June 7, 2024

CasePrepPlus

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Summarizing recent significant New York appellate cases

This week, the Court of Appeals delved into New York's choice of law rules when the dispute involves the internal affairs of a corporation, noting that the law of the place of incorporation will typically apply, and explained to the bench and bar when courts may take judicial notice of foreign law. And the Second Department took the opportunity to caution trial judges against dismissing actions sua sponte, without motions made on proper notice. 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

CIVIL PROCEDURE, CHOICE OF LAW, JUDICIAL NOTICE

***Eccles v Shamrock Capital Advisors, LLC*, 2024 NY Slip Op 02841 (Ct App May 23, 2024)**

Issue: **In the course of international business disputes, does the substantive law of the corporation's place of incorporation apply to disputes concerning the corporation's internal affairs, and when may a court take judicial notice of foreign law?**

Facts: After FanDuel was founded in Scotland, it expanded into the US and daily fantasy sports. A failed merger with competitor DraftKings led FanDuel to pursue a merger with Paddy Power Betfair, a British sports betting company. As the United States Supreme Court was considering whether Congress could prevent the states from legalizing sports betting, the two companies agreed to non-binding terms for a merger, which they finalized after the Supreme Court struck down the federal sports betting ban. As part of the merger, however, the founders of FanDuel and numerous other shareholders were essentially cut out of the deal, leaving their significant investments in FanDuel valueless. The affected shareholders sued in New York, alleging, under New York law, that the company's directors breached fiduciary duties to the shareholders by approving the merger that eliminated their investments. The defendants moved to dismiss, arguing that Scots law applied because FanDuel was incorporated in Scotland, and under Scots law, corporate directors do not owe fiduciary duties to shareholders. Supreme Court denied the motion, holding that New York law applied and the complaint stated a claim. The Appellate Division, however, reversed, took judicial notice of the substance of Scots law, and held that the complaint failed to state a claim under Scots law.

Holding: The Court of Appeals reversed, and reinstated the complaint. As the Court explained, "under New York choice-of-law principles, courts apply the law of the forum to procedural questions and, to substantive issues, the law of the jurisdiction with the most significant relationship to the dispute." Where, as here, the dispute centers on the internal affairs of a corporation, including the relationships between directors and shareholders, "the 'general' approach is to apply the law of the state of incorporation." The Court clarified "that the substantive law of a company's place of incorporation presumptively applies to causes of action arising from its internal affairs . . . [I]n order to overcome this presumption and establish the applicability of New York law, a party must demonstrate both that (1) the interest of the place of incorporation is minimal—i.e., that the company has virtually no contact with the place of incorporation other than the fact of its incorporation, and (2) New York has a dominant interest in applying its own substantive law." Here, since FanDuel was incorporated in Scotland, and New York did not have a dominant interest in applying its own law to this dispute, the Court held that Scots law applied.

The Court further held that the Appellate Division properly took judicial notice of the substance of Scots law, noting that "CPLR 4511 gives courts substantial flexibility in determining whether to take judicial notice of foreign law and ascertaining its content. As the statutory language notes, a court must take judicial notice of foreign law upon request and if the court is furnished with sufficient information to do so; otherwise, a court may take judicial notice of foreign law in its discretion." In deciding whether to take judicial notice of foreign law, the Court explained, "[a] court should consider the merits of expert affidavits and other submitted materials, make a determination as to their sufficiency, and take judicial notice of foreign law as it deems appropriate. In making this 'sufficiency' determination, a court must consider not just the materials submitted by the party making the request, but those materials provided by the non-requesting party in opposition, including contrary authority or material which supports their own request. While the court, in its discretion, might defer decision on the motion and choose to hold a hearing so that it may conduct additional inquiry into the foreign law question, we hold that such a hearing is not mandated as a matter of course . . . Nonetheless, a court taking judicial notice of foreign law should always endeavor to provide detailed findings as to what the law of the foreign jurisdiction is and how it applies to the case at hand in order to facilitate appellate review." Here, the parties provided voluminous expert submissions that allowed the Court to determine the substance of Scots law, and the Appellate Division properly held that that information was sufficient to take judicial notice.

The Court of Appeals, however, disagreed with the Appellate Division's conclusion that the complaint failed to state a claim under the substance of Scots law on corporate fiduciary duties. Thus, the Court reinstated the complaint, and remanded the matter to Supreme Court for further proceedings on Plaintiffs' claims.

