

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 Thursday, October 11, 2018 (arguments begin at noon)

No. 118 Clement v Durban

Charmaine Clement brought this personal injury suit against the New York Police Department, the City of New York, and officer Thomas Durban, alleging she was injured in 2010 when her car was rear-ended by a police vehicle driven by Durban as she was stopped at a red light in Brooklyn. While her suit was pending, Clement relocated from Queens to Georgia, and the City defendants moved pursuant to

CPLR 8501(a) and 8503 for an order requiring her to post security of \$500 to cover costs. Under CPLR 8101, the prevailing party in a civil suit is generally entitled to recover costs from the loser. CPLR 8501(a) provides that out-of-state plaintiffs who sue in New York courts may be required to post security for the costs for which they would be liable if they lose their case; and CPLR 8503 sets the amount of the security at \$500 in New York City and \$250 in the rest of the state. Clement opposed the motion, contending that CPLR 8501(a) and 8503 violate the Privileges and Immunities Clause, which provides, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" (US Const, art IV, § 2).

Supreme Court rejected Clement's constitutional claim and granted the City's motion to require her to post security, finding the statutes do not bar access to New York courts by non-residents on reasonable terms.

The Appellate Division, Second Department affirmed, saying the challenged statutes "do not deprive noncitizens of New York of reasonable and adequate access to New York courts. The requirement that a nonresident plaintiff who has not been granted permission to proceed as a poor person post the modest sum of \$500 as security for costs is reasonable to deter frivolous or harassing lawsuits and to prevent a defendant from having to resort to a foreign jurisdiction to enforce a costs judgment.... If the subject lawsuit is successful, the plaintiff's security is returned to him or her." It said the statutes "do not impose higher costs on nonresident plaintiffs. Rather, they merely require nonresident plaintiffs, who are unlikely to have any attachable assets in New York, to post security for costs. Once his or her lawsuit is brought to a conclusion, a nonresident plaintiff is in the same position as a resident plaintiff."

Clement argues, "Protecting federalism and delineating the rules by which the several States interact with one another, the Constitution prohibits discrimination by one State against the citizens of another State.... By compelling out-of-state plaintiffs (but no one else) to post security for costs at the request of a defendant, CPLR Article 85 unquestionably facially discriminates against the residents of other States by compelling them to act to their detriment in a manner not required of residents of this State. It is thus presumptively constitutionally offensive." If she wins her suit and the security bond is returned, she "nevertheless has suffered discrimination" because the statutes "compelled her to give the State an involuntary loan. She was deprived of access to the funds ... for an indefinite period (typically, many years)." If she loses and is required to pay costs, then she "has been compelled ... to pay those costs far earlier than a resident plaintiff would have. Her non-residency significantly accelerated her obligations."

For appellant Clement: Robert J. Tolchin, Brooklyn (718) 855-3627

For respondents Durban et al: Assistant Corporation Counsel MacKenzie Fillow (212) 356-4378

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No. 119 **People v Rohan Manragh, Jr.**

Rohan Manragh, Jr. was arrested in Suffolk County for allegedly striking a woman in the face and pushing her to the ground, among other things, in violation of an order of protection in 2012. Prior to grand jury proceedings, Manragh gave the District Attorney's Office a sworn statement in which a woman said the complainant had made statements to her that cast doubt on Manragh's guilt. Manragh asked the prosecutor to present the woman to the grand jury as a potential witness pursuant to CPL 190.50(6), which provides that a defendant "may request the grand jury ... to cause a person designated by him to be called as a witness in such proceeding. The grand jury may as a matter of discretion grant such request and cause such witness to be called...." The prosecutor declined, and the grand jury indicted Manragh on charges that included first-degree criminal contempt.

Suffolk County Court denied Manragh's motion to dismiss the indictment, finding that the prosecutor's exclusion of the witness "did not undermine the integrity of the grand jury nor render the proceedings defective.... [T]he proposed witness was not a witness to any of the relevant events leading to the charges contained in the indictment, and further, her testimony would have consisted almost entirely of hearsay.... As such, the proffered testimony was not competent evidence for the grand jury's consideration, and the prosecutor's decision to exclude it was appropriate and entirely within her discretion." Manragh later accepted a plea deal in which he pled guilty to the contempt charge in exchange for a sentence of two to four years. The court denied his subsequent motion to withdraw his plea, finding it was knowing and voluntary.

The Appellate Division, Second Department affirmed. "By pleading guilty, defendant forfeited his contention that his motion to dismiss the indictment should have been granted on the ground that the fact-finding process of the grand jury was impaired," it said, citing People v Hansen (95 NY2d 227 [2000]). In Hansen, the Court of Appeals identified a "critical distinction ... between defects implicating the integrity of the process, which may survive a guilty plea, and less fundamental flaws, such as evidentiary or technical matters, which do not."

Manragh argues, "since the grand jury was not permitted to vote on whether to hear [his witness's] testimony, the authority granted to the grand jury pursuant to CPL 190.50(6) was usurped by the prosecutor and the integrity of the grand jury proceeding impaired," and so the indictment should have been dismissed. He says he claimed "misconduct" in his case, "unilaterally excluding" his witness's testimony, "was error that impaired the integrity of a grand jury proceeding," and was thus of a kind that survives a guilty plea under Hansen.

For appellant Manragh: Thomas E. Scott, Melville (631) 673-6670

For respondent: Suffolk County Assistant District Attorney Caren C. Manzello (631) 852-2500