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, February 18, 2016

No. 42 PAF-PAR LLC v Silberberg

In July 2006, several limited liability companies controlled by Michael Silberberg and Berel Karniol borrowed $13 million from CAD Funding LLC, a loan secured by mortgages on property the borrowers owned in the Syracuse area. As further security, Silberberg and Karniol executed a guaranty in which they "absolutely, irrevocably and unconditionally guarantee[d] to Lender ... the payment and performance of the Guaranteed Obligations," which were defined to include the borrowers' obligation under the "Loan Documents." Article II of the Guaranty provides that "Guarantor's obligations ... shall not be released, diminished, impaired, reduced or adversely affected by ... modification, alteration or rearrangement ... of the Guaranteed Obligations, Note [or] Loan Documents...."

Sometime after the borrowers paid off $1 million of the loan in December 2008, CAD allegedly sold the loan to PAF-PAR LLC. The borrowers did not satisfy the remainder of the loan by its maturity date of July 15, 2009, but nine days later they entered into a Loan Modification and Extension Agreement in which PAF-PAR forgave $2 million of the loan and the borrowers made another $1 million payment. The borrowers paid off the remaining loan amount of $9 million by the new maturity date of September 30, 2009, and PAF-PAR issued a payoff letter and released the borrowers' collateral. PAF-PAR then demanded payment under the guaranty from Silberberg and Karniol of the $2 million it had forgiven. Silberberg and Karniol refused, contending the borrowers' full payment of the modified loan satisfied their obligations under the guaranty. PAF-PAR brought this action for payment of the $2 million, contending the loan modification did not reduce the liability of the guarantors for the full amount of the original $13 million loan.

Supreme Court dismissed the suit, saying PAF-PAR "cannot establish the existence of a debt for the very simple reason that the debt was discharged pursuant to the terms of the loan modification agreement." Regarding article II of the guaranty, it said "those provisions apply only to the guarant[y] obligations[,] which is defined in the guarant[y] as all of borrowers' obligations under the loan documents which include the modifications." A guarantor's liability "accrues only after a default," it said, and while "here we had initial default by the borrowers," full payment of the modified loan "remedied the default" and the guaranty was not triggered.

The Appellate Division, First Department affirmed, rejecting PAF-PAR's claim that the guaranty for the original loan amount is enforceable because article II says it cannot be "diminished" or "reduced" by "modifications." The court said, "[T]his language cannot operate to make the guarantor liable for more than what the primary obligor was obligated to pay and did pay." It also said there was no default because the borrowers paid the modified amount in full.

PAF-PAR argues the guaranty is "a stand-alone 'primary' obligation" that promises "to 'jointly and severally' and 'absolutely and unconditionally' repay the lender's $13 million in loaned funds, regardless of any later note modifications or loan forbearance as between the borrower and the lender." It says the Appellate Division improperly converted "the independent loan guaranty from a primary obligation into 'a contract of secondary liability' that necessarily follows later modifications to the note."

For appellant PAF-PAR: William Charron, Manhattan (212) 421-4100
For respondents Silberberg and Karniol: Vincent J. Syracuse, Manhattan (212) 508-6700

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To be argued Thursday, February 18, 2016

No. 43 Matter of Ranco Sand and Stone Corp. v Vecchio

Ranco Sand and Stone Corp. bought a 2.16-acre parcel at 154 Old Northport Road in Kings Park, Town of Smithtown, in 1992. In 2002, Ranco petitioned the Town to rezone the property from residential to heavy industrial use. The Town Planning Board held a hearing on the application in November 2002, and recommended that the Town Board approve the rezoning with conditions in March 2004. The Town took no further action on Ranco's application for more than five years, until August 2009, when the Town Board issued a positive declaration under the State Environmental Quality Review Act (SEQRA), finding the proposed rezoning "may have a significant effect on the environment" and requiring Ranco to prepare a draft environmental impact statement (DEIS). Ranco brought this article 78 proceeding to annul the Town's determination as arbitrary and capricious. In support, it pointed out that an adjacent 3.36-acre parcel it also controls was rezoned from residential to heavy industrial use without any SEQRA review to settle litigation against the Town in 2002. It has been leasing both properties as if they were a single parcel to a school bus company, which uses them for parking and repair of its vehicles. Ranco argued, in part, that because no formal environmental review was required for rezoning of the adjacent parcel, none should be required for its current application.

