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CasePrepPlus

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Summarizing recent significant New York appellate cases

The Court of Appeals is back with an important opinion on whether the employment discrimination protections offered under the New York City and New York State Human Rights Law apply to those who live outside New York, but seek employment here. They do, the Court held. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

EMPLOYMENT DISCRIMINATION, NEW YORK STATE AND CITY HUMAN RIGHTS LAW

***Syeed v Bloomberg L.P.*, 2024 NY Slip Op 01330 (Ct App Mar. 14, 2024)**

Issue: Do the New York City and New York State Human Rights Laws each protect nonresidents who are not yet employed in the city or state but who proactively sought an actual city- or state-based job opportunity?

Facts: Plaintiff Nafeesa Syeed, a South Asian-American woman, filed a lawsuit against defendant Bloomberg L.P., asserting employment discrimination claims. Plaintiff had worked in Bloomberg's D.C. bureau as a reporter, but concluded that she could not advance her career there. So, plaintiff applied for a position in the New York bureau covering the United Nations, but was told by her D.C. manager that the company was not going to convert the position into a "diversity slot." Plaintiff thereafter left Bloomberg and brought this action in federal court for damages. The Second Circuit then certified this question to the Court of Appeals: "Whether a nonresident plaintiff not yet employed in New York City or State satisfies the impact requirement of the New York City Human Rights Law or the New York State Human Rights Law if the plaintiff pleads and later proves that an employer deprived the plaintiff of a New York City- or State-based job opportunity on discriminatory grounds?"

Holding: The Court of Appeals held that the City and State Human Rights Law protections apply even when the person alleging harm is not a resident of New York, but rather applies for employment here. The Court explained, "a nonresident who has been discriminatorily denied a job in New York City or State loses the chance to work, and perhaps live, within those geographic areas. The prospective employee personally feels the impact of a discriminatory refusal to promote or hire in New York City or State, because that is where the person wished to work (and perhaps relocate) and where they were denied the chance to do so. When applying the required liberal construction of 'inhabitants' and 'individual within this state' (Executive Law § 290 [3]; Administrative Code § 8-101), a prospective inhabitant or employee, who was denied a job opportunity because of discriminatory conduct, fits comfortably within the Human Rights Laws' protection." Indeed, the Court reasoned, "[w]e cannot conclude that the legislature and city council intended to give New York employers a license to discriminate against nonresident prospective employees and, thus, we may not adopt such a narrow construction of the statutes."

UNIONS, CORPORATE GOVERNANCE, CIVIL PROCEDURE

***Matter of Agramonte v Local 461, Dist. Council 37, Am. Fedn. of State, County & Mun. Empls.*, 2024 NY Slip Op 01332 (Ct App Mar. 14, 2024)**

Issue: Does *Martin v Curran* (303 NY 276 [1951]) bar union members from seeking non-monetary injunctive relief against a union?

Facts: When a local union's president was removed from office, a new election to replace him was held. Seasonal lifeguards, who were members of the union, petitioned under the union's constitution that they should be eligible to run for office, which required members to be in good standing for a period of 1 year prior to running for election. An election committee determined that the seasonal lifeguards were not eligible because their employment lasted only 3 months, and even with a 6-month dues credit, they still were not members in good standing for a period of 1 year prior to the election. The seasonal lifeguards brought this suit against the union, seeking injunctive relief to compel it to comply with the union constitution concerning the election. The union moved to dismiss, and Supreme Court granted the motion, holding that "*Martin* mandated dismissal because petitioners failed to sufficiently plead that the individual members of Local 461 authorized or ratified the purportedly unlawful conduct." Supreme Court alternatively held that the union reasonably applied its constitution. The Appellate Division affirmed.

Holding: The Court of Appeals explained that in *Martin*, the "Court held that a libel action for damages was properly dismissed as asserted against representatives of a union in their official capacities because the complaint did not allege that the individual members of the union had authorized or ratified publication of the libel in question." That rule has long been applied to preclude damages claims against a union, without the necessary ratification, but has not been extended to claims against the union seeking injunctive relief. Thus, the Court clarified, "where, as here, union members seek only injunctive relief against the union and state no claim for pecuniary damages,

the pleading is not governed by Martin and, as such, a plaintiff need not allege the participation of each individual member to bring a claim in accordance with General Associations Law § 13." Nevertheless, the Court affirmed dismissal of the seasonal lifeguards' claims, because the union's interpretation of its constitution to determine that the seasonal lifeguards were not eligible to vote or run for office in the election was not unreasonable, which is the deferential standard that applies to judicial review of union internal governance disputes.

ANTITRUST, DONNELLY ACT

***Taxi Tours Inc. v Go N.Y. Tours, Inc.*, 2024 NY Slip Op 01333 (Ct App Mar. 14, 2024)**

Issue: **What must be alleged to plead a claim under the Donnelly Act for anticompetitive behavior?**

Facts: One tour bus company—Go New York—alleged that another tour bus company—the Gray Line respondents—conspired with other bus companies—Big Bus/Leisure Pass—to leverage their market share to shut out Go New York from the "hop-on, hop-off sightseeing tour bus market." Go New York alleged that representatives from various New York City attractions refused to do business with Go New York after Gray Line and Big Bus/Leisure Pass impugned Go New York's reputation and threatened to end their business with those attractions if they did business with Go New York. Go New York also alleged that, although certain attractions referenced exclusive relationships with either Gray Line or Big Bus/Leisure Pass as a basis not to partner with Go New York, the attractions in fact partnered with both. Thus, Go New York alleged that it can be inferred that the claimed exclusive relationships were a pretext to cover for anticompetitive efforts to exclude Go New York. Supreme Court dismissed the Donnelly Act claim, and the First Department affirmed.

