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Summarizing recent significant New York appellate cases

This week, the First Department took a deep dive into the legislative history underlying New York's anti-SLAPP law, and clarified that when a plaintiff is opposing an anti-SLAPP motion to dismiss, the plaintiff must come forward with "such relevant proof as a reasonable mind may accept as adequate to support" its claim to avoid dismissal and an automatic attorneys' fee award against it. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

CIVIL PROCEDURE, ANTI-SLAPP LAW

***Karl Reeves, C.E.I.N.Y. Corp. v Associated Newspapers, Ltd.*, 2024 NY Slip Op 01898 (1st Dept Apr. 09, 2024)**

Issue: **When opposing an anti-SLAPP motion to dismiss, what must a plaintiff establish to show that its claim has a "substantial basis in law" under the anti-SLAPP law?**

Facts: Following a vexatious divorce and custody dispute with his former wife, during which the plaintiff, an elevator company CEO, threatened to kill his wife's family, the plaintiff sued his wife, his mother-in-law, and an advocacy organization that had filed an ethics complaint against the plaintiff on their behalf during the dispute. The Daily Mail picked up on the dispute, and "published a story on its online site written by defendant Anneta Konstantinides, with the title 'Seriously, I'll kill both of them: NY socialite and actress is locked in vicious custody battle with "racist ketamine-snorting millionaire" CEO husband after he accused her of Pornhub fame and threatened to kill her parents.'" Plaintiff sued the Daily Mail for defamation, and other torts, and identified 12 statements from the article as defamatory. The Daily Mail moved to dismiss under New York's anti-SLAPP law, and sought an award of their attorneys' fees. Supreme Court granted the motion to dismiss, holding that each of the 12 statements were protected by fair reporting privilege, but denied the Daily Mail attorneys' fees under the 2020 amendment to the anti-SLAPP law.

Holding: The First Department affirmed dismissal of the plaintiff's defamation complaint, but modified to award the Daily Mail attorneys' fees under the 2020 amendment that made an attorneys' fees award mandatory upon an anti-SLAPP dismissal. Addressing for the first time the standard that a plaintiff must satisfy to avoid an anti-SLAPP dismissal, the Court held that the anti-SLAPP law "flip[s] the burden of proof ordinarily applied in CPLR 3211(a)(7) motions to dismiss or CPLR 3212 motions for summary judgment: once the movant establishes that the plaintiff's action is a SLAPP suit, the motion to dismiss 'shall' be granted unless the plaintiff demonstrates that the cause of action has a substantial basis." Noting that "[t]he term 'substantial basis' is not defined in the anti-SLAPP law and otherwise has no single recognized meaning," the Court looked to legislative history to help discern its meaning, and determined that "that 'substantial basis' under the anti-SLAPP law means 'such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.'" As the Court explained, "the CPLR 3211(g) motion is analogous to an accelerated summary judgment motion, albeit within the context of an anti-SLAPP action, claim, or cross-claim," and limited discovery is available if the opposing party requests it. Thus, to show that a claim has a "substantial basis" to avoid an anti-SLAPP dismissal, the plaintiff must put forth actual proof in support of its defamation claim, and "a complaint which fails to state a claim under CPLR 3211(a)(7) necessarily lacks a "substantial basis in law" for purposes of CPLR 3211(g)." Here, the Court held, the plaintiff's complaint failed to state a claim for defamation and thus was properly dismissed under the anti-SLAPP law. That dismissal, however, made an attorneys' fees award mandatory, and so the Court remanded for the limited purpose of calculating the fee award, beginning on November 10, 2020, the effective date of the 2020 amendment that made the award mandatory.

SECOND DEPARTMENT

RENT REGULATION

***Matter of Surat Realty v New York State Div. of Hous. & Community Renewal*, 2024 NY Slip Op 01930 (2d Dept Apr. 10, 2024)**

Issue: **May the State Division of Housing and Community Renewal order that tenants receive rent reductions when a building is built next door to their apartments that blocks their access to air and light?**

Facts: The tenants in petitioner's apartment building had nice views until the owner of the property next door constructed its own building that blocked their access to air and light through their apartment windows. Determining that petitioner offered the affected tenants

"decreased services" due to the third party's construction, the State DHCR "issued five orders directing the reduction of the rent of those tenants." The petitioner's administrative appeal was denied, as was its subsequent Article 78 petition in Supreme Court.

