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CasePrepPlus

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FIRST DEPARTMENT

ADMINISTRATIVE LAW, MEDICAID, CONTRACT LAW, MUNICIPAL LAW, SOCIAL SERVICES LAW.

THE NYC DEPARTMENT OF SOCIAL SERVICES DOES NOT HAVE THE AUTHORITY TO RECOVER MEDICAID OVERPAYMENTS FROM PERSONAL CARE SERVICE PROVIDERS.

The First Department, in a full-fledged opinion by Justice Kahn. over a two-justice dissent, determined that The City of New York Human Resources Administration Department of Social Services (HRA) does not have the authority to audit and recover overpayments of funds provided pursuant to the Health Care Reform Act (HCRA) from personal care service providers such as petitioner People Care Incorporated d/b/a Assisted Care: "The determinative issue on this appeal is not whether the HCRA funds were denominated as 'Medicaid rates of payment' or 'Medicaid rate adjustments' in the statute and the MOU [memorandum of understanding]. Rather, the issue presented here is whether, under the terms of the 2001 contract, Public Health Law § 2807-v(1)(bb)(i) and the MOU superseded the provisions of that contract as to the auditing and recoupment of HCRA funds. * * * ... [N]either Public Health Law § 2807-v(1)(bb), as the governing statute, nor the MOU between DOH [NYS Department of Health] and HRA, entered into pursuant to that statute, contains any language delegating DOH's auditing and recoupment authority to HRA or any other agency. ***Matter of People Care Inc. v. City of New York Human Resources Admin.*, 2019 N.Y. Slip Op. 05756, First Dep 7-23-19**

FRAUD, CIVIL CONSPIRACY, CONTRACT LAW, CIVIL PROCEDURE.

ALTHOUGH THERE IS NO CAUSE OF ACTION FOR CIVIL CONSPIRACY IN NEW YORK, THE ELEMENTS OF CONSPIRACY, INCLUDING OVERT ACTS, WERE PROPERLY PLED AS PART OF THE FRAUD CAUSE OF ACTION.

The First Department, modifying Supreme Court, determined that, although there is no cause of action for civil conspiracy in New York, the conspiracy alleged here was validly pled as part of the fraud cause of action. The unjust enrichment cause of action should have been dismissed because there was no close relationship between the plaintiff and defendant. The complaint did not support the punitive damages claim because it did not allege defendants' actions were aimed at the public or showed moral turpitude. The permanent injunction cause of action was validly pled because the injury cannot be fully compensated by money damages. The action stemmed from a failed partnership to develop a cure for rare genetic blood disorders: "The complaint states a cause of action for fraud by alleging that Sloan-Kettering knowingly misrepresented or omitted a material fact for the purpose of inducing plaintiff to rely upon it, that plaintiff justifiably relied on the misrepresentation or omission, and that plaintiff sustained injury ... . '[C]ivil conspiracy is not recognized as an independent tort in this State' ... . Rather, the 'allegations in the complaint herein charging conspiracy are deemed part of the remaining causes of action to which they are relevant' ... . Here, the conspiracy charge remains as part of the fraud cause of action. ... '[L]iability for fraud may be premised on knowing participation in a scheme to defraud, even if that participation does not by itself suffice to constitute the fraud' ... . Allegations of conspiracy 'serve to enable a plaintiff to connect a defendant with the acts of his co-conspirators where without it he could not be implicated' ... . [P]laintiff sufficiently alleges overt acts ... . [T]he liability of a defendant as a conspirator for co-conspirators' wrongful acts 'does not necessarily depend upon his active participation in the particular overt acts' ... . Moreover, once a conspiracy is established, all defendants are liable for each other's acts in furtherance of the conspiracy ...". ***Errant Gene Therapeutics, LLC v. Sloan-Kettering Inst. for Cancer Research*, 2019 N.Y. Slip Op. 05754, First Dept 7-23-19**

SECOND DEPARTMENT

ANIMAL LAW, EVIDENCE.

