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Summarizing recent significant
New York appellate cases

This week, the Court of Appeals is back with its first opinions from the April argument session, with the Court addressing the People's evidentiary burden to demonstrate probable cause to stop a car for having excessively tinted windows and how the Workers' Compensation Law presumption that an injury that occurs in the course of employment is also presumed to arise out of the employment applies in a workplace shooting. The First Department also took the opportunity to clarify some of its own prior contradictory case law about whether an account stated claim is duplicative of a breach of contract claim. And the Fourth Department cautioned that mergers of school districts doesn't let them off the hook for old "just debts," including Child Victim's Act liability. Let's take a look at those opinions and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

CRIMINAL LAW

***People v Nektalov*, 2024 NY Slip Op 02725 (Ct App May 16, 2024)**

Issue: Did the People meet their burden to establish that law enforcement had probable cause to stop the vehicle in which the defendant was a passenger where the police officer testified that he stopped the vehicle because it had "excessively tinted windows" without elaborating any further?

Facts: In 2018, Defendant was pulled over for having "excessively tinted windows." During the stop, the police officer observed marijuana in plain view, and then discovered cocaine on Defendant during a subsequent search. Defendant moved to suppress the evidence, arguing that "the officers lacked probable cause to stop the vehicle on the basis of a traffic violation." At the suppression hearing, the officer testified that he pulled over the vehicle because of the "excessively tinted windows," but did not elaborate any further. The trial court denied the suppression motion, and Defendant pled guilty. The Appellate Term affirmed.

Holding: The Court of Appeals, however, reversed Defendant's conviction. The Court clarified that "[t]he relevant question for a suppression court in determining whether law enforcement had probable cause is whether the officer who stopped the car reasonably believed the windows to be over-tinted in violation of the Vehicle and Traffic Law. When a defendant challenges the sufficiency of the factual predicate for the stop, it is the People's burden to come forward with evidence sufficient to establish that the stop was lawful. Summary statements that the police had arrived at a conclusion that sufficient cause existed will not do. Rather, the prosecution must establish the basis for the belief that law enforcement possessed the requisite suspicion in the form of facts, not assurances."

Here, the officer's testimony was nothing more than a legal conclusion that the tint on Defendant's vehicle violated the Vehicle and Traffic Law. The Court held, "the People failed to elicit any factual basis for this conclusion. The detective did not testify, for example, that the windows were so dark that he could not see into the vehicle or that he had training and experience in identifying illegally tinted windows or conducting this type of stop. Nor did the detective testify that he measured the tint after stopping the vehicle and the results confirmed that the tint level violated the Vehicle and Traffic Law, which could have provided objective, corroborative evidence of the reasonableness of his conclusion. Without more, the record is bereft of evidence of its basis to support the detective's conclusory belief that the tinted windows violated the law." Thus, the trial court should have suppressed the evidence, and the Defendant's conviction had to be reversed.

WORKERS' COMPENSATION LAW

***Matter of Timperio v Bronx-Lebanon Hosp.*, 2024 NY Slip Op 02723 (Ct App May 16, 2024)**

Issue: What evidence is necessary to rebut "the rebuttable presumption set forth in Workers' Compensation Law § 21 (1), which provides that when an injury arises in the course of a worker's employment, it is presumed to arise out of that worker's employment and therefore is compensable, absent substantial evidence to the contrary"?

Facts: In 2017, a former employee of Bronx-Lebanon Hospital entered the hospital hiding a loaded AR-15 rifle under a white medical coat, went to the 16th floor where petitioner Justin Timperio was working as a first-year resident, and opened fire, killing one doctor and wounding five members of the medical staff—including Timperio. The former employee and Timperio were strangers prior to the shooting; they never worked at BLH at the same time and had no other prior contact. After the shooting, the Hospital asked the Workers' Compensation Board for a determination that Timperio's injuries in the shooting were compensable under the Workers' Compensation Law. While the Hospital's claim was pending, Timperio filed a negligence action against the Hospital and the store where the former employee bought the rifle in federal court. The District Court denied the Hospital's motion to dismiss, determining that "Timperio's injuries

were not compensable because there was no evidence suggesting that the shooting originated in work-related differences." The District Court then stayed that action pending the outcome of the Hospital's workers' compensation claim. In 2020, the Workers' Compensation Board determined that Timperio's injuries were actually compensable under the Workers' Compensation Law. The Third Department, however, reversed, holding that under the section 21(1) presumption that "an injury that arose in the course of employment . . . [arose] out of employment as well," an "award of compensation may be sustained even though the result of an assault, so long as there is any nexus, however slender, between the motivation for the assault and the employment." The Third Department held that no such nexus existed here because there was no evidence in the record that the shooting was the result of employment-related animus.

