State of New York
Court of Appeals

To be argued Thursday, February 13, 2025

No. 25 Matter of P.C. v Stony Brook University

P.C. (or "petitioner"), a male student at Stony Brook University, was accused of violating provisions of the school's Code of Student Responsibility by engaging in sexual conduct with a female student, S.G. (or "complainant") without her affirmative consent. The two students met through a mutual friend, V.L, at a campus event in September 2019 and spent the rest of the day and much of the night drinking together. S.G. told a University investigator that, after V.L. left them, she and P.C. went for a walk in the woods and "were both ready for things to start escalating," but P.C. "kept saying it was a bad idea" because V.L. had told him she would be angry "if anything were to happen between" them. They engaged in oral sex, she said, then walked to a store to buy more alcohol and, at her request, condoms. When they returned to the woods, she said, "clothes came off and the intercourse started," though she had only "snapshot memories" of it due to her intoxication. She said she "snapped back into it at some point because of how hard he was choking me. I remember trying to prey his hands off my neck, but he was stronger than I was and did not budge at all." S.G. said she then "caved" to P.C.'s request to have sex in her car, although she wanted to "stay in the woods." While having intercourse in the car, S.G. said she felt like she may have passed out or was "dreaming." P.C. admitted in a series of texts with V.L. that he had engaged in sexual relations with S.G., saying he was "sorry" and he knew he "fucked up." V.L reported the encounter to the University the next day.

After a hearing, the school's Review Panel determined that P.C. violated provisions of the Student Code prohibiting sexual harassment, non-consensual sexual contact, and non-consensual sexual intercourse. It suspended him for nearly two years. The Appeals Committee affirmed.

The Appellate Division, Second Department annulled the determination in a 3-2 decision and ordered the disciplinary records expunged, finding the Review Panel's determination was not supported by substantial evidence. The Review Panel "did not find that S.G was incapacitated by intoxication" and incapable of giving consent, and there was not adequate evidence that she did not consent to the sexual conduct, the majority said, citing her statements "that she was 'ready for things to start escalating'" and she asked P.C. to buy condoms. "While it is possible that S.G. ... 'had sex with someone blacked out' and was incapable of 'making that decision' to consent to sex, these were not the findings the Review Panel made. Notably, while the record clearly provided evidence of S.G.'s consent to certain sexual activities..., the Review Panel made no effort to identify which sexual activities were engaged in without consent."

The dissenters said substantial evidence supported the Review Panel's conclusion that S.G. "did not affirmatively consent to all the sexual activity in which she and the petitioner engaged," including her "testimony that the petitioner engaged in various conduct, including choking her in the woods and having sexual intercourse with her in her car," where she objected that "people can see us." The dissenters said, "Since substantial evidence exists to support the determination, this court must not engage in a re-weighing of the evidence and the determination must be sustained, 'irrespective of whether a similar quantum of evidence is available to support other varying conclusions'...."

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State of New York
Court of Appeals

To be argued Thursday, February 13, 2025

No. 26 Matter of LL 410 East 78th Street LLC v Division of Housing and Community Renewal

LL 410 East 78th Street LLC, the owner of an eponymous apartment building in Manhattan, removed apartment 1B from rent stabilization in 2002 based on state provisions for high rent decontrol. After its deregulation, the owner was no longer required to register the apartment with the Division of Housing and Community Renewal (DHCR) and it did not file annual registrations through 2015. But in 2016 and 2017, it filed registrations saying apartment 1B was "temporarily exempt" from rent stabilization because it was occupied by the building's superintendent. In 2019, the owner filed an application with DHCR to withdraw the 2016 and 2017 registrations, which it said were filed by mistake, and file new ones stating the apartment had been permanently exempt from rent stabilization since 2002.

DHCR's rent administrator denied the application, saying registration amendments may "correct ministerial issues such as a clerical error in the rent amount, misspelling of the tenant's name or an incorrect lease term," but "[a]mendments seeking to remove an apartment from rent stabilized status"are not permitted through the amendment process under Rent Stabilization Code (RSC) § 2528.3 (c). On administrative review, the agency upheld the decision.

