



The Second Department this week addressed a novel issue in New York concerning the factors that must be considered when evaluating the enforceability of restrictive covenants in ordinary commercial contracts. Drawing from Court of Appeals precedent on restrictive covenants in employment contracts, the Court held that whether the covenant protects a legitimate business interest, the hardship on the party against whom enforcement is sought, and the reasonableness of the geographic scope and temporal duration of the covenant must be examined. 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

HABEAS CORPUS, LESS IS MORE ACT

Matter of People of the State of N.Y. v Annucci, 2024 NY Slip Op 01685 (1st Dept Mar. 26, 2024)

Issue: Did the Department of Corrections and Community Supervision conduct a timely preliminary hearing on the petitioner's alleged parole violation in accordance with the Less is More Act?

Facts: In 2021, the Legislature amended Executive Law § 259-i by enacting the Less is More Act to shorten the timeframes in which releasees charged with parole violations are afforded hearings—recognizance hearings must be held within 24 hours and parole violation preliminary hearings within 5 days after execution of the warrant. "LIMA was enacted to reduce the number of people held in custody in New York by shortening the timeframe for adjudicatory hearings and increasing judicial oversight in the parole revocation process. Prior to the amendment of Executive Law § 259-1 in 2021, preliminary hearings were required to be held within 15 days."

Here, petitioner was released on parole on April 28, 2022. He was rearrested on June 10, 2022, after he allegedly punched a police officer, and he was charged with various crimes. On June 17, 2022, while petitioner was in custody due to that arrest, DOCCS issued a parole warrant to detain him for violation of parole. That same day, DOCCS made a call to "the courts" to request a recognizance hearing, but made no further efforts to comply with LIMA's timeframes. Ultimately, the recognizance hearing was untimely held on June 22, 2022, and Petitioner's preliminary hearing was held on June 24, 2022. Petitioner then filed a habeas corpus petition, arguing that the untimely hearings entitled him to release. Supreme Court agreed, and granted the writ.

Holding: The First Department affirmed, holding that "LIMA's plain language was abrogated when petitioner's recognizance hearing was held five days after the execution of the warrant, instead of within the requisite 24 hours. This error was compounded when the preliminary hearing was held seven days after the execution of the warrant, instead of the requisite five days (Executive Law § 259-i[3][c][i][B])." The Court specifically rejected DOCCS' interpretation of the statute, which would have immunized it for merely making a request within the first 24 hours after execution of the warrant that a recognizance hearing be held, without ensuring that one actually is, and then would have run the five days for the preliminary hearing from the date of recognizance hearing, rather than execution of the warrant. As the Court explained, "[t]he interpretation that DOCCS advances would bypass LIMA and effectively remove its statutory duty to ensure that recognizance hearings are timely held within 24 hours of the warrant execution." That, the Court held, could not be permitted.

SECOND DEPARTMENT

RESTRICTIVE COVENANTS

Twitchell Tech. Prods., LLC v Mechoshade Sys., LLC, 2024 NY Slip Op 01744 (2d Dept Mar. 27, 2024)

Issue: What are the factors that courts must consider when evaluating whether a restrictive covenant in an ordinary commercial contract is enforceable, and do courts have the power to sever and grant partial enforcement of overly broad restrictive covenants in ordinary commercial contracts?

Facts: Mechoshade has manufactured solar roller shades for approximately 50 years. Needing fabric that will roll up and down without being damaged, Mechoshade contracted with Twitchell to help design the fabrics. After working for years on a handshake deal, the parties entered distribution agreements to sell the fabrics worldwide. As relevant here, the agreements contained restrictive covenants providing that "all weaves, patterns, designs and colors produced by [Twitchell] for [Mechoshade] for the Window Shading Product Line shall remain the exclusive designs of [Mechoshade] and shall not be sold to dealers, manufacturers or distributors in the window shading market; provided, however, that [Twitchell] shall be free to produce and sell new and different designs, weaves, patterns and colors for

distribution into the window shading market but shall not offer for sale to the window shading market slightly modified fabrics which are substantially similar to [Mechoshade's] exclusive fabrics." After working together for 30 years, Mechoshade terminated the agreement, and Twitchell sued. Mechoshade counterclaimed seeking a declaration that the restrictive covenants were enforceable, and Twitchell moved to dismiss the counterclaims. Supreme Court denied the motion.

Holding: The Second Department noted that "New York law does not contain a large body of guidance on the assessment of covenants not to compete within ordinary commercial contracts. However, we agree with those courts that have analyzed these types of covenants under a simple rule of reason, balancing the competing public policies in favor of robust competition and freedom to contract. Under this rule of reason, courts should consider: (1) whether the covenant protects a legitimate business interest; (2) the reasonableness of the covenant with respect to geographic scope and temporal duration; and (3) the degree of hardship upon the party against whom the covenant is enforced." Although the Court held that, for purposes of a motion to dismiss, Mechoshade had sufficiently alleged a legitimate business interest and hardship, the restrictive covenants did not contain any geographic scope or temporal limitation, which rendered it overbroad on its face. In such an instance, the Court held, it has power to grant partial enforcement of the restrictive covenant to the extent necessary to protect the legitimate business interest. Here, however, since the case was on a mere motion to dismiss, the Court held that the record was not sufficiently developed to determine the extent to which Mechoshade's restrictive covenants could be enforced.

