State of New York
Court of Appeals

To be argued Wednesday, May 15, 2024

No. 60 Matter of Elizabeth Street Garden, Inc. v City of New York

Elizabeth Street Garden, Inc. (Garden), which has leased a 20,265 square foot undeveloped lot in lower Manhattan from New York City since 1991, is challenging the City's environmental review of the proposed "Haven Green" project to build a seven-story mixed-use building for low-income senior housing with retail space and public facilities on the lot. The Elizabeth Street Garden lot is a green space and sculpture garden tended by volunteers in the Chinatown and Little Italy Historic District. The Garden claims, among other things, that the City Department of Housing Preservation and Development (HPD) violated the State Environmental Quality Review Act (SEQRA) by failing to complete a full Environmental Impact Statement (EIS) and instead relying on an Environmental Assessment Statement (EAS) when it issued a "negative declaration" for the Haven Green project in November 2018, finding the project "will have no significant effect on the quality of the environment."

Supreme Court vacated the negative declaration, agreeing with the Garden that "HPD failed to take the required 'hard look'" at the project's impact on the neighborhood, and remanded the matter for "a full EIS of the project's impacts." It said, "[P]etitioners are correct that based upon the quantitative analysis of the effect of the Project on open space as analyzed within the EAS..., the reduction in open space ratios is sufficient to indicate the presence of a significant adverse impact. Yet, the EAS goes on to find that because of alleged qualitative factors, the impact is not significant." It said there was no "rational basis in the EAS analysis" for the City's claim "that the open space deficiency in the area would be ameliorated by other resources including bike lanes, other community gardens and the proximity to Washington Square Park." The court said, "Even if ... the qualitative assessment identified factors that would mitigate the impact of the significant decline in the open space ratio caused by the project, there is no evidence ... that such mitigations are sufficient to overcome such significance."

The Appellate Division, First Department modified by confirming the negative declaration and dismissed the suit. "We find that HPD appropriately 'identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination'...," the court said. "[T]he EAS examined the half-mile study area at length. It properly found it to be underserved, identified existing open spaces and described their various attributes, calculated the difference between the future open-space-to-population ratios based on whether or not the project were constructed, and considered the proposed replacement of the current 0.46-acre lot ... with 0.15 acres of open space adjacent to the proposed apartment building with longer and more regular hours of public access. The EAS noted ... the presence of Washington Square Park immediately outside the study area, that the new space with longer hours would help balance the direct loss of the garden, that the added population of senior adults likely would not overburden existing mostly active open spaces, and that qualitative aspects of the surrounding area and nearby Washington Square Park would help mitigate the neighborhood's preexisting open space deficiency."

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State of New York
Court of Appeals

To be argued Wednesday, May 15, 2024

No. 61 MAK Technology Holdings Inc. v Anyvision Interactive Technologies Ltd.

In November 2017, MAK Technology Holdings entered into a referral agreement with Anyvision Interactive Technologies to provide payments to MAK for business it referred to Anyvision. The agreement defined November 23, 2017 as its "Effective Date," and defined the word "Term" to mean it "shall remain in force for a period of three (3) years." The agreement was amended in January 2018 to provide referral fees to MAK for investors who made an equity investment in Anyvision. The parties amended the agreement again on August 24, 2018 (the second amendment) to restructure the fees owed to MAK for investors it referred to Anyvision. Anyvision received a $25 million investment from a MAK referral in July 2021 and MAK contends it is owed a 5% referral fee of $1.25 million. Anyvision refused to pay the fee, arguing the investment occurred after the original referral agreement was to expire in November 2020. MAK brought this breach of contract action against Anyvision, contending the second amendment reset the "Effective Date" of the referral agreement to August 24, 2018, and thus extended Anyvision's three-year payment obligation to August 24, 2021, after the investment was made. The second amendment states, "Except as specifically provided above, the Agreement as amended hereby, shall remain unchanged as originally constituted." But it also provides, "Each of the undersigned hereby agrees that the with affect as of the date hereof and notwithstanding anything to the contrary in the Agreement," which MAK argues modified the original agreement's effective date. Anyvision moved to dismiss the suit, contending the second amendment did not change the effective date of the original agreement.

Supreme Court denied the motion to dismiss, finding the key phrase in the second amendment – "agrees that the with affect as of the date hereof" – is ambiguous. "I suspect there were two typos in that sentence, but I can't be sure," it said. "There's a the before with, which is weird. And affect probably should have been effect, but anyway, this language creates an ambiguity as to what the starting date is for the three-year Term."

The Appellate Division, First Department affirmed on a 3-2 vote, saying "the clause 'the with affect as of the date hereof' contained in ... the 2nd Amendment renders the agreement ambiguous as to whether it did or did not create a new effective date for the modified Referral Agreement." It said "the clause is clearly susceptible of multiple reasonable interpretations" and "additional information is necessary to ascertain the proper interpretation.... While 'mistakes in grammar, spelling or punctuation should not be permitted to alter, contravene or vitiate manifest intention of the parties'..., the 2nd Amendment cannot be rendered grammatically correct without possibly altering the parties' intent."