The owner brought this suit to annual the determination as arbitrary and capricious, arguing that nothing in the text of the 2014 regulation distinguishes between substantive and ministerial issues. Section 2528.3 (c) states, "An owner seeking to file an amended registration statement" for a prior year "must file an application pursuant to section 2522.6 (b) and Part 2527 of this Title ... to establish the propriety of such amendment...."

Supreme Court dismissed the suit, saying DHCR rationally "found that the correction requested by the Petitioner was substantive rather than ministerial, and thus unavailable in the context of a registration amendment proceeding."

The Appellate Division, First Department affirmed, saying "subsequent amendments to earlier rent registrations, while there is not a rent-paying tenant in occupancy who would be put on notice of the changes, could detract from the legitimacy of the registrations. DHCR notes that, prior to a 2014 amendment, owners were permitted to freely amend the rent registrations retroactively. However, it contends that '[t]he number of such amendments was significant,' and the unverified 'inclusion of amendments in [its] rent registration database had the effect of corrupting the purpose of that database as a contemporaneously created history of rents." It said "DHCR's interpretation of the applicable [RSC] provisions was rational and reasonable...."

The owner argues that "DHCR has been unable to present a rational basis for its narrow interpretation of RSC § 2528.3(c) as limited to ' ministerial' or 'clerical' issues," "which is contrary to the plain language of the regulation and contrary to the stated intent of the regulation when it was promulgated. The DHCR ... stated that its goal was to 'safeguard the integrity of the information currently contained in the registration system.' If that is truly the DHCR's goal then the agency must allow landlords to correct prior mistaken registrations ... upon 'establish[ing] the propriety of such amendment.'"

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State of New York
Court of Appeals

To be argued Thursday, February 13, 2025

No. 27 Matter of Rosbaugh v Town of Lodi

Lewis and Lynne Rosbaugh, who have lived in a house they built on Crisfield Road in the Town of Lodi, Seneca County, since 1976, brought this suit against the Town in 2011 after it hired a tree services company to trim and remove trees from their property that the highway superintendent said posed a hazard to passing traffic. They sought damages for their lost and damaged trees under Real Property Actions and Proceedings Law (RPAPL) § 861. The parties agreed to submit their dispute to binding arbitration and, in May 2021, the arbitrator awarded the Rosbaughs a total of $149,372, which included treble damages of $145,047 for the trees.

Supreme Court confirmed the award, rejecting the Town's argument that the award of treble damages violated public policy by impermissibly imposing punitive damages on a municipality. It said RPAPL § 861(1) "permits a property owner to maintain an action 'for treble the stumpage value of the tree or timber or two hundred fifty dollars per tree, or both' against 'any person' who, 'without the consent of the owner thereof, cuts, removes, injures or destroys ...any underwood, tree or timber....'" Since "no showing of actual malice or a wanton, willful or reckless disregard of plaintiffs' rights is necessary to justify an award of treble damages under RPAPL 861(1), that portion of the arbitrator's award is not punitive in nature," the court said.

The Appellate Division, Fourth Department affirmed the treble damages award on a 3-2 vote. While "the State and its political subdivisions are not subject to punitive damages," it said, treble damages awarded under RPAPL § 861(1) "are not equivalent to punitive damages." The majority said "'stumpage value' is limited to only 'the current fair market value' of the merchantable lumber within a standing tree...; it does not include the intrinsic value of a tree in its natural state – such as its environmental, historical and aesthetic qualities – which can be substantially greater to a landowner than the mere marketable lumber value. Thus, it is not the landowner's total compensatory damages, which are measured by what the landowner actually lost, that are trebled under RPAPL 861(1). Rather, it is merely the fair market value of the merchantable timber that is trebled, which is only a component of the total compensatory damages to be awarded under the statute when the cutting and removal is without 'cause to believe the land was his or her own...."

