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 Wednesday, March 23, 2016

No. 52 Larabee v Governor of the State of New York
No. 53 Silverman v Silver

New York trial court judges initially brought these actions against the State, the Legislature, and elected officials in 2007 and 2008, claiming their failure to enact any increase in judicial salaries since 1998 violated the State and Federal Constitutions. In Matter of Maron v Silver (14 NY3d 230 [2010]), resolving appeals in three cases, the Court of Appeals declared that "under the circumstances of this case," in which judicial salaries had been linked to legislators' salaries and other political issues, such as campaign finance reform, "the State defendants' failure to consider judicial compensation on the merits violates the Separation of Powers Doctrine." It rejected the specific remedies of inflation-indexed raises and retroactive compensation, leaving those issues to the Legislature. "By ensuring that any judicial salary increases will be premised on their merits, this holding aims to strike the appropriate balance between preserving the independence of the Judiciary and avoiding encroachment on the budget-making authority of the Legislature," the Court said. "Therefore, judicial compensation, when addressed by the Legislature in present and future budget deliberations, cannot depend on unrelated policy initiatives or legislative compensation adjustments. Of course, whether judicial compensation should be adjusted, and by how much, is within the province of the Legislature. It should keep in mind, however, that whether the Legislature has met its constitutional obligations in that regard is within the province of this Court (see Marbury v Madison, 1 Cranch [5 US] 137, 177 [1803])."

In response to Maron, the Legislature created the Commission on Judicial Compensation in 2010 to consider future pay increases for judges, the first phase of which took effect in 2012, but it did not authorize the commission to consider retroactive compensation. The plaintiffs in these cases then sought money damages for "lost pay," arguing that the Legislature, in creating a commission to consider only prospective pay raises, failed to provide any remedy for its prior constitutional violations found in Maron. Supreme Court denied them relief in both cases.

The Appellate Division, First Department affirmed on a 3-2 vote, saying that Maron implicitly rejected "a particular monetary remedy, retroactively tied to the cost of living," and that the Legislature, "abandoning linkage," had complied with the ruling by considering judicial raises on the merits. Two justices said in a concurrence that if courts were to award damages "in the form of back pay, we would be effectively arrogating the budgeting power to the judiciary under the guise of remedying a constitutional violation.... Such a decision would clearly violate the Separation of Powers Doctrine."

Two dissenting justices argued "the past constitutional violations identified by the Court of Appeals in [Maron] warrant retroactive monetary damages" because "the legislature failed to fully comply" with the ruling. "The legislature was obligated to consider the merits of retroactive compensation free of any linkage, based on the Court's finding that the first violation of the Separation of Powers Doctrine occurred in 2006...," they said. "Relief from defendants' past constitutional violations can only be provided by way of monetary damages."

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To be argued Wednesday, March 23, 2016

No. 54 Matter of Kenneth Cole Productions, Inc., Shareholder Derivative Litigation.
Erie County Employees Retirement System v Blitzer

This shareholder class action stems from an effort by Kenneth D. Cole, the controlling shareholder and chairman of the board of Kenneth Cole Productions, Inc. (KCP), to buy out minority shareholders and take the company private in a going-private merger. Founded by Cole in 1982, KCP designs and markets footwear, handbags and apparel. When he made his initial buyout offer of $15 per share in February 2012, Cole already held 46 percent of KCP's common stock and 89 percent of its voting power by virtue of his ownership of all of its Class B shares, which entitled the holder to 10 votes per share. Cole, who said he would not consider any other offers to buy KCP, conditioned his own offer on approval by a special committee of the board of directors and approval by the minority shareholders. The board appointed four directors to the committee, which retained legal counsel and negotiated with Cole until June 2012, when a merger agreement was announced at a price of $15.25 per share. Three months later, more than 99 percent of the minority shareholders voted to approve the transaction.

Shareholders who opposed the deal, including the Erie County Employees Retirement System (ECERS), brought several actions against Cole and five members of KCP's board of directors, among others, claiming they breached their fiduciary duties by approving a price that was unfair to minority shareholders. The cases were consolidated and ECERS was named lead plaintiff. It asserted that, while the individual directors were not financially interested in the transaction, they were not independent because Cole elected a majority of them to the board, including two members of the special committee, and thus they were controlled by Cole.

