State of New York
Court of Appeals

To be argued Tuesday, October 15, 2024

No. 126 Matter of Amedure v State of New York

Republican and Conservative Party officials and organizations are challenging the constitutionality of Election Law amendments enacted in 2021 to expedite the counting of absentee and other ballots cast by mail. The challenge is focused on section 9-209(2)(g), which provides that when a bipartisan board of elections "splits as to whether a ballot is valid, it shall prepare such ballot to be cast and canvassed...," essentially requiring disputes over the validity of the signature on a ballot envelope to be resolved in favor of the voter. The plaintiffs contend the provision violates Article II, section 8 of the State Constitution, which says all laws "affecting boards or officers charged with the duty of qualifying voters..., or of receiving, recording or counting votes at elections, shall secure equal representation of the two [major] political parties."

Supreme Court declared Election Law § 9-209(2)(g) unconstitutional under article II, section 8. "The Constitution requires bipartisan action, not simply bipartisan representation, when qualifying voters *and* when canvassing and counting votes. The meaning of bipartisan action requires that any decisions ...must be made by majority vote" and, if "there are only two commissioners, requires a unanimous vote," the court said. Under the amendment, "There is no bipartisan action, no ability to preserve the objection, and no ability to seek judicial review."

The Appellate Division, Third Department reversed on a 3-2 vote and declared the statute constitutional, saying "there is no justification for departing from [the Constitution's] literal language to hold that 'equal representation' must mean 'bipartisan action' when counting votes – i.e., that representatives of the two political parties must be forced to agree as to the authenticity of the signature on a ballot envelope duly issued to a qualified, registered voter for that ballot to be counted. All that the Constitution requires in this respect is 'equality of representation to the two majority political parties *on all such boards* and nothing more'.... It must also be emphasized that Election Law § 9-209(2)(g) does not go beyond those matters that are within the constitutional power of the Legislature to control. Courts have long recognized the power of the Legislature to prescribe the method of conducting elections...." It concluded, "[T]he legislative decision to preclude judicial challenges to timely-received, sealed ballots duly issued to qualified, registered voters found to be authentic by at least one election official – in order to ensure all valid votes are counted ...–does not unconstitutionally intrude upon the judiciary's powers."

The dissenters said the amendment "has the potential to inhibit the rights of New Yorkers to cast their ballot by preventing objections to a ballot cast by someone else in their name." They argued, "Election Law § 9-209(2)(g), as recently amended, upended the longstanding expectation that there would be bipartisan agreement – and not just consultation – in resolving certain challenges to absentee ballots, creating a presumption that the ballot is valid even if there is dispute between election officials as to whether, most importantly, the signature on the ballot envelope matches that of the person who purportedly cast it. The ballot is then counted in a way that prevents any possibility of judicial review to resolve those concerns." The Constitution "requires bipartisan agreement if election officials are required to decide whether a challenged ballot is valid, and Election Law § 9-209(2)(g) conflicts with that requirement by creating a presumption that a challenged ballot is valid in the event of a deadlock."

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State of New York
Court of Appeals

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No. 90 Wu v Uber Technologies, Inc.

This negligence action against Uber Technologies arose in July 2020, when Emily Wu hailed an Uber driver using the company's "rider app" on her cell phone. At her destination in Brooklyn, the driver stopped in the middle of the street, Wu exited the vehicle and was struck by another car. In November 2020, Wu brought this suit against Uber and others to recover for her injuries. Two months later, Wu and others received an email from Uber informing them of changes to its terms of use, including a hyperlink to "changes to the Arbitration Agreement ... and procedures and rules for filing a dispute against Uber," that would take effect on January 18, 2021. The email told them they would see a pop-up screen on the rider app, which also contained hyperlinks to the updated terms of use, and they would have to review and accept the terms before continuing to use the service. Wu clicked the consent button. Uber subsequently served a notice of intention to arbitrate her negligence claim and Wu moved to stay arbitration.

Supreme Court denied Wu's motion and granted Uber's cross-motion to compel arbitration, ruling that Wu received adequate notice of the updated terms of use and validly consented to them. It rejected her claim that Uber violated the Rules of Professional Conduct by sending her the updated terms of use without notice to counsel representing her in the suit.

