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 Tuesday, January 14, 2014

No. 16 Cornell v 360 West 51st Street Realty, LLC

Brenda Cornell is seeking to recover damages for personal injuries allegedly caused by exposure to toxic mold in her midtown Manhattan apartment. Her apartment was located directly above the basement, which sustained water damage from flooding in 2002 and 2003. In July 2003, after a steam pipe broke in her apartment, Cornell noticed a small amount of mold and she developed a rash, shortness of breath, fatigue, disorientation and headaches. The symptoms disappeared after the owner, 360 W. 51st Street Corp., installed a dehumidifier and she washed the area with bleach. In September 2003, 360 W. 51st Street Corp. sold the building to 360 West 51st Street Realty, LLC, and the new owner began renovating the basement a month later. As soon as debris removal began, Cornell developed the same symptoms she had in July, as well as congestion, swollen eyes and a metallic taste in her mouth. Despite taking prescribed allergy medications, the symptoms only subsided when she left the apartment.

Supreme Court dismissed Cornell's claims against the former owner, 360 W. 51st Street Corp., based on Fraser v 301-52 Townhouse Corp. (57 AD3d 416 [2008], in which the First Department affirmed the preclusion of testimony by the plaintiff's expert -- the same expert retained by Cornell -- regarding the effects of mold on health. Fraser found the plaintiff failed to establish at a Frye hearing that the expert's theory that mold causes disease was generally accepted within the relevant scientific community.

The Appellate Division, First Department reversed and reinstated Cornell's complaint. The majority said the lower court "incorrectly interpreted our ruling in Fraser ... as setting forth a categorical rule requiring dismissal of plaintiff's toxic mold claim due to failure to meet the standard of scientific reliability set forth in Frye...." It said the evidence offered by Cornell "easily satisfied" the Frye test. "[A] thorough reading of the studies relied on by plaintiff's expert demonstrate a clear relationship between exposure to mold and respiratory and other symptoms.... Scientists do not report their results in terms of black and white causality, but rather, in terms of the strengths of the associations found. These associations having been found sufficiently strong by the literature as to be indicative of a causal relationship, plaintiff's evidence must be deemed to meet the Frye standard."

The dissenter said, "In my opinion, the plaintiff's expert failed to establish the reliability of his theory under the Frye standard of review.... The majority is persuaded by the 'significant' findings in the two studies relied on by the plaintiff's expert. However, the majority disregards Frye's requirement that those 'significant' findings must be 'generally' accepted. There is nothing in the record nor does the majority address whether these studies that link mold with respiratory illness are 'generally accepted in the relevant scientific community'.... As such, I would not depart from our holding in Fraser."

For appellant 360 W. 51st Street Corp.: Mindy L. Jayne, Manhattan (212) 268-7535
For respondent Cornell: Morrell I. Berkowitz, Manhattan (212) 935-3131

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 Tuesday, January 14, 2014

No. 17 Union Square Park Community Coalition, Inc. v New York City Department of Parks and Recreation

In 2011, New York City completed a partial renovation of 3.6-acre Union Square Park in Manhattan, a project that included renovation of the park's Pavilion. In March 2012, the City entered into a 15-year agreement with Chef Driven Market, LLC, a private, for-profit company, to operate a seasonal restaurant in the Pavilion and a year-round food kiosk nearby "for the use and enjoyment of the general public." The agreement required City approval of the restaurant's operating plans, including menu items and prices, and restricted the types of events that could be held. It also provided that "this License is terminable at will [by the City] at any time; however, such termination shall not be arbitrary and capricious."

The Union Square Park Community Coalition (USCC) and individual park advocates brought this action against the City and Chef Driven Market, contending the agreement violates the public trust doctrine because it alienates dedicated parkland for a non-park purpose without approval from the State Legislature, and because the agreement is a lease, not a license, and so is a per se alienation of parkland even if the proposed restaurant would further a park purpose.

Supreme Court denied the City's motion to dismiss the complaint and granted USCC's motion for a preliminary injunction, finding the plaintiffs were likely to succeed in proving the restaurant would not serve a park purpose in view of "the small size and large crowds of Union Square Park; the commercial character of the encircling neighborhood; the plethora of nearby restaurants...; the prominence and importance of the Pavilion...; and the operating hours and prices to be charged by the proposed restaurant." The court also said the agreement "appears to be a lease masquerading as a license, given the long term (15 years); the reason for such a long term (to allow the concessionaire to recoup its initial capital investment); the concessionaire's day-to-day control over the space; and the conditional nature of the revocation clause."

The Appellate Division, First Department reversed, saying, "The seasonal restaurant and holiday market concessions at issue do not violate the public trust doctrine (see generally Friends of Van Cortlandt Park v City of New York, 95 NY2d 623 [2001]), since they are permissible park uses (see 795 Fifth Ave. Corp. v City of New York, 15 NY2d 221 [1965]) and the concession agreements are revocable licenses terminable at will, not leases (see Miller v City of New York, 15 NY2d 34, 38 [1964])."

For appellants USCC et al: Sanford I. Weisburst, Manhattan (212) 849-7000
For respondents City and Chef Driven Market: Deborah A. Brenner, Manhattan (212) 356-0826

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 Tuesday, January 14, 2014

No. 18 People v Adrian P. Thomas
No. 19 People v Paul Aveni

The common issue in these appeals is whether police deceptions during the defendants' interrogations were so coercive as to render their incriminating statements involuntary.

