

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, February 7, 2023

No. 10 Casey v Whitehouse Estates, Inc.

Kathryn Casey and other tenants of a Manhattan apartment building brought this class action against the building's owner, Whitehouse Estates, Inc., and related entities in 2011, claiming they illegally deregulated 78 rent-stabilized apartments while receiving tax abatements on the building through New York City's J-51 program. Such deregulation had been permitted by the Division of Housing and Community Renewal (DHCR) until 2009, when this Court ruled in Roberts v Tishman Speyer Props. (13 NY3d 270) that apartments in buildings receiving J-51 benefits could not be removed from rent stabilization. The tenants sought a declaration that their units were rent-stabilized, recovery of rent overcharges, and other relief. In 2012, Whitehouse filed retroactive registrations with DHCR which registered 72 of the apartments as rent-stabilized, but with recalculated regulated rents that were higher than it actually charged tenants from 2007 through 2011, the four-year 'look-back period.' The tenants moved for summary judgment declaring that their legal regulated rent must be calculated according to the default formula of the Rent Stabilization Code (RSC) due to the defendants' failure to provide adequate rental history records to establish their maximum legal rent.

Supreme Court granted the motion for summary judgment and referred the matter to a special referee to determine the base regulated rent using the default formula. It said use of the default formula was proper because it found Whitehouse's filing of retroactive rent registrations in 2012 was "a fraudulent attempt" to avoid a court determination that the apartments are rent stabilized and to "impose their own rent calculations, as the presumptively legal rent, for the duration of the statutory four-year look-back period...."

The Appellate Division, First Department affirmed in a 3-1 decision, saying that after the tenants filed their suit, "defendants, without court approval, unilaterally registered rents from the base date forward that were not the rents actually paid, and instead registered rents far higher, without explanation. While these intentional misstatements of fact, which were intended to artificially increase the legal regulated rent, constitute fraud under Grimm," the RSC "also calls for application of the default formula where '(i) the rent charged on the base date cannot be determined; or (ii) a full rental history from the base date is not provided.' Both of those scenarios apply here...." It said the default formula applies based on the defendants' fraudulent conduct and failure to provide records of the actual rents charged on the base date in 2007.

The dissenter said the trial court erred in applying the default formula because the tenants "failed to provide any evidence of defendants' fraud.... Plaintiffs' fraud claim rests almost entirely on uncontroverted evidence that the defendants began treating numerous apartments as deregulated sometime between 1993 and 2011 while receiving tax benefits. This is precisely what Regina [Metro. Co. v New York State DHCR] (35 NY3d 332) instructs is not evidence of willfulness to establish common-law fraud." She said, "The correct way to determine the tenant's legal regulated rent and any overcharge is by using 'the rent actually charged on the base date'" in 2007, and the case should be remanded to Supreme Court for discovery to determine the rents that were actually charged.

For appellants Whitehouse et al: Jeffrey Turkel, Manhattan (212) 867-6000

For respondents Casey et al: Ronald S. Languedoc, Manhattan (212) 349-3000

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, February 7, 2023

No. 11 Henry v New Jersey Transit Corporation

Kathleen Henry was a passenger on a New Jersey Transit Corp. bus traveling from Manhattan to New Jersey in 2014, when the bus collided with another vehicle in the Lincoln Tunnel. She suffered a serious shoulder injury and brought this personal injury action against New Jersey Transit and the bus driver. A jury found in her favor in 2018 and awarded damages including \$400,000 for past pain and suffering and \$400,000 for future pain and suffering. In 2019, New Jersey Transit moved to set aside the verdict or, alternatively, to reduce the damages awarded as excessive. Supreme Court denied the motion.

Meanwhile, the U.S. Supreme Court ruled in Franchise Tax Bd. of Cal. v Hyatt (139 S Ct 1485 [2019]) (Hyatt III) that a state cannot be sued in the courts of another state without its consent under the doctrine of interstate sovereign immunity. In this case, New Jersey Transit cited Hyatt III in its appeal to the Appellate Division, contending that Henry's suit must be dismissed based on interstate sovereign immunity because it is an agency of the State of New Jersey and it did not consent to be sued in the courts of New York.