The Appellate Division, First Department affirmed, saying, "The court correctly determined that an agreement to arbitrate existed between plaintiff and Uber.... Uber established, prima facie, the existence of that agreement by submitting evidence showing that plaintiff electronically signed its ... updated terms of use..., which included an arbitration agreement, by clicking a checkbox and button that confirmed that she reviewed and consented to the terms...." It said "Supreme Court providently exercised its discretion in declining to sanction Uber and its employees for the sending of mass communications that were received by plaintiff directly during the pendency of the action."

Wu argues, in part, that she did not agree to arbitrate her lawsuit because this case does not "involve a 'normal' arbitration clause governing the parties' future dealings. It involved a retroactive one purporting to funnel an existing lawsuit filed in the forum chosen by the plaintiff into one preferred by the defendant. A typical litigant would have expected such a communication to be directed to her counsel, not to her directly through a dialogue box in an app. The clause was so plainly beyond the expectations of a reasonable consumer that, particularly in the absence of clear notice, she cannot be said to have assented to it." She also says, "The Attorney Rules of Professional Conduct prohibit contact with represented parties like Emily Wu and Uber's flagrant violation of that obligation here to obtain a jury trial waiver in a pending action should not be rewarded."

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State of New York
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To be argued Tuesday, October 15, 2024

No. 92 Knight v Dewitt Rehabilitation and Nursing Center, Inc.

After 89-year-old Pamela Knight fell and broke her hip in January 2019, she was treated at three medical facilities in Manhattan, including Dewitt Rehabilitation and Nursing Center. She died in August 2019. Two years later James Knight, her son and administrator of her estate, brought this negligence action against all three medical facilities in Manhattan Supreme Court.

Dewitt moved to transfer the entire action to Supreme Court in Nassau County based on forum selection clauses in two of its admission agreements, which the decedent allegedly executed with Docusign signatures. Dewitt submitted an affidavit of its Director of Admissions, who had no recollection of decedent, but said it was Dewitt's custom and practice to have a staff member review each page of the admissions paperwork with patients and witness their signatures. She said a staffer's signature on decedent's admission agreements confirmed that he witnessed decedent sign them by Docusign, but Dewitt did not submit an affidavit from the staffer. Knight argued that Dewitt failed to establish that decedent executed the agreements. He submitted an affidavit and an exemplar of decedent's signature, asserting that the Docusign signatures on the agreements did not match his mother's and did not match each other.

Supreme Court granted the motion to change venue to Nassau County. It said Dewitt "has met its burden of showing that the choice of venue provision is applicable and enforceable," while Knight "provided only a bald assertion" that decedent's signatures were forgeries.

The Appellate Division, First Department reversed on a 3-2 vote, leaving venue in Manhattan. The majority said the "burden of proving the existence, terms and validity of a contract rests on the party seeking to enforce it" and Dewitt failed to meet this burden. "Here, Dewitt could have sought to establish the genuineness of decedent's electronic signature by the affidavit of someone with knowledge of the Docusign protocols and indicia of reliability, both generally and as applied to decedent's proffered signatures.... Dewitt did not do this. Since Dewitt has not at this juncture established that any valid contract was made with decedent, the forum selection clause contained in the admission agreements does not come into play."

The dissenters said the "burden here is on plaintiff, as the challenging party, to demonstrate why the forum selection clause should not be enforced.... Plaintiff's affidavit purporting to demonstrate that the signature and initials on the admission agreement do not belong to decedent is insufficient to demonstrate that enforcement of the forum selection clause was unreasonable, unjust, or in contravention of public policy, or that the clause was the result of fraud or overreaching." They also said "the burden is on the person alleging a forgery to establish that a contract was indeed forged.... Here, plaintiff did not identify the document from which the exemplar of decedent's signature was extracted or the date when that document was signed. Plaintiff also failed to present any expert affidavit on the alleged inauthenticity of decedent's signature."

For appellant Dewitt: William T. O'Connell, White Plains (914) 798-5465
For respondent Knight: Andrew D. Leftt, Manhattan (212) 256-1755

State of New York
Court of Appeals

To be argued Tuesday, October 15, 2024

No. 94 People v Tyrone Peters

Tyrone Peters was convicted of first-degree murder for fatally shooting Winston Williams in Brooklyn in 2003, days after Williams testified against him at a grand jury proceeding in a weapon possession case. Peters was sentenced to life without parole.