Supreme Court dismissed the complaint for failure to state a cause of action, saying "plaintiffs point to no authority for the assertion that a director lacks independence solely on the ground that he or she is elected by a controlling shareholder." Rejecting the claim that the directors breached their duties by failing to get the highest possible price, it found they were protected by the business judgment rule, which generally shields corporate directors from liability for actions taken with due care and in good faith on behalf of the corporation. It said the committee "negotiated with Cole over a period of months and obtained an increase in the price he would pay..., where the original price represented a premium over the stock's most recent selling price." Regarding Cole, it said ECERS "failed to put forth any cases demonstrating that a controlling shareholder is prohibited from acting in his own economic interest, as long as his actions do not constitute unfair self dealing."

The Appellate Division, First Department affirmed, saying Supreme Court "was not required to apply the 'entire fairness' standard to the transaction" and properly dismissed the suit under the business judgment rule."

ECERS argues that, because a "transaction in which the majority shareholder squeezes out the minority shareholders involves an inherent conflict of interest," and in view of Cole's "control" of KCP's directors, the "deferential" business judgment rule should not apply and the deal should be subject to entire fairness review, requiring "Cole to prove, on an evidentiary record, both 'fair dealing' and 'fair price.'"

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To be argued Wednesday, March 23, 2016

No. 30 Sadek v Wesley

In October 2006, Kamal Sadek was driving a limousine and about to enter the Manhattan end of the Lincoln Tunnel when he was allegedly sideswiped by a Greyhound bus and struck his head against his side window. Both drivers got out of their vehicles and engaged in an angry verbal altercation. Sadek became faint and dizzy and returned to his car to sit down. He became unresponsive and was transported to St. Luke's Roosevelt Hospital, where he was found to have suffered an embolic stroke. Sadek brought this action against Greyhound Lines and the driver of the bus, Aaron Jenkins (incorrectly sued as Jenkins A. Wesley), claiming the driver was negligent and the accident precipitated his stroke.

Sadek's neurological expert, Dr. Nabil Yazgi, said in a September 2010 report that there was a "probable causal relationship" between the accident and the stroke, based on medical tests conducted two days after the accident which found a large blood clot (a thrombus) in Sadek's left subclavian artery and plaque in his aortic arch. Dr. Yazgi issued a supplemental report in June 2011 based on medical tests conducted in November 2006, eight weeks after the initial tests, which found the blood clot and plaque were no longer evident. Dr. Yazgi said, "This is physiologically unlikely" and suggested the prior tests were incorrect, but he concluded, "Assuming this clot was present on the first report, trauma could feasibly have dislodged it, or a portion of it, causing an embolic stroke."

Supreme Court granted a defense motion to preclude Dr. Yazgi from testifying, saying the theory of causation in his first report was negated by his supplemental report, and the second report failed to establish causation because he said only that trauma "could ... have" caused the stroke. Sadek retained another neurologist, Dr. Sang Jin Oh, who adopted the opinion in Dr. Yazgi's first report and said he was prepared to testify the trauma of the accident or a resulting spike in blood pressure caused Sadek's stroke. The court ordered a Frye hearing and then precluded Dr. Oh from testifying, saying he failed to show his theories were generally accepted in the medical community or they were untimely raised. When Sadek conceded he could not establish causation without the expert testimony, the court dismissed his suit.

The Appellate Division, First Department reversed in a split decision, holding the expert testimony should not have been precluded. A three-justice majority said, "The essence of these witnesses' position on causation -- the unremarkable premise that the physical trauma caused by the motor vehicle collision was a competent producing cause of [the] stroke -- did not require a formal Frye hearing. Moreover, even if a Frye hearing was appropriate, the evidence ... was sufficient under Frye to avoid preclusion of the testimony." A fourth justice concurred in a separate opinion, disagreeing only with the conclusion that no hearing was necessary.

The dissenter said, "In permitting a jury of laypersons to speculate as to the medical cause of plaintiff's stroke and decide the issue as a question of fact, the majority simply ignores Frye and dispenses with the analysis it requires."

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