THE FACT THAT THE DOG WAS A GUARD DOG AND THE NATURE OF THE ATTACK AND INJURIES RAISED A QUESTION OF FACT ABOUT DEFENDANTS' KNOWLEDGE OF THEIR DOG'S VICIOUS PROPENSITIES IN THIS DOG BITE CASE.

The Second Department determined the evidence of defendants' dog's vicious propensities was sufficient to warrant denial of defendants' motion for summary judgment in this dog bite case: "... [T]he defendants met their prima facie burden of demonstrating their entitlement to judgment as a matter of law dismissing the complaint insofar as asserted on behalf of

I.A. through affidavits which demonstrated that the defendants were unaware of any incident where the dog bit any person or animal, or acted aggressively, viciously, or ferociously, or attacked, harmed, or threatened to harm any person or animal ... . In opposition, the plaintiffs submitted evidence demonstrating that the dog was kept, at least in part, as a guard dog, that the dog, unprovoked, bit I.A. on the face and would not let go until another boy pried open the dog's mouth, and that I.A. suffered multiple severe lacerations to his face which required emergency surgery and left him with multiple scars. While the hospital records submitted by the plaintiffs were uncertified (see CPLR 4518[c]), hearsay evidence may be considered in opposition to a motion for summary judgment where, as here, it was not the only evidence upon which opposition to the motion was predicated ... . [T]he evidence was sufficient to raise a triable issue of fact as to whether the defendants knew or should have known that their dog had vicious propensities ...". ***I.A. v. Mejia*, 2019 N.Y. Slip Op. 05757, Second Dept 7-24-19**

CIVIL PROCEDURE.

AN ORDER REQUIRING COMPLIANCE WITH DISCOVERY DEMANDS WHICH WAS NOT SERVED ON THE DEFENDANT BY THE PLAINTIFF IS NOT ENFORCEABLE.

The Second Department, reversing Supreme Court, determined an order that was not served on the defendant by the plaintiff, here an order striking the answer if discovery demands were not complied with by a specified date, was not enforceable: "... [T]he plaintiff, as the successful moving party given that the Supreme Court conditionally granted that branch of the prior motion which was to strike the defendant's answer, was required to serve the May 2016 order on the defendant for that order to be enforceable against the defendant with respect to its answer being stricken in the event that it failed to provide discovery responses by June 17, 2016 ... . The plaintiff's contention that since the May 2016 order did not specify that the plaintiff had to serve a copy of that order with notice of entry upon the defendant, the plaintiff did not have to do so before that order was enforceable against the defendant, is without merit (see CPLR 2220). Since the defendant did not have notice of the May 2016 order, its failure to provide discovery responses by June 17, 2016, was not willful." ***Wolf Props. Assoc., L.P. v. Castle Restoration, LLC*, 2019 N.Y. Slip Op. 05808, Second Dept 7-24-19**

CIVIL PROCEDURE, FORECLOSURE.

PLAINTIFF BANK IN THIS FORECLOSURE PROCEEDING SHOULD HAVE BEEN GRANTED AN EXTENSION OF TIME TO EFFECT SERVICE FOR GOOD CAUSE SHOWN AND IN THE INTEREST OF JUSTICE.

The Second Department, reversing Supreme Court, determined plaintiff bank in this foreclosure action should have been granted more time to serve the defendant by publication: "Pursuant to CPLR 306-b, a court may, in the exercise of discretion, grant a motion for an extension of time within which to effect service upon 'good cause shown or in the interest of justice' ... . 'To establish good cause, a plaintiff must demonstrate reasonable diligence in attempting service. Good cause will not exist where a plaintiff fails to make any effort at service, or fails to make at least a reasonably diligent effort at service. By contrast, good cause may be found to exist where the plaintiff's failure to timely serve process is a result of circumstances beyond the plaintiff's control' ... . If a plaintiff fails to establish good cause for an extension, courts must consider whether an extension is warranted in the interest of justice ... . A showing of reasonably diligent efforts at service is not required, but courts may consider diligence along with other factors, including 'the expiration of the statute of limitations, the meritorious nature of the action, the length of delay in service, the promptness of a request by the plaintiff for an extension, and prejudice to the defendant' ...". ***Wilmington Sav. Fund Socy., FSB v. James*, 2019 N.Y. Slip Op. 05807, Second Dept 7-24-19**

CRIMINAL LAW, VEHICLE AND TRAFFIC LAW.

