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, May 4, 2016

No. 88 People v Gary Wright *(papers sealed)*

After Gary Wright was charged with attempting to rape a neighbor in the Town of Berne in July 2008, he was initially represented by attorney Thomas Spargo. In February 2009, Wright retained James Long as defense counsel to replace Spargo. For the next seven months, Long made pretrial court appearances, prepared Wright for his testimony before the grand jury, filed motions to suppress Wright's statement to police and to dismiss the indictment, among other things, and obtained an offer to resolve the case with a misdemeanor plea, which Wright rejected. In September 2009, two months before his trial, Wright fired Long and hired new defense counsel. Wright was convicted of first-degree attempted rape and sexual abuse in Albany County Court and was sentenced to seven years in prison. His conviction was affirmed in 2011.

In 2014, Wright filed this CPL 440 motion to vacate his conviction, alleging that Long provided ineffective assistance due to a conflict of interest. Wright claimed that, while representing him, Long was simultaneously representing Albany County District Attorney David Soares, whose office was prosecuting him. In support, he offered evidence that in October 2008 Long sent a letter to the Albany County Board of Elections on behalf of Soares' reelection campaign regarding the omission of Soares' name from the Independence Party line on absentee ballots for the 2008 election. He also submitted evidence that Long represented Soares in a professional misconduct proceeding in April 2011 and later represented him in several personal matters. In response, Assistant District Attorney Christopher Horn said in an affidavit that Long's letter to the Board of Elections was sent about four months before Wright retained him, and he denied that Long represented Soares at anytime during the period Long was defending Wright. County Court denied Wright's motion without a hearing.

The Appellate Division, Third Department affirmed, saying Wright failed to show the existence of an actual conflict of interest. It took note of Long's 2008 letter on behalf of Soares' campaign, but said the record "is bereft of any evidence ... that Long represented Soares or his campaign at any other time during the period leading up to and through his representation of" Wright. While Long represented Soares in subsequent matters beginning in April 2011, it said this "occurred well after the attorney-client relationship between Long and defendant ended" and "has no bearing on whether Long was operating under a conflict." Since a defendant has the burden of proving a conflict exists, it said, Wright was not entitled to an adverse inference based on the prosecution's failure to submit an affidavit from Soares himself instead of Horn.

Wright argues, "From at least October 2008 on, [Long and Soares] had a retainer like relationship covering a variety of matters, all spanning the time frame" of Wright's criminal case. "This created an actual and inherent conflict of interest which resulted in the denial to Mr. Wright of his constitutional right to the effective assistance of counsel...." He says Horn's affidavit denying there was a conflict "has no probative value" because "it was made without personal knowledge of the facts." Without a response from Soares himself, the prosecution did not effectively deny the existence of a conflict and a "failure to dispute facts constitutes an implied concession of those facts," Wright says, citing People v Ciaccio (47 NY2d 431).

For appellant Wright: Michael Katzer, Slingerlands (518) 478-0006
For respondent: Assistant District Attorney Christopher D. Horn (518) 487-5460

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To be argued Wednesday, May 4, 2016

No. 89 People v Lennie Frankline *(papers sealed)*

Lennie Frankline was charged with attempted murder for assaulting his former girlfriend at her mother's house in the Bronx in July 2008. She testified at trial that Frankline entered the house, dragged her to the living room by the hair and squirted a liquid that smelled like gasoline in her face. When he flicked his lighter, she ran outside and he chased her down, poured more gasoline on her and set her hair on fire, which she extinguished with her hands. He hit her twice in the eye before her brother and bystanders intervened.

The trial court also allowed the complainant to testify at length about a more extended assault that occurred 10 days earlier in the apartment she had shared with Frankline in Niagara Falls. She said that, when she admitted she was seeing another man, Frankline hit her in the face, repeatedly kicked her in the stomach, tied her hands behind her back, poured gasoline on her, and forced her to perform oral and anal sex, which he videotaped. When she resisted, she said, "he took the gasoline, and he doused it on top of me again, and asked me was that what I wanted. I had to choose to have either anal sex or be set on fire." He took her to a hospital the next night.

