State of New York
Court of Appeals

To be argued Tuesday, February 8, 2022 (arguments begin at 2 p.m.)

No. 10 Ferreira v City of Binghamton

This federal case, a negligence action arising from a shooting by Binghamton police as they executed a no-knock search warrant in 2011, hinges on whether the New York rule that plaintiffs who sue a municipality for negligence must prove the government owed them a "special duty" applies to cases of government-inflicted injury, or only where plaintiffs claim the municipality failed to protect them from a third party.

In August 2011, acting on a tip that a man had robbed local drug dealers, was armed, and was staying at his girlfriend's apartment in Binghamton, city police officers obtained a no-knock warrant to search the residence. They conducted an hour of surveillance that evening and saw the suspect meet another man outside the apartment and then leave the area. They made no further effort to determine whether the suspect had returned before the raid the next morning. A SWAT team armed with assault rifles was assigned to execute the warrant. They did not bring beanbag guns, tasers, or other less-lethal weapons for the raid, nor did they know the apartment's layout.

Plaintiff Jesus Ferreira, an overnight guest who was not expected by the officers, was sleeping on a living room couch near the front door when the SWAT team broke through it with a battering ram. Officer Kevin Miller, the first man through the door, immediately encountered Ferreira and within two seconds shot him in the stomach at a distance of three to six feet. Miller later testified that, as he entered the room, he saw Ferreira rising from the couch and yelled "down, down, down," but Ferreira instead walked toward him. He said Ferreira did not verbally threaten him, but was holding a gray Xbox controller which the officer mistook for a snubnosed revolver and, as a result, Miller said he believed Ferreira posed an immediate danger to himself and other officers. Ferreira testified that he watched a movie from the couch the previous night using the Xbox controller and that he left the controller on the floor when he fell asleep. The next morning, when he was awakened by the banging and yelling at the door, Ferreira said he sat up slightly from the couch, raised his arms above his head, and turned his torso toward the door so he would not be seen as a threat. He said he did not hear anyone yell "get down" before the shot, which came "the same instant" the door flew open.

Ferreira sued the City and Miller in U.S. District Court for the Northern District of New York, which instructed the jury that it could find the City liable based either on negligence of Miller in shooting Ferreira or negligence of other officers in planning the raid. The jury found Miller had not been negligent, but it found the City liable for negligent planning of the raid, partially offset by a finding that Ferreira was 10% at fault. It awarded Ferreira $3 million.

The court granted the City's motion to set aside the verdict against it on the ground that Ferreira failed to show the City owed him a special duty greater than it owed the general public. On appeal, Ferreira argued that no special duty is required where the police inflict the injury.

The U.S. Court of Appeals for the Second Circuit is asking this Court to resolve the issue in a certified question: "Does the 'special duty' requirement ... apply to claims of injury inflicted through municipal negligence, or does it apply only when the municipality's negligence lies in its failure to protect the plaintiff from an injury inflicted other than by a municipal employee?"

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State of New York
Court of Appeals

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No. 32 U.S. Bank National Association v DLJ Mortgage Capital, Inc.

U.S Bank National Association, as trustee for a residential mortgage-backed securities (RMBS) trust, filed a breach of contract suit against the seller of the mortgage loans, DLJ Mortgage Capital, Inc., alleging that it failed to pay for defective loans as required by the "repurchase protocol" of the trust's pooling and service agreement. The repurchase protocol provides that within 120 days of receiving written notice of a breach of any of its representations and warranties regarding the quality of the loans "which materially and adversely affects" the interests of the investors, DLJ must cure the breach or repurchase the defective loan. Beginning in December 2011, U.S. Bank sent letters to DLJ demanding that it cure or repurchase hundreds of defective loans, and saying its investigation of the loans was ongoing and the breaches were pervasive. U.S. Bank filed this suit in 2013, claiming DLJ did not repurchase any loans in response. DLJ moved to dismiss all claims based on loans the plaintiffs did not specifically identify in their timely pre-suit breach notices.

Supreme Court denied DLJ's motion, ruling that U.S. Bank's timely pre-suit breach letters notified DLJ of numerous defective loans and also of the likelihood that additional breaches would be discovered, which would then relate back to the date of the initial complaint. The courts also ruled the plaintiffs were entitled to interest accrued on liquidated loans up to the date they are repurchased.

