CasePrepPlus

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Summarizing recent significant New York appellate cases

Let's take a look what has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

ELECTION LAW, REDISTRICTING

***Matter of Hoffmann v New York State Ind. Redistricting Commn.*, 2023 NY Slip Op 06344 (Ct App Dec. 12, 2023)**

Issue: When the courts are compelled to create redistricting maps to remedy a constitutional violation, are those maps effective for all elections until the next Census or may the Independent Redistricting Commission be compelled to create new maps mid-way through the decade?

Facts: Following the Court of Appeals' decision in ***Harkenrider v Hochul* (38 NY3d 494 [2022])**, in which the Court struck down New York's congressional and state senate redistricting maps because the IRC and the legislature failed to follow the redistricting procedure commanded by the State Constitution, the courts, with the assistance of a special master, adopted new maps for the 2022 election cycle. A number of Democratic voters then brought this case to compel the IRC to restart the constitutionally mandated redistricting process and do what they failed to do the first time around. The Republicans opposed, arguing that the maps fashioned by the courts must stay in place until the next census in 2030.

Holding: The Court of Appeals held that the language of "the 2014 [redistricting] amendments to the Constitution places express limitations on court-drawn maps. Following the enactment of the 2014 amendments, New York courts no longer have the blanket authority to create decade-long redistricting plans. Instead, the Constitution now limits court-drawn redistricting to the minimum required to remedy a violation of law." That, the Court held, meant that the special master's maps for the 2022 election cycle remained valid only for the 2022 elections, and the IRC must now complete its constitutional obligation to prepare and send to the legislature new congressional and state senate maps that will remain in place until the 2030 census starts the independent redistricting process all over again. Indeed, the Court held, "[t]he People of New York are entitled to the process set out in the Constitution, for which they voted. That process may include a judicially directed creation of districts that is limited expressly to the "extent" that the court is "required" to do so (NY Const, art III, § 4 [e]), but not at the expense of the IRC process when time exists to follow that process. There is no good argument as to why New Yorkers must be prohibited from ordering the creation of legislative districts through the process the Constitution requires, adopted by the direct vote of the People."

FIRST DEPARTMENT

ADMINISTRATIVE LAW

***Matter of Madison Sq. Garden Entertainment Corp. v New York State Liq. Auth.*, 2023 NY Slip Op 06090 (1st Dept Nov. 28, 2023)**

Issue: Did the State Liquor Authority exceed its authority in revoking Madison Square Garden Entertainment Group's special on-premises licenses on the grounds that a policy excluding certain attorneys bringing actions against any of their affiliates renders the venues no longer open to the general public?

Facts: Using facial recognition technology, the Madison Square Garden Entertainment Group forbid all lawyers in all law firms representing clients engaged in any litigation against the Company from entering the Company's venues in New York, including the use of any season tickets. When the SLA learned of the policy, it investigated whether the Company was violating its on-premises alcohol license by no longer being open to the general public and instituted administrative proceedings against the Company. The Company then sued to prohibit the SLA from continuing the investigation, arguing that it was exceeding its authority.

Holding: The First Department held that the SLA was not exceeding its authority by conducting the investigation into whether the Company's policy violated its license. The Court explained, the SLA's statutory authority to "determine whether public convenience and advantage will be promoted by the issuance" of on-premises licenses allowed it to investigate whether the Company violated the requirement, upheld previously by the Court of Appeals, that the Company's premises be "open to the public." Since the investigation and administrative proceedings were still ongoing, the Court held that the Company's Article 78 challenges to the SLA's determinations were not yet ripe, and would only be after the SLA makes the ultimate determination in the proceedings.

CIVIL PROCEDURE

***Esgro Capital Mgt., LLC v Banks*, 2023 NY Slip Op 06312 (1st Dept Dec. 07, 2023)**

Issue: **When does a defendant waive the CPLR 5015(a)(4) personal jurisdiction defense as a ground to vacate a default judgment?**

Facts: Following entry of a default judgment, the defendant moved to vacate the default, arguing that the judgment was entered without personal jurisdiction. The court denied the motion, holding that the defense had been waived.

Holding: The First Department held that "[t]he proper approach for determining whether a defendant has waived the CPLR 5015(a)(4) personal jurisdiction defense involves the consideration of whether the defendant's particular actions amount to 'an intentional relinquishment of a known right,' and results from the taking of some affirmative action evincing the intent to accept a judgment's validity — such as the making of voluntary payments to satisfy a default judgment prior to moving to vacate." The defendant here didn't make any voluntary payments, however. Instead, the defendant's wages were involuntarily garnished, which the Court held cannot be construed as an intentional waiver of the personal jurisdiction defense to default judgment.

