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.

NEW YORK STATE COURT OF APPEALS

Background Summaries and Attorney Contacts

February 11 thru February 13, 2025

State of New York
Court of Appeals

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To be argued Tuesday, February 11, 2025

No. 15 Fossella v Adams

The New York City Council amended the City Charter in 2022 to permit certain non-citizens to vote for mayor and other City officials in municipal elections, but not in state or national elections. This new class of non-citizen "municipal voters" must be "a lawful permanent resident or authorized to work in the United States" and must have been a resident of the City for at 30 days, a class estimated to include more than 800,000 New Yorkers. When outgoing Mayor Bill de Blasio and incoming Mayor Eric Adams declined to sign or veto the bill, it took effect as chapter 46-A of the City Charter in January 2022, 30 days after the Council passed it. The following day, the state and national Republican Committees, Republican office holders and others filed this suit to challenge its validity, contending that it violated the State Constitution, the Municipal Home Rule Law and Election Law. Nine non-citizen residents of the City intervened in defense of the municipal voter law.

Supreme Court granted summary judgment to the plaintiffs, declaring that the municipal voter law violates the State Constitution, Municipal Home Rule Law and Election Law. Relying largely on article II, section 1 of the Constitution, which states, "Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people...," the court said "it is clear ... that voting is a right granted to citizens of the United States" and no others. It said the City Council enacted the amendment in violation of the Home Rule Law, which requires that any law that "changes the method of nominating, elevating, or removing an elective officer" must be approved by a public referendum, because the Council did not submit it to a public vote.

The Appellate Division, Second Department modified by declaring the Council did not violate the Election Law, but on a 3-1 vote, affirmed the findings of constitutional and home rule violations. The majority said because article II, section 1 gives the right to vote to "every citizen" with no reference to noncitizens, an "irrefutable inference applies that noncitizens were intended to be excluded from those entitled to vote." It said the term "citizen" means United States citizen, not citizen of the state, and the section applies to municipal elections as well as statewide elections. It further held that enactment of the new voting law violated the referendum requirement of the Municipal Home Rule Law because it "changed the method of electing an elective officer" by creating a new class of voters. "Since eligibility to vote is a prerequisite to casting a ballot..., it follows that eligibility criteria to vote falls within the election process or 'method' of conducting an election," it said.

The dissenter agreed "that the word 'citizen' in article II, § 1, means 'United States citizen," but said that did not resolve the constitutional issue because the section governs state elections and "does not directly apply to elections for local offices." She said courts must consider article IX, which provides that local governments "shall have a legislative body elective by the people thereof" and that the term 'people' "shall mean or include ... [p]ersons entitled to vote" under article II, § 1. In view of article IX's purpose "to provide local governments with 'autonomy'" to handle local issues locally, she said, "The City's decision to ... to expand the franchise in local elections to include noncitizens should therefore be afforded deference." She said the Home Rule Law did not require a referendum for that new voter law because "the process for conducting elections of local officers is unchanged. The law broadens the scope of persons who may participate in that process without changing the process itself."

For appellant City Council: Assistant Corporation Counsel Claude Platton (212) 356-4378
For intervenors-appellants Naveed et al: Cesar Z. Ruiz, Manhattan (212) 739-7580
For respondents Fossella et al: Michael Y. Hawrylchak, Albany (518) 462-5601

State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 16 Burrows v 75-25 153rd Street, LLC

Brian Burrows and three other rent-stabilized tenants of a Queens apartment building brought this rent overcharge action against their landlord, 75-25 153rd Street, LLC, in 2020. They alleged that the landlord engaged in a fraudulent scheme to evade the protections of the Rent Stabilization Law (RSL) by basing current rent increases on initial legal regulated rents that were improperly calculated and registered by the original building owner in 2007. Those registered rents were thousands of dollars higher than rents actually paid by the original tenants beginning in 2005, which is 15 years outside of the four-year lookback period allowed for rent overcharge claims under the RSL. The lookback rule allows courts to review an apartment's rental history no more than four years prior to the date the overcharge claim was filed, but there is an exception for cases where a landlord engaged in a fraudulent scheme to deregulate or inflate the rent of a stabilized apartment.

Supreme Court in Manhattan denied the landlord's motion to dismiss the suit, finding the tenants "successfully pled a cause of action for rent overcharge." It said the tenants provided "sufficient indicia of fraud to allow the court to look back past the four-year look-back limit" and they were not required "to demonstrate fraud conclusively to survive a motion to dismiss."

The Appellate Division, First Department reversed and dismissed the suit in April 2023. It found "the 'legal regulated rent' set forth on the initial registration statement was unlawfully inflated" because it was "higher than the rent actually charged to the tenant," an amount that was also reflected in the registration statements as "Actual Rent Paid." However, it further held that the plaintiffs could not invoke the fraud exception to the four-year lookback rule "because neither plaintiffs nor their predecessors in interest could have reasonably relied upon the inflated legal regulated rents in the registration statements.... [T]he inflation of the legal regulated rents set forth on the publicly filed registration statements was evident from the registration statements themselves, negating the element of reliance as a matter of law."