Supreme Court dismissed the suit. "[T]he Town Board's SEQRA determination is not yet ripe for judicial review...," it said. "A lead agency's SEQRA review obligations are not considered complete until it issues a SEQRA findings statement...."

The Appellate Division, Second Department affirmed. It said Matter of Gordon v Rush (100 NY2d 236) "recognized that there may be circumstances in which the issuance of a positive declaration requiring property owners to prepare and submit a DEIS itself inflicts actual injury and constitutes a final administrative action ripe for judicial review," but "a number of factors distinguish this matter, and indeed perhaps the typical case," from Gordon. "Here, while the parties settled their dispute in the prior action as to the adjacent parcel without a SEQRA positive declaration..., the instant case involves a different parcel...." Further, it said, "Ranco has not already been subject to a review process coordinated by multiple governmental agencies. The Town Board did not previously forgo an opportunity to be heard in any such process.... [T]here has not been a prior determination that a DEIS is not warranted [and] a sufficient record has yet to be established on this matter." Ranco's expense in preparing a DEIS, "substantial though it may be, is not sufficient ... to require us to conclude that the matter is ripe for judicial review...," it said. "Here, the issuance of the positive declaration appears to be the initial step in the process for these parties, albeit several years after the application for rezoning was submitted."

Ranco argues that the Town's decision to require a DEIS "merely so [Ranco's] long-standing and long-tolerated use is in accord with the proper zoning category" is ripe for review under Gordon because the environmental study "is of no benefit to the Town and a great expense and injury to [Ranco]." It also contends the Town's delay in issuing the positive declaration "is a denial of due process."

For appellant Ranco: Leonard J. Shore, Commack (631) 543-5800
For respondents Town of Smithtown et al: John M. Denby, Smithtown (631) 724-8833

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To be argued Thursday, February 18, 2016

No. 44 Chanko v American Broadcasting Companies, Inc.

This case stems from an episode of "NY Med," an ABC television series set at The New York and Presbyterian Hospital in Manhattan that filmed members of the hospital's staff as they treated actual patients. The episode, which first aired in August 2012, included a segment about the treatment of Mark S. Chanko, who was brought to the emergency room in critical condition in April 2011 after he was hit by a truck while crossing the street near his home on the Upper East Side. His image is blurred and he is not identified, but he is heard early in the segment asking "Did you speak to my wife?" and complaining of pain. He went into cardiac arrest three times before he was declared dead. The segment focused on Dr. Sebastian Schubl, a surgical resident, as he diagnosed Chanko's condition, organized a team to treat him, called the time of death and -- accompanied by a social worker -- informed his family of his death. Family members were neither seen nor heard on the program. They also were not informed of the filming and did not consent to it. They learned of it 16 months later when the episode was broadcast. Chanko's estate, his widow and his children brought this action against the hospital, Schubl and American Broadcasting Companies, Inc., seeking damages for violation of physician-patient confidentiality and intentional infliction of emotional distress, among other things.

Supreme Court dismissed the claim for breach of doctor-patient confidentiality against ABC "because it does not provide health related services and there is no doctor-patient relationship." However, it said, "Plaintiffs have stated a potentially meritorious cause of action for the infliction of emotional distress against ABC." It refused to dismiss either claim against the hospital and Schubl.

The Appellate Division, First Department reversed and dismissed all of the remaining claims. "Defendants' conduct in producing and televising a show depicting the medical care provided at defendant hospital that included a pixilated image of plaintiffs' decedent, who was not identified, was not so extreme and outrageous as to support a claim for intentional infliction of emotional distress...," it said. "Nor can plaintiffs maintain an action against defendant doctor or defendant hospital for breach of the duty not to disclose personal information, since no such information regarding plaintiffs' decedent was disclosed...."

