

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 Tuesday, April 24, 2018

No. 56 Andino v Mills

New York City Police Officer Niurka Andino was severely injured in 2004, when the patrol car in which she was riding was struck by a Transit Authority vehicle driven by Transit supervisor Ronald Mills in the Bronx. Because she suffered her injuries in the line of duty, Andino was granted accidental disability retirement (ADR) benefits. A Supreme Court jury found the Transit Authority and Mills wholly liable for the accident. Andino was awarded \$2,392,512 for future lost earnings and \$2,490,829 for future loss of pension, in addition to damages for pain and suffering and for medical expenses. The Transit Authority applied for a collateral source offset pursuant to CPLR 4545, arguing that the awards for future lost earnings and lost pension should be reduced by the amount of Andino's ADR benefits because those accidental disability benefits "replace" the lost earnings she would have received had she been able to continue working as a police officer and the pension she would have received upon retirement.

After a collateral source hearing, Supreme Court denied the defendants' application for an offset from the awards for lost earnings and lost pension. The court relied on Oden v Chemung County Indus. Dev. Agency (87 NY2d 81 [1995]), which held that "only those collateral source payments that actually replace a particular category of awarded economic loss may be used to reduce the insured's judgment," and on Johnson v New York City Tr. Auth. (88 AD3d 321 [1st Dept 2011]). The court said, "To the extent that [Andino's] ADR benefits are guaranteed for life, and not a lost earnings dollar match that ends on her mandatory retirement date at age 63, the court finds that there is no direct match between plaintiff's ADR and the jury's award for lost earnings. In keeping with Oden and Johnson, this court finds that plaintiff's ADR pension is a benefit made available to a public servant who was injured in the line-of-duty, not a substitute for lost earnings."

The Appellate Division, First Department modified by granting the defendants an offset against the jury's award of future lost pension benefits in the amount of Andino's ADR benefits. Citing Oden and Johnson, it said, "The trial court correctly denied defendants' motion to reduce the jury's award for future lost earnings by her accidental disability pension and future medical expenses by the health insurance plan afforded to her as part of her disability retirement.... The jury's award for future loss of pension benefits, however, should have been offset by the total amount that plaintiff was projected to receive under that disability pension, effectively reducing that category of damages to zero (see Oden, 87 NY2d at 89)."

The Transit Authority and Mills argue that the ADR benefits are a collateral source that must be subtracted from the awards for loss of future earnings as well as for loss of pension benefits. Andino argues that her ADR benefits are not a collateral source for either category of economic damages -- lost earnings or lost pension -- and no deductions should be made from the jury's awards.

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No. 57 2138747 Ontario, Inc. v Samsung C&T Corporation

In September 2008, the Korean company Samsung C&T Corporation and two of its New Jersey affiliates signed a non-disclosure agreement (NDA) with SkyPower Corp., an Ontario renewable energy developer, and its majority owner LB SkyPower Inc., a Delaware corporation headquartered in New York, in order to explore a potential transaction that would enable Samsung to enter the Canadian renewable energy market. The NDA, which required Samsung to keep all of SkyPower's proprietary information confidential and to use it only for evaluating a potential deal with SkyPower, included a broad choice-of-law provision that said, "This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York." No transaction with SkyPower materialized, but in December 2008 Samsung entered into a secret memorandum of understanding with the Ontario government for the development of a renewable energy project. Samsung and the government later signed a framework agreement for the project, an agreement that was first made public in January 2010. Meanwhile, SkyPower filed for bankruptcy in 2009 and, in October 2014, all of SkyPower's claims against Samsung were assigned to one of its Canadian creditors, 2138747 Ontario, Inc. (plaintiff). Plaintiff brought this action against Samsung in October 2014 for breach of contract and unjust enrichment, alleging that Samsung violated the NDA by using SkyPower's confidential information to negotiate its agreement with the Ontario government.

Supreme Court granted Samsung's motion to dismiss the suit as untimely pursuant to CPLR 202, New York's borrowing statute, because it was not filed until after Ontario's two-year statute of limitations expired, even though it would have been timely under New York's six-year limitations period. Because SkyPower was a nonresident alleging a breach of the NDA in Ontario, the court said, CPLR 202 requires the plaintiff "to satisfy both statutes of limitations." It rejected the plaintiff's argument that the broad language of the NDA's choice-of-law provision reflected the parties' intent to be governed by the substantive and procedural laws of New York, including the state's six-year statute of limitations.