The Appellate Division, First Department affirmed, saying that "New Jersey Transit waived its sovereign immunity defense (see Belfand v Petosa, 196 AD3d 60 [1st Dept 2021] [decided herewith]). It did not place plaintiff or the court on notice of the defense by asserting it in its responsive pleadings, during pretrial litigation, at trial or in its posttrial motion. Indeed, it raised the issue for the first time on appeal. As the defense pre-dates [Hyatt III], and thus was available at the time New Jersey Transit served its answer, '[its] litigation conduct induced substantial reliance on that conduct by plaintiff and our courts, and is inescapably a clear declaration to have our courts entertain this action' (Belfand, 196 AD3d at 73)." It also said the damages awards "do not deviate materially from what would be reasonable compensation...."

New Jersey Transit argues that interstate sovereign immunity is "a fundamental constitutional right," and any waiver of that right "must be express and unambiguous" and cannot be inferred from its litigation conduct in this case. As for its failure to assert a sovereign immunity defense for six years after the suit was filed, it said, "Because sovereign immunity speaks to the Court's subject matter jurisdiction, it may be raised at any time, including for the first time on appeal." It also argues the Appellate Division's rejection of its sovereign immunity defense, "even though New York courts would have granted immunity to the State of New York in similar circumstances," violated the Full Faith and Credit Clause of the U.S. Constitution.

For appellants New Jersey Transit et al: Lawrence McGivney, Manhattan (212) 509-3456
For respondent Henry: Brian J. Isaac, Manhattan (212) 233-8100

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, February 7, 2023

No. 12 People v Santino Guerra

On St. Patrick's Day in 2016, Santino Guerra got into an altercation with several strangers in the Bronx and stabbed one of them, Dylan Pitt, in the chest with a penknife. Facing charges of attempted murder and assault, Guerra testified at trial that he acted in self-defense and that Pitt initiated the fight by swinging a beer bottle at him. Prosecution witnesses testified Guerra attacked Pitt without provocation. To bolster his claim that Pitt was the initial aggressor, Guerra sought to introduce evidence of Pitt's violent history, including an incident on a previous St. Patrick's Day when Pitt broke a man's jaw and another in which he assaulted a stranger.

Supreme Court barred the evidence based on the 1976 Court of Appeals ruling in People v Miller (39 NY2d 543), which modified the rules of evidence to permit a defendant asserting a justification defense "to introduce evidence of the victim's prior specific acts of violence of which the defendant had knowledge," in order to show whether the defendant had a reasonable belief that he faced imminent danger and his use of force was necessary to protect himself. It said evidence of a victim's past violence remained inadmissible if the defendant had been unaware of it or would use it to show the victim "generally had a poor reputation in the community ... lest a jury find a homicide justifiable for the wrong reason – i.e. that the deceased was unworthy of life." Since Guerra had not been aware of Pitt's criminal history at the time of the stabbing, the trial court allowed evidence of several of Pitt's prior convictions and the fact he was on parole, but only for impeachment and for the jury to evaluate Pitt's credibility, not to determine whether he was the initial aggressor. Guerra was convicted of second-degree assault and sentenced to three years in prison.

The Appellate Division, First Department affirmed. "The court correctly precluded defendant from introducing the victim's prior violent acts for the purpose of proving that the victim was the initial aggressor," it said, citing Miller. Since the acts were unknown to defendant, they were irrelevant to his state of mind at the time of the altercation and cannot establish that the victim was the initial aggressor.... The court providently exercised its discretion in imposing reasonable limits on defendant's cross-examination of the victim, based on its determination that the jury might improperly use information about the victim's prior violent acts to determine the issue of who was the initial aggressor."

Guerra urges this Court to overrule Miller, saying "New York has long barred the jury from considering the complainant's violent character on the issue of initial aggressor.... The overwhelming majority of other jurisdictions – including the federal courts and forty-eight sister states – now admit such evidence in one form or another." He says New York's rule "was grounded in the desire to minimize prejudice to the People" by preventing the use of a victim's poor reputation to justify a defendant's use of force, but "such a rule improperly equates protections to nondefendant witnesses with those afforded to criminal defendants, who face deprivation of liberty." He says the rule violates the "Sixth Amendment right to present a defense. Evidence of the complainant's violent character or specific prior violent conduct – especially where recent, highly related, and provable by prior court adjudications – is exculpatory, highly reliable, and not prejudicial to the complainant or the People."

For appellant Guerra: Kelly A. Librera, Manhattan (212) 294-6700

For respondent: Bronx Assistant District Attorney T. Charles Won (718) 838-7097