FIRST DEPARTMENT

CIVIL PROCEDURE, ELECTION LAW

Matter of Davis v Clennon, 2024 NY Slip Op 03004 (1st Dept May 31, 2024)

Issue: **How strict are the timing requirements for bringing primary challenges under the Election Law?**

Facts: In an election challenge to a designating petition for a candidate because a witness listed an incorrect address, Supreme Court entered its judgment invalidating the petition on May 6th. The Court of Appeals, however, set its Election Law calendar for the June 2024 primaries for May 14th, and required appeals at the Appellate Division to be heard on May 7th or 8th. The candidate, however, didn't file a notice of appeal from the Supreme Court judgment until May 10th and didn't perfect the appeal until May 22nd, well beyond the schedule set by the Court of Appeals.

Holding: The First Department held that that rendered the appeal untimely, because "at this juncture, the inclusion of appellant's name on the June 25, 2024, primary ballot would not be possible, given that ballots have been printed and mailed." The candidate argued that he could not have possibly perfected the appeal earlier because CPLR 5526 requires that the full transcript of proceedings be provided in the record on appeal, which he did not obtain until May 21st. The Court, however, rejected that argument, holding that "[i]n the context of an election appeal, applying CPLR 5526 and requiring the full record before perfecting an appeal would be impractical. In fact, the failure to do so has not been found to be grounds for dismissal of an election appeal." Candidates be warned, the timing of election appeals is critical to ensure relief can be granted before the electoral process is too far down the line and the Appellate Division won't let what is included in a record on appeal stand in the way of meaningful appellate review.

SECOND DEPARTMENT

CIVIL PROCEDURE, MORTGAGE FORECLOSURE

Wells Fargo Bank, N.A. v Louis, 2024 NY Slip Op 02948 (2d Dept May 29, 2024)

Issue: **When may a court dismiss a complaint sua sponte?**

Facts: After the plaintiff commenced this mortgage foreclosure action, it moved for summary judgment and for an order of reference. The defendant cross-moved to dismiss, arguing that the action was time-barred because the plaintiff had accelerated, but never decelerated the loan. Supreme Court denied both motions, holding that a letter that the plaintiff allegedly sent to the defendant created a question of fact whether the loan had been decelerated. Following additional discovery, the parties made competing discovery motions, both seeking sanctions against the other. Supreme Court, however, dismissed the complaint sua sponte instead, holding that the letter that both parties had attached to their discovery motions failed to decelerate the loan, and the complaint was thus time-barred.

Holding: The Second Department resoundingly reversed and took the "opportunity to emphasize to trial courts the due process importance of not directing the dismissal of a complaint absent notice and an opportunity to be heard, which has been occurring with unwarrantable frequency." As the Court explained, "sua sponte dismissals of complaints are held to be reversible error in nearly every instance" because the trial court's power to dismiss sua sponte "is to be used sparingly, and only when extraordinary circumstances exist to warrant such relief." The Court noted, however, that it had happened 91 times in the Second Department since 2011, and in each of those cases, the Court had overcome the typical jurisdictional bar to appellate review of sua sponte orders by granting leave to appeal to reverse the sua sponte order.

The Court emphasized, "the problem of sua sponte dismissals has been perpetuated from year to year, much more so in some counties than others, but seemingly without any 'brake' applied despite the multiple dozens of Appellate Division decisions that have repeatedly and collectively advised against the practice during the same time period. The importance that courts not dismiss actions sua sponte absent extraordinary circumstances is grounded in a fundamental concept that lawyers and judges know well—that due process requires parties to be given notice and an opportunity to be heard about litigation issues. Courts are to be bastions of due process. It is not the role of the court, within the moat of that bastion, to seize upon an issue not raised by any party in a motion and to unilaterally dismiss an action on the basis of that discrete issue, without providing the party whose claim is dismissed so much as notice of the issue and an opportunity for all parties to be heard on it. The Court of Appeals has cautioned the judiciary that 'we are not in the business of blindsiding litigants, who expect us to decide matters on rationales advanced by the parties, not arguments their adversaries never made.'"

Indeed, the CPLR is replete with procedural protections that are derived from due process protections afforded to the parties to a suit. Here, the Court held, since the parties moved for discovery relief, "[t]he scope of the court's order therefore should have been limited to issues of discovery and any spillover issues involving the note of issue and the parties' trial readiness. The court's attention should not have

extended to any dispositive issue, not raised or argued by either party, regarding the viability of the plaintiff's 2016 letter purportedly de-accelerating the balance due on the note and the effect of that determination on the applicable statute of limitations. By addressing and determining this issue, that it viewed to be dispositive, the court deprived the plaintiff of notice of the issue and an opportunity to be heard on it."

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