Holding: The Court of Appeals reversed, holding that the Appellate Division improperly inverted the "nexus" standard to rebut the normal presumption that an injury that occurs in the course of employment also arises out of the employment. "As stated in WCL § 21 (1) and recognized by this Court, the presumption is rebuttable by substantial evidence establishing that it was not the workplace itself that exposed the employee to harm. But where the assault occurs in the course of employment and there is no evidence as to its motivation, the presumption is triggered and is not rebutted. Once it has been established that an employee was assaulted in the course of employment, the presumption—unless rebutted—obviates the need for an affirmative showing that the assault arose out of the employment." Thus, the Court clarified that a lack of evidence in the record about the motivation for the assault cannot rebut the normal presumption that an assault that occurs in the workplace is work-related. The only way to rebut that normal presumption is to come forward with evidence that the assault, although occurring in the workplace, "was motivated by purely personal animosity." Here, that was not the case. The Court held that because no record evidence existed concerning the motivation for the shooting, and there was no indication that the former employee and Timperio even knew each other before the shooting, the normal presumption applied here and the Workers' Compensation Board had properly determined that the claim was compensable under the Workers' Compensation Law.

FIRST DEPARTMENT

CONTRACTS, ACCOUNT STATED

***Aronson Mayefsky & Sloan, LLP v Praeger*, 2024 NY Slip Op 02657 (1st Dept May 14, 2024)**

Issue: **Is an account stated an independent cause of action that can be asserted simultaneously with a breach of contract claim, or is it duplicative of a breach of contract claim?**

Facts: Plaintiffs represented defendant in his divorce action pursuant to a retainer agreements. Plaintiffs sent bills to defendant on a monthly basis, but defendant's payments stopped after September 30, 2022. Plaintiffs continued to represent defendant from October 2022 through the end of January 2023. Although Defendant did not express dissatisfaction with the quality of the work performed and he did not express an inability to pay, he continued to fail to pay his legal bills. As a result, Plaintiffs moved to withdraw as counsel, and that motion was granted. Plaintiffs then commenced this action seeking to recover legal fees and disbursements they incurred while representing defendant in his divorce. They asserted claims for account stated and breach of the retainer agreement; defendant counterclaimed seeking a refund of certain fees paid to plaintiffs during their representation. Following competing summary judgment motions, Supreme Court granted Plaintiffs summary judgment on their account stated claims and dismissed defendant's counterclaim.

Holding: The First Department, noting that some of its recent decisions had created inconsistencies in the law suggesting that "an account stated claim is duplicative of a breach of contract claim," used this opportunity to "make clear that the rule in the First Department is that an account stated claim is an independent cause of action that is not duplicative of a claim for breach of contract." The Court explained, "[a]n account stated has long been defined as an account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance. It is an agreement, independent of the underlying agreement, regarding the amount due on past transactions. A defendant's receipt and retention of the plaintiff law firm's invoices seeking payment for professional services rendered, without objection within a reasonable time, gives rise to an actionable account stated, thereby entitling the plaintiff to summary judgment in its favor. When a law firm is asserting an account stated claim, it does not have to establish the reasonableness of its fee because the client's act of retaining the invoice without objection will be considered acquiescence as to its correctness."

Although a narrow exception exists to the general rule that an account stated claim is not duplicative of a breach of contract claim, "where the plaintiff is attempting to use a claim for an account stated simply as another means to attempt to collect under a disputed contract," the Court noted that in those exceptional cases, it "did not hold that the account stated claim was duplicative of the breach of contract claim. Rather, we found that it was not a sustainable claim because a contractual relationship had not been established whereby the defendant agreed to pay for the services or goods provided by plaintiff." "Therefore, this Court wants to make clear that an account stated is an independent cause of action that can be asserted simultaneously with a breach of contract claim and that an account stated claim should not be dismissed as duplicative of a breach of contract claim. This case falls squarely within our well-established precedent that an attorney can be granted summary judgment on an account stated claim based on the defendant's receipt and retention of a plaintiff law firm's invoices seeking payment for professional services rendered, without objection within a reasonable time, even where there is a retainer agreement."

FOURTH DEPARTMENT

EDUCATION LAW, SUCCESSOR LIABILITY

***AL 557 Doe v Central Val. Cent. Sch. Dist.*, 2024 NY Slip Op 02652 (4th Dept May 10, 2024)**

Issue: **When two school districts merge, may the centralized school district be held liable for the "just debts," including claims under the Child Victim's Act, of the prior school districts?**

Facts: In 2013, Ilion Central School District merged with Mohawk Central School District as a part of a centralization to become Central Valley Central School District. In this Child Victim's Act case against Ilion, Mohawk, and Central Valley, the school districts moved to dismiss the amended complaint, arguing that they are not proper parties to the action because Central Valley did not exist until 2013, and the centralization that occurred in 2013 pursuant to Education Law §§ 1801 and 1802 (1) resulted in the dissolution of Ilion. Supreme Court denied the motion.

Holding: The Fourth Department affirmed, holding that the CVA action could be maintained against Central Valley because, under Education Law § 1804 and § 1518, the centralized district assumes responsibility for a component district's property and indebtedness and becomes the successor-in-interest to the component district, regardless of when the centralization occurred. Thus, the Court held, the component district continues to exist, through the centralized district, for the payment of its "just debts," including those that have not been ascertained as of the date of the centralization. Central Valley, as the centralized district, was therefore a proper party to be sued under the CVA.

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