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, March 22, 2016

No. 48 Beck Chevrolet Co, Inc. v General Motors LLC

This federal case stems from disputes between General Motors LLC and Beck Chevrolet Co., a franchised Chevrolet dealer in Yonkers, over GM's performance standards for car dealers and changes GM made to Beck's assigned territory. GM's franchise agreements require dealers to meet performance goals measured by a Retail Sales Index (RSI), in which a Chevrolet dealer's actual sales are measured against its expected sales based on an adjusted statewide average market share for Chevrolet products. The RSI formula takes into account Chevrolet's statewide market share for different types of vehicles and the relative popularity of each type of vehicle in the dealer's Area of Primary Responsibility, a non-exclusive sales territory. However, it does not consider local brand popularity, so downstate dealers like Beck do not receive a downward adjustment in their expected sales goal even though Chevrolet products are more popular in upstate markets. A dealer achieves an "average" or "satisfactory" score when actual sales equal expected sales, a threshold Beck consistently failed to reach, which could subject it to remedial actions or termination of its franchise by GM. In 2011, GM extended Beck's franchise agreement for a year, but it also increased Beck's territory in Westchester and Fairfield Counties by four census tracts and reduced it by seven tracts in the Bronx, which had the effect of increasing Beck's expected sales number.

Beck brought this suit alleging, in part, that GM violated New York's Franchised Motor Vehicle Dealer Act (Vehicle and Traffic Law §§ 460-473) by using unreasonable performance standards and, in unilaterally altering Beck's territory, modifying the franchise agreement without due cause. Section 463(2)(gg) of the Dealer Act prohibits car makers from using "an unreasonable, arbitrary or unfair sales or other performance standard in determining a franchised motor vehicle dealer's compliance with a franchise agreement." Section 463(2)(ff) limits the ability of franchisors to "modify the franchise" and it defines "modification" as "any change or replacement of any franchise if such change or replacement may substantially and adversely affect the new motor vehicle dealer's rights, obligations, investment or return on investment."

U.S. District Court dismissed Beck's suit, ruling GM's RSI formula "is not unreasonable, arbitrary or unfair in measuring sales performance by Beck." It said the use of statewide sales data was administratively convenient, objective, and easily understood; and GM's formula adequately adjusted for local conditions by considering the popularity of different vehicle types in dealers' own territories. While this case was pending on appeal and after GM moved to terminate Beck's franchise, an administrative law judge reached the opposite conclusion, finding "the RSI standard of GM is unreasonable" for downstate dealers, in part because "it does not realistically reflect the Chevrolet sales challenges that Beck and other New York metropolitan dealers face" due to the relative unpopularity of Chevrolet products in their region.

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve the key issues in a pair of certified questions: "(1) Is a performance standard that requires 'average' performance based on statewide sales data in order for an automobile dealer to retain its dealership 'unreasonable, arbitrary or unfair' under ... section 463(2)(gg) because it does not account for local variations beyond adjusting for the local popularity of general vehicle types? (2) Does a change to a franchisee's Area of Primary Responsibility ... constitute a prohibited 'modification' of the franchise under section 463(2)(ff), even though the standard terms of the Dealer Agreement reserve the franchisor's right to alter the Area of Primary Responsibility ... in its sole discretion?"

For appellant Beck Chevrolet: Russell P. McRory, Manhattan (212) 484-3900
For respondent General Motors: James C. McGrath, Boston, MA (617) 946-4800

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To be argued Tuesday, March 22, 2016

No. 49 Matter of Highbridge Broadway, LLC v Assessor of the City of Schenectady

Highbridge Broadway, LLC made improvements to its commercial property in the City of Schenectady in 2005 and applied in 2008 for a business investment property tax exemption under RPTL 485-b, which exempts a gradually decreasing percentage of assessed value attributable to such improvements for ten years after they are completed. Although the city assessor approved the exemption, Highbridge brought this RPTL article 7 proceeding to challenge its assessment on the 2008 tax roll, contending the assessor had undervalued the amount of the exemption. Highbridge served the petition on the Schenectady City School District, but the District did not appear. Supreme Court held in favor of Highbridge in 2011, ruling it was entitled to the exemption for seven years in amounts ranging from $176,260 in 2008 to $25,180 in 2014, the final year, and ordering the assessor to refund excess taxes paid since 2008. The city and county issued refunds to Highbridge, but the School District did not.

