because "Goessl was the sole proprietor of S&K Plumbing and..., at the time of the fire, he was engaged in the conduct of his 'trade, profession, or other occupation' as a plumbing subcontractor for AP Daino." Goessl and AP Daino "intentionally structured their business relationship as a long-term subcontracting arrangement," it said, noting that the company did not provide him health insurance, withhold taxes or pay social security or unemployment taxes for him; and Goessl set his own hourly rate, billed AP Daino on behalf of S&K Plumbing, received a form 1099 for miscellaneous income instead of a W-2 wage statement, and obtained his own liability insurance. "Inasmuch as ... AP Daino and Goessl intentionally entered into a business arranagement whereby Goessl was an independent contractor rather than an employee, we conclude ... that neither AP Daino nor Goessl expected that Goessl would be considered an 'employee' under the [Main Street] policy."

The dissenter said, "[T]he majority's rejection of the court's factual finding that Goessl was an employee of AP Daino is not only contrary to the well-settled standard that we apply when reviewing nonjury verdicts, but it is also contrary to the overwhelming evidence presented at trial and the strong public policy that militates against the improper and unscrupulous classification of employees as independent contractors."

For appellant Dryden: Peter W. Knych, Syracuse (315) 472-1175
For respondents AP Daino and Main Street: Jessica L. Foscolo, Buffalo (716) 853-3801

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To be argued Thursday, April 28, 2016 (arguments begin at noon)

No. 81 People v Glenford C. Hull

Glenford C. Hull was charged with second-degree murder after shooting his downstairs neighbor, Chance Caffery, during an altercation in their apartment house in Meridale, Delaware County, in February 2006. The men were engaged in a longstanding feud and on the night of the shooting Caffery was disturbed by noise Hull was making with a wooden mallet as he tenderized meat for chicken fried steaks. Caffery pounded on Hull's door and shouted threats, and Hull shouted back at him through the door, then retrieved a handgun from his bedroom. When Caffery went back to his apartment, Hull went out onto the stair landing with his gun and may have shouted something more. Caffery returned up the stairs in a rage. As he reached the landing, Hull pointed the gun at him and it discharged after Caffery made contact with it, striking him in the forehead.

Hull was initially found guilty of murder, but the conviction was reversed due to ineffective assistance of counsel. At his second trial, Supreme Court submitted the lesser included offense of first-degree manslaughter to the jury. Hull was acquitted of murder, but convicted of first-degree manslaughter and sentenced to 23 years in prison. On appeal, he argued the court erred in submitting the lesser included offense to the jury because no reasonable view of the evidence would support a finding that he intended to cause serious physical injury to Caffery rather than to kill him.

The Appellate Division, Third Department affirmed in a 3-1 decision, saying, "A reasonable view of this evidence is that an armed defendant emerged from his apartment with the intention of confronting his longtime nemesis and causing him harm. The evidence could reasonably support the further finding that defendant intended to seriously injure and not kill the victim. Defendant, had he wished to kill the victim, could have easily shot the victim as the victim screamed and pounded on defendant's apartment door or when the victim was ascending the stairs.... The victim was instead shot once during what the trial evidence suggests was a struggle for the gun...." It noted that, after shooting Caffery, Hull "performed first aid on him and summoned the authories...."

The dissenter said, "While defendant maintains that the shooting was accidental and he never intended to shoot the victim, he asserts that it is not possible to intentionally fire a weapon into a person's forehead from point blank range with only the intent to seriously injure but not kill. Here, in addition to the deteriorating relationship between the victim and defendant and the escalating verbal exchange preceding the event, the evidence shows that, during the brief encounter between the victim and defendant at the top of the stairway, the victim was shot in the forehead from a range of only a few inches. As such, I perceive no reasonable view of the evidence to support a finding that defendant intended only to cause serious physical injury...."

For appellant Hull: Jonathan I. Edelstein, Manhattan (212) 871-0571
For respondent: Delaware County Assistant District Attorney John L. Hubbard (607) 832-5299

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To be argued Thursday, April 28, 2016 (arguments begin at noon)

No. 82 Matter of Columbia County Support Collection Unit v Risley *(papers sealed)*

In 2005, Family Court in Columbia County entered a child support order requiring Joshua Risley to make biweekly payments of $166.23 to the mother of his two children. The mother filed a violation petition in 2009, alleging that Risley was not meeting his support obligations. The proceeding was transferred in 2010 to Family Court in Ulster County, where the mother had moved. That court found Risley willfully violated the support order and committed him to jail for six months, but it suspended the commitment order. In 2012, after the mother filed another violation petition, Family Court again found Risley in willful violation of the support order and committed him to jail for six months, but again suspended the commitment order.

