

# 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](mailto:gspencer@nycourts.gov).

To be argued Thursday, January 5, 2023

## **No. 7 Matter of Brookdale Physicians' Dialysis Associates, Inc. v Department of Finance of the City of New York**

The New York City Department of Finance (DOF) is appealing a decision that requires it to reinstate a property tax exemption for a two-story Brooklyn building owned by the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund (Schulman Fund), a not-for-profit corporation that provides funding for two other non-profits, Brookdale Hospital Medical Center and the Schulman and Schachne Institute for Nursing and Rehabilitation (Nursing Institute). Since 1996, the Schulman Fund has leased the first floor and basement of its building to Brookdale Physicians' Dialysis Associates (Brookdale Dialysis), a for-profit corporation that is staffed by physicians and other employees of Brookdale Hospital and pays the hospital a fee for the staffing. Brookdale Dialysis also pays for and provides all dialysis services for patients at the hospital and Nursing Institute. The lease required Brookdale Dialysis to pay 60.9 percent of any property taxes that "become payable" and, when DOF revoked the building's tax exemption for the 2015-16 tax year, the company applied to DOF to reinstate it pursuant to Real Property Tax Law (RPTL) 420-a, which provides a tax exemption for property owned by a charitable organization and "used exclusively" for its charitable purposes. DOF denied the application, saying the building was not eligible for the exemption because the Schulman Fund was making a profit through its rental income under the lease and Brookdale Dialysis was profiting by operating its for-profit business in a tax-exempt building. Brookdale Dialysis and the Schulman Fund brought this proceeding to annul the determination.

Supreme Court annulled DOF's decision to revoke the tax exemption and the Appellate Division, First Department affirmed, saying the lower court "correctly determined that the building owned by [the Schulman Fund] and used for the provision of a critical healthcare service qualifies for tax-exempt status, notwithstanding the for-profit status of the provider of the service." The Appellate Division said the three non-profits "participate in an arrangement by which Brookdale Dialysis renders a critical healthcare service ... to Brookdale Hospital and the Nursing Institute at little to no direct cost to the non-profit entities. Although the non-profit entities received an ostensible financial benefit, and Schulman's rent receipts exceed its building maintenance expenses, no benefit exists because Schulman placed the profit back into its healthcare-provider affiliates. The provision of dialysis services for Brookdale Hospital and Nursing Institute patients qualifies the building for tax-exempt status, because it is 'reasonably incident' to Schulman's purpose of funding and supporting its healthcare affiliates..."

The DOF argues, "The decision of the Appellate Division directly contravenes the plain language of [RPTL] 420-a, Court of Appeals precedent, and the mandate of the Legislature to construe 420-a tax exemptions strictly and narrowly because it has improperly granted a tax exemption to a not-for-profit entity that does not use or occupy the building, but instead leases it to a for-profit dialysis center which uses the exempt property for its own pecuniary gain."

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For respondent Brookdale Dialysis: Menachem J. Kastner, Manhattan (212) 509-9400

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## No. 8 Suzanne P. v Joint Board of Directors of Erie-Wyoming County Soil Conservation District

In June 2012, a 14-year-old boy was wading and swimming with friends in Buffalo Creek in the Town of West Seneca when he was washed over a low-head dam, held underwater by the strong current flowing over the dam, and drowned. The boy's mother, Suzanne P., brought this wrongful death action on behalf of her son's estate against the Joint Board of Directors of Erie-Wyoming County Soil Conservation District (Joint Board) alleging that it was the owner and operator of the dam and had been negligent. The estate also sued Erie County, the Town of West Seneca, and the separate Soil & Water Conservation Districts of Erie and Wyoming Counties (the Districts) on various grounds, including that they shared responsibility for the Joint Board's actions or they failed to warn of a dangerous condition at the dam. The low-head dam was designed and built in the 1950s by a federal agency now known as the Natural Resources Conservation Service (NRCS). The Joint Board, as sponsor of the project, has operated and maintained the dam under contracts and agreements with the NRCS, which the estate contends vested ownership of the dam in the Joint Board.

Supreme Court denied the Joint Board's motion for summary judgment dismissing the suit, saying there were issues of fact about whether the Board owned the dam, "especially in light of the operation and maintenance agreement" with the NRCS. The court dismissed all claims against the other defendants, finding that the Districts were "separate entities" from the Joint Board and were not responsible for the dam; that the County did not own the dam; and that the Town did not own or control the creek. The Appellate Division, Fourth Department affirmed.

After a bifurcated trial on the issue of the Joint Board's ownership of the dam, Supreme Court granted a directed verdict that the Joint Board was an owner of the dam. It said the operation and maintenance agreement between the Board and NRCS vests structures, including the dam, in the project sponsor. "The Sponsor is the Joint Board per the agreement.... This court believes that it's spelled out that the dam vests with the Sponsor, and the conditions to vest are still met to this day.... They may not know that they own it but it vests with them."