Highbridge then moved to hold the District in civil contempt based on its failure to refund excess tax payments. The District argued Highbridge was not entitled to refunds for taxes paid for 2009 to 2011 because it did not bring separate article 7 proceedings to challenge those assessments while its 2008 challenge was pending. It cited Matter of Scellen v Assessor for City of Glens Falls (300 AD2d 979 [3d Dept 2002]), which held that "the statutory scheme underlying RPTL article 7 evinces a clear legislative intent that a separate proceeding be timely commenced to challenge each tax assessment for which relief is sought."

Supreme Court denied the contempt motion because the 2011 judgment did not expressly direct the District to issue refunds, but it ordered the District to refund excess taxes Highbridge paid from 2009 to 2011, saying RPTL 726(1)(c) made the 2011 judgment binding on the District. "[T]here is not any statutory authority ... that would require [Highbridge] to file a separate petition for each year of the 10-year period in order to be entitled to the exemption," it said. "Because the District was served with the 2008 petition seeking application of the RPTL 485-b exemption, which by its terms is 10 years in duration, the court is not persuaded that the District was not on notice that [Highbridge] was seeking an exemption for years subsequent to 2008."

The Appellate Division, Third Department reversed the refund order based on Scellen. "We are mindful that an RPTL 485-b exemption may be obtained upon a single application...," it said. "The separate point here, however, is that property owners must preserve their right to relief through annual challenges to the assessment pending a determination of the original assessment challenge. Since [Highbridge] failed to do so here, Supreme Court lacked jurisdiction to direct the District to refund payments made based on the 2009 through 2011 assessments...."

Highbridge argues that "Scellen may apply to every 'annual' assessment matter," but not to RPTL 485-b exemptions, which provide 10 years of benefits based on one application. It notes the Fourth Department has rejected Scellen, although the Second Department adopted it.

For appellant Highbridge Broadway: Brian D. Mercy, Schenectady (518) 280-8872
For respondent Schenectady City School District: Jonathan P. Nye, Albany (518) 487-7600

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To be argued Tuesday, March 22, 2016

No. 1 Finerty v Abex Corporation

Raymond Finerty was born in Ireland in 1953 and worked as a mechanic there in the 1970s, repairing vehicles on his family's farm and at a nearby garage. He moved to New York in 1985. In 2009, he was diagnosed as suffering from peritoneal mesothelioma, a disease primarily caused by exposure to asbestos. Finerty and his wife brought this action against, among others, the Ford Motor Company (Ford USA) and its English subsidiary, Ford Motor Company, Ltd. (Ford UK), alleging he was exposed to asbestos in Ford brakes, clutches, and engine parts while working on Ford tractors, cars, and trucks in Ireland.

Supreme Court denied Ford USA's motion for summary judgment dismissing the complaint. "Plaintiffs have shown that Ford USA exercised significant control over [Ford UK and its Irish subsidiary] and had a direct role in placing the asbestos-containing products to which Mr. Finerty was exposed into the stream of commerce," it said. "Such activities go far beyond the level of advice and consultation, and raise a question whether Ford USA could have required [Ford UK] to either manufacture asbestos-free products and/or sell replacement parts which warned of the hazards associated with asbestos."

The Appellate Division, First Department dismissed the complaint against Ford UK for lack of personal jurisdiction and otherwise affirmed. It agreed with Ford USA that "there is no basis for piercing the corporate veil. However, the record demonstrates that Ford USA acted as the global guardian of the Ford brand, having a substantial role in the design, development, and use of the auto parts distributed by Ford UK, with the apparent goal of the complete standardization of all products worldwide that carried the signature Ford logo. Thus, issues of fact exist whether Ford USA may be held directly liable as a result of its role in facilitating the distribution of the asbestos-containing auto parts on the ground that it was 'in the best position to exert pressure for the improved safety of products' or to warn the end users of these auto parts of the hazards they presented...."

