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CasePrepPlus

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Summarizing recent significant New York appellate cases

Here's what has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

CONSTITUTIONAL LAW, CPLR ARTICLE 78

***Matter of Hogue v Board of Educ. of the City Sch. Dist. of the City of N.Y.*, 2023 NY Slip Op 04927 (1st Dept Oct. 3, 2023)**

Issue: Was it arbitrary for the City of New York Reasonable Accommodation Appeals Panel to deny the petitioner's request for a religious exemption from the New York City Department of Education's COVID-19 vaccine requirement?

Facts: The Panel denied the petitioner's request for a religious exemption from the COVID-19 vaccine mandate for employment with the City DOE because it determined that the petitioner's professed religious beliefs were not sincerely held, and it would have caused an undue burden on the City DOE.

Holding: The First Department affirmed dismissal of the petitioner's Article 78 proceeding, holding that the petitioner failed to demonstrate that the Panel's determination was arbitrary. The Court reasoned, "[p]etitioner had no demonstrated history of refusing medications or vaccines, he admitted to receiving a certain vaccination required for him to attend college, and he refused to answer a question about whether he had avoided any other vaccines or medications based on the same objection he raised to the COVID-19 vaccines." Notably, the Court held, "while not dispositive on its own, the body of petitioner's initial application appeared to be entirely copied from an online sample application, including material that was supposed to be customized but had been left in an unfinished form, arguably casting doubt on the sincerity of petitioner's purported expression of his beliefs." In addition, the City DOE's unsigned Position Statement explained in detail the undue burden that the proposed reasonable accommodation would place on the DOE. Taken together, the Court held that was sufficient to establish that the Panel's determination was not arbitrary.

SECOND DEPARTMENT

FAMILY LAW, SANCTIONS

***Hoffman v Hoffman*, 2023 NY Slip Op 04959 (2d Dept Oct. 4, 2023)**

Issue: When is it a proper exercise of discretion for a court to sanction a parent with jail time for failure to comply with a child support order?

Facts: After a trial in which the court had ordered the father to pay child support obligations, the mother moved to hold the father in contempt for willfully failing to comply with the order. The court scheduled a virtual hearing on the motion, and issued a warrant for the father's arrest and set bail at $40,000 when he failed to appear at the appointed time. The father eventually appeared 20 minutes late and requested that the court appoint an attorney for him because he could not afford to retain an attorney to represent him. The court denied the father's request, but stayed enforcement of the warrant for one week to allow the father to pay the $40,000 bail. When the father couldn't pay the $40,000 bail, but attended the court appearance one week later, the court issued an order of commitment sending the father to the county jail until the next court appearance and keeping bail at $40,000.

Holding: The Second Department, in what can only be called a stern rebuke of the trial court's handling of the matter, reversed the order of commitment. The Court held that "the respondent in a civil contempt proceeding who faces the possibility of the imposition of a term of imprisonment, however short, has the right to the assignment of counsel upon a finding of indigence" and so does "a parent . . . in a proceeding in which it is alleged that he or she has willfully failed to comply with a prior child support order." Because the father asked for the assignment of counsel and asserted indigency, it was incumbent on the trial court to determine whether the father qualified for the assignment of counsel, which it failed to do prior to issuing the order of commitment. Indeed, the Second Department cautioned, "it was an improvident exercise of discretion for the Supreme Court to decline to vacate the warrant issued for the defendant's arrest after his eventual appearance at the conference on May 9, 2022, and his subsequent appearance at the conference on May 16, 2022. That the court issued a warrant and set bail at $40,000 in response to what was, in effect, a late appearance is particularly egregious where the potentially indigent defendant claimed that he did not have the means to pay his court-ordered child support."

MORTGAGE FORECLOSURE, CIVIL PROCEDURE

***UGH Mazing, LLC v 21st Mtge. Corp.*, 2023 NY Slip Op 04986 (2d Dept Oct. 4, 2023)**

Issue: May a mortgage holder be equitably estopped from pursuing recovery on an outstanding mortgage when the holder previously accelerated the entire amount owed?

Facts: In 2008, a borrower executed a note in the amount of $409,500 in favor of Wells Fargo Bank for a property in Queens. In 2010, Wells Fargo commenced a foreclosure action against the borrower and, in the complaint, elected to accelerate the debt. In 2019, the Second Department dismissed that action for lack of personal jurisdiction over the borrower. Two days after the Second Department's decision, the borrower sold the property to the plaintiff, and the plaintiff one month after that commenced this action to cancel the mortgage pursuant to RPAPL 1501(4).

Holding: The Second Department held that "[t]he entire mortgage debt will be deemed to have been accelerated by . . . the commencement of a mortgage foreclosure action in which the complaint seeks payment of the full outstanding loan balance" and doing so starts the 6-year statute of limitations to recover on the debt. Although the mortgage holder argued that the prior Wells Fargo foreclosure action was not a valid acceleration because the prior complaint was "unverified and counsel lacked authority to accelerate the debt," the Second Department held that that "argument is precluded by an amendment to CPLR 213(4) enacted under the Foreclosure Abuse Prevention Act (L 2022, ch 821, § 8 [eff. Dec. 30, 2022])," which estops a mortgage holder from making that claim unless the court in the prior action expressly determines that the debt was not validly accelerated. Since the prior action was dismissed on personal jurisdiction grounds, without any such determination by the court, and more than 6 years had run since the debt was accelerated, the Court held that mortgage holder was estopped from pursuing recovery and the mortgage should be canceled.

