

# 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 Wednesday, February 12, 2025

## No. 20 Wright v State of New York

Chi Bartram Wright filed this negligence claim against the State of New York under the Child Victims Act (CVA) in July 2021, alleging that he “was raped and sexually abused as a child by numerous men in multiple incidents between 1986 and 1990” at “The Egg,” the Performing Arts Center at the Empire State Plaza in Albany. He said the abusers were “both employees of the State as well as members of the general public” and the abuse took place “in the bathrooms, stairwells, tunnels, boiler room, and Kitty Carlisle Hart Theater” of The Egg. The CVA is a revival statute that provided a two-year window in which to file previously time-barred claims of childhood sexual abuse. Wright, who was 12 to 15 years old when the alleged abuse occurred, alleged the State was liable for negligent hiring, retention, and supervision of its employees and failure to properly supervise and provide security at the State-owned premises. The State moved to dismiss Wright’s claim for failure to adequately specify “the nature of” the claim and “the time when” it arose, as required by Court of Claims Act § 11(b).

The Court of Claims dismissed the suit, saying “the Claim alleges that Claimant was sexually abused by various unidentified individuals at various locations within the Egg/Empire State Plaza over the course of five years. Claimant does not provide any details as to when the assaults began, or any date(s) when said assaults occurred.... Claimant’s failure to set forth any specific date(s) of the alleged abuse violates Court of Claims Act § 11(b) and mandates dismissal of this Claim.... [T]he notion that the State must demonstrate it cannot conduct an investigation of the claim based upon the facts presented before moving to dismiss pursuant to [section 11(b)] has been specifically rejected....”

The Appellate Division, Third Department reversed and reinstated the claim. “The reality is that ‘in matters of sexual abuse involving minors, as recounted by survivors years after the fact, dates and times are sometimes approximate and incapable of calendrical exactitude...,’ the court said. “Under the particular circumstances of the before us, where the events are alleged to have occurred several decades ago, when claimant was a child, we conclude that the four-year time frame pleaded is sufficient” to satisfy the pleading requirement of section 11(b). “Also..., claimant sufficiently states the nature of his claim...,” it said. “Because the claim is sufficiently detailed to allow defendant ‘to investigate the claim and to reasonably infer the basis for its alleged liability...,’ it satisfies the nature of the claim requirement of Court of Claims Act § 11(b).

The State argues the Third Department “erroneously relied on its own policy judgments to substantially relax the jurisdictional requirements” of section 11(b). The Third Department acknowledged that the CVA did not expressly amend the section, “but it noted the particular challenges posed by CVA cases involving the childhood memories of decades-old abuse and reinstated Wright’s vague and conclusory claim.” It says the claim is jurisdictionally defective because it failed to allege “the factual basis of the State’s liability” and failed to allege “not only how many acts of abuse took place or with what frequency, but also any specific dates or even months or years within the five-year period when the abuse allegedly occurred.”

For appellant State: Deputy Solicitor General Jeffrey W. Lang (518) 776-2007  
For respondent Wright: Seth A. Dymond, Manhattan (212) 681-1575

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**No. 21 People v McKenzie Willis**

**No. 22 People v Edward Martinez-Fernandez**

The appellants in these cases are challenging the facial sufficiency of misdemeanor complaints charging them with aggravated unlicensed operation of the motor vehicle. They argue that allegations in the complaint that they failed to answer a prior traffic summons is not sufficient to establish that they knew or should have known that their license to drive had been suspended, an essential element of the misdemeanor charge.

McKenzie Willis was stopped and arrested while driving in lower Manhattan in October 2018 after a police officer ran a computer check of Department of Motor Vehicles (DMV) records and found that his license had been suspended three times for failing to answer a traffic summons. Edward Martinez-Fernandez, a taxi driver, was arrested after a traffic accident in the Bronx in July 2016, when an officer found his license had been suspended at least three times for failing to answer a traffic summons. Both men were charged with second- and third-degree aggravated unlicensed operation of a motor vehicle; Martinez-Fernandez was also charged with reckless driving. Both men pled guilty to third-degree aggravated unlicensed driving and were each sentenced to a \$200 fine and \$88 surcharge.