Months later, in 2024, the Legislature enacted legislation to clarify the fraud exception to the lookback rule, stating that courts must determine whether an owner engaged in a fraudulent scheme "after a consideration of the totality of the circumstances" and that "there need not be a finding that all of the elements of common law fraud, including evidence of a misrepresentation of material fact, falsity, scienter, reliance and injury, were satisfied in order to make a determination that a fraudulent scheme to deregulate a unit was committed if the totality of the circumstances nonetheless indicate" that it was. The law provided that it took effect immediately and "shall apply to any action or proceeding in any court ... on the effective date."

The tenants and the State Attorney General, as amicus curiae, argue that the 2024 legislation applies to this case and expressly provides that plaintiffs need not establish the elements of common law fraud in order to invoke the fraud exception to the lookback rule. Alternatively, they argue that prior law did not require proof of reliance or other elements of fraud in order to invoke the exception.

For appellants Burrows et al: Roger A. Sachar, Manhattan (212) 619-5400
For amicus Attorney General: Assistant Solicitor General Daniel S. Magy (212) 416-6073
For respondent Landlord: Deborah Riegel, Manhattan (212) 551-1223

State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 18 People v Marquese Scott

Marquese Scott was charged with three counts of second-degree burglary in an indictment alleging that he illegally entered three separate Buffalo-area homes in 2012 and 13. The maximum sentence for each class C felony charge is 15 years and, during plea negotiations, the prosecutor and the court informed Scott that his maximum sentencing exposure would be 45 years if he were to be convicted at trial. Scott accepted an offer to plead guilty to all three burglary counts in exchange for a determinate sentence of six to eight years, with a condition that he must be "truthful" in answering questions from the Probation Department. At sentencing, the prosecutor informed the judge that Scott had denied responsibility for the burglaries during a probation interview. Supreme Court found that he had violated his plea agreement by lying to probation and, instead of the agreed prison term, sentenced him to three consecutive five-year terms for an aggregate of 15 years in prison.

On appeal, Scott argued that his plea was not knowing, voluntary or intelligent because he was given incorrect information about his sentencing exposure. Penal Law 70.30(1)(e)(i) would have limited his exposure for consecutive sentences on the three burglary counts to no more than 20 years, not the 45 years he was told before he accepted the plea. The prosecution argued that, despite the error, his plea was voluntary under the totality of the circumstances.

The Appellate Division, Fourth Department affirmed Scott's conviction without addressing the merits if his involuntary plea claim. The court said he failed to preserve his claim for appellate review because he did not move to withdraw his plea or vacate the judgment of conviction on the ground that he had been misinformed about his sentencing exposure. However, the court also found that his 15-year sentence, "nearly double the maximum of the original sentence promise," was "unduly harsh and severe under the circumstances" and reduced it to 10 ½ years in the interest of justice.

Scott argues that he was not required to preserve his involuntary plea claim "because he never had an opportunity to discover or object to a fundamental defect in the plea: significant misrepresentations of his potential maximum sentence" if he went to trial. He cites decisions from the First and Second Departments in similar cases, which held that where a defendant was unaware of or misled about his actual sentencing exposure, he does not have a reasonable opportunity to withdraw his plea and preservation is not required. On the merits, he says Supreme Court's "significant misrepresentations" of his potential maximum sentence had "a misleading effect" on his decision to plead guilty and rendered the plea involuntary. He says the 45-year maximum he was told he faced "is more than twice" the length of the 20-year maximum he actually faced. "The two terms present categorically different degrees of threat to a defendant considering whether going to trial is worth the risk."

For appellant Scott: Nicholas P. DiFonzo, Buffalo (716) 416-7496
For respondent: Erie County Assistant District Attorney Michael J. Hillery (716) 858-2424

State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 28 People v Dwight Moss

This proceeding under the Sex Offender Registration Act (SORA) stems from Dwight Moss's 2016 conviction of first-degree sexual abuse and endangering the welfare of a child for abusing a seven-year-old girl in Monroe County. He was given an enhanced 10-year prison term as a second child sexual assault felony offender based on his felony sex crime conviction in 2006 for having intercourse with a 10-year-old girl. The Appellate Division, Fourth Department upheld the conviction, but vacated the sentence and remitted the case for County Court to determine whether his 2006 conviction "was unconstitutionally obtained." After a hearing, County Court found Moss met his burden of showing that his 2006 guilty plea was coerced by the trial court's threat to sentence him to 50 years if he went to trial, when he actually faced a maximum of 25 years. County Court said it lacked authority to vacate the plea, which "must be done by a higher court," but it ruled the 2006 guilty plea was unconstitutionally obtained and could not be used as a predicate conviction to enhance sentencing in the 2016 case. The court resentenced Moss to six years in prison.