The Bronx court denied defense counsel's mistrial motion, saying the testimony was admissible as background -- to explain their relationship -- and as proof of motive and intent. Frankline was convicted of second-degree attempted murder, first-degree burglary, and related charges. The court sentenced him to 25 years in prison to run consecutively to the 50-years-to-life term he received in Niagara County, where he had been convicted of multiple sexual assault, kidnapping and assault charges.

The Appellate Division, First Department affirmed the Bronx judgment, ruling the testimony about the Niagara County case was properly admitted. "As defendant concedes, this evidence was admissible as background evidence to complete the narrative," it said. "Moreover, contrary to defendant's unpreserved claims, this evidence was also probative of defendant's motive.... We do not find that the amount of such evidence was excessive or inflammatory. Furthermore, the court's thorough instructions minimized any prejudice." It said any error "was harmless in light of the overwhelming proof of defendant's guilt."

Frankline argues he was denied a fair trial because "the nature and scope of the excessive, largely irrelevant, and highly inflammatory testimony about the prior assault spilled over all proper bounds and made it impossible for the jury to fairly and objectively assess the evidence of the [Bronx] incident for which [he] was being tried." Instead of "roughly 25 pages" of testimony, he says, "a couple of sentences would have been enough for [the complainant] to explain why and how her relationship with [Frankline] ended in Niagara Falls and why ... [he] pursued her to the Bronx."

For appellant Frankline: Allen Fallek, Manhattan (212) 577-3566
For respondent: Bronx Assistant District Attorney Jordan K. Hummel (718) 838-7322

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To be reargued Wednesday, May 4, 2016

No. 97 Aetna Health Plans v Hanover Insurance Company

Luz Herrera was injured in an accident on the Hutchinson River Parkway in the Bronx in April 2008 while driving a car insured by Hanover Insurance Company. Hanover provided no-fault benefits, paying medical bills that were submitted to it by Herrera or her doctors. However, some of her medical providers erroneously billed Aetna Health Plans, Herrera's medical insurer, instead of Hanover for treatment of her accident-related injuries. Aetna paid $19,649.10 for such treatment in 2008. After Hanover stopped providing no-fault benefits in 2009, Aetna paid an additional $23,525.73 for continuing treatment of Herrera's injuries through 2011. Herrera submitted documentation for some of those costs to Hanover in 2010 and demanded reimbursement for bills paid by Aetna that should have been paid by Hanover.

When Hanover did not respond, Herrera commenced a no-fault arbitration against Hanover. The arbitrator denied her claim, saying the medical records she submitted to Hanover to document the bills paid by Aetna "were not bills" because she had no legal obligation to pay them. "[I]f any person and/or entity [has] a claim against [Hanover] in this matter it is [Aetna], not [Herrera]." Herrera assigned her right to recover no-fault benefits to Aetna, which brought this action against Hanover to recover the $43,174.83 it had paid for her treatment.

Supreme Court dismissed Aetna's complaint, saying its claim was barred by 11 NYCRR 65-3.11(a), which provides for the payment of no-fault benefits "directly to the applicant ... or, upon assignment by the applicant ... to [the] providers of health care services." The court said Aetna, "a health insurer, is not a 'provider of health care services' contemplated under 11 NYCRR 65-3.11." Aetna's breach of contract claim fails because it "is not in privity of contract" with Hanover, it said, and Aetna "cannot sustain a cause of action under subrogation principles" because there is "no authority permitting a health insurer to bring a subrogation action against a no-fault insurer for sums the health insurer was contractually obligated to pay to its insured."

The Appellate Division, First Department affirmed, saying Aetna "is not a 'health care provider' under [under 11 NYCRR 65-3.11], but rather a health care insurer.... While the No-Fault Law provides a limited window of arbitration between no-fault insurers (see Insurance Law §§ 5105, 5106[d] ...), the statutory language does not pertain to a health insurer such as Aetna. Thus, Aetna cannot maintain a claim against defendant under the principle of subrogation.... Nor may Aetna assert a breach of contract claim..., since it is not in privity of contract with Hanover, and there has been no showing that it was an intended third-party beneficiary of the contract."