The Appellate Division, First Department affirmed based, in part, on the relation-back doctrine. In a related case, it said, "The trustee's timely presuit letters, which stated that DLJ had placed defective loans into the trusts 'on a massive scale,' cited breach rates between 65% and 72% in the trusts, cautioned that the specified defective loans were 'just the tip of the iceberg,' and stated that its investigation into the loans in the trusts was ongoing, put DLJ on notice that the breaches plaintiffs were investigating might uncover additional defective loans for which claims would be made. Therefore, plaintiffs' timely complaints that identified certain breaching loans may be amended to add the claims at issue, as they relate back to the original complaints...." It also upheld the ruling on interest.

DLJ argues that the plaintiff failed to comply with the repurchase protocols in the governing agreements, which "require timely notice as to every loan for which plaintiffs assert a claim." The parties "agreed to a loan-specific sole remedy that requires timely, loan-specific breach notices," it says, and "relation back cannot be used to excuse timely compliance with contractual requirements." It also contends that the plaintiff is not entitled to interest on liquidated loans.

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To be argued Tuesday, February 8, 2022 (arguments begin at 2 p.m.)

No. 59 White v Cuomo

The State Legislature amended the Racing, Pari-Mutual Wagering and Breeding Law in 2016 by enacting a new article 14 to permit interactive fantasy sports (IFS) contests, in which players pay entry fees to an IFS provider, select fantasy teams of real-world athletes, and compete against other players for cash prizes based on the performances of their chosen athletes in actual sporting events. Article 14 declares that IFS contests do not constitute gambling as defined in Penal Law § 225, thereby eliminating criminal penalties for IFS; and it provides for consumer safeguards, minimum standards and the registration, regulation and taxation of IFS providers. Jennifer White and three other plaintiffs brought this action against then-Governor Cuomo and the State Gaming Commission to strike down article 14 as unconstitutional. They contend its authorization of IFS contests violates article I, section 9 of the State Constitution, which states that "no lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling ... shall ... be authorized or allowed within this state," except for state run lotteries, pari-mutual betting on horse races, and state authorized casinos.

Supreme Court granted partial summary judgment to the plaintiffs, ruling that article 14's authorization for IFS contests violates the constitutional prohibition of gambling. It relied on Penal Law § 225, which defines "gambling" as a person betting on "a contest of chance or a future contingent event not under his control or influence; and defines "contest of chance" as any game "in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein." While IFS players may employ skill in choosing their teams, the court said, "IFS involves, to a material degree, an element of chance, as the participants win or lose based on the actual statistical performance of groups of selected athletes in future events not under the contestants' ... control or influence." However, it upheld the portion of article 14 that eliminates criminal penalties for IFS contests.

The Appellate Division, Third Department upheld, on a 4-1 vote, the finding that the statutory authorization of IFS violates the constitutional ban on gambling. The Constitution does not define "gambling," but the majority said "the current Penal Law definition comports with the common understanding of the meaning of the constitutional prohibition" and encompasses IFS contests. "[A]lthough participants in IFS contests may use their skill in selecting teams, they cannot control how the athletes on their IFS teams will perform in the real-world sporting events.... In other words, the skill level of an IFS contestant cannot eliminate or outweigh the material ... role of chance in IFS contests." It modified the judgment by striking down the decriminalization of IFS contests, saying the Legislature would not have wanted to leave them entirely unregulated.

The dissenter argued that "our judicial inquiry is limited to deciding whether the Legislature rationally determined, after hearing and considering evidence, that IFS contests are not 'gambling' as defined under Penal Law § 225.00.... [A]rticle 14 was constitutionally enacted because the legislative record supports that the outcome in an IFS contest neither depends (1) to a 'material degree upon an element of chance' nor (2) upon 'a future contingent event not under [the contestants'] control or influence...." He said the Legislature "concluded that the proper focus is not on the participants' influence over the real world events and a specific athlete's performance, but the participants' unquestionable influence on winning the contest by making skillful choices in assembling a fantasy roster."

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