On appeal to the Appellate Division, Second Department, Peters was provided appointed counsel from Appellate Advocates, who began drafting a brief. A short time later, in August 2004, Peters hired Barry Krinsky as his appellate counsel using what he said was a $20,000 retainer from his mother. Peters sent Krinsky his appointed counsel's partial draft of an appellate brief along with drafts Peters had written containing his own legal research. The attorney-client relationship deteriorated, allegedly due to Krinsky's failure to communicate with Peters about the appeal, and Peters filed a complaint against Krinsky with the departmental Grievance Committee in May 2011, seven years after his conviction. The Grievance Committee dismissed the complaint in 2012, and Krinsky then submitted a brief to the Second Department. The brief was 135 pages long, but Peters says it consisted of a partial copy of his appointed counsel's initial draft and verbatim portions of Peters' own draft. He claims Krinsky wrote none of it. The Second Department affirmed his conviction in August 2012.

Peters, acting pro se, petitioned for a writ of error coram nobis to vacate the affirmance on the ground that he was denied the effective assistance of appellate counsel. He said the representation he was provided on appeal "was so nominal it amounted to the substantial equivalent of being assigned no counsel at all," or, "If the assistance of appellate counsel was something more than nominal, it still did not reach a level of performance sufficient to satisfy an objective standard of reasonableness." The Second Department denied his petition in a brief order saying, "The appellant has failed to establish that he was denied the effective assistance of appellate counsel."

Peters argues that he "met his burden under both the more lenient New York standard and the narrower federal Constitution standard, both of which guarantee the right to effective appellate representation. The prosecution argues that Peters "had meaningful representation on his direct appeal to the Appellate Division.... That appellate counsel did not raise any successful claims was not because counsel was ineffective, but rather because there were none that could have been raised."

For appellant Peters: Eric Nelson, Staten Island (718) 356-0566
For respondent: Brooklyn Assistant District Attorney Solomon Neubort (718) 250-2514

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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 Tuesday, October 15, 2024

No. 104 Ruisech v Structure Tone Inc.

Felipe Ruisech was injured in 2011 while working on a renovation of the 19th floor of 200 Park Avenue in Manhattan. He was installing a 500-pound glass wall panel into an aluminum track that had been cut into the concrete floor when he slipped on small pebbles of concrete debris, allegedly injuring his back. Ruisech and his wife brought this personal injury action against building owner 200 Park LP and manager Tishman Speyer Properties; CBRE Inc., which leased the floor and contracted for the renovation; and general contractor Structure Tone Inc. Ruisech's employer, A-Val Architectural Metal, was brought in as a third-party defendant.

Ruisech asserted an array of claims including violation of Labor Law § 241(6) predicated on an alleged breach of Industrial Code § 23-1.7(e)(2), which provides, "The parts of floors, platforms and similar areas where persons work or pass shall be kept free from accumulations of dirt and debris and from scattered tools and materials and from sharp projections insofar as may be consistent with the work being performed." The Labor Law imposes a nondelegable duty on owners and contractors to comply, but under case law the code provision does not apply when the material that causes an injury "was an integral part of the construction." The defendants moved for summary judgment dismissing the claim, contending the concrete debris that caused Ruisech to slip was created by and an integral part of his work.

Supreme Court denied the motions by CBRE, Park and Structure Tone, finding Ruisech had a valid Labor Law claim based on the alleged violation of Industrial Code § 23-1.7(e)(2) because "the pebbles were not integral to plaintiff's work at the job site as the track for the glass plaintiff was handling had already been completed." The court also ruled that issues of fact precluded summary judgment. "Plaintiff testified that the pebbles were made out of the cement from the flooring, another A-Val team performed that work, and that he had never done that work.... There are questions of fact as to whether section 23-1.7(e)(2) was violated and was a proximate cause of plaintiff's accident."

The Appellate Division, First Department modified by dismissing the plaintiffs' remaining claims. It said section 23-1.7(e)(2) did not apply to the accident because "the pebbles were debris that were an integral part of the construction work. The integral to the work defense applies to things and conditions that are an integral part of the construction, not just to the specific task a plaintiff may be performing at the time of the accident...."

The plaintiffs argue the Appellate Division ruling "extends the [integral-to-the-work defense] so far beyond this Court's decision [adopting the defense] that it subsumes the regulations entirely." The defendants argue, in part, that the plaintiffs' motion for leave to appeal to this Court was untimely.

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For respondent Structure Tone: Willim D. Joyce III, Manhattan (212) 313-3600
For respondent CBRE: C. Briggs Johnson, Manhattan (212) 683-7100
For respondents Tishman Speyer and Park: Louise M. Cherkis, Manhattan (212) 964-7400
For respondent A-Val: Danny C. Lallis, White Plains (914) 287-7711