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, February 16, 2016

No. 34 Spoleta Construction, LLC v Aspen Insurance UK Limited

Spoleta Construction, the general contractor for a construction project in Rochester, hired Hub-Langie Paving as a subcontractor and, as required by the subcontract, Hub-Langie named Spoleta as an additional insured on its commercial general liability policy from Aspen Insurance UK Limited. A Hub-Langie employee, Shane VanDerwall, was injured on the work site in October 2008. Spoleta did not receive notice of the accident until December 2009, when VanDerwall's attorney informed it in a letter of his intention to file a personal injury action. Spoleta's insurer notified Hub-Langie of the potential claim in January 2010, reminded Hub-Langie of its agreement to defend and indemnify Spoleta, and asked it to notify its own insurer "so that they m[a]y do their own investigation of this claim." Two weeks later, Hub-Langie sent Aspen a notice of claim form regarding VanDerwall's accident and attached the January 2010 letter. VanDerwall commenced his personal injury suit in April 2010, and Spoleta demanded in May 2010 that Aspen defend and indemnify it in VanDerwall's suit. When Aspen disclaimed coverage to Spoleta for untimely notice, Spoleta brought this action for a declaration that Aspen was obligated to provide it with coverage.

Supreme Court granted Aspen's motion to dismiss, saying, "Spoleta failed to provide timely notice of the claim and its demand for coverage as an additional insured."

The Appellate Division, Fourth Department reversed on a 3-2 vote, ruling Spoleta gave Aspen the notice required by its policy, which provides that the insured "must see to it that we are notified as soon as practicable of an 'occurrence' or an offense which may result in a claim." It further provides that when "a claim is made or 'suit' is brought against any insured, you must ... see to it that we receive written notice of the claim or 'suit' as soon as practicable." The court found the December 2009 letter from VanDerwall's attorney was a notice of an "occurrence," not a "claim" under the policy. "We further conclude that the January 2010 letter and form that Hub-Langie sent to [Aspen] at [Spoleta's] request satisfied the insured's duty under the policy to 'see to it' that [Aspen] was notified of the occurrence 'as soon as practicable'.... Inasmuch as the January 2010 letter constituted notice of an 'occurrence,' we conclude that the May 2010 letter constituted notice of a 'claim' or 'suit' based upon VanDerwall's April 15, 2010 commencement of the underlying action."

The dissenters argued Spoleta did not provide timely notice to Aspen of an "occurrence," so the insurer was entitled to disclaim coverage. The January 2010 letter "received by [Aspen] via Hub-Langie did not notify [Aspen] of an occurrence that may result in a claim under the policy. Instead, the letter merely stated that [Spoleta] was seeking defense and indemnification from Hub-Langie pursuant to the indemnification provision of the subcontract. The letter does not indicate that [Spoleta] is seeking coverage directly from [Aspen] as an additional insured..., nor does it ask Hub-Langie to provide notice of any kind to [Aspen] on [Spoleta's] behalf."

For appellant Aspen: Stephanie A. Nashban, Manhattan (212) 232-1300
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To be argued Tuesday, February 16, 2016

No. 35 Yaniveth R. v LTD Realty Co.

Yaniveth R. was born in January 1997 and for the next year her grandmother, Victoria Collazo, took care of her for 10 to 12 hours each weekday at Collazo's Bronx apartment while the child's parents were at work. The apartment was built before 1960, when New York City banned the use of lead-based paint in residences, and some of its paint was cracked or peeling. During a routine medical checkup in 1998, Yaniveth was found to have an elevated blood lead level. The finding triggered inspections by the City Health Department, which found lead paint in Collazo's apartment, but not in the apartment of the child's parents. The department ordered the building's owner, LTD Realty Co., to abate the lead hazard in Collazo's apartment, saying Yaniveth "resides ... and/or spends a significant amount of time" there. LTD ultimately complied with the order. Yaniveth and her mother brought this action against LTD in 2006, claiming the child suffered brain damage and related cognitive and behavioral disorders due to her exposure to lead paint.

LTD moved for summary judgment dismissing the suit, arguing it owed no duty to the child because she did not "reside" at Collazo's apartment within the meaning of Local Law 1, as it then read. The law required owners of multiple dwellings to remove or cover lead paint "in any dwelling unit in which a child or children six (6) years of age and under reside" (Administrative Code of the City of New York § 27-2013[h]). The plaintiffs argued the child did "reside" at Collazo's apartment based on the substantial time she spent there.

Supreme Court granted LTD's motion to dismiss, saying Local Law 1 "requires that the child reside in the apartment" and LTD established that Yaniveth did not. "While counsel correctly states that a person may have more than one residence for venue purposes," it said, citing Matter of Newcomb (192 NY 238 [1908]), "intent is a crucial facet of that analysis ... and the proof presented demonstrates that it remained the intention of both [the child's] mother and Collazo that [the child] return each day to the home she shared with her parents and siblings."

The Appellate Division, First Department affirmed, saying LTD "established prima facie that the infant plaintiff was cared for at the apartment, during the day, but resided elsewhere, with her parents.... In opposition, plaintiffs failed to raise an issue of fact as to the infant's residence at the premises."