As his release date approached in 2022, the Board of Examiners of Sex Offenders prepared a Risk Assessment Instrument that would have made Moss a lowest-risk level one offender. However, the Board said his 2006 conviction triggered an automatic override requiring a risk level three designation, the highest risk level.

County Court accepted the Board's recommendation and applied the automatic override to designate Moss a level three sexually violent predicate offender, although it said the case "presents a novel issue that the court has not found any other court in New York has directly addressed," It said, "Here, the People have met their burden of proving, by clear and convincing evidence, the existence of the prior sex crime conviction. Defendant ... does not argue that the conviction does not exist, but rather that the court should not consider the prior conviction because of this court's decision in the second felony offender hearing that the prior sex crime conviction was obtained unconstitutionally." The court said it was "bound" by Second Department precedent holding that "once the People establish the existence of a prior conviction..., then the applicability of the override is automatic to create a presumptive Level III risk" designation. Since Moss's 2006 conviction has not been overturned, it said, "the automatic override applies and defendant/offender is presumptively a Level III risk to reoffend." Since Moss did not request a downward departure, "the court will not consider a departure."

The Fourth Department affirmed "for reasons stated" by County Court.

Moss argues that "the fundamental defect" in his 2006 conviction "was a coerced guilty plea that, as a matter of law, is inherently unreliable" and that County Court erred "by concluding that a still-existing conviction can support an automatic override under SORA despite an uncontested finding that the conviction resulted from a coerced guilty plea.... County Court had both the authority and the duty to distinguish between reliable and unreliable convictions and to deny application of the override based upon a conviction that Mr. Moss had proven, by substantial evidence, was unreliable." Moss says the decision "violates the legislative intent of SORA" to protect public safety and violates his right to due process.

For appellant Moss: David R. Juergens, Rochester (585) 753-4093
For respondent: Monroe County Asst. District Attorney Martin P. McCarthy, II (585) 753-4534

State of New York
Court of Appeals

To be argued Tuesday, February 11, 2025

No. 19 People v Juan Padilla-Zuniga

Juan Padilla-Zuniga was charged with six traffic offenses after he crashed into two parked cars in Levittown, Nassau County, in July 2019. A blood test determined that his blood-alcohol content was .23 percent. He agreed to plead guilty to three counts – first-degree aggravated unlicensed operation of a motor vehicle, aggravated driving while intoxicated, and leaving the scene of an accident – in exchange for a sentence of five years probation. During his virtual plea allocution, when Supreme Court asked if he had known that his license to drive "was suspended, revoked or otherwise withdrawn" on the day of the crashes, he said no. Defense counsel then asked him, "Did you have the privilege to drive on the date of then incident?" Padilla-Zuniga replied, "No, I didn't have a license. I've never had a license." The court did not inquire further about his license and ultimately accepted his guilty plea. At sentencing, the court sentenced him to time served and five years probation. It also imposed $500 mandatory minimum fines on the aggravated unlicensed and aggravated DWI counts, fines that had not been mentioned during the plea proceeding.

The Appellate Division, Second Department affirmed, finding that Padilla-Zuniga "knowingly, voluntarily, and intelligently waived his right to appeal," which "precludes appellate review of his objection to the factual sufficiency of the plea allocution." It further held that he failed to preserve his claims that the allocution regarding the status of his drivers license rendered his plea involuntary and that the court improperly imposed an enhanced sentence with the $500 fines.

Padilla-Zuniga argues that his statements about his drivers license during the allocution failed to establish that he knew or should have known that his privilege to drive was "suspended, revoked or otherwise withdrawn," as required by the statute. He says his responses triggered the court's duty to inquire further before accepting his plea and rendered the plea involuntary, a claim that does not require preservation. He contends the court's failure to inform him of the mandatory $500 fines before it imposed them left him with no practical opportunity to object or withdraw the plea and rendered his plea involuntary. He also argues that the court failed to obtain a valid waiver of his right to appear in person at his plea hearing, which was held virtually.

For appellant Padilla-Zuniga: Argun Ulgen, Hempstead (516) 560-6423
For respondent: Nassau County Assistant District Attorney Kevin C. King (516) 571-3660
To be argued Wednesday, February 12, 2025

State of New York
Court of Appeals

To be argued Wednesday, February 12, 2025

No. 20 Wright v State of New York

Chi Bartram Wright filed this negligence claim against the State of New York under the Child Victims Act (CVA) in July 2021, alleging that he "was raped and sexually abused as a child by numerous men in multiple incidents between 1986 and 1990" at "The Egg," the Performing Arts Center at the Empire State Plaza in Albany. He said the abusers were "both employees of the State as well as members of the general public" and the abuse took place "in the bathrooms, stairwells, tunnels, boiler room, and Kitty Carlisle Hart Theater" of The Egg. The CVA is a revival statute that provided a two-year window in which to file previously time-barred claims of childhood sexual abuse. Wright, who was 12 to 15 years old when the alleged abuse occurred, alleged the State was liable for negligent hiring, retention, and supervision of its employees and failure to properly supervise and provide security at the State-owned premises. The State moved to dismiss Wright's claim for failure to adequately specify "the nature of" the claim and "the time when" it arose, as required by Court of Claims Act § 11(b).