The Chankos argue their claims should be reinstated. "The complaint plainly alleges that the doctor and the hospital breached patient confidentiality when they let the television crew into the operating room to film the diagnosis and treatment of a patient.... A breach of physician-patient confidentiality does not evaporate because the television company to which the unauthorized disclosure is made limits the amount of confidential information it shows the public." They say, "The record also shows that the conduct here is so shocking to our sense of decency and propriety that a claim of infliction of emotional distress is stated."

For appellants Anita Chanko et al: Norman A. Olch, Manhattan (212) 964-6171
For respondent Hospital and Schubl: Michael S. Cohen, Jericho (516) 832-7500
For respondent ABC: Nathan Siegel, Manhattan (212) 850-6100

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To be argued Thursday, February 18, 2016

No. 45 People v Joel Nelson

Joel Nelson was charged with fatally shooting Leo Walton and attempting to kill Mark Maldonado inside the victims' Brooklyn apartment in March 2008. Maldonado told police, and testified at trial, that Nelson was angry with him for not bailing him out of jail after a shoplifting arrest. Maldonado said he invited Nelson into the apartment, served him a drink and went to his bedroom, where he heard three shots fired. He said Nelson then kicked his door open and shot him four times. Walton died of three gunshots to the back of his head. Nelson told police in written and videotaped statements that Maldonado fired at him first, but struck Walton instead. Nelson said he then pulled his own gun, followed Maldonado to his room and fired four rounds. He raised a justification defense at trial.

Prior to the prosecutor's summation, Nelson's attorney told the trial court that "three members of the Walton family are sitting with shirts saying 'Leo Walton,' the deceased's photo, and it says 'Remembering Leo Walton' in clear view of the jury, and I would ask that either they change their shirts or -- it's really trying to inflame the jury...." The court refused, saying, "I see nothing prejudicial or impacting the defendant. The family members of the deceased are being seated quietly, innocuously in the audience. They have not drawn attention to themselves nor ... to the shirts...." It questioned the timing of the request and said "... I am not going to instruct them to do anything." Defense counsel said, "I don't believe that anybody has worn those shirts before today." The court replied, "You're incorrect, counsel.... I'm finding as a matter of fact that one of the females has worn this shirt for at least three court dates...." Nelson was convicted and sentenced to consecutive terms of 25 years to life for second-degree murder and 25 years for first-degree assault.

The Appellate Division, Second Department affirmed on a 3-1 vote, rejecting Nelson's claim that he was deprived of a fair trial by the court's refusal to have the Walton family cover or remove their T-shirts. It said a trial court "has a constitutional duty to monitor the atmosphere of the courtroom to ensure that the jury is not exposed to spectator conduct that poses a coercive threat to the jury's ability to remain impartial" and "must act immediately to minimize its impact on the jury.... The trial court's failure to adhere to such a course in this case is troubling, as is the indication in the record that it was aware of the subject T-shirts three days before defense counsel raised the issue...." However, it declined to adopt a per se rule requiring reversal "whenever a spectator brings a depiction of a deceased victim into a courtroom," and it upheld the court's determination "that the spectator conduct did not threaten the ability of the jury to remain impartial" based on findings that the shirts were not "inflammatory," the Walton family did not "draw the jury's attention to the T-shirts," and their shirts were not entirely visible because they sat in the second row and wore "other garments over them."

The dissenter agreed with Nelson that "this display was a highly prejudicial, and ultimately successful, attempt to elicit sympathy for Walton and inflame the passions of the jury." He said "the memorial T-shirts worn by several members of the victim's family..., in view of the jury, presented '"an unacceptable risk ... of impermissible factors coming into play"' in the jury's verdict...," and deprived Nelson of his right to a fair trial.

For appellant Nelson: Alexis A. Ascher, Manhattan (212) 693-0085
For respondent: Brooklyn Assistant District Attorney Morgan J. Dennehy (718) 250 2515