The plaintiffs argue that, because the purpose of Local Law 1 is to protect children from lead paint hazards, the word "reside" should be read broadly to include "an apartment in which she spends 50 hours per week under the care of a close relative." The lower courts "improperly added" an intent element and "a requirement that a child must primarily reside in the subject premises. Neither requirement finds support in the plain meaning, text or intent of Local Law 1." They cite Newcomb, which held, "Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires ... an intention to make it one's domicile."

For appellants Yaniveth et al: Alan J. Konigsberg, Manhattan (212) 605-6200
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To be argued Tuesday, February 16, 2016

No. 36 People v Christian Williams

Christian Williams was arrested in January 2010 for allegedly selling crack cocaine to an undercover officer in Manhattan. In November 2011, he pled guilty to third-degree sale of a controlled substance in exchange for a promised sentence of three years in prison. Neither Supreme Court nor the attorneys realized the sentence was illegal because Williams had a prior violent felony conviction, which made the correct sentencing range 6 to 15 years. The court allowed him to remain free pending sentence and advised him that he could be sentenced to as much as 12 years if he committed another crime, failed to return for sentencing, or failed to cooperate with the Probation Department. Two weeks later, before the promised sentence was imposed, Williams was arrested on a misdemeanor charge of marijuana possession. The District Attorney's Office declined to prosecute him, but the court that had taken his plea held a hearing, found Williams violated his plea agreement by committing the misdemeanor, and sentenced him to an enhanced term of six years in prison.

The Appellate Division, First Department reversed and vacated the plea in a 3-2 decision, ruling his plea "violated due process because it was secured by way of an illegal promise" of a three-year prison term. "[I]t is difficult to understand the dissent's position that defendant's plea was knowing and voluntary when the court itself did not understand that the agreed upon sentence ... was illegal.... While such a challenge must ordinarily be preserved by a motion to withdraw the plea..., this does not apply where the trial court failed to fulfill its obligations to ensure that a plea conformed with due process" by informing the defendant "of the direct consequences of the plea." It said that, "when a defendant enters into an involuntary guilty plea, the constitutional defect lies in the plea itself, and not in the resulting sentence.... In such a scenario, vacatur of the plea is the only remedy since it returns the defendant to his status before the constitutional infirmity took place...."

The dissenters argued Williams' objections to his plea are unpreserved and should not be considered, saying this is not "the 'rare case' where preservation is not required ... because the court failed in its duty to advise the defendant of a direct consequence of entering a guilty plea...." Further, they said, "Where a defendant does not move to withdraw his plea, a sentencing court nevertheless has the inherent power to correct an illegal sentence.... Thus, the illegality of the promised sentence does not, in itself, render a defendant's guilty plea unknowing and involuntary.... Here, defendant was told that he could receive up to 12 years' imprisonment if he failed to comply with the conditions set by the court.... Since defendant violated the conditions of the plea agreement and did not move to withdraw his plea, he was no longer entitled to the three year sentence and cannot argue that the period of imprisonment finally imposed was not within the expected sentencing range of up to 12 years. Because the final sentence was lawful and within the expectations of the parties, defendant's plea did not violate his due process rights."

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To be argued Tuesday, February 16, 2016

No. 37 People v Marcellus Johnson

Marcellus Johnson was arrested on robbery and larceny charges in September 2011 for allegedly stealing a wallet, cell phone and debit card from a drunken tourist in Manhattan. Unable to make bail, he was held at Rikers Island awaiting trial for nearly four months and made dozens of telephone calls to friends and relatives, in some of which he discussed details of the crimes. His calls were recorded pursuant to an Operations Order of the City Department of Correction (DOC), which requires recording and retention of all calls made by and to inmates, except privileged calls to attorneys, clergy or treating physicians and calls to certain government agencies. Near the telephones are posted notices that read, "Inmate telephone conversations are subject to electronic monitoring and/or recording in accordance with department policy. An inmate's use of institutional telephones constitutes consent to this monitoring and/or recording." Permission for DOC personnel to listen to the calls is generally limited to situations involving threats to institutional security or criminal behavior, but the order includes a procedure for providing copies of the recorded calls at the request of prosecutors and police agencies.

The prosecutor in Johnson's case obtained recordings of his phone calls from DOC. Johnson moved to bar the prosecutor from introducing or referring to his recorded conversations, arguing that their release exceeded DOC's authority, that any consent by him did not apply to use of the recordings by prosecutors, and that his indelible right to counsel would be undermined. His defense attorney said, "If disclosure of the defendant's calls to his prosecutor reflects a policy of routine approval of such prosecutorial requests, then DOC has made itself the 'ears' of the prosecution and has injected itself into the criminal process in a way that violates the defendant's Sixth Amendment Right to Counsel."

Supreme Court denied the motion, saying, "I cannot conclude that the Department of Corrections is an agent of the police department and is responsible for obtaining incriminating evidence against the defendant. So, I'm going to deny your motion to preclude on the [right to counsel] issue." Nine of the recordings were played for the jury. Johnson was convicted of third-degree robbery, fourth-degree grand larceny and possession of stolen property. He was sentenced to 3½ to 7 years in prison.

The Appellate Division, First Department affirmed. "The court properly admitted portions of telephone calls made by defendant from Rikers Island that were routinely recorded by the Department of Correction. These calls were clearly admissible, notwithstanding that defendant's right to counsel had attached...," it said. "We have considered and rejected defendant's remaining claims regarding the recorded calls."

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