The Court of Claims dismissed the suit, saying "the Claim alleges that Claimant was sexually abused by various unidentified individuals at various locations within the Egg/Empire State Plaza over the course of five years. Claimant does not provide any details as to when the assaults began, or any date(s) when said assaults occurred.... Claimant's failure to set forth any specific date(s) of the alleged abuse violates Court of Claims Act § 11(b) and mandates dismissal of this Claim.... [T]he notion that the State must demonstrate it cannot conduct an investigation of the claim based upon the facts presented before moving to dismiss pursuant to [section 11(b)] has been specifically rejected...."

The Appellate Division, Third Department reversed and reinstated the claim. "The reality is that 'in matters of sexual abuse involving minors, as recounted by survivors years after the fact, dates and times are sometimes approximate and incapable of calendrical exactitude...," the court said. "Under the particular circumstances of the before us, where the events are alleged to have occurred several decades ago, when claimant was a child, we conclude that the four-year time frame pleaded is sufficient" to satisfy the pleading requirement of section 11(b). "Also..., claimant sufficiently states the nature of his claim...," it said. "Because the claim is sufficiently detailed to allow defendant 'to investigate the claim and to reasonably infer the basis for its alleged liability...,' it satisfies the nature of the claim requirement of Court of Claims Act § 11(b).

The State argues the Third Department "erroneously relied on it own policy judgments to substantially relax the jurisdictional requirements" of section 11(b). The Third Department acknowledged that the CVA did not expressly amend" the section, "but it noted the particular challenges posed by CVA cases involving the childhood memories of decades-old abuse and reinstated Wright's vague and conclusory claim." It says the claim is jurisdictionally defective because it failed to allege "the factual basis of the State's liability" and failed to allege "not only how many acts of abuse took place or with what frequency, but also any specific dates or even months or years within the five-year period when the abuse allegedly occurred."

For appellant State: Deputy Solicitor General Jeffrey W. Lang (518) 776-2007
For respondent Wright: Seth A. Dymond, Manhattan (212) 681-1575

State of New York
Court of Appeals

To be argued Wednesday, February 12, 2025

No. 21 People v McKenzie Willis
No. 22 People v Edward Martinez-Fernandez

The appellants in these cases are challenging the facial sufficiency of misdemeanor complaints charging them with aggravated unlicensed operation of the motor vehicle. They argue that allegations in the complaint that they failed to answer a prior traffic summons is not sufficient to establish that they knew or should have known that their license to drive had been suspended, an essential element of the misdemeanor charge.

McKenzie Willis was stopped and arrested while driving in lower Manhattan in October 2018 after a police officer ran a computer check of Department of Motor Vehicles (DMV) records and found that his license had been suspended three times for failing to answer a traffic summons. Edward Martinez-Fernandez, a taxi driver, was arrested after a traffic accident in the Bronx in July 2016, when an officer found his license had been suspended at least three times for failing to answer a traffic summons. Both men were charged with second- and third-degree aggravated unlicensed operation of a motor vehicle; Martinez-Fernandez was also charged with reckless driving. Both men pled guilty to third-degree aggravated unlicensed driving and were each sentenced to a $200 fine and $88 surcharge.

The Appellate Term, First Department affirmed both judgments in separate, but nearly identical decisions issued on the same day. The misdemeanor complaints were jurisdictionally valid, it said, because they "described facts of an evidentiary nature establishing reasonable cause to believe that defendant was guilty of aggravated unlicensed driving in the third degree." The complaints alleged that "a computer check run by the officer of the records of the [DMV] showed that defendant's driver's license" had been suspended three or more times for failing to answer a traffic summons "and that all such summonses have printed on them '"[i]f you do not answer this ticket by mail within fifteen (15) days your license will be suspended," [and that] the suspension occurs automatically (by computer) within four weeks of the defendant's failure to answer.' These factual allegations were sufficient for pleading purposes to establish reasonable cause to believe that defendant knew, or had reason to know, that his license was suspended."

Willis and Martinez-Fernandez argue the misdemeanor complaints should be dismissed as facially insufficient because they failed to provide reasonable cause to believe that the defendants knew or should have known their licenses were suspended. They say there were no allegations that they actually received a traffic summons with the printed warning that their license would be suspended if they did not answer it; the officers who signed the complaints provided no factual basis for their assertion that "all" traffic summonses include the warning about license suspension; and there were no allegations that the defendants ever received notice that DMV had suspended their licenses.