CONVICTIONS OF INCLUSORY CONCURRENT COUNTS OF AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE FIRST DEGREE VACATED.

The Second Department determined vacated defendant's conviction of two inclusory concurrent counts of the court alleging aggravated operation of a operation of a motor vehicle in the first degree: "... [T]he counts alleging driving while intoxicated as a felony in violation of Vehicle and Traffic Law § 1192(3) and aggravated unlicensed operation of a motor vehicle in the second degree were inclusory concurrent counts of the count alleging aggravated unlicensed operation of a motor vehicle in the first degree (see CPL 300.30[4]; 300.40[3][b]; Vehicle and Traffic Law §§ 511[2][a][ii]; [3][a][i]; 1192). Accordingly, the defendant's convictions of driving while intoxicated as a felony in violation of Vehicle and Traffic Law § 1192(3), and aggravated unlicensed operation of a motor vehicle in the second degree and the sentences imposed thereon must be vacated, and those counts of the indictment dismissed. Under the circumstances of this case, the defendant's contention that the mandatory surcharge and crime victim assistance fee must be reduced is more appropriately raised before the Supreme Court and, accordingly, we remit the matter to the Supreme Court, Nassau County, to consider this issue ...". ***People v. Delcid*, 2019 N.Y. Slip Op. 05788, Second Dept 7-24-19**

INSURANCE LAW, CONTRACT LAW.

INSURER DID NOT TIMELY NOTIFY THE ADDITIONAL INSUREDS OF THE DISCLAIMER OF COVERAGE, INSURER MUST DEFEND AND INDEMNIFY THE ADDITIONAL INSUREDS IN THIS CONSTRUCTION ACCIDENT CASE.

The Second Department determined defendant insurer (Utica) failed to timely disclaim coverage of the additional insureds and was therefore obligated to defend and indemnify the additional insureds in this construction accident case: "[T]he plaintiff AVR-Powell C Development Corp. (hereinafter AVR-Powell), the owner of and general contractor at a construction site located on Lax Avenue in College Point, entered into a written agreement with nonparty Vinny Construction Corp. (hereinafter Vinny Construction), which was to perform masonry work in connection with the construction project. Pursuant to the agreement, Vinny Construction was required to procure and maintain a commercial general liability insurance policy naming AVR-Powell and the plaintiff Powell Cove Associates, LLC (hereinafter Powell Cove), as additional insureds. The defendant, Utica First Insurance Company (hereinafter Utica), issued a policy to Vinny Construction which included a 'Blanket Additional Insured' endorsement specifying that an '[i]nsured also includes . . . [a]ny person or organization whom you are required to name as an additional insured on this policy under a written contract or written agreement.' ... Pursuant to Insurance Law § 3420 (d), an insurer is required to provide its insured and any other claimant with timely written notice of its disclaimer or denial of coverage on the basis of a policy exclusion, and will be estopped from disclaiming liability or denying coverage if it fails to do so ... . Furthermore, where, as here, 'a primary insurer . . . tenders a claim for a defense and indemnification to an insurer . . . which issued a certificate of insurance to the parties, indicating that they are additional insureds, that insurer must comply with the disclaimer requirements of Insurance Law § 3420(d)(2) by providing written notice of disclaimer of coverage to the additional insureds' ... . The plaintiffs' submissions showed that Utica did not provide a disclaimer of coverage directly to its additional insureds until March 20, 2015, approximately six years after the first demand for coverage from Utica." ***AVR-Powell C Dev. Corp. v. Utica First Ins. Co.*, 2019 N.Y. Slip Op. 05758, Second Dept 7-24-19**

LABOR LAW-CONSTRUCTION LAW, PERSONAL INJURY.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS SCAFFOLD-COLLAPSE CASE SHOULD HAVE BEEN GRANTED IN THIS LABOR LAW § 240(1) ACTION.

