State of New York
Court of Appeals

To be argued Thursday, May 19, 2022 (arguments begin at noon)

No. 34 ACE Securities Corp. v DB Structured Products, Inc.

This breach of contract action stems from a residential mortgage-backed securities (RMBS) investment deal that went sour. The appeal hinges on whether the trustee of an RMBS trust qualifies as a "plaintiff" under CPLR 205(a), which gives a "plaintiff" six months to revive an action that is dismissed for reasons other than the merits, when the original action was commenced by the trust's certificate holders rather than the trustee.

DB Structured Products, Inc. (DBSP) purchased 8,815 residential mortgages, which were pooled in a trust and securitized through the sale of more than $500 million in certificates to investors in 2006. In a Mortgage Loan Purchase Agreement (MLPA), executed on March 28, 2006, DBSP made representations and warranties regarding the quality of the mortgage loans. The MLPA and related agreements require that DBSP be notified of a breach of any of its warranties and gives it 60 days to cure the breach. If the breach cannot be cured, DBSP is required to repurchase the affected loan within 90 days of receiving notice. The agreements provide that the trustee -- HSBC Bank USA, National Association -- may not sue or demand that DBSP repurchase a defective loan until the cure period expires.

Two investors filed this suit on behalf of the trust against DBSP on March 28, 2012, the last day of the 6-year limitations period, alleging extensive breaches of the loan warranties. In September 2012, HSBC, as trustee, sought to substitute itself as the plaintiff, making similar claims of extensive breaches and DBSP's refusal to cure or repurchase the loans. The Appellate Division, First Department dismissed the suit as untimely (112 AD3d 522). The Court of Appeals affirmed the dismissal (25 NY3d 581), in part because the investor-plaintiffs failed to comply with a contractual condition precedent to suit when they commenced the action without affording DBSP 60 days to cure and 90 days to repurchase the loans.

While that appeal was pending at this Court, HSBC commenced this action to revive the original action pursuant to CPLR 205(a), noting that "the 60- and 90-day cure and repurchase periods ... have now elapsed." Supreme Court dismissed HSBC's suit, finding the trustee was not a "plaintiff" under the statute.

The Appellate Division, First Department affirmed, saying, "The dispositive issue ... is whether the trustee of a [RMBS] trust is a 'plaintiff' within the meaning of CPLR 205(a) when the prior action was commenced by the trust's certificateholders. In U.S. Bank N.A. v DLJ Mtge. Capital, Inc. (141 AD3d 431 ...), we concluded that 'the trustee [was] not entitled to refile the claims under CPLR 205(a), because it [was] not a "plaintiff" under that statute....'"

HSBC argues that prior cases interpreting CPLR 205(a) have applied a "same rights" test to determine who is a proper "plaintiff" to revive an action under the statute, and that it is entitled to the benefits of the statute "because the named plaintiffs in the Original Action and this Revival Action acted to enforce the exact same rights each time – those afforded to the Trust by the securitization agreements that DBSP sponsored.... In each of the two actions, the same rights were invoked, the same allegations were made, and the same relief was sought on behalf of the same true party in interest."

For appellant HSBC (as trustee): Zachary W. Mazin, Manhattan (212) 402-9400
For respondent DB Structured Products: William T. Russell, Jr., Manhattan (212) 455-2000

State of New York
Court of Appeals

To be argued Thursday, May 19, 2022 (arguments begin at noon)

No. 55 Matter of DCH Auto v Town of Mamaroneck

In 2007, DCH Auto entered into 20-year lease with the owner of a parcel in the Town and Village of Mamaroneck, which it uses for its automotive repair business. The lease required DCH to pay all real estate taxes levied on the property. It also gave DCH the right to contest the tax assessments and the right to settle any such proceeding without the owner's consent. In 2014, DCH filed administrative complaints pursuant to Real Property Tax Law (RPTL) 524(3), in its own name and not the owner's, to challenge the Town's assessments for five years, from 2009 to 2014, and the Village's assessments for three of those years. After the Town and Village Boards of Assessment Review denied the administrative complaints, DCH commenced these tax certiorari proceedings under RPTL article 7 to challenge the assessments in court.

