

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 Monday, January 6, 2014

No. 1 New York Hospital Medical Center of Queens v Microtech Contracting Corp.

New York Hospital Medical Center of Queens contracted with Microtech Contracting Corp. in March 2008 to demolish certain structures in the basement of the Hospital in Flushing. Microtech hired two undocumented aliens, brothers Gerardo and Luis Lema, to perform the work. The Lemas were injured during their first day on the job when a chimney fell on them, and Microtech provided compensation for their injuries pursuant to the Workers' Compensation Law. When the Lemas filed a personal injury suit against the Hospital, citing Labor Law violations, the Hospital brought this action for contribution and indemnification against Microtech.

Microtech moved to dismiss the complaint on the ground that the Hospital's claims for contribution and indemnification were barred by Workers' Compensation Law § 11, which generally prohibits third-party claims against employers for common law indemnification for workplace injuries. The Hospital argued that Microtech violated the federal Immigration Reform and Control Act of 1986 (IRCA) by failing to verify the immigration status of the Lemas and, therefore, was not entitled to the protection of the Workers' Compensation Law.

Supreme Court granted Microtech's motion dismiss, finding that the exceptions to Workers' Compensation Law § 11 do not include an employer's alleged hiring of undocumented aliens and, thus, the Hospital's claim for indemnification from Microtech was barred by the statute. The Appellate Division, Second Department affirmed, holding that "the IRCA does not preempt the applicable provisions of the Workers' Compensation Law and that the violations of the IRCA alleged here do not abrogate the protections provided to the defendant by Workers' Compensation Law § 11 from third-party claims for contribution and indemnification." It said the Hospital's complaint "fails to allege a legally cognizable exception to" section 11.

The Hospital argues that, because Microtech violated the IRCA by hiring the Lemas without verifying their immigration status, "the employment contracts between Microtech and the Lemas were illegal contracts that are unenforceable in New York courts. Thus, Microtech may not defend this case on the ground that the Lemas were its employees and therefore the action is barred by section 11...." It says, "Requiring employers to pay contribution and indemnification in these circumstances will provide employers with an incentive *not* to hire persons not authorized to work in the United States."

For appellant Hospital: Timothy J. O'Shaughnessy, Woodbury (516) 487-5800

For respondent Microtech: Dennis M. Wade, Manhattan (212) 267-1900

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No. 2 Executive Plaza, LLC v Peerless Insurance Company

This federal case hinges on the interplay between two provisions in a \$1 million fire insurance policy issued by Peerless Insurance Company to cover a two-story office building in Island Park owned by Executive Plaza, LLC. One provision required Executive, when seeking payment for replacement costs, to repair or replace its damaged property before bringing suit on the policy and to complete the replacement work "as soon as reasonably possible." The other provision required Executive to bring any lawsuit against Peerless within two years after the damage occurred. The question is, what happens when it is not reasonably possible to replace a damaged property within two years?

Executive's building was destroyed by fire on February 23, 2007, and within days Executive hired an architect and a construction company to replace it. However, zoning laws had changed since the office building was erected and Executive was required to obtain a variance and other approvals from local authorities. It filed its application in June 2007, but did not receive its final building permit until November 2008, 17 months later. By October 2010, Executive had substantially completed its new building.

In February 2009, less than two years after the fire, Executive sued Peerless to recover its replacement costs up to the \$242,000 remaining under the policy limit (Peerless had earlier paid it \$758,000 to cover the actual cash value of the damaged property). U.S. District Court for the Eastern District of New York dismissed the suit as premature because the new construction was not complete. In October 2010 -- after completing the new construction, but more than two years after the fire -- Executive sent a demand letter for \$242,000 to Peerless and, when the insurer rejected it, brought this action to recover its replacement costs. The district court dismissed the second action as time-barred. Executive appealed.

The U.S. Court of Appeals for the Second Circuit is asking the New York Court of Appeals in a certified question to determine whether, under the terms of the insurance policy, Executive would be "covered for replacement costs if the insured property cannot reasonably be replaced within two years," or whether the two-year limitations clause is enforceable regardless of whether the work could reasonably be completed within that time.

For appellant Executive Plaza: David Jaroslawicz, Manhattan (212) 227-2780

For respondent Peerless: John N. Love, Boston, MA (617) 267-2300

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No. 3 People v Lance J. Reed

Shawn Thomas, a drug dealer, was shot to death on the afternoon of April 7, 2007, on Pennsylvania Avenue in Rochester. After a year-long investigation, Lance Reed was charged as an accomplice with robbery and felony murder, based on allegations that \$40,000 was taken from Thomas after he was killed.

Several eyewitnesses heard the gunshots and saw a Lincoln Town Car drive away with the shooter. One of them identified Reed as the driver, and said the shooter bent over the victim immediately after the shooting and then got in the car. Police discovered the vehicle the next day near the home of Reed's sister and in it they found a plastic Tops supermarket bag that was closed at the top with two knots and ripped open at the bottom. Thomas's girlfriend testified that shortly before the murder, she had counted out \$40,000 for him to use to buy drugs, bound the bills with colored rubber bands, and placed them in a Tops grocery bag, which she tied closed with two knots. She identified the bag that police recovered from the Lincoln as the one that held the cash. Reed was convicted of second-degree felony murder and two counts of first-degree robbery and was sentenced to 15 years in prison.

The Appellate Division, Fourth Department affirmed in a 3-2 decision, rejecting Reed's claim that there was insufficient evidence that anything was stolen from Thomas. "It has long been the law in New York that evidence establishing that a defendant possessed a wrapper or container that had held property before it was stolen is sufficient to support a conviction for stealing that property...", the majority said. "Consequently, '[t]his evidence, although circumstantial, was nevertheless more than sufficient to lead a reasonable person to conclude that defendant' or one of his accomplices stole the cash from the victim."

