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 13, 2015

No. 13 Matter of Tyrone D. v State of New York *(papers sealed)*

Tyrone D. was convicted of first-degree rape and other charges in 1993 based on a violent sexual assault in the Bronx and was sentenced to 8 to 16 years in prison. As he neared the end of his prison term, the attorney general petitioned for his civil confinement under Mental Hygiene Law article 10. In 2010, Supreme Court in the Bronx found that he was a dangerous sex offender requiring confinement and he was sent to a secure treatment facility in Oneida County. In 2011, when he received an annual notice of his right to petition for discharge, Tyrone checked the box stating that he did not wish to waive his right to seek discharge and he filed the petition in Supreme Court, Oneida County. He later moved to change the venue of his annual review hearing to Manhattan, saying that family members were "willing to assume care and custody of him" if he were released and that it was "burdensome and impossible" for them to travel to Oneida County due to financial and health issues. He said the "vast majority" of potential witnesses lived downstate "and may need to testify [about] the potential for parole, social services," and treatment programs in Manhattan.

Supreme Court denied the motion to move the hearing. It found change of venue is permitted under Mental Hygiene Law § 10.08(e), which states, "At any hearing or trial pursuant to [article 10], the court may change the venue of the trial to any county for good cause, which may include considerations relating to the convenience of the parties or witnesses...." However, it said Tyrone failed to establish good cause for the change because he offered "only general and conclusory allegations" of inconvenience and failed to show his witnesses would be material.

When Tyrone failed to appear for his hearing, the court asked for his status. His counsel said, "Your honor, he's stating he did not want to come to court today." The court said, "So he doesn't want to come and he doesn't want his hearing?" Counsel replied, "Right." The court asked, "Did he sign anything?" Counsel said, "I sent him a letter confirming that." The court deemed Tyrone's refusal to appear to be a waiver of his right to a hearing. It later ordered continued confinement, saying "he is likely to be a danger to others and commit sex offenses."

The Appellate Division, Fourth Department affirmed. It said the change of venue ruling was reviewable "because it 'necessarily affects' the final order," but it ruled the lower court had no authority to change venue for the hearing because the language of section 10.08(e) permits a change of venue only for a trial. It rejected Tyrone's claim that, in refusing to appear at the hearing, he waived only his right to be present and not his right to the hearing itself. "Section 10.09(d) specifically contemplates that an offender may waive the right to petition for discharge, and we conclude that, through counsel, petitioner waived that right."

Tyrone argues that section 10.08(e) allows change of venue for hearings and trials "because restricting the change to a trial only would incorrectly remove the word 'hearing' from the legislation" He also contends he showed good cause to move his hearing to Manhattan. He argues that he was improperly denied his right to a hearing because, although he declined to appear, "there is no indication that by doing so he was choosing to waive such hearing." He says article 10 permits, but does not require, an offender to be present for the hearing to proceed.

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No. 14 Conason v Megan Holding, LLC

Julie Conason and Geoffrey Bryant entered into a rent-stabilized lease commencing in November 2003 for an apartment in a Manhattan building owned by Megan Holding, LLC. Their initial rent was $1,800 per month and they signed renewal leases at monthly rents of $1,899 in 2005 and $1,956 in 2007. In December 2003, after they occupied the unit, Megan Holding registered the apartment with the State Division of Housing and Community Renewal (DHCR). It listed the prior tenant as Oki Suzuki at a monthly rent of $1,000, and said the tenant before that paid $475 per month. In 2009, Megan Holding brought a summary nonpayment proceeding against Conason and Bryant in Civil Court, and in their answer the tenants alleged harassment, breach of the warranty of habitability and rent overcharges. After trial, Civil Court found Megan Holding had fraudulently listed Suzuki, a nonexistent tenant, as the prior occupant and claimed nonexistent improvements to the apartment to inflate the rent. It awarded the tenants a rent abatement on their warranty of habitability claim.

In June 2011, Conason and Bryant brought this action against Megan Holding and its principal owner, Emmanuel Ku, in Supreme Court to recover the rent overcharges, treble damages, and attorneys' fees, alleging the landlord fraudulently registered a fictitious tenant with DHCR to inflate their legal regulated rent. They argued Ku was liable because he abused the corporate form by intermingling the assets of Megan Holding and other companies with his personal assets. The plaintiffs moved for summary judgment based on the collateral estoppel effect of Civil Court's findings of fraud. The defendants moved to dismiss the suit as time-barred, arguing the rent overcharge claim accrued from the first overcharge in 2003 and the claim was not asserted until 2009, after the four-year statute of limitations (CPLR 213-a) expired.