The Second Department, reversing Supreme Court, determined that plaintiff's motion for summary judgment in this scaffold-collapse, Labor Law § 240(1) action should have been granted. The defendant did not raise a question of fact whether plaintiff's omission (failure to use clips) was sole proximate cause of the movement of the scaffold and the fall: "... [T]he collapse of the scaffold, for no apparent reason, gave rise to 'a prima facie showing that the statute was violated and that the violation was a proximate cause of the worker's injuries' ... . [Defendant] St. Gerard argued that the plaintiff failed to utilize clips to secure the working platform to the frame of the scaffold, and that this conduct was the sole proximate cause of the accident. However, St. Gerard's evidence was insufficient to raise a triable issue of fact as to whether the plaintiff failed to use clips and whether any failure to use clips constituted the sole proximate cause of the accident. In this regard, St. Gerard relied solely on the affidavit of the plaintiff's supervisor, Danny Simile, dated nearly 2½ years after the accident, in which Simile averred that '[t]here were no clips at the accident location.' Simile's affidavit did not explain whether, when, or in what manner he had undertaken a search for clips. Significantly, the absence of clips was not noted in any of three incident reports prepared by Simile shortly after the accident. Additionally, Simile averred, in mere conclusory fashion, that had clips been used to secure the working platform, 'the working platform would be secure and it would not move, slide out or fall.' This bare assertion was insufficient to raise a triable issue of fact as to whether any absence of clips was the sole proximate cause of the accident. Indeed, Simile also averred that if the platform had been 'properly seated' or decked' it would be 'secure' and would not 'move, slide out or fall.' There was no evidence presented that the platform had been improperly 'seated' or 'decked.' " ***Cruz v. Roman Catholic Church of St. Gerard Magella in Borough of Queens in the City of N.Y.*, 2019 N.Y. Slip Op. 05763,**

MUNICIPAL LAW, ADMINISTRATIVE LAW, CONSTITUTIONAL LAW.

THE COUNTY LEGISLATURE DID NOT HAVE THE AUTHORITY TO ADOPT A RESOLUTION REQUIRING THE DISCLOSURE OF AN ASSISTANT DISTRICT ATTORNEY'S FINANCIAL INFORMATION AFTER THE COUNTY ETHICS COMMITTEE DENIED THE DISCLOSURE-REQUEST MADE BY A NEWSPAPER; THE LEGISLATURE USURPED THE POWER OF A REVIEWING COURT.

The Second Department annulled a resolution adopted by the Suffolk County Legislature specifically allowing the publication of the financial disclosure information provided to the County Ethics Board by an assistant district attorney. A newspaper initially made the request of the Ethics Board. The request was denied and the newspaper did not seek review of the denial. The Legislature, in direct response to the denial of the newspaper's request, took it upon itself to adopt the resolution allowing the information to be made public. The Second Department held that the Legislature did not have the authority to essentially act as a reviewing court by passing a resolution addressed to a specific circumstance: "The County Legislature was established to determine County policies and to exercise other functions as may be assigned to it by law ... .

The County Legislature exercises the County's powers of local legislation and appropriations ... . The County Legislature has broad powers to enact local legislation. However, it is fundamental that legislative power does not extend so far as to apply the rules of law to particular cases, as the power to adjudicate the applicability of the law to individual situations is a judicial power ... . A legislative body may not usurp a court's power to interpret and apply the law to the particular circumstances before it ... . Thus, it was beyond the authority of the County Legislature to determine that the Ethics Board's decision to withhold the petitioner's financial disclosure statements from public inspection was incorrect and to take it upon itself to obtain the statements and provide for their public release. Put another way, the County Legislature wrongly placed itself in the position of a reviewing court. This is particularly disturbing where the purportedly aggrieved newspaper took no steps to vindicate its rights to disclosure of the financial statements by the Ethics Board." ***Matter of Prudenti v. Suffolk County Legislature*, 2019 N.Y. Slip Op. 05779, Second Dept 7-24-19**

MUNICIPAL LAW, ADMINISTRATIVE LAW, VEHICLE AND TRAFFIC LAW.