The dissenters argued the key clause with its "obviously inadvertent errors" is not ambiguous. "Since the Second Amendment is devoid of language purporting to change the definition of the term 'Effective Date' in the original Referral Agreement, that definition ... was not changed.... [T]he phrase 'with effect as of the date hereof' (correcting the typographical errors) plainly modifies the later phrase 'the Agreement shall be amended as follows' – meaning that the first phrase sets forth only the date on which ... the Second Amendment took effect."

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State of New York
Court of Appeals

To be argued Wednesday, May 15, 2024

No. 62 Matter of United Jewish Community of Blooming Grove, Inc. v Washingtonville Central School District

United Jewish Community of Blooming Grove (UJC), which serves Jewish families in Orange County, and two parents of students attending Jewish schools in the Village of Kiryas Joel filed this suit against the Washingtonville Central School District and State Education Department after the School District denied their request to transport students to nonpublic schools on two days when the public schools were closed during the 2020-21 school year. UJC claimed the District violated Education Law § 3635, which requires school districts outside of New York City to transport students to both public and nonpublic schools. The statute, enacted in 1939, states, "Sufficient transportation facilities ... shall be provided by the school district for all children residing within the school district to and from the school they legally attend...." SED's published guidance advises districts that they are not "required to provide transportation to nonpublic schools on days when public schools are scheduled to be closed."

Supreme Court granted summary judgment to UJC and declared that section 3635 "requires the ... District to provide transportation to all nonpublic school students on all days when their nonpublic schools are open for instruction, regardless of whether the public schools are open." It said, "Where, as here, the text of the statute is clear, the court must ... give import to its plain meaning.... 'All the children' means all the children, without regard to whether the school they attend is private or public.... [T]he statute does not expressly impose any other restriction, and certainly does not condition the obligation to provide transportation to nonpublic schools on the public schools also being open...." Addressing legislative history, it said, "There is nothing in the 1939 Bill Jacket Collection which made transportation to private schools contingent upon public schools being open."

The Appellate Division, Third Department reversed and dismissed the suit, declaring the District "is not required to transport nonpublic school students on days when its public schools are closed." "Inasmuch as the statute is silent as to when transportation must occur...," it said, "an examination of the legislative history is required" to determine the Legislature's intent. A proposed amendment in 1985 initially included a requirement that school districts transport nonpublic school students on two days per year when public schools were closed. "Ultimately, the Legislature omitted this mandate from the final version of the bill, manifesting its intent not to require central school districts to provide transportation to nonpublic school students on days that public schools are closed...," the court said. "It is also noteworthy that the Legislature has not intervened ... to correct SED's longstanding interpretation of [section 3635] as permitting, but not requiring transportation of nonpublic school students on days when the public schools are closed...." It said a contrary ruling "would lead to unreasonable results," requiring districts "to transport nonpublic school students in the summer, on weekends, on state or federal holidays, or on days when public schools are closed for weather-related or other emergency reasons...."

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For respondent School District: Mark C. Rushfield, Poughkeepsie (845) 486-4200

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.

To be argued Wednesday, May 15, 2024

No. 63 Liggett v Lew Realty LLC

K. E. Liggett, who rents a Manhattan apartment on East 25th Street, brought this action against her landlord, Lew Realty LLC, in 2021 seeking a declaration that her apartment is subject to the Rent Stabilization Law and that it was illegally decontrolled based on a private agreement in 2000 between the owner and a previous occupant, Edward McKinney. The apartment had been rent controlled for decades while it was leased by Edward Brown, who died in 1998 when his monthly rent was $141.23. McKinney claimed he had succession rights to the apartment, and Lew Realty commenced a licensee holdover proceeding to evict him. They settled the holdover proceeding in 2000 by stipulation, in which they agreed the apartment was no longer rent controlled, but was rent stabilized. They stipulated that the initial legal regulated rent would be $1,650 per month, but further agreed that McKinney would pay a preferential rent of only $650 per month, plus allowable renewal increases, as long as he was the tenant and did not challenge the rent. Those terms were included in a rider to the lease, which Lew Realty filed with the Division of Housing and Community Renewal. The legal rent of $1,650, plus authorized increases for improvements and vacancy, reached the high-rent threshold for deregulation in 2001 and a new tenant signed an unregulated market-rate lease the same year. Liggett leased the apartment in 2020 and filed this suit the following year, claiming the 2000 settlement was designed to circumvent the initial rent registration procedures for decontrolling an apartment and that the initial legal rent for her apartment is the preferential monthly rent of $650 that McKinney and Lew Realty agreed to.

Supreme Court denied Lew Realty's motion to dismiss, saying the 2000 settlement agreement "is unenforceable to the extent it waives the protections of the rent control law."