For appellants Willis & Martinez-Fernandez: Sylvia Lara Altreuter, Manhattan (212) 298-5448
For respondent in No. 21: Manhattan Assistant District Attorney Anna Notchick (212) 335-9000
For respondent in No. 22: Bronx: Bronx Asst. District Atty. Elliott R. Hamilton (718) 838-7486

State of New York
Court of Appeals

To be argued Wednesday, February 12, 2025

No. 23 Gibson, Dunn & Crutcher LLP v Koukis

Gibson, Dunn & Crutcher brought this action to enforce a judgment for unpaid legal fees against George Koukis, a Swiss investor, and four members of the D'Anna family, who in 2009 founded Be In, Inc., a software start-up based in Manhattan. Be In retained Gibson Dunn in 2013 for a lawsuit in California against Google Inc. A fee dispute with the firm went to arbitration, resulting in 2015 in a $325,346 judgment against Be In. In 2016, Gibson Dunn filed this action in New York to set aside allegedly fraudulent conveyances, claiming Koukis and the D'Annas had improperly transferred Be In's assets to themselves in order to render the company insolvent and frustrate the law firm's collection efforts. After the defendants failed to respond and Gibson Dunn moved for a default judgment, Gil Santamarina – a New York attorney retained by Joseph D'Anna -- entered into a stipulation with the law firm that purported to waive "any defenses based on service of process or lack of personal jurisdiction" on behalf of all five defendants in exchange for an extension of time to respond. Supreme Court granted the default judgment in 2019. Two years later, Koukis moved to vacate the default, contending that Santamarina was not authorized to act on his behalf, that service was improper, and that the court lacked personal jurisdiction because he resides in Switzerland and had minimal contacts with New York.

Supreme Court held that Santamarina had neither actual nor apparent authority to act on Koukis's behalf. However, the court denied his motion to vacate the default judgment against him, finding that Gibson Dunn had established jurisdiction over Koukis under CPLR 302(a)(2).

The Appellate Division, First Department modified in a 3-2 decision by vacating the default judgment against Koukis and dismissing the complaint against him for lack of jurisdiction. The majority agreed with the lower court "that there was no basis to conclude that Koukis authorized Santamarina to appear and waive all jurisdictional defenses on his behalf.... On December 16, 2019, Koukis emailed Santamarina ... specifically stating that 'I have not authorized you to represent me in any legal or other matters.' Koukis also averred that he never communicated with Santamarina and that he never represented him, and there is no indication in the record that Koukis was even aware of Santamarina for any significant time prior to his December 16, 2019 email." However, the court said "there are insufficient allegations in the complaint that Koukis participated in the allegedly fraudulent conveyance to hinder legitimate creditors such as plaintiff, which warranted the exercise of jurisdiction pursuant to CPLR 302(a)(2). The complaint is devoid of any specific allegations involving Koukis."

The dissenters disagreed "with the majority's assertion that there is 'no basis' in the record for an inference that Santamarina had authority to represent Koukis in this action. The majority overlooks certain November 2019 emails that plainly raise an issue of fact in this regard." They said those emails between Koukis and Joseph D'Anna, which discussed the litigation without mentioning Santamarina, "raise a triable issue of fact as to whether Koukis had given such authority, whether expressly or through knowing acquiescence in the representation as it continued through an extended period of time. This factual issue cannot be resolved on the present record and should be tried by the court or by a referee pursuant to CPLR 2218."

For appellant Gibson Dunn: Seth M. Rokosky, Manhattan (212) 351-4000
For respondent Koukis: Joseph A. Aronauer, White Plains (212) 755-6000

State of New York
Court of Appeals

To be argued Wednesday, February 12, 2025

No. 24 Matter of Dourdounas v City of New York

George Dourdounas was a tenured high school math teacher from 1999 to 2017, when he retired with an expectation that he would receive a $50,000 severance payment offered by the City's Department of Education (DOE). In 2012, he had been placed on Absent Teacher Reserve (ATR) status – for teachers whose permanent assignments were eliminated due to budget cuts, school closures or other reasons unrelated to their performance – and for the 2016-17 school year he was assigned to serve as a substitute teacher at Bronx International High School. In February 2017, he accepted an offer to remain at the school through the end of the academic year.