In No. 18, Adrian Thomas and his wife found their four-month-old son Matthew unconscious and breathing irregularly in their Troy apartment in 2008. Thomas stayed with their other children while his wife went to the hospital with Matthew, who had subdural hematomas consistent with severe head trauma. He also had pneumonia and sepsis, a severe systemic infection. Matthew died two days later, but Thomas was unaware of that when police questioned him. The police told him Matthew was alive, but gravely injured, and his doctors needed to know what happened in order to treat him properly. Thomas ultimately said he had thrown the infant forcefully onto a bed three times and unintentionally struck his head against his crib. Thomas was convicted of depraved indifference murder and is serving 25 years to life.

The Appellate Division, Third Department affirmed, saying, "[T]he strategies and tactics employed by the officers during these interviews were not of the character as to induce a false confession and were not so deceptive that they were fundamentally unfair and deprived him of due process.... The officers' repeated misrepresentation that defendant's truthfulness might enable doctors to effectively treat Matthew did not render his statements involuntary, because appealing to his parental concerns did not create a substantial risk that he might falsely incriminate himself."

Among other issues, Thomas argues he should have been allowed to present expert testimony on the relationship between coercive interrogations and false confessions. The trial court precluded the testimony after a Frye hearing, finding the subject was within the ken of the average juror and Thomas did not establish that the principles his expert relied on were accepted in the scientific community. He also argues there was insufficient evidence of depraved indifference murder.

In No. 19, Paul Aveni's girlfriend, Angela Camillo, suffered a fatal overdose in New Rochelle in 2009. Aveni was unaware of her death when police interviewed him hours later, and he initially denied any involvement. A detective told him doctors were working on Camillo and it was "imperative" for them to know what drugs she had taken so they could avoid medications that might cause an adverse reaction. The detective said, "[S]he's okay now but if you lie to me and don't tell me the truth now and they give her medication, it could be a problem." Aveni immediately said he had injected her with heroin and given her Xanax. He was convicted of second-degree burglary, criminally negligent homicide and other charges.

The Appellate Division, Second Department reversed and suppressed Aveni's statements as involuntary, saying the detectives "not only repeatedly deceived the defendant by telling him that Camillo was alive, but implicitly threatened him with a homicide charge by telling the defendant that the consequences of remaining silent would lead to Camillo's death, since the physicians would be unable to treat her, which 'could be a problem' for him. While arguably subtle, the import of the detectives' threat to the defendant was clear: his silence would lead to Camillo's death, and then he could be charged with her homicide."

No. 18 For appellant Thomas: Jerome K. Frost, Troy (518) 283-3000
For respondent: Rensselaer County Asst. District Attorney Kelly L. Egan (518) 270-4040
No. 19 For appellant: Westchester County Asst. Dist. Attorney Raffaelina Gianfrancesco (914) 995-3496
For respondent Aveni: David B. Weisfuse, White Plains (914) 286-3400

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 Tuesday, January 14, 2014

No. 20 People v Gunther J. Flinn

Gunther Flinn was charged with assaulting and seriously injuring Jordan Culbertson in Alexandria Bay, Jefferson County, in July 2006. He agreed to a plea bargain, pleading guilty to second-degree attempted murder in exchange for a sentence of six years in prison. After the judgment was reversed on appeal, on the ground that coercive statements by the County Court judge rendered the plea involuntary, Flinn rejected the same plea offer and went to trial.

At a sidebar conference during jury selection, a conference Flinn did not attend, his attorney waived Flinn's right to be present at sidebar conferences. Defense counsel said, "Mr. Flinn is remaining at counsel table. I have discussed with him that he has the right to come up here during these discussions at the bench, and he has waived that right." County Court replied, "All right. Thank you." Defense counsel said, "I assume that would be without prejudice to accompany us?," and the court said, "He can change his mind any time." Flinn did not attend any sidebar conferences during jury selection. He was convicted of second-degree attempted murder, first and second-degree assault, among other charges, and was sentenced to an aggregate term of 15 years in prison.

The Appellate Division, Fourth Department affirmed, rejecting his claim that his Antommarchi right to attend sidebar conferences with jurors was violated. "The right to be present during sidebar questioning of prospective jurors regarding matters of bias or prejudice may be waived, provided that the waiver is voluntary, knowing and intelligent...," it said. "Here, we conclude that defendant's failure to attend sidebar conferences after being fully informed of the right to do so constitutes a valid waiver of that right...." The court also rejected Flinn's claim that he was unconstitutionally punished for exercising his right to a trial, saying there was no evidence "that the court was motivated by 'retaliation or vindictiveness' in sentencing defendant following the trial...."

Flinn argues that any waiver of his Antommarchi rights by his defense attorney was invalid because it was not made in his presence and it was never placed on the record or reiterated in his presence. He says there was no implied waiver by him because the trial judge never informed him that he had "the absolute right" to attend bench conferences concerning juror bias. Flinn also argues that his sentence, "two and a half times longer than the plea offer prior to trial," impermissibly penalized him for exercising his right to trial.

For appellant Flinn: Martin P. McCarthy, II, Rochester (585) 262-5130
For respondent: Jefferson County Assistant District Attorney Patricia L. Dziuba (315) 785-3053