The Town and Village moved to dismiss the suits on the ground that the administrative complaints in the RPTL 524 proceedings were defective because they were not brought in the name of the property owner. RPTL 524(3) provides that a complaint "must be made by the person whose property is assessed, or by some person authorized in writing by the complainant or his officer or agent to make such statement who has knowledge of the facts stated therein." While RPTL 704(1) authorizes "any person claiming to be aggrieved" to bring a tax certiorari proceeding under article 7, the municipalities argued that a valid complaint under RPTL 524 is a condition precedent to filing suit under RPTL article 7.

Supreme Court dismissed the tax proceedings, ruling that it lacked subject matter jurisdiction to review the assessments because DCH, by filing the administrative complaints under RPTL 524 in its own name instead of the owner's, "did not satisfy a condition precedent to the commencement of these proceedings."

The Appellate Division, Second Department affirmed. It said DCH "may qualify as an aggrieved party pursuant to RPTL 704(1), since it paid the real estate taxes in the challenged tax years. However, in filing the administrative complaints under RPTL 524 in its own name, it failed to satisfy a condition precedent to the commencement of an RPTL article 7 proceeding since it was neither the owner, nor identified in the complaints as an agent of the owner...."

DCH argues that the Second Department's holding that only a property's owner may file a RPTL 524 complaint is not supported by the language or legislative history of the statute, in which the word "owner" does not appear. It says that it was authorized by its lease to challenge the assessment, and that RPTL 524(3) should be read together with RPTL 704(1) to permit any "aggrieved" person to file a complaint at the administrative level. And it contends that its filing of the RPTL 524 complaints in its own name was, at most, a "technical" defect which should be waived due to the municipalities' failure to object during the administrative proceedings and to further the "remedial" purposes of the RPTL's tax grievance provisions.

For appellant DCH Auto: Matthew S. Clifford, Bronxville (914) 961-1300
For respondents Mamaroneck et al: William Maker, Jr., Mamaroneck (914) 381-7815

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, May 19, 2022 (arguments begin at noon)

No. 56 People v Sergio Cerda *(papers sealed)*

Sergio Cerda was charged with sexually abusing an 11-year-old girl, who was related to him, at his home in Port Washington, Nassau County, in November 2016. The girl testified at trial that Cerda penetrated her vagina with his finger and then fondled her breast while she was sitting on a couch watching television with him and two younger girls. One of those girls testified that she did not see Cerda touch the complainant. The prosecution presented records of the complainant's sexual assault examination, which showed two petechiae (burst blood vessels) on her hymen. The prosecution's expert witness testified that such petechiae result from "pressure or force" and that they could have been caused by digital penetration. He noted that they may have been a result of masturbation or accidental injury, but said it was unlikely.

Cerda moved to admit evidence from a forensic report, which found the complainant's own saliva in her underwear and a vulvar swab. It also found a mixture of DNA from at least two males in a stain on her underwear, but the sample was insufficient to generate DNA profiles to identify the contributors. A vaginal swab contained prostate specific antigen, which is found in several bodily fluids including semen, but no sperm were present on the swab. The prosecutor argued the evidence should be excluded under the Rape Shield Law (CPL 60.42) because it did not exonerate Cerda and it could be used to imply the complainant was promiscuous. CPL 60.42 provides, "Evidence of a victim's sexual conduct shall not be admissible in a prosecution for" specified sex offenses "unless such evidence" fits within one of five of the statute's enumerated exceptions. Cerda argued the forensic evidence was admissible under three of the exceptions because it provided alternative explanations for the petechiae, including that the complainant had injured herself by masturbating or by sexual contact with a third party. Those exceptions allow evidence to rebut prosecution evidence that the victim did not engage in sexual conduct during a given period of time; rebut evidence "that the accused is the cause of pregnancy of disease of the victim, or the source of semen found in the victim; and defense evidence the trial court finds "to be relevant and admissible in the interest of justice."

Supreme Court precluded the forensic evidence, saying it "is very speculative. I think it's going to confuse the jurors. I think there's a risk that the jurors might conclude" the victim had sexual contract with a third party, "and I think that's exactly what the rape shield law is designed to prevent." The prosecutor argued in summation that "there's nothing in the medical record to support" Cerda's "alternate theories" that the complainant's injuries were self-inflicted. Cerda was convicted of first-degree sexual abuse and sentenced to three years in prison.

