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.

To be argued Thursday, March 27, 2014

No. 79 Webb-Weber v Community Action for Human Services, Inc.

Wendy Webb-Weber filed this whistleblower lawsuit against her former employer, Bronx-based Community Action for Human Services, Inc. (CAHS), claiming she was fired in retaliation for reporting "issues endangering the safety and welfare of those persons who entrusted their care to CAHS." Webb-Weber was chief operating officer of CAHS, a private nonprofit corporation that provides health care and social services to indigent mentally and physically disabled adults. She says she began voicing her concerns to the CAHS Board of Directors and Chief Executive Officer David Bond in 2001, including allegations of "false and intentionally inaccurate reporting of revenue and expenses to government auditors, falsifying medical records, misdirection of funding resulting in a lack of proper maintenance of facilities, lack of proper supervision of patients/residents, lack of adequate medical nursing, unpaid federal and state taxes, knowingly bouncing payroll checks, lack of fire alarms and sufficient emergency egress, and failing to pay vendor bills for ... food, transportation, rent, gas and electric." In 2008, she reported her concerns to the State Office of Mental Retardation and Developmental Disabilities (OMRDD), which found violations and imposed sanctions. CAHS terminated her employment in 2009.

Among other claims, Webb-Weber alleged the defendants violated Labor Law § 740(2)(a), which provides, "An employer shall not take any retaliatory personnel action against an employee because such employee ... discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and represents a substantial and specific danger to the public health or safety." CAHS and Bond moved to dismiss the section 740 claim on the ground that Webb-Weber failed to state a cause of action because she did not identify the specific "law, rule or regulation" she claims they violated.

Supreme Court denied the motion, saying, "While plaintiff does not recite the specific rules, regulations and laws she claims were violated by defendants, given a liberal construction and affording plaintiff the benefit of every possible favorable inference, the allegations in the complaint are sufficient" to state a cause of action under section 740. The Appellate Division, First Department reversed and dismissed the claim, ruling Webb-Weber failed to state a cause of action because she "does not identify a specific law, rule or regulation that defendants purportedly violated (Labor Law § 740[2][a]...)."

Webb-Weber says, "Nothing in the plain language of Labor Law § 740 requires plaintiffs to cite precisely the laws and regulations that defendants violated." She argues her amended complaint was sufficient because it alleged the defendants violated laws and regulations intended to safeguard the health and safety of their clients and gave defendants "fair notice of plaintiff's claim that she was terminated for speaking out on health, safety and fraud violations."

For appellant Webb-Weber: Stephen Bergstein, Chester (845) 469-1277
For respondents CAHS and Bond: Dennis A. Lalli, Manhattan (646) 253-2300

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To be argued Thursday, March 27, 2014

No. 80 Village of Ilion v County of Herkimer

This case stems from the decision of Herkimer County and its municipalities to terminate the Herkimer County Self-Insurance Plan for Workers' Compensation claims at the end of 2005 due to rising costs. The self-insurance plan had been created in 1956 pursuant to article 5 of the Workers' Compensation Law. To provide for future coverage of existing claims after termination of the plan, the County created an "abandonment plan" under which each municipality was required to pay its share of the estimated cost of those future compensation benefits, which were expected to be paid over the next 30 to 50 years. The Village of Herkimer and other municipalities brought this action against the County to challenge the validity of its actuarial estimate of the self-insurance plan's future liabilities and the fairness of its apportionment of those liabilities to plan participants, among other things. The County counterclaimed against the Village for breach of contract, and Supreme Court granted summary judgment on liability to the County.

At the trial on damages, Supreme Court refused to instruct the jury to discount its damage award to present value. The jury awarded the County $1,617,528 against the Village of Herkimer, representing the Village's share of the self-insurance plan's future liabilities as of the termination date, December 31, 2005. The court also granted the County's motion for prejudgment interest on the undiscounted award at the maximum statutory rate of 9 percent, assessing $833,580 in prejudgment interest against the Village.

The Appellate Division, Fourth Department affirmed, saying the trial court properly refused to discount the verdict to present value and properly awarded prejudgment interest on that verdict. "[T]he County's award of damages did not actually constitute compensation for future losses; by its verdict, the jury found that [the Village] owed the County $1,617,528 as of December 31, 2005, a sum that it thereafter wrongfully withheld. Inasmuch as there is no basis for discounting the award of damages, the court's award of prejudgment interest on those damages is neither a windfall nor a penalty.... Rather, it is fair compensation for the period in which [the Village] held money that rightfully belonged to the County...."

The Village of Herkimer argues the lower courts erred in refusing to discount the verdict to present value and then awarding prejudgment interest on the undiscounted verdict, resulting in a windfall for the County. It says the jury verdict necessarily includes future damages, and therefore should have been reduced to present value, because it is based on an actuarial estimate of the Village's share of future liabilities that will be paid over several decades. It argues the County will be able to earn interest on both the damages awarded and the prejudgment interest assessed for many years before the last compensation benefits are actually paid.

For appellant Village of Herkimer: Martha L. Berry, Syracuse (315) 422-9295
For respondent County of Herkimer: Albert J. Millus, Jr., Binghamton (607) 723-5341

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To be argued Thursday, March 27, 2014

No. 75 Matter of State of New York v John S. *(papers sealed)*
No. 76 Matter of State of New York v Charada T. *(papers sealed)*

John S. and Charada T. are challenging court determinations under Mental Hygiene Law article 10 that they are dangerous sex offenders requiring confinement after the expiration of their criminal sentences. In both cases, the issues include whether the trial courts erred in admitting hearsay evidence through expert testimony and, if so, whether those errors were harmless.