THIRD DEPARTMENT

CRIMINAL LAW, CONSTITUTIONAL RIGHTS

***People v O'Day*, 2023 NY Slip Op 05011 (3d Dept Oct. 5, 2023)**

Issue: Was the defendant denied a speedy trial?

Facts: The defendant was charged, on March 27, 2017, with two misdemeanor DWIs and a felony aggravated unlicensed operation of a motor vehicle in the first degree. Although the defendant executed a speedy trial waiver on July 13, 2017 in connection with a plea agreement, he thereafter rejected the agreement on September 21, 2017. Defendant's counsel then withdrew and the defendant was without counsel until October 31, 2017, when an assistant public defender accepted the assignment. The People eventually declared their readiness for trial on May 9, 2018.

Holding: The Third Department held that "[t]he period of time between March 27, 2017 and the People's declaration of readiness on May 9, 2018 totals 407 days," well more than the 6 months permitted under CPL 30.30(1)(a), and thus the Court was required to decide "whether any periods within this time frame fall within the statutory exclusions set forth in CPL 30.30(4)." First, "Defendant has conceded that the period between March 27, 2017 and the next court appearance on April 18, 2017 (22 days) was excludable." Although the defendant's request for a "supporting deposition" didn't fit neatly within the statutory exclusion for a request for a bill of particulars, even including that period for the request and response, the Court held, would only exclude 13 days. Next, the Court excluded 28 days for the defendant's request for an adjournment to consider a plea offer. Then the Court excluded "the period between defendant's speedy trial waiver on July 13, 2017 and rejection of the plea offer on September 21, 2017 (70 days)." "CPL 30.30(4)(f) excludes the period during which the defendant is without counsel through no fault of the court," and that applied here for the period between when the defendant's counsel withdrew and the assistant public defender took the case (40 days). Finally, the Court excluded the "period between December 12, 2017 and January 23, 2018 (42 days) . . . because defense counsel expressly consented to this continuance." Even with a total of 215 days excluded, 192 days were still chargeable to the People, more than the six months permitted under CPL 30.30. Thus, the Court held, defense counsel's failure to make a speedy trial motion constituted ineffective assistance of counsel, and the defendant's conviction was reversed.

FOURTH DEPARTMENT

EMINENT DOMAIN

***Matter of Penney Prop. Sub Holdings LLC v Town of Amherst*, 2023 NY Slip Op 05058 (4th Dept Oct. 6, 2023)**

Issue: What notice is required before a municipality takes real property by eminent domain and what qualifies as a public purpose?

Facts: The Town sought to condemn 62 acres of land, predominantly consisting of the Boulevard Mall and its surrounding parking area, which included the petitioner's 2.3-acre property on which the petitioner had leased space for an operating JC Penney store. The petitioner challenged the condemnation in an original proceeding commenced in the Appellate Division under EDPL 207, arguing that the

Town failed to provide proper notice of the condemnation hearing and that the taking was not for a public purpose and was excessive because its property was fully functional, not blighted.

Holding: The Fourth Department confirmed the Town's condemnation, holding that the Town's service of the notice of the condemnation hearing via certified mail, return receipt requested satisfied the EDPL service requirements and procedural due process, even though the notice was not actually received until after the hearing was held. The record lacked any evidence that the Town was aware that its attempt at service had failed to provide actual notice, and thus it was not required to take any additional steps to ensure the petitioner received the notice. The Fourth Department also rejected the petitioner's argument that the condemnation would not serve a public use, benefit, or purpose. Noting that what may qualify as a public purpose is broadly defined, the Court held that "redevelopment and urban renewal are valid public uses, as is removal of urban blight" and, here, the condemnation of the petitioner's property would "allow the Town to hold complete title to the Mall property and will thus foster the redevelopment of the area . . . in order to eliminate blighting influences." The Court held that including the petitioner's property, which remained productive and was not considered blighted, was proper because the Town could rationally "condemn an unblighted parcel as part of an overall plan to improve a blighted area."

CONSTITUTIONAL LAW, CIVIL PROCEDURE

***United Church of Friendship v New York Dist. of Assemblies of God*, 2023 NY Slip Op 05090 (4th Dept Oct. 6, 2023)**

Issue: **When may a court adjudicate a dispute between two religious assemblies without running afoul of the First Amendment?**

Facts: UCF was created by the merger of two different religious assemblies, in which it assumed ownership over all of the assemblies' real and personal property. In 2018, UCF encountered financial difficulties, and requested that the defendant provide financial assistance. The defendant offered to place UCF under "supervision," which meant that the defendant's representatives would serve as the new board and the existing UCF board would serve as a non-voting advisory board. Problems arose thereafter, and UCF brought a declaratory judgment action asking the court to decide which board controlled.

Holding: The Fourth Department held that "[t]he First Amendment forbids civil courts from interfering in or determining religious disputes, because there is substantial danger that the state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs . . . Civil disputes involving religious parties or institutions may be adjudicated without offending the First Amendment as long as neutral principles of law are the basis for their resolution." Here, since there was no dispute about the ownership of UCF's real or personal property under the governing documents, the Court held that UCF's claims were nonjusticiable, because "none of the relief requested by plaintiff in its complaint may be decided by a court based on neutral principles of law." Instead, UCF's claims only involved the dispute about church governance "is an ecclesiastical matter . . . in which civil courts should not intervene."

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