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 Monday, November 14, 2016

No. 191 Stonehill Capital Management LLC v Bank of the West

After borrowers defaulted in 2011, Bank of the West (BOTW) retained Mission Capital Advisors LLC to auction off some of its non-performing loans including the subject of this case, a syndicated loan with an unpaid balance of $8.8 million. The offering memorandum sought "non-contingent" sealed bids and provided that acceptance of a bid would "require immediate execution of [a] pre-negotiated Asset Sale Agreement" and payment of a 10 percent deposit by the winning bidder. It also stated that BOTW "reserves the right, at their sole and absolute discretion, to withdraw any or all of the assets from the loan sale, at any time," and that it was selling the loans "subject only to those representations and warranties explicitly stated in the Asset Sale Agreement."

On April 18, 2012, Stonehill Capital Management and two related companies submitted a bid of $2.4 million for the $8.8 million loan. Stonehill also informed Mission that the proposed sale agreement was not the correct form to transfer a syndicated loan. Mission told Stonehill two days later that it had made the highest bid and, in an April 27 email, informed it that BOTW had accepted the bid subject to "mutual execution of an acceptable" sale agreement. Stonehill and BOTW negotiated changes to the sale agreement into May 2012. During the same period, Stonehill arranged to refinance the $8.8 million loan in return for an increased payoff from the defaulting borrowers of $4.2 million, about $1.8 million more than BOTW was to receive from the auction sale. BOTW learned of the refinancing deal and, on May 18, refused to complete the sale, contending it was not obligated to proceed because it had no signed agreement with Stonehill and because it had reserved its right "to withdraw any loan from the auction at any time." BOTW ultimately received the $4.2 million loan payoff, and Stonehill brought this breach of contract action against BOTW and Mission.

Supreme Court granted summary judgment to Stonehill on its claim against BOTW, saying "the auction was structured such that the material terms were pre-negotiated" and so, despite discussions about the proper sale agreement to use, "the material terms of the sale were established at the time of Mission's acceptance of Stonehill's bid" on behalf of BOTW. It said the "material terms" of the sale "are readily ascertainable by reference [to] the Offering Memorandum, the original [sale agreement], Stonehill's bid, and Mission's email accepting the bid." The court awarded Stonehill $1.8 million in damages.

The Appellate Division, First Department reversed and dismissed the suit. It said BOTW "made explicit statements that it was not to be bound absent an executed writing." The parties were negotiating "necessary modifications" to the sale agreement, but "[b]efore any writing was executed, [BOTW] exercised its right under the offering memorandum to withdraw the loan asset in question from the auction process and refused to go forward with the transaction." It said the "conditions comprising a valid acceptance" of the bid -- a signed agreement and payment of a deposit -- "were not fulfilled."

For appellant Stonehill: Martin Eisenberg, Manhattan (212) 351-5020
For respondent Bank of the West: David A. Crichlow, Manhattan (212) 940-8800
For respondent Mission Capital Advisors: Damian R. Cavaleri, Manhattan (212) 689-8808

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No. 192 Matter of Henry v Fischer

Jevon Henry was an inmate at Greene Correctional Facility in April 2012, when he was charged with assault, weapon possession, gang activity and other violations of prison rules for allegedly joining in a gang assault on an inmate who was a member of a rival gang. Henry pled not guilty at his disciplinary hearing, claiming that he was in his cell when the assault occurred and that he did not associate with gang members. Representing himself, Henry repeatedly asked the hearing officer for copies of the unusual incident (UI) report on the assault, any log book entries regarding the incident, and "to/from memoranda" on inmate movements related to it. The hearing officer denied his requests for the documents, saying Henry was not entitled to the Unusual Incident report because he was not named in it, the log book had no entry about the assault, and the to/from memoranda were confidential. Henry asked to call two correction officers as character witnesses to testify that he did not associate with gang members. The hearing officer called one of them, who said he had only a vague memory of the assault and did not know whether Henry associated with the inmates who were involved or if he was near the scene. The hearing officer denied the request to call the other officer, saying his testimony would be "redundant." Henry also sought to call several inmate witnesses, two of whom testified that Henry was not near the scene of the assault and a third who said Henry would not associate with the inmates involved. The hearing officer said a fourth inmate refused to testify, but did not say whether he had asked the inmate why he refused. Henry had explained why he was seeking the documents and witnesses, but did not specifically object to the hearing officer's rulings. He twice said, "I am objecting to the whole hearing."