Supreme Court granted plaintiffs summary judgment on liability, finding defendants were collaterally estopped from contesting the fraud allegations, and it ordered a hearing to determine the amount of damages, including treble damages and attorneys' fees. It said the suit was not time-barred, but damages would be limited to the four years prior to the assertion of the overcharge claim in Civil Court in 2009. The plaintiffs could pierce the corporate veil to hold Ku individually liable, it said, because they "established that Ku is the owner of 99% of Megan, that Megan fraudulently set a rent for [their] apartment, and that plaintiffs were financially injured thereby."

The Appellate Division, First Department affirmed, rejecting the statute of limitations defense. Citing M/O Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin. (15 NY3d 358) and Thornton v Baron (5 NY3d 175), it said "'an unscrupulous landlord ... could register a wholly fictitious, exorbitant rent and, as long as the fraud is not discovered for four years, render that rent unchallengeable'[]. We thus hold that the four-year statute of limitations is not a bar in a rent overcharge claim where there is significant evidence of fraud on the record...."

Megan Holding and Ku argue all of the claims are time-barred and the First Department's ruling is "an outright judicial repeal" of the statute of limitations. "In sum, CPLR 213-a is clear. The [plaintiffs'] claims were not timely filed and neither common-law fraud nor a judge-made fraud exception to the statute can change that fact. There is no allegation or proof that the [defendants] prevented the [plaintiffs] from timely filing their claim and there is no other justification given for the failure to timely file."

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For respondents Conason and Bryant: James B. Fishman, Manhattan (212) 897-5840

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No. 15 People v Matthew Keschner
No. 16 People v Aron Goldman

Matthew Keschner and Aron Goldman were charged with participating in a no-fault insurance fraud scheme in Manhattan from 2002 to 2006. The operation was devised and controlled by Gregory Vinarsky, who employed runners to solicit patients at the scenes of car accidents and employed medical professionals -- including Goldman, an internist, and Keschner, a chiropractor -- to provide diagnosis and treatment. Prosecutors presented evidence that Vinarsky and his alleged accomplices used medical clinics to fraudulently bill no-fault insurers for reimbursement of unnecessary medical tests, procedures and equipment on behalf of accident victims. Most of the tests and procedures were performed at a clinic on St. Nicholas Avenue in Washington Heights rented by Vinarsky, although Goldman was listed as owner of the clinic.

Goldman and Keschner were tried jointly, with Vinarsky testifying against them under a cooperation agreement, and they were convicted of enterprise corruption (Penal Law art 460) and related offenses. Goldman was sentenced to 2½ to 7½ years in prison and an $800,000 fine, Keschner to 1½ to 4½ years and a $750,000 fine. Among other arguments on appeal, they contended there was insufficient evidence to establish the "continuity of existence" element of enterprise corruption (Penal Law § 460.10[3]) because the criminal enterprise could not continue to function without Vinarsky.

The Appellate Division, First Department affirmed. It said a "criminal enterprise" as defined in Penal Law § 460.10(3) need not be "so structured as to permit it to continue its existence without the involvement of one or more key participants" because "the statute expressly requires only 'a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents'..., not criminal 'participants'...." It said Vinarsky's enterprise "embraced more than one clinic, extended over a period of years, and involved a succession of patients" who were used "to facilitate the fraudulent billing of insurers, which paid some $6 million for services allegedly provided by the St. Nicholas clinic. Thus, the jury was warranted in concluding that the criminal enterprise had a continuity that extended beyond any individual patient or transaction."

The defendants argue, in part, that prosecutors failed to prove the "continuity of existence" element of enterprise corruption because Vinarsky was indispensable to the scheme. "Logic dictates that an enterprise devised and controlled by one individual -- who alone possesses the wherewithal to run it -- also does not come within [the statute's] purview," Keschner says. "Regardless of the minions who may also participate under the individual's direction, the entity effectively constitutes an enterprise of one -- rendered a nullity without its all-controlling leader." Goldman says the Appellate Division "rejected the thoughtful decisions of a host of justices and neutered one of the statute's main protections -- the requirement that an enterprise have a 'continuity of existence,' which this Court has described as 'constancy and capacity exceeding the individual crimes committed under the association's auspices."

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