Holding: The Second Department reversed, holding that because the petitioner had no control over the third party's construction, and no ability to restore the prior views, the State DHCR's rent reduction orders were arbitrary and could not be sustained. The Court reasoned, "[a]lthough the repair and maintenance of an apartment window may constitute a required service, the rent reduction orders here were based upon the reduction of air and light through the windows due to the erection of an adjacent building and not due to the petitioner's failure to repair or maintain the windows. The Deputy Commissioner failed to consider the fact that it was the erection of the adjacent building that obstructed the air and light through the windows. The petitioner had no control over the erection of the adjacent building, in which it had no interest Moreover, the petitioner has no ability to restore air and light to the windows."

THIRD DEPARTMENT

CIVIL PROCEDURE, PREVAILING WAGE

***Matter of Associated Gen. Contrs. of N.Y. State, LLC v New York State Dept. of Labor*, 2024 NY Slip Op 01968 (3d Dept Apr. 11, 2024)**

Issue: **Must a party bring a challenge to a regulation of the Commissioner of Labor, including constitutional claims, first before the Industrial Board of Appeals prior to challenging that regulation in court?**

Facts: Following the promulgation of 12 NYCRR 222.2 (c), which required construction industry participants to pay "prevailing wages to truckers hauling aggregate materials from within a 50-mile radius of a worksite," the petitioners brought an Article 78 and declaratory judgment action, arguing that "the challenged regulation exceeded respondents' authority and violated the separation of powers doctrine; violated the Equal Protection clauses of the State and Federal Constitutions; was unlawful, arbitrary and capricious; and was adopted in violation of the State Administrative Procedure Act." NYSDOL moved to dismiss, arguing that Supreme Court lacked jurisdiction because the petitioners did not first bring their claim before the Industrial Board of Appeals. Supreme Court agreed, and dismissed the suit for lack of jurisdiction.

Holding: The Third Department affirmed, holding that "[p]ursuant to the statutory scheme, a challenge to the validity of a regulation instituted by respondent Commissioner of Labor must first be brought before the Industrial Board of Appeals," including constitutional challenges like those pled here. "Absent review by the IBA, however, [the statute provides that] 'no court shall have jurisdiction to review or annul any such provision, rule, regulation or order or to restrain or interfere with its enforcement.'" Thus, because the petitioners failed to first bring this challenge before the IBA, Supreme Court properly determined that it lacked jurisdiction to entertain it.

PRESERVATION

***Fitzpatrick v Tvetenstrand*, 2024 NY Slip Op 01956 (3d Dept Apr. 11, 2024)**

Issue: **Must a party preserve their challenge to a trial verdict as against the weight of the evidence by moving to set aside the verdict upon that basis at the trial court?**

Facts: In this medical malpractice action, the plaintiff moved, at the close of the trial proof, for a partially directed verdict on the lack of informed consent to the medical procedure that was performed. The trial court denied the motion, and the jury returned a defense verdict. Following the verdict, the plaintiff did not move to set aside the verdict as against the weight of the evidence, but instead raised that issue on appeal.

Holding: The Third Department held that "plaintiffs were not required to preserve their weight of the evidence contention by moving to set aside the verdict upon that basis. A trial court has the authority to order a new trial 'on its own initiative' when the verdict is contrary to the weight of the evidence (CPLR 4404 [a]), and this Court's power 'is as broad as that of the trial court.' Although we believe it remains best practice for a party to challenge a verdict upon this basis before the trial court, in light of its superior opportunity to evaluate the proof and credibility of witnesses, we nonetheless agree that this Court is fully empowered to 'order a new trial where the appellant made no motion for that relief in the trial court.'" In so holding, the Court noted, it joined the similar holdings of the other Appellate Division departments on the issue, and noted that "[t]o the extent that our prior decisions have suggested otherwise, they should no longer be followed." Although the plaintiffs did not need to preserve their weight of the evidence challenge, it was nevertheless unsuccessful, as the Court held that, "deferring to the jury's credibility assessments and resolution of any conflicting testimony, we conclude that a fair interpretation of the evidence supports the jury's verdict."

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