COUNTY'S MOTION FOR SUMMARY JUDGMENT IN ITS ACTION FOR SEIZURE AND FORFEITURE OF DEFENDANT'S VEHICLE AFTER A DWI CONVICTION SHOULD NOT HAVE BEEN GRANTED, THE COUNTY DID NOT COMPLY WITH THE NOTICE REQUIREMENTS OF THE COUNTY CODE.

The Second Department, reversing Supreme Court, determined the county's motion for summary judgment in its action to seize defendant's vehicle pursuant to the Nassau County Administrative Code after a DWI conviction (Vehicle and Traffic Law § 1192) should not have been granted. The county did not comply with the notice requirements of the code: ".... [T]he complaint, as amplified by the plaintiff's submissions establishing that the defendant pleaded guilty to a violation of Vehicle and Traffic Law § 1192, stated a cause of action for civil forfeiture of the vehicle pursuant to Nassau County Administrative Code § 8-7.0(g)(4) ... . Accordingly, we agree with the Supreme Court's denial of the defendant's motion pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against her. However, in opposition to the plaintiff's showing of its prima facie entitlement to judgment as a matter of law, the defendant raised a triable issue of fact by adducing evidence demonstrating that, while she was given a copy of the notice of seizure in person, the plaintiff failed to comply with the requirement of Nassau County Administrative Code § 8-7.0(g)(4)(a) that she also be served with the notice of seizure by certified mail, return receipt requested ... . Accordingly, the court should have denied the plaintiff's cross motion for summary judgment awarding civil forfeiture of the vehicle." ***County of Nassau v. Urban*, 2019 N.Y. Slip Op. 05762, Second Dept 7-24-19**

MUNICIPAL LAW, JUDGES, CIVIL PROCEDURE, APPEALS, NEGLIGENCE.

JUDGE SHOULD NOT HAVE, SUA SPONTE, GRANTED RELIEF NOT REQUESTED BY A PARTY, HERE THE ABILITY FOR UNLIMITED AMENDMENT OF A NOTICE OF CLAIM WHICH HAD NOT YET BEEN FILED; SUA SPONTE ORDERS ARE NOT APPEALABLE; LEAVE TO APPEAL GRANTED AS AN EXERCISE OF DISCRETION.

The Second Department, reversing Supreme Court, determined that Supreme Court should not, sua sponte, have granted relief which was not requested by a party. Petitioner allegedly was injured trying to board a subway train. Before filing a notice of claim petitioner commenced a CPLR 3102 (c) proceeding to obtain discovery before starting the action. The court granted the petition and, sua sponte, gave the petitioner permission to amend the notice of claim, which had not yet been filed, within 30 days of filing the note of issue. The Second Department noted that a sua sponte order is not appealable and exercised its discretion to grant leave to appeal (CPLR 5701[a][2]; [c]): "Turning to the merits, '[p]ursuant to CPLR 2214(a), an order to show cause must state the relief demanded and the grounds therefor' . 'However, the court may grant relief that is warranted by the... facts plainly appearing on the papers on both sides, if the relief granted is not too dramatically unlike the relief sought, the proof offered supports it, and there is no prejudice to any party' ... . Here, the Supreme Court strayed from this principle when, in addition to granting, in effect, that branch of the petition which was for an order preserving material related to the accident, it also sua sponte granted a nearly unlimited prospective right to the petitioner to amend a notice of claim that had not yet been served. This sua sponte relief was dramatically different from the pre-action discovery that was the subject of the petition ... . Furthermore, the papers before the court did not support the award of such additional relief, since the absence of a notice of claim rendered it impossible to determine whether the future notice of claim or any amendments thereto would be in compliance with General Municipal Law § 50-e. We also agree with the appellants that they were prejudiced insofar as the court set a permissive timeline for amending the notice of claim that potentially could be, inter alia, beyond the statute of limitations and after the completion of discovery." ***Matter of Velez v. City of New York*, 2019 N.Y. Slip Op. 05781, Second Dept 7-24-19**

PERSONAL INJURY, MUNICIPAL LAW.