The Appellate Term, First Department affirmed both judgments in separate, but nearly identical decisions issued on the same day. The misdemeanor complaints were jurisdictionally valid, it said, because they “described facts of an evidentiary nature establishing reasonable cause to believe that defendant was guilty of aggravated unlicensed driving in the third degree.” The complaints alleged that “a computer check run by the officer of the records of the [DMV] showed that defendant’s driver’s license” had been suspended three or more times for failing to answer a traffic summons “and that all such summonses have printed on them “[i]f you do not answer this ticket by mail within fifteen (15) days your license will be suspended,” [and that] the suspension occurs automatically (by computer) within four weeks of the defendant’s failure to answer.’ These factual allegations were sufficient for pleading purposes to establish reasonable cause to believe that defendant knew, or had reason to know, that his license was suspended.”

Willis and Martinez-Fernandez argue the misdemeanor complaints should be dismissed as facially insufficient because they failed to provide reasonable cause to believe that the defendants knew or should have known their licenses were suspended. They say there were no allegations that they actually received a traffic summons with the printed warning that their license would be suspended if they did not answer it; the officers who signed the complaints provided no factual basis for their assertion that “all” traffic summonses include the warning about license suspension; and there were no allegations that the defendants ever received notice that DMV had suspended their licenses.

For appellants Willis & Martinez-Fernandez: Sylvia Lara Altreuter, Manhattan (212) 298-5448  
For respondent in No. 21: Manhattan Assistant District Attorney Anna Notchick (212) 335-9000  
For respondent in No. 22: Bronx: Bronx Asst. District Atty. Elliott R. Hamilton (718) 838-7486

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## No. 23 Gibson, Dunn & Crutcher LLP v Koukis

Gibson, Dunn & Crutcher brought this action to enforce a judgment for unpaid legal fees against George Koukis, a Swiss investor, and four members of the D’Anna family, who in 2009 founded Be In, Inc., a software start-up based in Manhattan. Be In retained Gibson Dunn in 2013 for a lawsuit in California against Google Inc. A fee dispute with the firm went to arbitration, resulting in 2015 in a \$325,346 judgment against Be In. In 2016, Gibson Dunn filed this action in New York to set aside allegedly fraudulent conveyances, claiming Koukis and the D’Annas had improperly transferred Be In’s assets to themselves in order to render the company insolvent and frustrate the law firm’s collection efforts. After the defendants failed to respond and Gibson Dunn moved for a default judgment, Gil Santamarina – a New York attorney retained by Joseph D’Anna -- entered into a stipulation with the law firm that purported to waive “any defenses based on service of process or lack of personal jurisdiction” on behalf of all five defendants in exchange for an extension of time to respond. Supreme Court granted the default judgment in 2019. Two years later, Koukis moved to vacate the default, contending that Santamarina was not authorized to act on his behalf, that service was improper, and that the court lacked personal jurisdiction because he resides in Switzerland and had minimal contacts with New York.

Supreme Court held that Santamarina had neither actual nor apparent authority to act on Koukis’s behalf. However, the court denied his motion to vacate the default judgment against him, finding that Gibson Dunn had established jurisdiction over Koukis under CPLR 302(a)(2).

The Appellate Division, First Department modified in a 3-2 decision by vacating the default judgment against Koukis and dismissing the complaint against him for lack of jurisdiction. The majority agreed with the lower court “that there was no basis to conclude that Koukis authorized Santamarina to appear and waive all jurisdictional defenses on his behalf.... On December 16, 2019, Koukis emailed Santamarina ... specifically stating that ‘I have not authorized you to represent me in any legal or other matters.’ Koukis also averred that he never communicated with Santamarina and that he never represented him, and there is no indication in the record that Koukis was even aware of Santamarina for any significant time prior to his December 16, 2019 email.” However, the court said “there are insufficient allegations in the complaint that Koukis participated in the allegedly fraudulent conveyance to hinder legitimate creditors such as plaintiff, which warranted the exercise of jurisdiction pursuant to CPLR 302(a)(2). The complaint is devoid of any specific allegations involving Koukis.”