The Appellate Division, First Department affirmed, saying the "broadly drawn" choice-of-law provision did not preclude the application of CPLR 202. "We do agree with plaintiff's argument, that the language of the choice-of-law provision in this NDA, and in particular the use of the word 'enforcement,' is broad and should be interpreted as reflecting the parties' intent to apply both the substantive and procedural law of New York State to their disputes.... But even this broad reading of the NDA choice-of-law clause does not require that the borrowing statute be ignored in favor of New York's domestic, six-year statute of limitations. The borrowing statute is itself a part of New York's procedural law and is a statute of limitations in its own right, existing as a separate procedural rule within the rules of our domestic civil practice, addressing limitations of time...."

The plaintiff argues, "By agreeing that the contract would be enforced by New York law, the parties intended that New York's six-year statute of limitations would govern all contract claims arising out of the NDA, regardless of who asserted them," and "New York should honor the parties' choice." It says, "The outcome reached below makes no sense at all: it dictates a scenario in which five sophisticated parties negotiated a single forum and single set of procedural rules to govern their disputes (New York's), but intended that the limitations period for resolving their disputes would depend on whether the party asserting that claim had its principal place of business in Ontario, Korea, New Jersey, or New York." It says, "New York public policy does not prevent parties from contracting for New York's own legislatively approved six-year statute of limitations."

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No. 58 Matter of People v Conrado Juarez; Frances Robles

In 1991, highway workers found the body of a four-year-old girl in a picnic cooler near the Henry Hudson Parkway in Manhattan. She had been sexually abused and suffocated. Police investigators, who were unable to identify the girl for 22 years, called her Baby Hope. The victim was finally identified in 2013 and the police questioned her cousin, Conrado Juarez, as a suspect. After several hours of interrogation, Juarez said in a videotaped statement that he had smothered the girl with a pillow during a sexual encounter and disposed of her body in the cooler with his sister's help. He was charged with murder. Two days later, New York Times reporter Frances Robles interviewed Juarez at Rikers Island. In a story published the next day, Robles reported that Juarez said the girl had died after falling down the stairs and he had only helped his sister dispose of the body. He recounted his statements to the police, but said his confession to killing her was false and had been coerced, according to the story.

Juarez moved to suppress his confession as involuntary, and the prosecution subpoenaed Robles to testify at the hearing and to turn over her notes on the interview for in camera review. Robles moved to quash the subpoenas based on New York's Shield Law (Civil Rights Law § 79-h[c]). Supreme Court quashed the subpoenas. The court ultimately denied Juarez's motion to suppress his confession, finding it was voluntary. The prosecution then sought to enforce the subpoenas to compel Robles to testify and produce her notes at trial; and Robles again moved to quash based on the Shield Law.

Supreme Court denied her motions to quash the subpoenas, saying Juarez's "statements to law enforcement and Ms. Robles are the only evidence linking him to the crime. Since voluntariness may be raised before the jury regardless of the pretrial decision, it is critical that the People present all possible evidence corroborative of his statements to the police in their efforts to prove beyond a reasonable doubt that the statements were voluntary and truthful.... The testimony and notes are material, relevant and critical to the People's case."

The Appellate Division, First Department reversed and granted Robles's motions to quash, saying "the People have a videotaped confession by the defendant that has been found admissible at trial and that includes statements consistent with other evidence in the case. Under the circumstances, and in keeping with 'the consistent tradition in this State of providing the broadest possible protection to "the sensitive role of gathering and disseminating news of public events"...., we find that the People have not made a 'clear and specific showing' that the disclosure sought from Robles (her testimony and interview notes) is 'critical or necessary' to the People's proof of a material issue so as to overcome the qualified protection for the journalist's nonconfidential material (Civil Rights Law § 79-h[c])."

Addressing a threshold issue, the prosecution argues that this Court lacks jurisdiction because the trial court's order denying a nonparty's motion to quash subpoenas in a criminal action is not appealable. It says, "Since no [Criminal Procedure Law] provision authorizes an appeal from such an order, the appeal should be dismissed, and the matter remitted to the Appellate Division ... with directions to dismiss the appeal taken to that court," which would leave in place the trial court's denial of the motion to quash. Robles argues that "the determination of a motion to quash, as it relates to a non-party to a criminal proceeding, has been appealable in this state for 80 years and that rule should not be changed.... In sum, as this Court and the Appellate Division have repeatedly held, and the District Attorney and other prosecutors' offices have acknowledged to this Court, because the determination of a motion to quash a subpoena brought by a non-party is a final order on the civil side of the Supreme Court, which is vested with both criminal and civil jurisdiction, it is an appealable order in a criminal action."

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