QUESTION OF FACT WHETHER THE BUS STOPPED IN AN UNUSUAL AND VIOLENT WAY IN THIS COMMON CARRIER INJURY CASE.

The Second Department, reversing Supreme Court, determined there was a question of fact about whether the bus on which plaintiff was a passenger stopped in an unusual and violent way, injuring her: "To prevail on a cause of action alleging that

a common carrier was negligent in stopping a bus, a plaintiff must prove that the stop was unusual and violent, rather than merely one of the sort of 'jerks and jolts commonly experienced in city bus travel' ... . Moreover, a plaintiff may not satisfy that burden of proof merely by characterizing the stop as unusual and violent ... . 'However, in seeking summary judgment dismissing such a cause of action, common carriers have the burden of establishing, prima facie, that the stop was not unusual and violent' ... . According to the plaintiff's testimony, shortly after she paid her fare, the bus 'took off' and then came to a quick stop, causing her to fall. According to the testimony of the bus driver, he was operating the bus at about 15 miles per hour when a vehicle cut in front of him, causing him to apply the brakes and stop the bus. Under the circumstances, a triable issue of fact exists as to whether the stop of the bus was unusual and violent ...". ***Brown v. New York City Tr. Auth.*, 2019 N.Y. Slip Op. 05759, Second Dept 7-24-19**

PROPERTY DAMAGE, EVIDENCE, CIVIL PROCEDURE.

SPOLIATION WARRANTED STRIKING THE COMPLAINT.

The Second Department, reversing Supreme Court, determined that the destruction of plaintiff's truck, which was allegedly struck by defendant's truck, warranted striking the complaint: "... [O]n their motion pursuant to CPLR 3126 to strike the complaint, the defendants sustained their burden of establishing that the plaintiff was obligated to preserve the truck at the time it was purportedly 'seized and disposed' of, that the truck had been seized and disposed of before the defendants had an opportunity to inspect it, and that the truck was relevant to the litigation ... . Furthermore, the defendants demonstrated that their ability to prove their defense had been significantly, if not fatally, compromised by the loss of the truck. Under the circumstances presented, the sanction of striking the complaint was appropriate ...". ***Delmur, Inc. v. School Constr. Auth.*, 2019 N.Y. Slip Op. 05764, Second Dept 7-24-19**

THIRD DEPARTMENT

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENDANT SUBMITTED EVIDENCE RAISING CONCERNS ABOUT WHETHER HIS GUILTY PLEA WAS ENTERED VOLUNTARILY AND WHETHER HE RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL, DEFENDANT'S MOTION TO VACATE THE JUDGMENT OF CONVICTION SHOULD NOT HAVE BEEN DENIED WITHOUT A HEARING.

The Third Department, reversing County Court, determined defendant's motion to vacate his conviction by guilty plea should not have been denied without a hearing. Defendant presented DNA evidence of a genetic inability to metabolize certain medications he was taking to address his mental health. In addition, defendant raised issues concerning ineffective assistance of counsel. Defense counsel, who was aware of defendant's mental health issues, had sent a letter to the court requesting to withdraw as counsel immediately after defendant told the court he felt coerced into pleading guilty. Three days later defendant entered a guilty plea saying he was not coerced. The court noted that the DNA evidence submitted by the defendant was not the kind of DNA evidence (i.e., demonstrating innocence) which can be used as the basis of a motion to vacate a judgment of conviction: "Given the evidence of defendant's metabolic deficiency and the ongoing efforts to chemically treat his mental health issues before and after his guilty plea, further development of the record is required to determine whether defendant's mental capacity was impaired at the time of his plea and, if so, whether he was able to knowingly, voluntarily and intelligently plead guilty to attempted murder in the second degree ... . [D]efense counsel stated to defendant on multiple occasions that he had 'absolutely no defense' to the charged crimes. In our view, defendant's submissions demonstrate the need for further development of the record regarding off-the-record conversations that took place between defendant and defense counsel regarding defendant's case and possible defenses, ... so as to discern whether defendant knowingly, voluntarily and intelligently waived any potential defenses, including an involuntary intoxication defense or the defense of not responsible by reason of mental disease or defect ... . [D]efense counsel stated, among other things, that, should defendant refuse to plead guilty, he would no longer agree to represent defendant and, in attempting to dissuade defendant from proceeding to trial, invoked the potential disgrace to his family." ***People v. Adamo*, 2019 N.Y. Slip Op. 05813, Third Dept 7-25-19**