Ford USA argues, "It has long been settled under New York law that strict products liability extends *only* to the manufacturer, distributor, or seller of the defective product. That rule cannot be reconciled with the Appellate Division's holding that Ford [USA] could be held liable for Mr. Finerty's injuries -- even though Ford [USA] did not manufacture or distribute or sell the products that allegedly injured him -- merely because Ford [USA] could have 'exert[ed] pressure' on its subsidiaries to improve the safety of the defective products or the warnings given about the dangers of those products. The Appellate Division's holding also contradicts the fundamental corporate law principles of limited liability and corporate separateness, which preclude holding a parent corporation liable for the acts of its subsidiary even when the parent exercises control over that subsidiary.... Under the correct legal standard, strict liability cannot extend beyond the distribution chain, absent veil-piercing that concededly cannot be shown here."

For appellant Ford Motor Company: Anton Metlitsky, Manhattan (212) 326-2000
For respondent Finerty: James M. Kramer, Manhattan (212) 605-6200

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To be argued Tuesday, March 22, 2016

No. 51 People v Bobby Wallace

Bobby Wallace was accused of beating an Hispanic man with a metal rod or pipe outside of a Manhattan Pathmark store in June 2010. Police officers received a radio report of "a dispute with a weapon ... a metal stick" and, when they arrived at the scene, a woman pointed out Wallace as the assailant. An officer said, "I need to speak with you," and asked him what happened. Wallace replied, "He just kept fucking with me, I was tired of him fucking with me." The officer asked where the weapon was. Wallace said he had hit the victim with his hand, then volunteered that "Mexicans come here and try to take our jobs." Asked again about the weapon, Wallace at first repeated, "I hit him with my hand," but ultimately led the officers to the pipe and they arrested him. Up to that point, the officers had not given him Miranda warnings.

Wallace moved to suppress the pipe and the statements he made to the officers, arguing they should have read his Miranda rights before asking him about the location of the weapon. Supreme Court denied the motion, saying the officers' questions "were not ... made during an interrogation but were investigative in nature in order to determine what had happened, in order to determine whether or not there was probable cause for an arrest." Wallace was convicted of second-degree assault as a hate crime and sentenced to 3½ years in prison.

The Appellate Division, First Department affirmed. "Under the circumstances, the police were not required to provide Miranda warnings prior to making investigatory inquiries of defendant as they arrived at the scene of the incident," it said. "A reasonable innocent person in defendant's position would not have thought he was in custody.... In any event, to the extent there was an investigatory stop, it did not require Miranda warnings.... Furthermore, there was no interrogation requiring warnings because the officer's inquiries were made to clarify the situation..., or were permissible efforts to locate a weapon in the interest of public safety...."

Wallace argues he was in custody for purposes of Miranda as soon as he confessed to criminal wrongdoing by admitting he hit the victim with his hand. "No person who confesses to a crime to police would feel free to leave that encounter." He says the officers should have informed him of his Miranda rights at that point, but instead continued to question him about the weapon, and in response he made his comment about Mexicans and other incriminating statements, and led them to the pipe. He says the questioning was interrogation because it "was designed to elicit an incriminating response." He contends the public safety exception does not apply because the officers "were not and reasonably should not have been concerned for their or the public's safety; the officers knew the missing instrumentality was a metal stick or pipe, rather than an inherently dangerous weapon, and there is no evidence to suggest that the pipe was hidden on Mr. Wallace's person or anywhere nearby."

For appellant Wallace: Katherine Kelly Fell, Manhattan (212) 373-3000
For respondent: Manhattan Assistant District Attorney Ellen Stanfield Friedman (212) 335-9000