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Summarizing recent significant New York appellate cases

This week we have attorney discipline for the easiest way a lawyer can get himself or herself into trouble and the judicial ethics of recusal involving judicial campaigns, among many other interesting things. Let's take a look what has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

LANDLORD–TENANT, GUARANTY

Tamar Equities Corp. v Signature Barbershop 33 Inc., 2024 NY Slip Op 00039 (1st Dept Jan. 04, 2024)

Issue: **Does the New York City Guaranty Law preclude a landlord from pursuing a claim for unpaid rent against a personal guarantor of a lease obligation from the start of the COVID-19 pandemic to June 30, 2021?**

Facts: In August 2019, Signature Barbershop signed a 10-year lease for space in the plaintiff's property, which was guaranteed by Defendant David Yunatanov. At the outset of the COVID-19 pandemic, however, the Governor's executive orders shut down the Barbershop, which made it impossible for the business to pay rent. The landlord filed suit, seeking the unpaid rent from the Barbershop from April 2020 to March 2022 and from the guarantor from July 2021 to March 2022. "Plaintiff limited its claim against defendant guarantor in an effort to comply with the New York City Guaranty Law, which bars enforcement of a personal liability provision in a commercial lease against a natural person that would otherwise render that person liable 'upon the occurrence of a default or other event' if the tenant was required to close to the public under Executive Order 202.7, and '[t]he default or other event causing such natural person to become . . . liable . . . occurred between March 7, 2020 and June 30, 2021, inclusive' (Administrative Code of City of New York § 22-1005[2])." The guarantor moved to dismiss, arguing that the City Guaranty Law barred enforcement of any guaranty claims against him, "i.e., a guaranty ceases to be enforceable." Supreme Court agreed, and dismissed the claims against the guarantor.

Holding: The First Department reversed, and denied the guarantor's motion to dismiss. The Court held that the City Guaranty Law ""bars only those claims against guarantors seeking rent that came due within the [law's] protection period," from March 7, 2020 to June 30, 2021. The Court explained, "the City Council made plain that the protections were 'temporary,' and designed to provide businesses covered by the law with 'a reasonable recovery period with a duration that is comparable to the period of time that [the] businesses were forced to close or operate with significant limitations on indoor occupancy.'" Here, the Court held, "[b]ecause plaintiff sought damages against defendant guarantor only for amounts that became due and for which guarantor became liable outside the Guaranty Law period, the complaint should not have been dismissed as against the guarantor."

ATTORNEY DISCIPLINE

Matter of Grant, 2024 NY Slip Op 00026 (1st Dept Jan. 04, 2024)

Issue: **What is the quickest way for an attorney to get suspended from the practice of law?**

Facts: The respondent served as a referee in a "foreclosure action in which the complainant's company had entered the winning bid. A down payment of $79,000 was tendered to respondent as Referee, consisting of two cashier's checks, one for $50,000, another for $25,000, . . . and the remainder of the funds in cash. The foreclosure sale was never completed. On November 1, 2021, Supreme Court, Nassau County issued an order vacating the sale, and ordering that respondent return the down payment to the complainant's company." But respondent never returned the down payment. And when the Grievance Committee investigated, respondent failed to respond, ignored the Committee's request for the bank records for her escrow account, and ignored a judicial subpoena to appear for a deposition. The Grievance Committee was able to obtain the escrow account records on their own, which showed that "respondent made improper ATM withdrawals and debit card purchases from her escrow account that repeatedly invaded the client's down payment. As of December 10, 2019, the balance in the escrow account was $6.53."

Holding: The First Department granted the Committee's motion to temporarily suspend the respondent from the practice of law immediately, because respondent's conduct in failing to cooperate with the investigation immediately threatened the public interest. And the Court answered the question presented: the quickest way for an attorney to get suspended from the practice of law is to mess with client money in an escrow account.