SECOND DEPARTMENT

ADMINISTRATIVE LAW

***Matter of 3216 Rest. Corp. v New York State Liq. Auth*., 2023 NY Slip Op 06245 (2d Dept Dec. 6, 2023)**

Issue: **Did the State Liquor Authority arbitrarily deny an on-premise liquor license to premises located within 500 feet of three or more existing premises operating with an on-premises liquor license?**

Facts: The State Liquor Authority denied the petitioner's application for an on-premises alcohol license, finding that because the premises was within 500 feet of three or more other premises with on-premises licenses, it was not in the public interest to grant another. The petitioner challenged the denial, arguing that it was arbitrary and capricious.

Holding: The Second Department held that "[i]n determining whether the granting of the license would be in the public interest, the Liquor Authority may consider any or all of certain statutory factors, including '[t]he number, classes and character of licenses in proximity to the location and in the particular municipality or subdivision thereof' and '[t]he history of liquor violations and reported criminal activity at the proposed premises.'" In considering those factors, the Court held, the SLA rationally determined "to deny the petitioner's application for an on-premises liquor license based on its finding that the granting of such a license would not be in the public interest."

THIRD DEPARTMENT

TORTS, COVID-19

***Whitehead v Pine Haven Operating LLC*, 2023 NY Slip Op 06180 (3d Dept Nov. 30, 2023)**

Issue: **Should the legislation repealing the Emergency or Disaster Treatment Protection Act, which granted immunity from liability for care provided by health care facilities and professionals during the COVID-19 emergency, be applied retroactively, thereby exposing defendants to potential liability?**

Facts: Decedent resided at a nursing home from July 2017 until April 2020, when she died as a result of contracting COVID-19. Plaintiff, the executor of decedent's estate, then commenced a negligence action, alleging a failure on the part of the nursing home to take the proper steps to protect decedent from COVID-19. The nursing home moved to dismiss, arguing that it was entitled to immunity under the EDTPA, notwithstanding that the statute was subsequently repealed. Supreme Court denied that portion of the motion to dismiss.

Holding: The Third Department held that "[w]here, as here, legislation would impair rights a party possessed when he or she acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed, a presumption against retroactivity applies. There is also a statutory presumption against retroactivity in the case of legislation that repeals an earlier statute." Given those presumptions, the Court held that "a clear expression of intended retroactivity" is necessary for the EDPTA repeal to apply retroactively. There was no such expression in the repealing law, however. The Court held that although the Legislature expressly decided that the EDPTA would be retroactive when it was first adopted, it did not include any such clear expression of retroactivity in the statute repealing the EDPTA. Thus, because the care provided to the decedent resulted from the COVID-19 pandemic, the defendant nursing home was entitled to immunity from suit.

REAL PROPERTY TAX LAW

***Matter of Lost Lake Resort, Inc. v Board of Assessors for the Town of Forestburgh*, 2023 NY Slip Op 06297 (3d Dept Dec. 7, 2023)**

Issue: When arriving the full value of real property for real property tax purposes, may an assessor ignore a recent arm's length sale of a combined number of lots in an approved subdivision and "separately determine the actual full market value for each of the individual tax lots within the development by reviewing the sale prices of comparable lots"?

Facts: Petitioners, the prior and current owners of an approved subdivision, challenged the Town's tax assessment of 347 lots within the development, arguing that the arm's length sale of those lots from the former owner to the current owner for approximately $9.5 million established the total fair market value for all of the lots combined. They argued, therefore, that the Town's combined assessments of the lots for between $19 million and $23 million was improper. Supreme Court agreed, and granted the petitioners summary judgment, "reducing the total combined assessed value to $9,550,000 and ordering a corresponding proportionate reduction of the assessments per lot."

Holding: The Third Department, noting that "[p]roperty is assessed for tax purposes according to its condition on the taxable status date, without regard to future potentialities or possibilities and may not be assessed on the basis of some use contemplated in the future," held that the arm's length sale of the combined properties was the best evidence of the properties' fair market value for real property tax purposes. The Court rejected the Town's argument that the comparable sales approach must be used for each individual lot in the subdivision because that approach is "merely a substitute for looking to an arm's length sale, such as took place here, to determine value." And the Court noted, "the approach urged by respondents is particularly inappropriate in this case, where respondent Town of Forestburgh is refusing to grant permits to build on any of the lots until roads, a centralized water supply system, and other utilities and improvements are installed. Assessments must reflect the existing use of property, and potential development to a higher and better use may not serve as the basis for assessing . . . Petitioners may develop and sell individual lots in the future, at which time they will undoubtedly be reassessed. At this juncture, however, the best evidence of the subject property's value is what was paid for it in the recent arm's length transaction."

FOURTH DEPARTMENT

None.

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