The dissenters argued that "the arbitrator lacked authority to award treble damages against the Town under RPAPL 861(1). It is well settled that '[d]amages awarded for punitive purposes ... are not sensibly assessed against [a] governmental entity'" because "the persons who would bear the burden of punishment are taxpayers who have done nothing wrong." They said "the award of treble damages assessed against a municipality has a punitive purpose" because, under the statute, "'a trespasser's good faith belief in a legal right to harvest timber'" relieves them of liability for treble damages and because the legislative history "evinces an intent to 'provide for greater deterrence for the knowing offender while at the same time promote more diligence and care on the part of legitimate timber harvesters to prevent inadvertent trespass and timber theft.'"

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State of New York
Court of Appeals

To be argued Thursday, February 13, 2025

No. 17 Golobe v Mielnicki

When Dorothy Golobe died intestate in February 1992, she was survived by her two brothers, Yale Golobe, who had not been in touch with the family for years, and Zangwill Golobe, making them co-distributees of her estate. The estate included a mixed-use building at 265 West 30th Street in Manhattan. Zangwill's son, John Golobe, petitioned Surrogate's Court to be named administrator of Dorothy's estate and, believing that Yale had died before Dorothy, asserted that his father Zangwill was Dorothy's sole heir. His assertion was supported by testimony of a long-time family friend, who said Yale died in 1985. The court granted the petition and determined that Zangwill was Dorothy's sole heir. Zangwill renounced his interest in the estate, passing it on to his son John, who then deeded the building on West 30th to himself. John Golobe took physical possession of the premises in October 1992.

John sought to sell the building in 2018 and a title search brought to light that Yale did not die until 1993, 11 months after Dorothy, and his half-interest in the estate passed down through his heirs until ending up in the Emil Krause Revocable Trust. In 2019, John Golobe informed the Trustee of the trust of its one-half interest in the property, which would make them tenants in common, but negotiations on a settlement to clear title to the property failed in 2020, and Golobe brought this action against the Trustee for a judgment declaring Golobe the sole owner of the property by adverse possession.

Supreme Court granted summary judgment to John Golobe and declared him sole owner of the premises by adverse possession, saying he established that "he had actual possession of the property, that it was open and notorious, exclusive and continuous" for more than the 20 years required by RPAPL 541 for tenants in common. It dismissed the Trustee's counterclaims for fraud and breach of fiduciary duty as administrator of Dorothy's estate.

The Appellate Division, First Department affirmed, saying, "Plaintiff's claim of right arising from the administrator's deed" in 1992 "vested 20 years later, in 2012.... Under that claim of right, plaintiff constructed an open and notorious wood deck and other observable improvements on the property, encumbered the property with a construction loan which he later satisfied, leased portions of the mixed-use building to third parties solely in plaintiff's name, and there was no acknowledgment, by plaintiff or anyone else, of any other interest in the property for a period exceeding 20 years. This satisfies the hostility element, as '[a] rebuttable presumption of hostility arises from possession accompanied by the usual acts of ownership'...." It said the defendant "failed to establish plaintiff's scienter as to any misstatement or defendant's own reliance on any misstatement made to the Surrogate's Court" for its fraud counterclaim; and failed to show that the plaintiff had a fiduciary duty "to conduct an extraordinary search to confirm the death of a potential distributee where none is ordered by the Surrogate's Court...."

The Trustee argues that Golobe cannot prove the "hostility, open, and notorious elements of adverse possession" because it is "impossible for Plaintiff to prove that his possession of the Premises has been adverse to the interest of the Trust ... for the twenty (20) year statutory period ... because it is undisputed that Plaintiff himself (1) was unaware he owned the Premises as a co-tenant in common until after the statutory period passed, and (2) had known of the co-tenancy for fewer than two years when he commenced this Action. There is no precedent under New York law in which *both* co-tenants were unaware of their shared interest throughout the statutory period and then one co-tenant was awarded the entire property by adverse possession. The Trustee argues it was a breach of fiduciary duty for Golobe, as estate administrator, "not to conduct a proper heir search and investigation that would have revealed a succession of co-tenants in common with a one-half interest in real property; deed that real property to himself; and then bring an action to obtain sole ownership by adverse possession."

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For respondent John Golobe: John M. Brickman, Garden City (516) 829-6900