The Appellate Division, Second Department affirmed, saying Cerda "was not denied his constitutional rights to due process and to confront witnesses by the Supreme Court's application of the Rape Shield Law (CPL 60.42) to prohibit him from introducing into evidence portions of a laboratory report. The defendant was given ample opportunity to develop evidence at trial to support his defenses...."

Cerda argues, in part, "The trial court's evidentiary rulings, exploited by the prosecutor on summation, cumulatively crippled the defense, providing the jury with an inaccurate and unfair view of complainant's credibility, and depriving Mr. Cerda of his constitutional rights to present a defense, to confront witnesses, and to a fair trial. He says the precluded evidence would have provided "clear and direct evidence of at least two alternative sources for the observation of petechiae on [the complaint's] hymen" and "dispelled the prosecution's repeated attempts to cast [her] as a sexually innocent and naive child" who lacked the knowledge and experience to fabricate her claims.

For appellant Cerda: Donna Aldea, Garden City (516) 745-1500
For respondent: Nassau County Assistant District Attorney Andrew Fukuda (516) 571-3660

State of New York
Court of Appeals

To be argued Thursday, May 19, 2022 (arguments begin at noon)

No. 57 People v Ron Hill

Ron Hill was arrested on drug possession charges in the Bronx in November 2018. In a misdemeanor complaint, the arresting officer said he "observed defendant to have on his person, in his left hand, which he tossed to the ground, one (1) clear ziplock bag containing a shredded dried plant-like material with a chemical odor." The officer said that "based upon deponent's training and experience, which includes training in the recognition of controlled substances, and their packaging, the aforementioned substance is alleged and believed to be SYNTHETIC CANNABINOID/SYNTHETIC MARIJUANA (K2)." At his arraignment in Criminal Court, Hill accepted an offer to plead guilty to the top count of criminal possession of a controlled substance in the seventh degree, an A misdemeanor, in exchange for a conditional discharge.

On appeal, Hill argued that the misdemeanor complaint was jurisdictionally defective because the officer's factual allegations did not identify the particular type of synthetic marijuana he possessed and, therefore, the complaint failed to allege every element of the charged offense. A wide variety of chemicals can be used to make synthetic marijuana, but only ten of them are listed as a "controlled substance" in Public Health Law § 3306(g) and thereby criminalized for prosecution under Penal Law § 220.03.

The Appellate Term, First Department affirmed, saying, "The misdemeanor complaint was jurisdictionally valid because it described facts of an evidentiary nature establishing reasonable cause to believe that defendant possessed synthetic cannabinoids, a Schedule 1 controlled substance.... The instrument recited that the officer observed defendant in possession of a 'clear ziplock bag containing a shredded dried plant-like material with a chemical odor' ... and that the officer concluded that the substance was 'synthetic cannabinoid/synthetic marijuana (K2),' 'based on [his] training and experience, which include[d] training in the recognition of controlled substances, and their packaging'.... Where, as here, 'the defendant has waived prosecution by information (and therefore has assented to the more lenient reasonable cause standard), these legal and factual allegations are sufficient to particularize the crime charged and protect against a constitutional double jeopardy violation...."

Hill argues the complaint was insufficient because "the arresting officer did not allege that the substance the appellant possessed was one of the synthetic cannabinoids specified in Public Health Law § 3306(g). Moreover, synthetic cannabinoids can only be identified by chemists conducting specialized testing in a laboratory setting.... [T]hey cannot be identified usually by the naked eye.... In New York, the State Legislature has made a determination that only specific synthetic cannabinoids are illegal and subject to criminal prosecution." He says "the complaint was jurisdictionally defective because it failed to set forth sufficient factual allegations to provide reasonable cause that the substance ... recovered from appellant was one of the synthetic cannabinoids that is illegal in New York. As such, the complaint ... did not allege a crime."

For appellant Hill: Harold V. Ferguson, Jr., Manhattan (212) 577-3548
For respondent: Bronx Assistant District Attorney Joshua P. Weiss (718) 838-6229