State of New York
Court of Appeals

To be argued Wednesday, October 16, 2024

No. 95 Farage v Associated Insurance Management Corp.

In August 2014, a Staten Island apartment building owned by Regina Farage was severely damaged by fire. Six years later, Farage brought this breach of contract action against her property insurers, Tower Insurance Company of New York and related companies, and her insurance brokers. She alleged that the Tower defendants had refused to pay repair costs for the building in the six years following the fire, causing substantial delay of the reconstruction work.

The Tower defendants moved to dismiss the suit, contending the action was barred by a two-year contractual limitation period in the insurance policy. The policy provision states, "No one may bring a legal action against us under this insurance unless: [a] There has been full compliance with all of the terms of this insurance; and [b] The action is brought within 2 years after the date on which the direct physical loss or damage occurred."

In response, Farage cited another policy provision which said Tower would not "pay on a replacement cost basis for any loss or damage ... Until the lost or damaged property is actually repaired or replaced...." She relied on Executive Plaza, LLC v Peerless Ins. Co. (22 NY3d 511), a case like this one involving a fire damaged building and a two-year policy limitation for legal claims, in which the Court ruled that the "contractual limitation period, applied to a case in which the property cannot reasonably be replaced in two years, is unreasonable and unenforceable." Therefore, Farage argued, the limitation period in her case could not be enforced because her building could not be repaired in two years.

Supreme Court granted Tower's motion to dismiss the suit as untimely because Farage filed it four years after the limitation period expired. The Appellate Division, First Department affirmed, saying Executive Plaza "is distinguishable, as plaintiff here failed to allege that she reasonably attempted to repair the property within the two-year limitations period but was unable to do so...."

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For insurer respondents Tower Insurance et al: Kevin F. Buckley, Manhattan (212) 804-4200
For broker respondents Bowman et al: Howard S. Kronberg, White Plains (914) 948-7000

State of New York
Court of Appeals

To be argued Wednesday, October 16, 2024

No. 96 People v Brandon Williams

Brandon Williams and his cousin Neon Osouna were charged with murdering Donald Reed in December 2019 outside a Queens nightclub, The Smoke Shop Lounge, that was owned by Osouna. Reed had visited the club in the early morning hours with his sister and his girlfriend. When the women left about three hours later, Reed robbed the club's doorman at gunpoint and followed them out. Surveillance video of the street outside shows Osouna and another man, whose head is obscured by a hoodie, chase after Reed and fatally shoot him.

Osouna gave a videotaped statement in which he incriminated himself and explained that Reed had robbed the club's doorman, but he refused to name the second shooter. Williams was arrested based on identifications by Reed's sister and girlfriend, who did not witness the shooting but told police Williams had been the doorman that night and was the man wearing the hoodie in the surveillance video. They also identified Williams as the second shooter at trial, saying they had visited The Smoke Shop Lounge often and were familiar with his appearance.

Williams moved to sever his trial from Osouna's and moved to preclude Osouna's videotaped statement, saying its admission would violate his right to confront and cross-examine witnesses against him. The trial court denied both motions, saying the statement "does not expressly implicate defendant Williams," and it failed to give the jury a limiting instruction that Osouna's confession should be considered only as evidence of his own guilt. The prosecutor emphasized in her opening and closing statements that Osouna's videotape corroborated the identifications by Reed's sister and girlfriend. Williams was convicted of second-degree murder and weapon possession. He was sentenced to 25 years to life in prison.

The Appellate Division, Second Department affirmed. It said the admission of Osouna's confession without a limiting instruction violated Williams' right to confrontation. "Although Osouna did not specifically name the defendant..., 'the jury could have easily inferred' that the defendant was the person who was robbed.... Indeed, the prosecutor encouraged that interpretation of Osouna's confession, informing the jury during opening statement that 'you will hear the victim ... robbed one of his people, so instead of calling the police, *these two defendants* decided that Donald Reed had to die and they meted out their own version of street justice'.... Further, Osouna's confession supplied the only evidence of motive to shoot [Reed], and linked that motive to the defendant as the individual who was robbed by [Reed] shortly before the shooting." However, the court said "the error was harmless in light of the overwhelming evidence of the defendant's guilt ... and since there is no reasonable possibility that the improperly admitted confession contributed to the defendant's convictions."

Williams argues that the admission without limiting instructions of Osouna's "unredacted, incriminating confession, freely employed by the prosecution in framing its case, completely denied appellant his fundamental right to confront the witnesses against him and warrants a per se reversal," not subject to harmless error analysis. Alternatively, he says the error was not harmless because the only other evidence of guilt was the indirect identification by two witnesses who did not see the shooting.