The dissenters said the plastic grocery bag "is a common item" that could not be conclusively identified as the bag that held the cash. "[N]one of the seven eyewitnesses to the shooting -- many of whom also saw the assailant's departure from the area of the shooting -- saw the taking of property from the victim," they said. "Moreover, none of those witnesses saw anyone walk from the vicinity of the victim's body carrying anything other than a gun." They argued there was insufficient evidence to support the robbery convictions or the felony murder conviction that was premised on the robbery.

For appellant Reed: Svetlana K. Ivy, Rochester (585) 753-4947

For respondent: Monroe County Asst. District Attorney Nicole M. Fantigrossi (585) 753-4618

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No. 4 People v David W. Schreier

(papers sealed)

On the morning of December 24, 2008, David Schreier stood outside of his neighbor's apartment in the Town of Gates and videotaped her through a window in her front door as she stood naked in her bathroom at the top of a stairway. The woman spotted the camera after several minutes, closed the bathroom door and called the police, who followed footprints in the snow to Schreier's apartment next door.

Schreier was charged with unlawful surveillance in the second degree (Penal Law § 250.45[1]), which applies when, "For his or her own ... amusement, entertainment, or profit, or for the purpose of degrading or abusing a person, [a defendant] intentionally uses or installs ... an imagining device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent." After a bench trial in Monroe County Court, he was convicted of the charge and sentenced to five years probation.

The Appellate Division, Fourth Department affirmed, rejecting Schreier's claim there was insufficient evidence that he acted "surreptitiously," that the complainant had "a reasonable expectation of privacy," and that he made the recording for his own amusement. "With respect to the surreptitious nature of the recording, we note that defendant videotaped the victim in the early morning hours, around dawn, obscured himself and his compact camera from the victim's view and, when confronted by the police, initially denied that a recording existed," the court said. Regarding the complainant's reasonable expectation of privacy, it said she "was recorded at 7:30 a.m. in the second-floor bathroom of her home as she was preparing for work. Her location was largely obscured from outside view, except from a particular vantage point through a certain window that could be obtained only by a person of above-average height, standing immediately outside her door."

Schreier argues he did not act "surreptitiously" because he did not use a telephoto lens or hidden camera, but instead stood at the complainant's front door with nothing to conceal him "from full public view while the recording was being made.... From its inception, this law was meant to prohibit recordings made from **non**-public clandestine places, hidden from the entire public, not just secreted from the complainant." He argues the complainant had no reasonable expectation of privacy at the time because she "could be -- and was -- seen from a public place while standing nude in her bathroom. Absent any effort on her part to shield herself from public view -- as by covering the window in her front door, or closing her bathroom door -- the complainant cannot as a matter of law be said to have possessed an expectation of privacy under the statute." He also contends the prosecution failed to prove his criminal intent.

For appellant Schreier: Timothy P. Murphy, Buffalo (716) 849-1333 ext. 323

For respondent: Monroe County Asst. District Attorney Nicole M. Fantigrossi (585) 753-4618

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No. 5 People v Alias Stone

(papers sealed)

Alias Stone was charged with two counts of second-degree burglary for allegedly entering non-public areas of a midtown Manhattan hotel in January and March 2008 and, during the first incident, stealing an employee's cell phone. He had assigned counsel for his trial, but during jury selection insisted he be allowed to represent himself, a request the court reluctantly granted. Stone completed jury selection, gave a brief opening statement in which he did not outline a defense, and began cross examining the first prosecution witness, a hotel employee, in such a manner that he appeared to concede he had been in the employee's office, which was the basis for the burglary charges. He then told the judge he was "very nervous" and the court granted his request to reinstate his assigned counsel. Stone was disruptive throughout his trial and expressed delusions that his attorney, the prosecutor and the court were conspiring against him. After he was convicted of both burglary counts, but before he was sentenced, Stone was diagnosed with paranoid schizophrenia and hospitalized. When he was finally found competent to proceed, after being medicated, he was sentenced to seven years in prison.

On appeal, Stone argued the trial court erred in allowing him to represent himself without first determining whether he was competent to do so. He cited the U.S. Supreme Court's ruling in Indiana v Edwards (554 US 164 [2008]), which held that "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial ... but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves."

The Appellate Division, First Department affirmed, saying Edwards "was expressly limited to circumstances in which a court *denies* a trial-competent defendant's application to proceed pro se on the ground that mental illness nevertheless renders the defendant incapable of self-representation. We need not determine whether there are circumstances in which a court is *required* to insist upon representation by counsel for such a defendant because the record here does not reflect that defendant suffered from such a mental incapacity at the time of trial." Stone's pro se performance "did not suggest such an incapacity," it said. "Defendant's opening statement, though brief, was cogent and appropriate. While his cross-examination of the People's main witness may have been less than artful, there is no basis for attributing this to mental illness, as opposed to the lack of skill demonstrated by many pro se defendants."

Stone argues that, given his behavior, the trial court erred in failing to inquire into his competence to stand trial and the higher level of competence required to represent himself. "The kind of competence required to stand trial with the assistance of counsel is substantively different from the kind of competence required to conduct one's own defense without the assistance of counsel.... [T]he latter requires competence sufficient to perform the many onerous tasks associated with the presentation of a defense, among them, 'making motions, arguing points of law, participating in voir dire, questioning witnesses, and addressing the court and jury,'" he says, citing Edwards (554 US at 176).

For appellant Stone: Leah Friedman, Manhattan (212) 474-1598

For respondent: Manhattan Assistant District Attorney Sheila O'Shea (212) 335-9000