In 2013, after an inquest on another violation petition, the court found Risley willfully violated support orders and committed him to jail for six months, unless he paid child support arrears of $23,487.28. The court also revoked the suspensions of the two prior orders of commitment and ordered that the three six-month jail terms run consecutively.

On appeal, Risley argued that Family Court Act § 454(3)(a) does not authorize consecutive commitments to jail for violations of child support orders. For willful violations of support orders, the statute permits a court to "commit the respondent to jail for a term not to exceed six months." It also states, "Such commitment does not prevent the court from subsequently committing the respondent for failure thereafter to comply with any such order."

The Appellate Division, Third Department affirmed the commitment orders imposing consecutive terms, citing section 454(3). It said there was no "merit to the father's contention that consecutive sentences were unauthorized.... Given the father's failure to contest the amounts due and his willful refusal to voluntarily pay them despite repeated opportunities afforded to him over more than three years, we find no abuse of discretion in the determination to run the sentences consecutively."

Risley argues that section 454(3) prohibits the imposition of consecutive commitments to jail and that the "plain language of the statute" limits terms of incarceration to a maximum of six months. "An overarching objective of the Family Court Act is to ensure that parents financially support their children," he says. "Therefore, it is reasonable to conclude that the Act contemplates concurrent sentences so that an obligor is punished for nonfeasance, on the one hand, and then freed to find employment and to meet her or his support obligation on the other."

For appellant Risley: Theodore J. Stein, Woodstock (845) 679-4953
For respondent Ulster County DSS: Daniel Gartenstein, Kingston (845) 334-5290

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To be argued Thursday, April 28, 2016 (arguments begin at noon)

No. 80 Ambac Assurance Corporation v Countrywide Home Loans, Inc.

Ambac Assurance Corp. guaranteed payments on residential mortgage backed securities issued by subsidiaries of Countrywide Financial Corp. between 2004 and 2006. After Countrywide merged with a Bank of America subsidiary, Red Oak Merger Corp., in 2008, Ambac brought this action against Countrywide, alleging that it fraudulently induced Ambac to insure the transactions by misrepresenting the quality of the underlying mortgages and that it breached the terms of the insurance agreements. Ambac asserted secondary claims against Bank of America, contending the bank would be liable for any judgment as Countrywide's successor-in-interest as a result of the merger.

When Ambac sought discovery of hundreds of communications between Countrywide, Bank of America, and their respective attorneys leading up to the merger and subsequent sales of Countrywide assets to Bank of America entities, the bank claimed they were protected by attorney-client privilege. While disclosure to a third party of a communication between counsel and client generally deprives it of confidentiality, an exception called the common-interest privilege can preserve the confidentiality of a legal communication when disclosure is made to further a nearly identical legal interest shared by the client and the third party. The bank argued it had a "shared legal interest" with Countrywide "in closing the merger" and completing "the many necessary intermediate steps for two heavily regulated entities."

A special referee granted Ambac's motion to compel discovery of the documents, saying the bank's view of the common-interest doctrine "is much too broad." The common-interest privilege "must be limited to communication between counsel and parties with respect to legal advice in pending or reasonably anticipated litigation in which the joint consulting parties have a common legal interest. The attorney-client privilege, even as expanded by the 'common interest' exception, may not be used to protect communications that are business oriented or are of a personal nature." Supreme Court denied the bank's motion to vacate the order, saying the referee "correctly held that New York law does not allow a privilege claim under the common-interest doctrine unless there is pending or reasonably anticipated litigation."

The Appellate Division, First Department reversed. While "New York courts have taken a narrow view of the common-interest privilege, holding that it applies only with respect to legal advice in pending or reasonably anticipated litigation," it said this view is no longer viable. "We hold that, in today's business environment, pending or reasonably anticipated litigation is not a necessary element of the common-interest privilege. Our conclusion holds particularly true in this case, where the parties have a common legal interest because they were engaged in merger talks during the relevant period and now have a completed and signed merger agreement. Indeed, the circumstances presented in this case illustrate precisely the reason that the common-interest privilege should apply -- namely, that business entities often have important legal interests to protect even without the looming specter of litigation."

Ambac argues, "[T]here is no sound policy justification for throwing out the litigation requirement. For years, businesses have organized their affairs in joint settings and have negotiated a variety of business combinations under existing privilege law." The Appellate Division's ruling could have "serious consequences..., such as concealing frauds from regulators, keeping secret unlawful attempts to monopolize through business combinations and covering up actions that injure consumers."

For appellant Ambac: Stephen P. Younger, Manhattan (212) 336-2000
For respondent Bank of America: Jonathan Rosenberg, Manhattan (212) 326-2000