Holding: The Court of Appeals reversed, however, and reinstated the Donnelly Act claims. As the Court noted, "[t]he Donnelly Act prohibits every contract, agreement, arrangement or combination through which a monopoly . . . is or may be established or maintained, whereby competition or the free exercise of any activity in the conduct of business . . . is or may be restrained, or whereby trade or business is or may be restrained for the purpose of establishing or maintaining any such monopoly or unlawfully interfering with the free exercise of any activity in the conduct of any business, trade or commerce" (General Business Law § 340 [1]). A claim alleging a Donnelly Act violation, then, "must allege both concerted action by two or more entities and a consequent restraint of trade within an identified relevant product market." The Court held that Go New York's allegations here, though sparse, were sufficient to plead a Donnelly Act claim "under our liberal notice pleading standards."

THIRD DEPARTMENT

TORTS, ASSUMPTION OF THE RISK

***Katleski v Cazenovia Golf Club, Inc.*, 2024 NY Slip Op 01366 (3d Dept Mar. 14, 2024)**

Issue: **Can the assumption of the risk doctrine require dismissal of a claim alleging injury during a golf tournament, even where the parties' competing experts disagree on whether the design of the golf course heightened the risk of injury?**

Facts: Plaintiff — an experienced golfer — was struck in the left eye by a golf ball during a golf tournament at Cazenovia Golf Club, Inc. when he was riding in a golf cart on the seventh hole fairway and a tee shot from the third hole struck him. Plaintiff filed a personal injury action, alleging that the golf club negligently operated a dangerously designed golf course that unreasonably enhanced the risk of being struck by a golf ball. Supreme Court denied the golf club summary judgment, holding that triable issues of fact existed on whether the golf club unreasonably enhanced the risk of being hit with a golf ball, which created a danger over and above the inherent dangers of the sport.

Holding: The Third Department noted that under the assumption of the risk doctrine, "one who participates in a sport or recreational activity consents to those commonly appreciated risks which are inherent in and arise out of the nature of the sport generally and flow from such participation." In golf, in particular, the Court noted, "it is well established that being hit without warning by a shanked shot is a commonly appreciated risk of participating in the sport. Golfers are deemed to assume the risks of open topographical features of a golf course, and evidence establishing that the proximity of a tee to a different green and hole was open and obvious will preclude liability against a golf course for injuries sustained as a result of such proximity." Even though the parties submitted competing expert evidence about whether the design of the course enhanced the risk of being struck by an errant shot, the Third Department held that that did not preclude summary judgment to the golf club under the assumption of the risk doctrine. "Even accepting the opinions of plaintiff's experts that the course failed to meet applicable safety standards, the primary assumption of risk doctrine also encompasses risks involving less than optimal conditions. One who voluntarily participates in a sport under suboptimal conditions will be deemed to have assumed the risk of such conditions if the risks are inherent to the sport and readily apparent to the plaintiff." Since the plaintiff was a "highly experienced golfer," and had played at the golf club many times, he "knew of the risks involved in playing in the tournament and made an informed decision to keep doing so despite the lack of protective barriers and his asserted concern during the first round about the tee A location at hole three. The risk posed by playing under such suboptimal conditions — i.e., getting hit by a shanked shot — is inherent to the sport of golf and was readily apparent to plaintiff, who acknowledged his appreciation of the dangers involved."

FOURTH DEPARTMENT

TORTS, CONTINUING TRESPASS, STATUTE OF LIMITATIONS

***Kramer v Kleiber*, 2024 NY Slip Op 01387 (4th Dept Mar. 15, 2024)**

Issue: **What statute of limitations applies when it is alleged that a neighbor has wrongfully installed something permanent on your property?**

Facts: Defendants installed plumbing in 2014 that encroached on their neighbor's property by connecting the plumbing from their garage to a septic system on the neighbor's property. The neighbor sued in 2021 under RPAPL Article 15 for a declaration that he owned the land where the septic system sat, and for damages for trespass. Supreme Court dismissed the suit as time barred, however, because it was brought 7 years after the plumbing had been installed.

Holding: The Fourth Department reversed, holding that "plaintiff's claim for trespass seeking monetary damages should not be analyzed for statute of limitations purposes in the same way as a claim for the artificial diversion of water onto an adjoining property, inasmuch as plaintiff's trespass claim is based upon a permanent physical encroachment, i.e., the underground plumbing that defendants installed on plaintiff's property." As a permanent encroachment, the Court held, the trespass gives rise to successive continuing causes of action for so long as it continues, until enough time passes "as would create an easement by prescription or change of title by operation of law, namely, by adverse possession." Since 10 years had not passed by the time the neighbor brought the suit, the Fourth Department held that the continuing trespass claim was not time barred.

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