In June 2017, Dourdounas received an email from his union, the United Federation of Teachers (UFT), informing him that the DOE had agreed to offer a severance package to ATR teachers who had been on ATR status for the past year or more and who retired between June 5 and July 14, 2017. Dourdounas submitted an ATR Voluntary Severance Agreement stating that he would retire on July 1, 2017, and opting for a $50,000 lump sum payment. Later in July, DOE determined he was ineligible for the retirement incentive because he had been permanently hired by the Bronx high school in February 2017. He filed a grievance challenging the DOE decision and, after the Bronx school principal and DOE Chancellor denied his claim, he asked the UFT to take his grievance to binding arbitration. The union refused, explaining in its final decision in October 2020 that "your grievance could not be successfully pursued...." Dourdounas filed this suit on February 26, 2021, to challenge DOE's denial of his severance payment, arguing that he remained a member of the ATR pool until his retirement.

Supreme Court dismissed his suit as untimely. Because Dourdounas challenged DOE's denial of his severance payment in July 2017, not the UFT's final decision in October 2020 not to pursue arbitration, the court ruled the four-month statute of limitations began to run in July 2017 and expired before he filed this suit in February 2021.

The Appellate Division, First Department affirmed, saying DOE's "determination became final and binding when he was informed of the denial in July 2017." Although Dourdounas was "required to avail himself of the grievance procedure set forth in the [UFT contract] before commencing an action" in court..., it said, "pursuing the union grievance did not function to toll the statute of limitations as to the underlying denial of the retirement incentive.... As this proceeding was not commenced until February 26, 2021, more than 3 ½ years after the denial of the retirement incentive became final and binding, the petition was untimely."

Dourdounas argues that his cause of action accrued and the statute of limitations began to run "upon the exhaustion of his grievance remedy, not upon the determination of the [DOE] to withhold the separation incentive payment from him." He says the lower courts "told him that he had properly and necessarily exhausted his administrative remedy, only to lose his cause of action because the four-month limitation period ran out years before the grievance ran its course. This is a cruel trick, reminiscent of Kafka. Such a trap is unworthy of our law and violates the letter and spirit of the CPLR."

For appellant Dourdounas: Bryan D. Glass, Manhattan (212) 537-6859
For respondent City of New York: Assistant Corporation Counsel Susan Paulson (212) 356-0821

State of New York
Court of Appeals

To be argued Thursday, February 13, 2025

No. 25 Matter of P.C. v Stony Brook University

P.C. (or "petitioner"), a male student at Stony Brook University, was accused of violating provisions of the school's Code of Student Responsibility by engaging in sexual conduct with a female student, S.G. (or "complainant") without her affirmative consent. The two students met through a mutual friend, V.L, at a campus event in September 2019 and spent the rest of the day and much of the night drinking together. S.G. told a University investigator that, after V.L. left them, she and P.C. went for a walk in the woods and "were both ready for things to start escalating," but P.C. "kept saying it was a bad idea" because V.L. had told him she would be angry "if anything were to happen between" them. They engaged in oral sex, she said, then walked to a store to buy more alcohol and, at her request, condoms. When they returned to the woods, she said, "clothes came off and the intercourse started," though she had only "snapshot memories" of it due to her intoxication. She said she "snapped back into it at some point because of how hard he was choking me. I remember trying to prey his hands off my neck, but he was stronger than I was and did not budge at all." S.G. said she then "caved" to P.C.'s request to have sex in her car, although she wanted to "stay in the woods." While having intercourse in the car, S.G. said she felt like she may have passed out or was "dreaming." P.C. admitted in a series of texts with V.L. that he had engaged in sexual relations with S.G., saying he was "sorry" and he knew he "fucked up." V.L reported the encounter to the University the next day.

After a hearing, the school's Review Panel determined that P.C. violated provisions of the Student Code prohibiting sexual harassment, non-consensual sexual contact, and non-consensual sexual intercourse. It suspended him for nearly two years. The Appeals Committee affirmed.

The Appellate Division, Second Department annulled the determination in a 3-2 decision and ordered the disciplinary records expunged, finding the Review Panel's determination was not supported by substantial evidence. The Review Panel "did not find that S.G was incapacitated by intoxication" and incapable of giving consent, and there was not adequate evidence that she did not consent to the sexual conduct, the majority said, citing her statements "that she was 'ready for things to start escalating'" and she asked P.C. to buy condoms. "While it is possible that S.G. ... 'had sex with someone blacked out' and was incapable of 'making that decision' to consent to sex, these were not the findings the Review Panel made. Notably, while the record clearly provided evidence of S.G.'s consent to certain sexual activities..., the Review Panel made no effort to identify which sexual activities were engaged in without consent."

The dissenters said substantial evidence supported the Review Panel's conclusion that S.G. "did not affirmatively consent to all the sexual activity in which she and the petitioner engaged," including her "testimony that the petitioner engaged in various conduct, including choking her in the woods and having sexual intercourse with her in her car," where she objected that "people can see us." The dissenters said, "Since substantial evidence exists to support the determination, this court must not engage in a re-weighing of the evidence and the determination must be sustained, 'irrespective of whether a similar quantum of evidence is available to support other varying conclusions'...."