THIRD DEPARTMENT

JUDICIAL ETHICS

Minckler v D'Ella, Inc., 2024 NY Slip Op 00017 (3d Dept Jan. 4, 2024)

Issue: **Must a judge recuse from a matter when defense counsel supports the judge's campaign for reelection to the bench?**

Facts: After the judge assigned to the matter recused because defense counsel had served as the chair of his campaign committee, a new judge was assigned to the case. The new judge's campaign for reelection was also supported by defense counsel and his law firm, including at an upcoming fundraiser. When plaintiff's counsel found out on their own, they informally asked the new judge to recuse from the case. The new judge, in response, "submitted an inquiry about the recusal issue to the Judicial Campaign Ethics Center . . . and ask[ed] the parties to hold any motion practice in abeyance until a response was received." The new judge received a response to his inquiry in about a week, but waited another month after that to advise the parties that he would not recuse. Plaintiffs then formally moved for recusal, which the new judge denied.

Holding: The Third Department noted that "[j]udges have an obligation to comport themselves within the bounds of judicial ethics and must avoid the appearance of impropriety at all times, particularly when running for election or reelection . . . Although the relationship between lawyers and judges can result in the judge's recusal during and after a campaign, an attorney's attendance at a single campaign event will not require the judge's recusal; recusal is only required where the attorney plays an active role in the judge's campaign." The most important obligation, the Court held, is to "disclose to the parties the nature and level of that attorney's involvement." The new judge here didn't do that. Rather, the plaintiffs learned about defense counsel's involvement in the new judge's campaign on their own, and the judge didn't disclose that the JCEC letter advised him to recuse from any matters involving defense counsel while the campaign was ongoing until after the judge's campaign had concluded and he had been reelected. The Court held, therefore, to avoid the appearance of impropriety, the new judge abused his discretion in denying the recusal motion.

MENTAL HYGIENE LAW, INVOLUNTARY COMMITMENT

Matter of Julie O., 2024 NY Slip Op 00015 (3d Dept Jan. 4, 2024)

Issue: **May a court hold a single combined hearing on the emergency commitment of an individual under Mental Hygiene Law § 9.39 and the involuntary commitment of the same individual under Mental Hygiene Law § 9.27?**

Facts: The respondent was admitted to the behavioral health unit of petitioner Cayuga Medical Center pursuant to the emergency admission procedures of Mental Hygiene Law § 9.39 after she was observed behaving erratically at a local race track. A few days later, she asked for a hearing on the continuation of her emergency admission under section 9.39, and the next day the Medical Center notified her that it would be seeking her involuntary commitment under section 9.27 because "two physicians ... averred that she was 'mentally ill and in need of involuntary care and treatment.'" At the hearing, the Medical Center asked for a combined hearing on the two applications, using the more stringent standard set in section 9.39, and respondent opposed, arguing that she would be deprived of one of two hearings to which she was entitled under the law. County Court opted for the combined hearing, reasoning that respondent would not be prejudiced because the more stringent emergency admission standard under section 9.39 was more difficult to establish and holding that the Medical Center satisfied its burden to show that respondent "'presented a substantial and serious risk of harm to herself' and continued to do so."

Holding: Although the appeal was moot because respondent had been released at the time it was decided, the Third Department held that this was "a novel issue of substantial import that is likely to evade review" and thus an exception to mootness applied. The Court then concluded that County Court had improperly held a combined hearing on respondent's emergency admission under section 9.39 and the Medical Center's conversion of that admission to an involuntary one under section 9.27. In doing so, County Court disregarded that respondent had not asked for a hearing on the involuntary commitment application, only on the emergency admission. The Court explained that the statutes "vest in the patient — not the court or hospital — the right to request a hearing under each section. In that regard, we agree with respondent that, because she never requested a hearing under section 9.31, the court erred in holding a combined hearing and she retained the right to later request a hearing under section 9.31. On the other hand, had respondent also requested a section 9.31 hearing, we see no reason why a combined hearing could not be held by the court, provided it did so within the applicable statutory deadlines and considered both statutory standards in rendering its decision." Nevertheless, the Third Department held that respondent's emergency admission under section 9.39 had been proper because the Medical Center "established by clear and convincing evidence that respondent had a mental illness and, at the time of the hearing, posed a substantial risk of harm to herself."

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