The Appellate Division, First Department reversed and dismissed the suit in a 3-2 decision, saying, "An agreement by a tenant to waive the benefit of any provision of the rent control law is expressly prohibited and void.... However, when McKinney and defendant settled their dispute over McKinney's status, McKinney was not a tenant.... He was not on the lease and had no evident rights, other than being an occupant of the apartment who claimed that he had succession rights.... By entering into the 2000 stipulation, both sides ... resolved their dispute as to whether McKinney had any statutory right to the apartment. By doing so, McKinney and defendant chose the certainty of settlement, rather than the uncertainty of a judicial declaration.... There is no public policy for disregarding that choice." It said Liggett's argument that her legal rent is the preferential rent in the 2000 agreement is "unavailing" because the stipulation "clearly shows that both parties agreed that $650 was the preferential rent, but $1,650 was the legal rent that was subject to applicable guidelines increases and other increases authorized by law."

The dissenters said Liggett "sufficiently pleaded" that the 2000 stipulation "was void under applicable statutes" and "undermined the statutory process by which initial regulated rents are set.... McKinney and defendant agreed to an initial legal regulated rent that was one vacancy increase away from high rent decontrol, and which McKinney would never have to pay and agreed never to challenge. By doing so, they thwarted the Rent Stabilization Code's mechanism for ensuring a fair and reasonable initial legal regulated rent: a true arm's length negotiation in which the tenant has both the right and the incentive to challenge the initial legal regulated rent if it were unreasonable.... Plaintiff correctly argues in her complaint ... that the only rent that the landlord proposed and McKinney agreed to pay was $650 per month, that this sum was the only rent subject to the arm's length negotiation contemplated by the Rent Stabilization Code to establish fair market value, and that it should therefore have been registered as the initial legal regulated rent."

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State of New York
Court of Appeals

To be argued Wednesday, May 15, 2024

No. 64 People v Alvin King

In September 2018, during an argument with his wife outside his mother's house in Syracuse, Alvin King threatened two of their children with a knife and then cut and stabbed his wife as she sat behind the wheel of her car. Police found him several hours later in a wooded area nearby, where he menaced them with the knife before they subdued and arrested him. Prosecutors charged King in a felony complaint on the day of his arrest, September 5, 2018, and then filed an indictment and announced readiness for trial on March 14, 2019. The trial was ultimately scheduled to begin on January 27, 2020.

Meanwhile, in April 2019, the Legislature amended the speedy trial provisions of Criminal Procedure Law (CPL) 30.30 and enacted CPL article 245, which provides for automatic discovery by prosecutors of all information in their possession that is relevant to a case and requires them to file a certificate of compliance when they have disclosed the required materials. Further, CPL 245.50 provides, "Notwithstanding the provisions of any other law..., the prosecution shall not be deemed ready for trial for purposes of [CPL] 30.30 ... until it has filed a proper certificate" of compliance. The amendments were made effective January 1, 2020.

On the first morning of his trial – January 27, 2020 – King moved to dismiss the indictment under CPL 30.30, contending the prosecution was not ready for trial within the six-month speedy trial period because it had not filed a certificate of compliance with discovery obligations. Prosecutors filed a certificate later that day. Supreme Court refused to dismiss the indictment "based on a statute that was not in effect, and, in fact, not in existence" when the prosecution announced ready for trial. King was convicted of second-degree assault, weapon possession and related crimes, and was sentenced to 14 years in prison.

The Appellate Division, Fourth Department reversed and dismissed the indictment on a 4-1 vote, agreeing with King that "upon the effective date of CPL article 245, the People were returned to a state of unreadiness, and the People's subsequent attempt to serve and file a certificate of compliance did not occur until after the time to declare trial readiness had expired." It acknowledged that, in an "already pending" prosecution, a newly enacted statute effecting procedural change applies to proceedings occurring after its effective date, but not "where the effect is to reach backward, and nullify by relation the things already done." But it said the new statute did not "invalidate the People's previous statements of readiness," but instead "reset the People's readiness status by tying it to the fulfillment of their obligations under the new discovery laws.... Consequently, as of the effective date of CPL article 245, the People had no longer 'done all that [was] required of them to bring the case to a point where it may be tried'... until they filed a proper certificate of compliance...."

The dissenter said the amendments "should not be applied in a manner that renders illusory the People's readiness for trial or takes their case out of a postreadiness posture." If they had not declared readiness before the amendments took effect, they "could not do so unless or until they complied with the new discovery obligations and the filing of a certificate of compliance.... Here, however, the People complied with their obligations to be ready for trial as required under the prior version of CPL 30.30 when they announced their trial readiness on March 14, 2019" and "any new legislation affecting the People's readiness would have the effect of reaching backward. The effect of the majority's conclusion ... rendering the People unready for trial, is to improperly nullify a 'thing[ ] already done'...."

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