For appellant University: Assistant Solicitor General Elizabeth A. Brody (212) 416-6167
For respondent P.C.: Donna Aldea, Garden City (516) 745-1500

State of New York
Court of Appeals

To be argued Thursday, February 13, 2025

No. 26 Matter of LL 410 East 78th Street LLC v Division of Housing and Community Renewal

LL 410 East 78th Street LLC, the owner of an eponymous apartment building in Manhattan, removed apartment 1B from rent stabilization in 2002 based on state provisions for high rent decontrol. After its deregulation, the owner was no longer required to register the apartment with the Division of Housing and Community Renewal (DHCR) and it did not file annual registrations through 2015. But in 2016 and 2017, it filed registrations saying apartment 1B was "temporarily exempt" from rent stabilization because it was occupied by the building's superintendent. In 2019, the owner filed an application with DHCR to withdraw the 2016 and 2017 registrations, which it said were filed by mistake, and file new ones stating the apartment had been permanently exempt from rent stabilization since 2002.

DHCR's rent administrator denied the application, saying registration amendments may "correct ministerial issues such as a clerical error in the rent amount, misspelling of the tenant's name or an incorrect lease term," but "[a]mendments seeking to remove an apartment from rent stabilized status"are not permitted through the amendment process under Rent Stabilization Code (RSC) § 2528.3 (c). On administrative review, the agency upheld the decision.

The owner brought this suit to annual the determination as arbitrary and capricious, arguing that nothing in the text of the 2014 regulation distinguishes between substantive and ministerial issues. Section 2528.3 (c) states, "An owner seeking to file an amended registration statement" for a prior year "must file an application pursuant to section 2522.6 (b) and Part 2527 of this Title ... to establish the propriety of such amendment...."

Supreme Court dismissed the suit, saying DHCR rationally "found that the correction requested by the Petitioner was substantive rather than ministerial, and thus unavailable in the context of a registration amendment proceeding."

The Appellate Division, First Department affirmed, saying "subsequent amendments to earlier rent registrations, while there is not a rent-paying tenant in occupancy who would be put on notice of the changes, could detract from the legitimacy of the registrations. DHCR notes that, prior to a 2014 amendment, owners were permitted to freely amend the rent registrations retroactively. However, it contends that '[t]he number of such amendments was significant,' and the unverified 'inclusion of amendments in [its] rent registration database had the effect of corrupting the purpose of that database as a contemporaneously created history of rents." It said "DHCR's interpretation of the applicable [RSC] provisions was rational and reasonable...."

The owner argues that "DHCR has been unable to present a rational basis for its narrow interpretation of RSC § 2528.3(c) as limited to ' ministerial' or 'clerical' issues," "which is contrary to the plain language of the regulation and contrary to the stated intent of the regulation when it was promulgated. The DHCR ... stated that its goal was to 'safeguard the integrity of the information currently contained in the registration system.' If that is truly the DHCR's goal then the agency must allow landlords to correct prior mistaken registrations ... upon 'establish[ing] the propriety of such amendment.'"

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For respondent DHCR: Robert Ambaras, Manhattan (212) 872-0652

State of New York
Court of Appeals

To be argued Thursday, February 13, 2025

No. 27 Matter of Rosbaugh v Town of Lodi

Lewis and Lynne Rosbaugh, who have lived in a house they built on Crisfield Road in the Town of Lodi, Seneca County, since 1976, brought this suit against the Town in 2011 after it hired a tree services company to trim and remove trees from their property that the highway superintendent said posed a hazard to passing traffic. They sought damages for their lost and damaged trees under Real Property Actions and Proceedings Law (RPAPL) § 861. The parties agreed to submit their dispute to binding arbitration and, in May 2021, the arbitrator awarded the Rosbaughs a total of $149,372, which included treble damages of $145,047 for the trees.

Supreme Court confirmed the award, rejecting the Town's argument that the award of treble damages violated public policy by impermissibly imposing punitive damages on a municipality. It said RPAPL § 861(1) "permits a property owner to maintain an action 'for treble the stumpage value of the tree or timber or two hundred fifty dollars per tree, or both' against 'any person' who, 'without the consent of the owner thereof, cuts, removes, injures or destroys ...any underwood, tree or timber....'" Since "no showing of actual malice or a wanton, willful or reckless disregard of plaintiffs' rights is necessary to justify an award of treble damages under RPAPL 861(1), that portion of the arbitrator's award is not punitive in nature," the court said.

The Appellate Division, Fourth Department affirmed the treble damages award on a 3-2 vote. While "the State and its political subdivisions are not subject to punitive damages," it said, treble damages awarded under RPAPL § 861(1) "are not equivalent to punitive damages." The majority said "'stumpage value' is limited to only 'the current fair market value' of the merchantable lumber within a standing tree...; it does not include the intrinsic value of a tree in its natural state – such as its environmental, historical and aesthetic qualities – which can be substantially greater to a landowner than the mere marketable lumber value. Thus, it is not the landowner's total compensatory damages, which are measured by what the landowner actually lost, that are trebled under RPAPL 861(1). Rather, it is merely the fair market value of the merchantable timber that is trebled, which is only a component of the total compensatory damages to be awarded under the statute when the cutting and removal is without 'cause to believe the land was his or her own...."