The dissenters disagreed “with the majority’s assertion that there is ‘no basis’ in the record for an inference that Santamarina had authority to represent Koukis in this action. The majority overlooks certain November 2019 emails that plainly raise an issue of fact in this regard.” They said those emails between Koukis and Joseph D’Anna, which discussed the litigation without mentioning Santamarina, “raise a triable issue of fact as to whether Koukis had given such authority, whether expressly or through knowing acquiescence in the representation as it continued through an extended period of time. This factual issue cannot be resolved on the present record and should be tried by the court or by a referee pursuant to CPLR 2218.”

For appellant Gibson Dunn: Seth M. Rokosky, Manhattan (212) 351-4000  
For respondent Koukis: Joseph A. Aronauer, White Plains (212) 755-6000

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## No. 24 Matter of Dourdounas v City of New York

George Dourdounas was a tenured high school math teacher from 1999 to 2017, when he retired with an expectation that he would receive a \$50,000 severance payment offered by the City's Department of Education (DOE). In 2012, he had been placed on Absent Teacher Reserve (ATR) status – for teachers whose permanent assignments were eliminated due to budget cuts, school closures or other reasons unrelated to their performance – and for the 2016-17 school year he was assigned to serve as a substitute teacher at Bronx International High School. In February 2017, he accepted an offer to remain at the school through the end of the academic year.

In June 2017, Dourdounas received an email from his union, the United Federation of Teachers (UFT), informing him that the DOE had agreed to offer a severance package to ATR teachers who had been on ATR status for the past year or more and who retired between June 5 and July 14, 2017. Dourdounas submitted an ATR Voluntary Severance Agreement stating that he would retire on July 1, 2017, and opting for a \$50,000 lump sum payment. Later in July, DOE determined he was ineligible for the retirement incentive because he had been permanently hired by the Bronx high school in February 2017. He filed a grievance challenging the DOE decision and, after the Bronx school principal and DOE Chancellor denied his claim, he asked the UFT to take his grievance to binding arbitration. The union refused, explaining in its final decision in October 2020 that “your grievance could not be successfully pursued...” Dourdounas filed this suit on February 26, 2021, to challenge DOE's denial of his severance payment, arguing that he remained a member of the ATR pool until his retirement.

Supreme Court dismissed his suit as untimely. Because Dourdounas challenged DOE's denial of his severance payment in July 2017, not the UFT's final decision in October 2020 not to pursue arbitration, the court ruled the four-month statute of limitations began to run in July 2017 and expired before he filed this suit in February 2021.

The Appellate Division, First Department affirmed, saying DOE's “determination became final and binding when he was informed of the denial in July 2017.” Although Dourdounas was “required to avail himself of the grievance procedure set forth in the [UFT contract] before commencing an action” in court..., it said, “pursuing the union grievance did not function to toll the statute of limitations as to the underlying denial of the retirement incentive.... As this proceeding was not commenced until February 26, 2021, more than 3 ½ years after the denial of the retirement incentive became final and binding, the petition was untimely.”

Dourdounas argues that his cause of action accrued and the statute of limitations began to run “upon the exhaustion of his grievance remedy, not upon the determination of the [DOE] to withhold the separation incentive payment from him.” He says the lower courts “told him that he had properly and necessarily exhausted his administrative remedy, only to lose his cause of action because the four-month limitation period ran out years before the grievance ran its course. This is a cruel trick, reminiscent of Kafka. Such a trap is unworthy of our law and violates the letter and spirit of the CPLR.”

For appellant Dourdounas: Bryan D. Glass, Manhattan (212) 537-6859

For respondent City of New York: Assistant Corporation Counsel Susan Paulson (212) 356-0821