THIRD DEPARTMENT

NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE, MANDAMUS

Matter of Clements v New York Secretary of State, 2024 NY Slip Op 01756 (3d Dept Mar. 28, 2024)

Issue: Is mandamus available to compel the New York State Secretary of State to adopt regulations that more specifically require enforcement of the New York State Uniform Fire Prevention and Building Code?

Facts: In June 2021, Keionzie Clements filed a code enforcement complaint with the Village of Dryden concerning her rental apartment, alleging, among other things, that the apartment's bathroom sink was on the floor, the bathroom fan exhausted into the kitchen and the apartment showed evidence of water leaks and mold. Code enforcement officials for the Village conducted two inspections of the premises, found several violations of the Code, and issued an order to remedy to the building's landlord. The landlord, however, took no action to remedy the deficient conditions, and the Village officials took no further enforcement actions. Clements and other individuals who resided in the same building filed a CPLR article 78 proceeding, alleging that the Secretary of State failed to comply with his mandatory duty to promulgate regulations governing the quality of a code inspection or response to code violations by municipal code officials as required by Executive Law § 381, and sought mandamus to compel the Secretary to promulgate new regulations. Supreme Court dismissed the petition.

Holding: The Third Department, in a 3-2 opinion, held that the Secretary "has met his duty to set forth adequate means for addressing complaints, inasmuch as the regulations require localities to establish procedures for addressing bona fide complaints by requiring implementation of a process that shall include, when appropriate, provisions for inspection of the buildings, structures, conditions, and/or activities alleged to be in violation." With respect to enforcement, the Court held, "the language in the statute explicitly states that local authorities shall have the power to issue an order to remedy, not that they must exercise such power and pursue fines or imprisonment in every instance in which they seek to enforce to the Uniform Code. Consequently, [the Secretary] is not foreclosed from advising, within the regulatory framework, that local authorities are not required to issue an order to remedy in a given situation where violations of the Uniform Code are found to exist if, in the judgment of the authority having jurisdiction, such violations can be addressed adequately by the use of other enforcement tools or by other means." In light of that, although troubled by the particular lack of enforcement in this case, the Court held that the remedy of mandamus to compel was beyond its power.

WORKERS' COMPENSATION, COVID-19

Matter of Anderson v City of Yonkers, 2024 NY Slip Op 01755 (3d Dept Mar. 28, 2024)

Issue: Must a claimant seeking compensation for a COVID-19-related psychological injury satisfy a higher burden than a claimant alleging a physical injury?

Facts: During the COVID-19 pandemic, school districts throughout New York closed their school buildings in March 2020 and engaged in remote instruction through the conclusion of the 2019–2020 school year. For the 2020–2021 school year, however, students began to return to in person instruction as the year progressed. Here, the claimant, a second-grade school teacher with a past medical history of asthma and bronchitis, returned to work in person at her assigned school building on September 7, 2020, but was forced out two weeks later after a coworker tested positive for COVID. Claimant began feeling ill on or about September 23, 2020 but tested negative for COVID-19. On October 1, 2020, claimant returned to work in person, but she became increasingly anxious in anticipation of the students' return to the building, which was scheduled to occur on Monday, October 5, 2020. She did not return to work after October 2, 2020. Claimant then filed a workers' compensation claim, alleging that, during the course of her employment, she experienced a dangerous exposure to

COVID-19 and that, as a result thereof, she sustained psychological injuries, with a date of injury of October 5, 2020. The Workers' Compensation Law Judge disallowed the claim, and the Workers' Compensation Board affirmed on administrative appeal.

Holding: The Third Department held that “in cases involving exposure to the COVID-19 virus, the Board applies disparate burdens to claimants seeking compensation for a physical injury as compared to those seeking compensation for a psychological injury, in violation of the principle that psychological or nervous injury precipitated by psychic trauma is compensable to the same extent as physical injury.” “Indeed, when presented with claims for contraction of COVID-19, a physical injury, the Board has adopted the rule that a claimant may meet his or her burden to show that an injury arose in the course of employment by demonstrating either a specific exposure to COVID-19 or prevalence of COVID-19 in the work environment so as to present an elevated risk of exposure constituting an extraordinary event. Yet, when presented with a psychological injury claim by a public-facing worker, such as here, the Board finds that, given the circumstances surrounding a global pandemic, exposure to COVID-19 constitutes the new normal, leading to the rejection that such exposure could constitute a workplace accident. This incongruity operates to disallow claims for psychological injuries but allow claims for physical injuries stemming from the same elevated risk of exposure constituting an extraordinary event, violating the principle that where an individual becomes incapable of functioning properly because of a workplace accident, that injury — whether physical or psychological — should be compensable pursuant to the Workers' Compensation Law.” Under the proper standard, the Court explained, “[t]o determine whether a workplace accident has occurred — i.e., whether the stressor was greater than other similarly situated workers experienced in the normal work environment — the Board must consider whether the alleged stressor is one the claimant should reasonably and ordinarily be expected to encounter in the normal work environment, and is therefore non-accidental, or whether the stressor was instead an unusual, unexpected or extraordinary part thereof and therefore accidental. Evidence regarding other similarly situated workers should likewise be used to inform the Board's understanding of a claimant's normal work environment and the reasonable expectations therein, as well as the claimant's job duties and expectations, as ordinary psychological stressors and expectations may reasonably vary within the same work environment among different jobs.” The Board failed to do that in this case, and thus the Court remitted to the Board to undertake this analysis.

CasePrepPlus | April 5, 2024

© 2024 by the New York State Bar Association

To view archived issues of CasePrepPlus,
visit NYSBA.ORG/casepreplusplus/.