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, January 3, 2023

No. 1 Matter of Town of Southampton v NYS Department of Environmental Conservation

Sand Land Corporation owns a sand and gravel mine on a 50-acre parcel in the Town of Southampton, Suffolk County. The mine has been in continuous operation on 31.5 acres of the property for more than 60 years. In 1972, the Town re-zoned the parcel to a residential district where mining is prohibited, but the mine continued to operate as a prior nonconforming use. The State Department of Environmental Conservation (DEC) issued Mined Land Reclamation Law permits for the mining operation beginning in 1981. In 2011 and 2016, the Town issued certificates of occupancy to Sand Land that said the mine was a pre-existing nonconforming use. In 2019, the DEC renewed the mining permit, increasing the footprint of the mine site to 34.5 acres. The DEC also granted Sand Land's separate application to modify its permit by increasing the depth of the mine by 40 feet, concluding the deeper mine would not significantly affect the quality of the groundwater drinking supply.

The Town of Southampton, neighboring landowners, and civic and environmental organizations immediately brought this article 78 proceeding to nullify both permits against Sand Land, its mine operator Wainscott Sand and Gravel Corp. (collectively Sand Land), and the DEC. They contended that DEC's approvals violated section 23-2703(3) of the Mined Land Reclamation Law (MLRL), which was enacted in 1991 and applies only to Long Island. The law provides, "No agency of this state shall consider an application for a permit to mine as complete or process such application for a permit to mine ... if local zoning laws or ordinances prohibit mining uses within the area proposed to be mined." A companion amendment to ECL 23-2711(3) requires that when DEC receives "a complete application for a mining permit, for a property not previously permitted pursuant to this title," the DEC must contact the relevant municipality to determine "whether mining is prohibited at that location."

Supreme Court dismissed the suit, agreeing with the DEC and Sand Land that ECL 23-2703(3) applies only to applications for a new permit or a substantial modification. It said this "interpretation is consistent with the language of the statute which states that it applies to an 'application for a permit to mine.' In the court's view, it would be nonsensical to interpret the statute to apply to modification applications such as this one which *only proposes mining deeper* within an existing disturbance footprint/area where mining is already otherwise authorized."

The Appellate Division, Third Department reversed on a 4-1 vote and annulled the permits, saying, "ECL 23-2703(3) is not vague or ambiguous; it is concise and clear.... There is no qualification on what type of permit applications must be put on hold; rather, by its certain language, the statute applies to all applications." It concluded, "ECL 23-2703(3) clearly recognizes that the local laws of the municipality are determinative as to whether an application can be processed. Here, where it is unchallenged that the Town's laws prohibit mining, DEC cannot process the application, let alone issue the permit."

The dissenter said Sand Land has "a constitutionally protected prior nonconforming use 'within the area proposed to be mined'" and argued that ECL 23-2703(3) only applies to new mines and "to expansions that exceed the established prior nonconforming use of an existing mine." Applying the statute to all mining permits "could render the law unconstitutional" because, while a town could use its zoning power to exclude new mines "and could even reasonably curtail and amortize prior nonconforming uses, it cannot terminate these uses in a wholesale fashion without running afoul of the Takings Clause." He said the DEC did not violate the statute by allowing Sand Land to increase the depth of its mine by 40 feet because the "expansion is within the existing footprint and clearly within the existing vertical reserves."

For appellants Sand Land and Wainscott: Gregory M. Brown, Syracuse (315) 399-4343
For respondents Southampton et al: David H. Arntsen, Nesconset (631) 366-2700
Robert S. Smith, Manhattan (212) 833-1125

State of New York
Court of Appeals

To be argued Tuesday, January 3, 2023

No. 2 State of New York v Vayu, Inc.

This case arises from a September 2016 agreement by the State University of New York at Stony Brook to purchase two unmanned aerial vehicles (UAVs or drones) from Vayu, Inc., a drone designer and manufacturer based in Michigan. The agreement provided for the UAVs to be delivered to SUNY Stony Brook's Global Health Institute in Madagascar, where they were to be used to deliver medical supplies and specimens in remote areas of the country. A professor at SUNY Stony Brook said in an affidavit that he contacted Vayu's chief executive officer in 2015 in hopes of creating a business relationship between the school and Vayu to develop medical supply drones. He said they pursued the potential deal in a series of phone calls and emails and, when agreement was reached, SUNY Stony Brook remitted payment to Vayu's bank account in Michigan. He said the parties envisioned that the relationship would continue, with Vayu providing training and technical support for the drone program. Vayu and the school jointly submitted a grant proposal to fund the manufacture, use and maintenance of medical supply drones in developing countries. After Vayu delivered the two UAVs to Madagascar in November 2016, school officials complained they were defective. In September 2017, Vayu's CEO met with the professor in New York to discuss the problems. SUNY Stony Brook subsequently returned the drones to Vayu in Michigan. When Vayu failed to replace them or refund the $50,000 purchase price, New York State filed this breach of contract action on behalf of SUNY Stony Brook against Vayu.

Vayu moved to dismiss the suit for lack of personal jurisdiction. The State argued that jurisdiction was established under the long-arm statute, CPLR 302(a)(1), which provides that "a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent ... transacts any business within the state."

