

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 or gspencer@nycourts.gov.

To be argued Wednesday, April 26, 2017 (in White Plains)

No. 57 The Burlington Insurance Company v NYC Transit Authority

When the New York City Transit Authority (NYCTA) and Metropolitan Transit Authority (MTA) hired Breaking Solutions, Inc. to perform excavation work for a Brooklyn subway project in 2008, the contractor obtained a general liability policy from The Burlington Insurance Company which named NYCTA, MTA, and the City of New York additional insureds "only with respect to liability for 'bodily injury,' ... caused, in whole or in part, by ... acts or omissions" of Breaking Solutions. In February 2009, a Breaking Solutions excavating machine set off an explosion in the tunnel when it struck a buried electrical cable. A NYCTA employee, injured trying to flee the blast, brought a personal injury action against the City; and the City brought a third-party action against NYCTA and MTA for indemnification. Burlington ultimately settled the worker's suit on the City's behalf for \$950,000. Based on evidence that it had been NYCTA's responsibility to identify and mark hazards and shut off power to electrical cables in the work area, that its failure to do so was the sole cause of the explosion, and that Breaking Solutions was not at fault, Burlington disclaimed coverage of NYCTA and MTA.

Burlington then brought this action for a declaration that NYCTA and MTA were not additional insureds with respect to the underlying personal injury suit because there was no evidence of negligence on the part of its named insured, Breaking Solutions, and thus the injury was not "caused, in whole or in part, by ... acts or omissions" of Breaking Solutions. It also sought, as subrogee of the City, to recover its costs in settling the injury claim.

Supreme Court granted Burlington's motion for summary judgment, declaring NYCTA and MTA were not covered for losses stemming from the explosion. "[T]he Appellate Division, First Department has held that this 'acts or omissions' language limits additional insured coverage to those instances where there has been a finding of negligence by the named insured," it said, citing Crespo v City of New York (303 AD2d 166 [2003]). "Because the terms of the additional insured endorsement of the Burlington policy provided coverage to NYCTA and MTA] only for the liability arising out of Breaking Solutions' 'acts or omissions,' and because Breaking Solutions was determined not to be negligent in the underlying action, the underlying action fell outside the additional insured endorsement."

The Appellate Division, First Department reversed and declared that NYCTA and MTA were entitled to coverage, saying the issue of negligence was irrelevant under its more recent precedents. It said, "The act of triggering the explosion, faultless though it was on Breaking Solutions' part, was a cause of [the worker's] injury. The language of the relevant endorsement, on its face, defines the additional insured coverage in terms of whether the loss was 'caused by' the named insured's 'acts or omissions,' without regard to whether those 'acts or omissions' constituted negligence or were otherwise actionable.... Although it may be that the insurance service institution that drafted the endorsement forms defining additional insured coverage in terms of 'acts or omissions' intended that language to restrict coverage to liability arising, at least in part, from the fault of the named insured, the fact remains that no words referring to the negligence or fault of the named insured were included in the endorsement itself."

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To be argued Wednesday, April 26, 2017 (in White Plains)

No. 58 People v Chris Price

Two men in hoodies, one of them armed, robbed a milkman at gunpoint as he was making overnight deliveries in Queens in March 2008. The victim identified Chris Price as the gunman in a lineup and at trial. The prosecutor sought to corroborate the victim's trial identification by introducing a printout of a photograph from a social networking website that depicted Price holding a gun in one hand and cash in the other. Defense counsel objected that the prosecutor could not authenticate the photograph because no witness was available to testify "as to when that picture was taken, who took it," who posted it on the site, and whether it had been "doctored in any way." Supreme Court admitted the printout after a detective testified that it accurately portrayed the web page and that the photograph was one of about two dozen images of a man who appeared to be Price; and after the victim testified that the gun was "similar to the gun that took place in the robbery" based on its size, color, and "the silver piece on top." Price was convicted of robbery in the first and second degrees and sentenced to seven years in prison.

The Appellate Division, Second Department affirmed. "The trial court admitted into evidence a photograph posted on the defendant's web page approximately four months prior to the robbery, showing him holding a gun that was similar to the weapon used in the robbery..." it said. "[T]he People laid a proper foundation for admission of the photograph, it was relevant to the issue of the defendant's identity as the gunman, and its probative value outweighed any prejudicial effect..."

Price argues that "digital photographs present authentication concerns due to the ease of making alterations that are difficult to detect.... The interactive and non-secure nature of social networking websites make tampering fears especially well-founded.... In light of the heightened risk of manipulation of digital photos, the People should be bound by the traditional methods of authentication and required to establish that a social networking photo is genuine and unaltered through a witness with personal knowledge of what the photo portrays, expert testimony as to its unchanged condition, or forensic proof that traces the photo to its source." He says the prosecution failed to authenticate the photograph in this case because the victim "could not testify that the gun in the photo was the same one used during the crime, and the investigating detective who testified as to the photo's source was unable to verify either that it was a genuine and unaltered portrayal of appellant or that it came from him."

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