Aetna argues it is entitled to recover from Hanover "under the doctrines of subrogation, indemnification, or both" because it paid the medical costs of Herrera, which Hanover was obligated to pay, and it therefore stands in place of Herrera with the same rights she would have to recover from Hanover. Even though it is not a "health care provider," Aetna says 11 NYCRR 65-3.11 does not bar its claim because it is Herrera's subrogee and has the same right to payment from Hanover as she has under the regulation. It argues, "Privity of contract is not required where, as here, the health insurer's claim is made under principles of subrogation or indemnity."

For appellant Aetna: Jonathan A. Dachs, Mineola (516) 747-1100
For respondent Hanover: Barry I. Levy, Uniondale (516) 357-3000

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To be argued Wednesday, May 4, 2016

No. 75 CRP/Extell Parcel I, L.P. v Cuomo

CRP/Extell Parcel I, L.P. is the sponsor of the Rushmore Condominium on Riverside Boulevard in Manhattan. Its offering plan and purchase agreements gave buyers of condominium units the right to rescind their agreements if the first unit sale did not close by September 1, 2008, a deadline CRP missed by more than five months. When CRP did not return the purchaser's deposits, along with interest earned while they were is escrow, more than 40 buyers filed complaints with the State Attorney General's Office. In April 2010, the attorney general issued an administrative determination directing CRP and its escrow agent to release $16 million in down payments. CRP sought reformation of the offering plan and agreements on the ground that the 2008 deadline was a scrivener's error and the intended deadline was September 1, 2009. The attorney general rejected the argument.

CRP filed this article 78 proceeding to challenge the determination and seek reformation of the purchase agreements. In their response, the purchasers demanded that CRP release their down payments "together with prejudgment interest," but they did not assert any counterclaims for a money judgment for the down payments or challenge any part of the attorney general's award. In January 2012, Supreme Court denied CRP's petition, dismissed the proceeding, and ordered the down payments released "together with any accumulated interest." The Appellate Division, First Department affirmed in December 2012.

In February 2012, while CRP's appeal was pending, the purchasers moved for an award of statutory interest at 9 percent under CPLR 5001. They argued that having their down payments, which ranged from $110,000 to nearly $1.1 million, held in escrow for years was causing financial hardship. Supreme Court granted the motion in September 2012, saying, "The [purchasers] are clearly being deprived of the use of their money. Under such circumstances, the undertaking [to cover interest costs] must be increased to ensure that the purchasers are made whole." It ordered "that the prejudgment interest shall accrue at the statutory rate" and directed CRP to post $6 million to cover it. In response to subsequent motions, the court rejected CRP's argument that it lacked jurisdiction to order statutory interest. "Clearly, the court has subject matter jurisdiction to hear an Article 78 proceeding," in which it awarded prejudgment interest, it said. "And further, this court has jurisdiction to enforce its orders."

The Appellate Division reversed and vacated the judgment that awarded statutory interest at 9 percent, saying "the motion court did not have jurisdiction to issue the money judgments after the underlying proceeding had been dismissed...." It said, "CPLR 5001(a) 'mandates the award of interest to verdict in breach of contract actions' ... or where an act or omission deprives or interferes with title to, or possession or enjoyment of property.... [The purchasers], however, never asserted a breach of contract claim, or a claim for interference with property [in the article 78 proceeding]. Indeed, they made no affirmative claim for relief at all, but solely opposed the petition for reversal of the Attorney General's determination.... [T]he motion court exceeded its jurisdiction by deciding the parties' dispute regarding a proper rate of interest after the action had been fully resolved."

For appellant purchasers: John A. Coleman, Jr., Manhattan (212) 829-9090
For respondent CRP: Jason C. Cyrulnik, Armonk (914) 749-8200