The Appellate Division, Fourth Department reversed and dismissed the suit, ruling the Joint Board did not own the dam. It said that "NRCS constructed the dams, which were permanently affixed to land underlying Buffalo Creek.... Thus..., the dams are structures that constitute fixtures annexed to the realty and are part thereof.... Inasmuch as the trial evidence also established the NRCS had no ownership interest in Buffalo Creek or the abutting land, no transfer of ownership of the subject dam by NRCS could have occurred under the terms of the agreement given that "[a] grantor cannot convey what the grantor does not own"...."

The estate argues that this Court should reinstate its claims against all of the defendants. Under the language of the contracts between the Joint Board and NRCS, it says ownership of the dam "automatically vested in the Joint Board" upon its completion, without regard to who owned the creek bed or abutting land and with no need for a transfer of ownership, making the Board responsible for posting signs warning about the dangers posed by the dam.

For appellant Suzanne P.: William A. Quinlan, Buffalo (716) 852-1000

For respondent Erie County: Jeremy C. Toth, Buffalo (716) 858-2204

For respondent West Seneca: Norman E.S. Greene, Buffalo (716) 856-1344

For respondent Joint Board: Mark P. Della Posta, Buffalo (716) 856-1636

For respondent Erie Soil & Water: Justin L. Hendricks, Buffalo (716) 853-3801

For respondent Wyoming Soil & Water: Breanna C. Reilly, Buffalo (716) 856-1300

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## No. 9 People v Oscar Sanders

Oscar Sanders was charged with assault in June 2016 after a street fight in Manhattan. The jury deliberated for three days at the end of his trial. When the jury announced it had reached a verdict, Sanders was brought into the courtroom in handcuffs. Defense counsel objected to what he said was the court's "policy" of keeping defendants in handcuffs while jurors render their verdict. He said he planned "to poll the jury with the idea in mind that perhaps the unanimity of the jury can be questioned." He said having the defendant "in handcuffs while they announce that verdict, especially ... if it's a verdict of guilty, lends pressure to anyone who might dissent during that polling to be influenced negatively against anyone in handcuffs.... So I'm asking you to leave him uncuffed during the reading of the verdict for that reason." Supreme Court replied, "All right. The application is denied. Bring in the panel." Sanders was convicted of first-degree attempted assault and second-degree assault.

After the verdict the court said Sanders might qualify for sentencing as a persistent felon. The prosecutor agreed and, two months later, moved for an order sentencing him as a discretionary persistent felony offender. The motion recounted the dates and places of his prior convictions and aspects of his character and criminal history that supported such sentencing. Defense counsel filed a written opposition. At an appearance three months after the prosecutor's motion, the court asked the attorneys if they were ready to proceed with a discretionary persistent felon hearing. Defense counsel objected based on the court's failure to provide the notice required by CPL 400.20, which states that a court "must" file an order directing a hearing at least 20 days prior to the hearing. The court "must" file with the order a statement of the dates and places of the defendant's previous convictions and the "factors in the defendant's background and prior criminal conduct which the court deems relevant" to persistent felon sentencing. The court overruled the objections, saying counsel was aware of the prosecutor's motion and should have been prepared. The court proceeded with the hearing, adjudicated Sanders a persistent felony offender, and sentenced him to 15 years to life in prison.

The Appellate Division, First Department affirmed. "Any error in defendant being handcuffed, without any explanation on the record, during the rendition of the verdict and the polling of the jury was harmless.... The handcuffing could not have contributed to the verdict, which the jury had already reached. Defendant's suggestion that jurors may have been inclined to repudiate their verdicts during polling, but were influenced to refrain from doing so by the sight of defendant in handcuffs, is highly speculative." It said the trial court's sentencing of Sanders as a persistent felon "was a provident exercise of discretion, given defendant's extraordinarily serious criminal history. There was 'substantial compliance' with the requirements of CPL 400.20..., whereby defendant received full notice of, and fully litigated, all relevant matters."

Sanders argues "the trial court erred in keeping Sanders in handcuff restraints visible to the jury ... without making any finding on the record as to the necessity of such restraints.... This error improperly reinforced the prosecution's narrative about Sanders's violent character in a case where the evidence of guilt was far from overwhelming. This Court should confirm that the constitutional prohibition against shackling a criminal defendant during trial without justification during the critical trial stage of verdict reading and jury polling, at which time the verdict is not yet final." He says the trial court failed to comply with CPL 400.20 and the Appellate Division "erroneously declared the court in 'substantial compliance' with the statute, when in fact there was no compliance." The court's failure to provide the required notice of hearing and statement deprived him "of an opportunity to adequately challenge the qualifying convictions or to respond to the specific factors that the sentencing judge deemed relevant."

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For respondent: Manhattan Assistant District Attorney Philip V. Tisne (212) 335-9000