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State of New York
Court of Appeals

To be argued Wednesday, October 16, 2024

No. 97 People v Eddie Robles

In June 2018, two Syracuse police officers received a report of shots fired at an intersection in the city. One of them reviewed video recordings from police cameras in the area, which showed a Black man with a thin build, wearing dark clothing and a red bandana, walking a yellow dog on a pink leash. The recordings showed that man had been in an altercation with two men, who knocked him to the ground, and as he fled he raised his arm and appeared to fire a handgun at them. About two hours later and a few blocks from the site of the shooting, the officers saw Eddie Robles, who partially matched the suspect in the video, walking a yellow Labrador on a pink leash. The officers approached him and, after a struggle, recovered a gun from his waistband and handcuffed him. When an officer asked Robles without Miranda warnings "what's going on? Are you all right? Are you okay?" Robles responded "you saw what I had on me. I was going to do what I had to do."

Supreme Court denied Robles' motion to suppress the gun and his statement to police, finding the officers had reasonable suspicion to detain him and his statement was "not the product of interrogation." Robles, acting pro se, ultimately pled guilty to attempted criminal possession of a weapon in the second degree in exchange for a two-year prison sentence.

The Appellate Division, Fourth Department affirmed in a 4-1 decision. It said the lower court properly refused to suppress the handgun, but "should have suppressed the statement defendant made in response to the officer's questions inasmuch as defendant was in custody at the time but had not waived his Miranda rights." However, the majority further found that "the particular circumstances of this case permit the rare application of the harmless error rule to defendant's guilty plea." Because the handgun found in Robles' waistband "would have been admissible at trial, we conclude that there is no reasonable possibility that the court's error in failing to suppress defendant's statement admitting possession of the firearm contributed to his decision to plead guilty."

The dissenter said the failure to suppress Robles' statement was not "'harmless beyond a reasonable doubt'.... Here, the People do not argue that harmless error analysis applies, and defendant failed to articulate a reason for his plea that is independent of the erroneous suppression ruling.... [T]his is not one of those rare cases in which the defendant said something on the record from which we can conclude that he would have pleaded guilty without regard to the error...."

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State of New York
Court of Appeals

To be argued Wednesday, October 16, 2024

No. 99 Matter of Kasowitz, Benson, Torres & Friedman v JPMorgan Chase Bank

In this turnover proceeding, JPMorgan Chase Bank and The Dakota dispute whose lien has priority over the proceeds of the sale of Alphonse Fletcher's shares in two apartments in The Dakota, a residential cooperative in Manhattan. When Fletcher acquired the apartments in 2001, paragraph 15 of the lease required him to reimburse The Dakota for all expenses it might incur in litigation between the two. Fletcher subsequently sued The Dakota for refusing to consent to his purchase of an additional apartment. Supreme Court ultimately dismissed Fletcher's claims and, in 2017, awarded The Dakota a $3.1 million judgment for its legal expenses.

Meanwhile, in 2008, Fletcher assigned to Chase his right, title and interest in his lease and shares in The Dakota apartments as security for loans totaling $11,250,000. And in 2015, Kasowitz, Benson, Torres & Friedman commenced this special proceeding against Chase, The Dakota, and Fletcher to enforce a $2.8 million judgment it had obtained against Fletcher for unpaid legal fees. The law firm sought an order for the sale of Fletcher's lease, and it subsequently assigned its judgment against Fletcher to Chase. Fletcher defaulted in the proceeding. A receiver realized $9.3 million in net proceeds from the sale of Fletcher's shares and lease, less than the total value of The Dakota's and Chase's liens.

The Dakota contended that its interest in its $3.1 million award for legal fees in the 2017 judgment against Fletcher was superior to Chase's interest in the proceeds. Chase argued, in part, that the 2017 judgment was based on a misinterpretation of the attorneys' fee provision in paragraph 15 of the lease and that the provision was unconscionable. It said its claims were reviewable because it was not a party to that action nor in privity with Fletcher, so the 2017 judgment had no collateral estoppel effect on it; and it said the Dakota should have sought to join Chase in that action if it wanted Chase to be bound by the judgment. The Dakota argued that Chase would have had to intervene in the Fletcher action in order to challenge the 2017 legal fees judgment as improper under paragraph 15 of the lease.

Supreme Court granted The Dakota's motion for summary judgment, declaring that its lien on the apartment sale proceeds was superior to Chase's lien as a lender to Fletcher and as assignee of the law firm's lien.

The Appellate Division, First Department affirmed, saying Chase's claims that The Dakota's 2017 judgment for legal fees was improperly based on a misreading of the lease and was unconscionable "is an impermissible collateral attack on the Dakota's judgment" and "would destroy the judgment altogether.... If Chase wants to vacate the Dakota's judgment, it must move before '[t]he court which rendered [the] judgment'" pursuant to CPLR 5015. The court said, "As Fletcher's assignee, Chase could have sought to intervene in this action against the Dakota to argue that paragraph 15th was invalid...."

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