The hearing officer found Henry guilty of the disciplinary charges and imposed penalties of 24 months of confinement in the Special Housing Unit, 24 months loss of good time, and loss of other privileges. After his administrative appeal was denied, Henry brought this article 78 proceeding to challenge the determination, claiming his rights to call witnesses and to present documentary evidence had been violated.

Supreme Court dismissed the suit, ruling that Henry's claims were not preserved for judicial review because he did not raise objections regarding those issues at the hearing. The Appellate Division, Third Department affirmed, agreeing the issues were "unpreserved due to his failure to specifically object at the hearing."

Henry argues that, under CPLR 4017, "Formal exceptions to rulings of the court are unnecessary" to preserve an issue for review, and that a party need only "make known the action which he requests the court to take" even in proceedings where parties are represented by counsel. "Because inmates faced with disciplinary proceedings are pro se, the rules of waiver should be less severe," he says, and his objections to the "whole hearing" should suffice to preserve his claims. He also argues he preserved the issues by raising them in his administrative appeal.

For appellant Henry: Donna H. Lee, Long Island City (718) 340-4300
For respondent Fischer (State): Assistant Solicitor General Marcus J. Mastracco (518) 776-2007

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No. 193 People v James Brown *(papers sealed)*
No. 194 People v Terrence Young
No. 195 People v Earl Canady

In these cases, where prosecutors filed an off-calendar statement of readiness for trial and then said at the next court appearance that they were not ready for trial, the defendants contend the statements of readiness were illusory and did not stop the speedy trial clock under CPL 30.30. A key question is who bears the burden of showing that the statement of readiness was illusory or valid. The parties focus on People v Sibblies (22 NY3d 1174 [2014]), in which the Court found illusory a statement of readiness that was followed at the next appearance by a declaration that the prosecutor was not ready for trial, but the Court split 3 to 3 on the rationale. Chief Judge Jonathan Lippman argued in one concurrence that the People should have the burden of proving they were actually ready when the statement was filed. "[T]he People must demonstrate that some exceptional fact or circumstance arose after their declaration of readiness so as to render them presently not ready for trial," he said, or "the time between the filing and the following appearance ... should be charged to them." Judge Victoria Graffeo argued the burden should be on the defendant to show the prosecution was not actually ready when the readiness statement was filed, saying "there is a presumption that a statement of readiness is truthful and accurate."

Here, the trial courts denied speedy trial motions by James Brown, who is serving 22 years to life for first-degree robbery, and Terrence Young, who received a conditional discharge for disorderly conduct.

Affirming the ruling in Brown, the Appellate Division, First Department applied "the narrower approach of Judge Graffeo" and said, "[D]efense counsel merely speculated that the certificate of readiness was illusory because the People announced that they were not ready at the next court appearance after it was filed, which is insufficient to rebut the presumption that the certificate of readiness was accurate and truthful." The Appellate Term affirmed in Young.

In Canady, Criminal Court granted the defendant's speedy trial motion and dismissed misdemeanor assault and menacing charges. The Appellate Term, 2nd, 11th and 13th Judicial Districts affirmed, saying "the People bear the burden of ensuring that the record explains the cause of adjournments sufficiently for the court to determine which party should properly be charged with any delay.... Here, the People failed to provide any reason why they were not ready on April 19, 2011, one day after filing an off-calendar statement of readiness, and, thus, did not meet their burden. Consequently, in accordance with the respective concurring opinions in People v Sibblies..., the off-calendar statement of readiness dated April 18, 2011 was illusory...."

No. 193 For appellant Brown: Danielle Muscatello, Kew Gardens (718) 575-5145
For respondent: Manhattan Asst. District Attorney Sylvia Wertheimer (212) 335-9000
No. 194 For appellant Young: Jonathan Garelick, Manhattan (212) 577-3607
For respondent: Brooklyn Assistant District Attorney Leonard Joblove (718) 250-3128
No. 195 For appellant: Brooklyn Assistant District Attorney Seth M. Lieberman (718) 250-2516
For respondent Canady: Andrew C. Fine, Manhattan (212) 577-3440