DEFAMATION, SOCIAL SERVICES LAW, IMMUNITY.

DOCTOR'S REPORTING PLAINTIFFS' CHILD'S INJURIES TO CHILD PROTECTIVE SERVICES IS PROTECTED BY THE QUALIFIED IMMUNITY PROVISION IN THE SOCIAL SERVICES LAW, PLAINTIFFS' DEFAMATION ACTION SHOULD HAVE BEEN DISMISSED.

The Third Department, reversing Supreme Court, determined defendant doctor's (Bludorn's) and hospital's motion for summary judgment in this defamation case should have been granted. The injury to plaintiffs' child had been reported to Child Protective Services which ultimately determined the report to be unfounded: "Social Services Law § 413 requires certain individuals, including physicians like Bludorn, to make a child protective report whenever 'they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child.'

Where these mandated reporters discharge their reporting duties in good faith, they are accorded qualified immunity from civil liability (see Social Services Law § 419). A mandated reporter's good faith 'shall be presumed, provided [that] such person . . . was acting in the discharge of [his or her] duties and within the scope of [his or her] employment, and . . . such liability did not result from the willful misconduct or gross negligence of such person' ... . 'The reporting requirements [that] trigger the qualified immunity provision in Social Services Law § 419 are not predicated upon actual or conclusive proof of abuse or maltreatment. Rather, immunity attaches when there is reasonable cause to suspect that the infant might have been abused and when the party so reporting has acted in good faith in discharging the obligations and duties imposed by the statute' ... . The child's medical records and the social worker's written assessment confirmed that plaintiffs had expressed uncertainty as to what had caused the child's skull fracture and that they had offered two different possible explanations, both of which involved incidents that had occurred several days before they sought medical treatment for the child. Bludorn averred that he made the child protective report in good faith and that, in so reporting, he had no intent other than discharging his statutory duties under Social Services Law § 413 and protecting the interests of his patient." ***Hunter v. Lourdes Hosp.*, 2019 N.Y. Slip Op. 05831, Third Dept 7-25-19**

UNEMPLOYMENT INSURANCE, EMPLOYMENT LAW.

CLAIMANT'S RECEIPT OF STRIKE BENEFITS DID NOT DISQUALIFY HIM FROM RECEIVING UNEMPLOYMENT INSURANCE BENEFITS.

The Third Department determined claimant was receiving strike benefits which did not disqualify him from receiving unemployment insurance benefits: "... [I]t is well settled that 'whether a claimant is totally unemployed for purposes of receiving unemployment insurance benefits is a factual issue for the Board and its determination will be upheld if supported by substantial evidence' ... . The receipt of remuneration has been found to be indicative of a lack of total unemployment ... . However, '[u]nder 12 NYCRR 490.2 (b), strike benefits paid by labor unions to their members are not considered remuneration within the meaning of the [u]nemployment [i]nsurance [l]aw so long as the payments are not conditioned upon the rendering of services to the union' ... . Thus, the dispositive issue is whether the monies received by claimants from the IBT and Local 812 constituted strike benefits under 12 NYCRR 490.2 (b)." ***Matter of Bebbino (Clare Rose Inc.--Commissioner of Labor)*, 2019 N.Y. Slip Op. 05818, Third Dept 7-25-19**

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