John S. pled guilty to forcibly raping a college student in Central Park in 1996, and he was sentenced to 12½ years in prison. Prior to his release in 2009, the State filed an article 10 petition for civil management and at his jury trial, Supreme Court allowed the State's psychiatric experts to testify about sex offense allegations from 1968 and 1978. John S. had been charged with three rapes and two robberies in 1968, and he pled guilty to one count each of first-degree rape and robbery in full satisfaction of the charges. The convictions were vacated by federal district court in 1977, on the ground he was not mentally competent when he entered the pleas, and the records were sealed. He was arrested for two rapes in 1978 and a jury convicted him of first-degree rape for one of them, but he was never indicted or convicted in the second incident and the records were sealed. The court said the allegations were "key to understanding the basis of" the expert opinions, but barred testimony about the vacated convictions.

Charada T. admitted forcibly raping two women in Manhattan in 1997, pleading guilty to first-degree rape and other charges. In the presentence report, he admitted being in the vicinity of a third rape, suggesting he might be the perpetrator, but he was never charged in that case. In 2002, based on a DNA match, he was linked to a 1996 rape, pled guilty, and was sentenced to 13 years in prison. Before his release, the State filed a petition for civil confinement and Supreme Court permitted the State's psychiatric expert to testify about the uncharged rape in 1997 and about evaluations of Charada's unsuccessful participation in a sex offender treatment program by members of it staff.

The Appellate Division, First Department affirmed both confinement orders, saying in John S. that the State's experts could testify about hearsay allegations from 1968 and 1978 because the records were "of a kind accepted in the profession as reliable in forming a professional opinion." In Charada T., it said the trial court erred in allowing expert testimony about Charada's admission concerning the uncharged rape in his presentence report, but it said "this error was harmless given the expert's reliance on two brutal sexual assaults to which [he] pleaded guilty and a third that he admitted committing...."

John S. and Charada T. argue, in part, that their due process rights were violated when the State's experts were allowed to testify about hearsay concerning uncharged crimes, vacated convictions, and the views of treatment program staff because they had no opportunity to cross-examine their accusers. They say the State failed to demonstrate that this hearsay "basis testimony" is reliable and that its probative value "substantially outweighs its prejudicial effect," as required by Matter of State v Floyd Y. (22 NY3d 95 [decided 11/19/13]).

For appellants John S. and Charada T.: Deborah P. Mantell, Manhattan (646) 386-5891
For respondent State in John S.: Asst. Solicitor General Andrew W. Amend (212) 416-8022
For respondent State in Charada T.: Asst. Solicitor General Claude S. Platton (212) 416-6511

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To be argued Thursday, March 27, 2014

No. 81 CDR Créances S.A.S. v Maurice Cohen; CDR Créances S.A.S. v Leon Cohen

CDR Créances S.A.S. brought these actions against Maurice Cohen and his son, Leon, as well as Maurice's wife and several family-controlled companies and employees, to recover loan funds allegedly diverted from a failed hotel project in Manhattan more than 20 years ago. CDR's predecessor, Societe de Bank Occidentale (SDBO), in 1991 entered into a loan agreement, governed by French law, with a Cohen-controlled entity, Euro-American Lodging Corp. (EALC), to provide $82.7 million for the project. There was a falling out among the parties in 1992 and SDBO, alleging default on the loan, sued EALC in France. In 2003, a French court awarded CDR a $95.8 million judgment against EALC. The French judgment was recognized in a New York court proceeding in 2005, and Supreme Court granted judgment to CDR in the same principal amount. CDR brought these related actions in 2003 and 2006, including claims for fraud and conversion, alleging that Maurice and Leon Cohen orchestrated a conspiracy to strip EALC of its assets and conceal the proceeds of the 1991 loan in order to avoid repaying it. While these cases were in discovery, the Cohens were convicted in 2010 of federal tax fraud charges for failing to report and pay taxes on the same funds that CDR is seeking to recover, and they were each sentenced to 10 years in prison.

CDR moved to strike the defendants' pleadings and for a default judgment pursuant to CPLR 3126, alleging they violated discovery obligations and committed a fraud upon the court, based largely on evidence in the federal tax prosecution that the Cohens committed perjury and submitted forged documents in CDR's case and induced others to give false testimony to conceal the Cohens' ownership or control of assets that were the subject of CDR's civil claims.

Supreme Court granted the motion after an evidentiary hearing. It found, "on the basis of clear and convincing evidence," that the Cohens had committed a fraud on the court by wilfully providing false evidence and concealing evidence. The court subsequently awarded CDR $135,359,331.39 in compensatory damages and another $50,965,529.62 in prejudgment interest.

The Appellate Division, First Department affirmed in a 4-1 decision, saying, "We agree with Supreme Court's overall conclusion that these defendants have exhibited no less dishonesty before the courts as in their dealings with business associates and the federal taxing authorities." It found there was sufficient evidence to meet the "clear and convincing" standard, and said even a preponderance of the evidence standard would suffice. It said the factual issues were properly resolved by the hearing court, rather than a jury, and no inquest on damages was required because the amount was based on a foreign judgment recognized in New York and, thus, was a ministerial matter.

The dissenter said the motion court applied "the 'clear and convincing' standard set by some federal courts," but the governing standard in the First Department requires that a fraud on the court be "conclusively demonstrated," meaning "deceit must be admitted or undisputed." He said the defendants disputed the evidence of fraud -- particularly the testimony of two Cohen employees who testified for the prosecution in the federal case in exchange for immunity, and admitted they lied in the CDR case. This raised a question of material fact regarding the alleged fraud "that must be resolved by a jury."

For appellants Cohen et al: David S. Pegno, Manhattan (212) 943-9000
For respondent CDR: Douglas A. Kellner, Manhattan (212) 889-2821