The dissenters argued that "the arbitrator lacked authority to award treble damages against the Town under RPAPL 861(1). It is well settled that '[d]amages awarded for punitive purposes ... are not sensibly assessed against [a] governmental entity'" because "the persons who would bear the burden of punishment are taxpayers who have done nothing wrong." They said "the award of treble damages assessed against a municipality has a punitive purpose" because, under the statute, "'a trespasser's good faith belief in a legal right to harvest timber'" relieves them of liability for treble damages and because the legislative history "evinces an intent to 'provide for greater deterrence for the knowing offender while at the same time promote more diligence and care on the part of legitimate timber harvesters to prevent inadvertent trespass and timber theft.'"

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For respondent Rosbaughs: Michael J. Hutter, Albany (518) 720-6188

State of New York
Court of Appeals

To be argued Thursday, February 13, 2025

No. 17 Golobe v Mielnicki

When Dorothy Golobe died intestate in February 1992, she was survived by her two brothers, Yale Golobe, who had not been in touch with the family for years, and Zangwill Golobe, making them co-distributees of her estate. The estate included a mixed-use building at 265 West 30th Street in Manhattan. Zangwill's son, John Golobe, petitioned Surrogate's Court to be named administrator of Dorothy's estate and, believing that Yale had died before Dorothy, asserted that his father Zangwill was Dorothy's sole heir. His assertion was supported by testimony of a long-time family friend, who said Yale died in 1985. The court granted the petition and determined that Zangwill was Dorothy's sole heir. Zangwill renounced his interest in the estate, passing it on to his son John, who then deeded the building on West 30th to himself. John Golobe took physical possession of the premises in October 1992.

John sought to sell the building in 2018 and a title search brought to light that Yale did not die until 1993, 11 months after Dorothy, and his half-interest in the estate passed down through his heirs until ending up in the Emil Krause Revocable Trust. In 2019, John Golobe informed the Trustee of the trust of its one-half interest in the property, which would make them tenants in common, but negotiations on a settlement to clear title to the property failed in 2020, and Golobe brought this action against the Trustee for a judgment declaring Golobe the sole owner of the property by adverse possession.

Supreme Court granted summary judgment to John Golobe and declared him sole owner of the premises by adverse possession, saying he established that "he had actual possession of the property, that it was open and notorious, exclusive and continuous" for more than the 20 years required by RPAPL 541 for tenants in common. It dismissed the Trustee's counterclaims for fraud and breach of fiduciary duty as administrator of Dorothy's estate.

The Appellate Division, First Department affirmed, saying, "Plaintiff's claim of right arising from the administrator's deed" in 1992 "vested 20 years later, in 2012.... Under that claim of right, plaintiff constructed an open and notorious wood deck and other observable improvements on the property, encumbered the property with a construction loan which he later satisfied, leased portions of the mixed-use building to third parties solely in plaintiff's name, and there was no acknowledgment, by plaintiff or anyone else, of any other interest in the property for a period exceeding 20 years. This satisfies the hostility element, as '[a] rebuttable presumption of hostility arises from possession accompanied by the usual acts of ownership'...." It said the defendant "failed to establish plaintiff's scienter as to any misstatement or defendant's own reliance on any misstatement made to the Surrogate's Court" for its fraud counterclaim; and failed to show that the plaintiff had a fiduciary duty "to conduct an extraordinary search to confirm the death of a potential distributee where none is ordered by the Surrogate's Court...."

The Trustee argues that Golobe cannot prove the "hostility, open, and notorious elements of adverse possession" because it is "impossible for Plaintiff to prove that his possession of the Premises has been adverse to the interest of the Trust ... for the twenty (20) year statutory period ... because it is undisputed that Plaintiff himself (1) was unaware he owned the Premises as a co-tenant in common until after the statutory period passed, and (2) had known of the co-tenancy for fewer than two years when he commenced this Action. There is no precedent under New York law in which *both* co-tenants were unaware of their shared interest throughout the statutory period and then one co-tenant was awarded the entire property by adverse possession. The Trustee argues it was a breach of fiduciary duty for Golobe, as estate administrator, "not to conduct a proper heir search and investigation that would have revealed a succession of co-tenants in common with a one-half interest in real property; deed that real property to himself; and then bring an action to obtain sole ownership by adverse possession."

For appellant Mielnicki (Trustee): Leslie D. Corwin, Manhattan (212) 692-1000
For respondent John Golobe: John M. Brickman, Garden City (516) 829-6900