Supreme Court dismissed the suit, saying the State failed to show that Vayu or its CEO initiated the transaction of any business in New York.

The Appellate Division, Third Department affirmed in a 3-2 decision, saying, "The various communications between the parties were twofold: first, to discuss the ongoing issues with the UAVs that SUNY Stony Brook purchased and, second, to create a relationship and to submit grants for projects that would take place entirely and solely outside of New York. Regardless of the quantity of defendant's communications with SUNY Stony Brook, these communications did not result in more sales in New York or seek to advance defendant's business contacts within New York.... Rather, the business transacted – specifically the sale of the UAVs to SUNY Stony Brook for use in Madagascar – was a one-time occurrence that resulted after the professor ... contacted the CEO.... The visit by the CEO to New York in 2017 was for the purpose of discussing issues regarding the completed purchase of the UAVs, rather than seeking additional business ... in New York."

The dissenters said, "Although the two [UAVs] that were purchased by [SUNY Stony Brook] were shipped to Madagascar, SUNY Stony Brook was in New York, the purchase price was billed to New York and the payment was made from New York.... The emails between the professor and the CEO both leading up to and following [their 2017 meeting in New York] demonstrate that the initial September 2016 sales transaction was not simply a 'one-time occurrence' but was contemplated as part of an ongoing business relationship ... that was intended to blossom into further business relations involving, among other things, expanded UAV sales and applications, ongoing UAV technical support and flight training services. Although the relationship between SUNY Stony Brook and defendant ended without the execution of any additional contracts, in our opinion, defendant's contacts in New York were nevertheless purposefully intended to create a continuing business relationship and, therefore, the first prong of obtaining long-arm jurisdiction was established...."

For appellant State: Assistant Solicitor General Dustin J. Brockner (518) 776-2017

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, January 3, 2023

No. 3 Hetelekides v County of Ontario

Demetrious Hetelekides (decedent) was the sole owner of a parcel of land and a restaurant, The Akropolis, in the Town of Hopewell until his death in August 2006, when his wife Krystalo Hetelekides inherited the property. Decedent did not pay property taxes on the parcel for 2005 and in November 2005, nine months before his death, Ontario County placed his property on the list it filed of properties affected by delinquent tax liens. In October 2006, two months after his death, County Treasurer Gary Baxter commenced a tax foreclosure proceeding against the property and sent notices of foreclosure to decedent by certified and first class mail pursuant to Real Property Tax Law (RPTL) 1125, which requires that notice be given to "each owner and any other person whose right, title, or interest was a matter of public record as of the date the list of delinquent taxes was filed." An employee of the restaurant signed the certified mail receipts and none of the first class mailings were returned to the county. The deadline for paying off the tax debt to redeem the property was January 12, 2007, and Baxter called the restaurant on January 9 and 10 in an effort to notify an owner or manager of the impending deadline, but he was told no one was available. He visited the restaurant on January 11 and again asked to speak to an owner or manager, but was told no one was available. The property was not redeemed by the deadline, a default judgment of foreclosure was entered, and the property was sold at auction for $160,000. The buyer assigned his bid to Krystalo Hetelekides, who brought this action against Ontario County and Baxter, contending that their failure to notify her of the foreclosure proceeding violated her due process rights.

Supreme Court ruled the foreclosure proceeding was "a nullity" and awarded the plaintiff damages of $138,657 plus interest, representing the difference between the $160,000 auction price and the $21,343 in taxes owed. It said the "foreclosure was invalid for two reasons": because the County defendants failed to notify the property owner before the redemption deadline and because they "commenced the foreclosure action against a deceased party." It said, "Defendants concede that 'title to the [P]roperty immediately vested in Plaintiff upon Mr. Hetelekides' death'.... Nevertheless, the Defendants mailed foreclosure notices to the decedent, who had already been deceased for two months," and they "never attempted to serve the Plaintiff or the decedent's estate through any of the methods contained in" RPTL 1125. As for the second ground, it said the defendants commenced the proceeding "six months after Demetrios died" and "at least one month after they definitively learned that Demetrios had died and his wife (the Plaintiff) inherited the Property.... 'It is well established that the dead cannot be sued.'"

The Appellate Division, Fourth Department reversed that portion of the judgment and vacated the damages award, saying RPTL 1125 requires notice only to persons whose interest in a property is "a matter of public record '*as of the date the list of delinquent taxes was filed*'.... Here, the list of delinquent taxes was filed ... when decedent was still alive. Plaintiff was thus not entitled to notice under that statute." If due process required more than the statutory notice, it "would be unreasonable" to require more than Baxter's "three personal attempts to talk to someone with authority at the restaurant and provide that person with actual notice...." As for suing the dead, it said "a tax foreclosure proceeding is not commenced against any person; it is commenced against the property itself. The owners are not necessary 'parties' to the ... proceeding; they are only '[p]arties entitled to notice' of the proceeding.... As a result, the tax foreclosure proceeding was properly commenced even though decedent had died..., and there was no need to substitute someone for the dead owner."

For appellant Hetelekides: Mary Jo S. Korona, Rochester (585) 327-4100
For respondent County and Baxter: Jason S. DiPonzio, Rochester (585) 530-8515