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CasePrepPlus

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Summarizing recent significant New York appellate cases

Is the United Methodist Church a jural entity capable of being sued under the Child Victim's Act for alleged abuse committed by its local church officials? Given the unique structure of the Church, the Second Department held, the Church is only a religious denomination, not a legal entity capable of being sued. Thus, the only proper parties to a CVA suit are the Church's General Conference and the local churches themselves. 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

RENT STABILIZATION LAWS

Liggett v Lew Realty LLC, 2024 NY Slip Op 03378 (Ct App June 20, 2024)

Issue: **May a person who is not yet established as a tenant waive the protections of the Rent Stabilization Laws by entering a stipulation with the landlord?**

Facts: Defendant Lew Realty owns and operates a Manhattan apartment building where plaintiff K.E. Liggett has resided since October 2020 pursuant to a market lease. In 1984, an initial rent registration for the apartment was filed with the Division of Homes and Community Renewal, identifying Edward Brown as the sole rent-controlled tenant of record. When Brown died in 1998, he paid $141.23 in rent per month. Upon Brown's death, Edward McKinney claimed to be Brown's successor to the rent-controlled apartment. Lew Realty disputed McKinney's status and commenced a holdover proceeding to evict him. McKinney and Lew Realty settled that proceeding in 2000 through a so-ordered stipulation, which provided that McKinney would take tenancy as the first rent stabilized tenant of the apartment rather than maintaining the apartment as rent controlled. The stipulation provided that McKinney "agrees to accept and the landlord agrees to offer a rent stabilized lease" at a rate of "$650 per month," set the legal regulated rent at $1,650 per month, and contained a provision that ensured that McKinney would pay a preferential rate of $650, with subsequent increases tied to this number for the duration of his tenancy. McKinney also agreed "not to challenge the rent," thereby waiving his right to challenge the amount of the initial rent through a Fair Market Rent Appeal proceeding. McKinney vacated the apartment in 2001, and Lew Realty renovated it, then claiming it was subject to luxury decontrol. Lew Realty then rented the apartment on the open market.

When Liggett rented the apartment, he challenged the decontrol, arguing that the stipulation was void against public policy, due to the impermissible waiver of McKinney's rights under the RSL. Supreme Court denied Lew Realty's motion to dismiss, holding that the Stipulation is unenforceable to the extent that it waived the protections of the rent laws. The Appellate Division, in a 3-2 opinion, "concluded that although an agreement by a tenant to waive the benefit of any provision of the rent control law is void, this protection did not apply to McKinney because he was not an established tenant when he signed the Stipulation."

Holding: The Court of Appeals reversed, holding that the Stipulation purporting to waive the tenant's right to file a fair market rent appeal was void against public policy. The Court explained, "New York's Administrative Code provides a specific process for setting the initial rent of an apartment leaving rent control and entering rent stabilization. Under 9 NYCRR 2521.1 (a), the initial regulated rent 'shall be the rent agreed to by the owner and the tenant and reserved in a lease or provided for in a rental agreement subject to the provisions of this Code, and subject to a tenant's right to a Fair Market Rent Appeal to adjust such rent pursuant to section 2522.3 of this Title.' The right to file an FMRA is held only by the first tenant of a rent stabilized apartment, so long as that tenant received mailed notice of this right." Since the right to file a fair market rent appeal is a tenant's right under the RSL, and the RSL prohibits waivers of those rights, the Court held that "McKinney's explicit agreement 'not to challenge the rent,' . . . circumvented the statutory process, and consequently the Stipulation is void in its entirety as a matter of law." Voiding the Stipulation, thus, also voided the deregulation of the apartment that was based on the stipulation.

The Court also explained that the Appellate Division's prior holding in *Kent v Bedford Apartments Co.* (237 AD2d 140 [1st Dept 1997]), which "held that the RSL's prohibition of a waiver of rights did not apply to a plaintiff not yet established as a rent stabilized tenant," was inconsistent with the Court's RSL precedent and was no longer to be followed. "McKinney's status vis-à-vis the apartment has no bearing on whether the Stipulation was void. Rather, the Stipulation is void because it purports to waive a benefit of the rent laws. Accordingly, *Kent* provides no basis to dismiss Liggett's claims here."

SECOND DEPARTMENT

CIVIL PROCEDURE, CAPACITY

Chestnut v United Methodist Church, 2024 NY Slip Op 03726 (2d Dept July 10, 2024)

Issue: **Is the United Methodist Church a jural entity amenable to suit?**

Facts: The plaintiff brought a Child Victim's Act suit against the United Methodist Church General Conference, a number of local Methodist churches, and " an entity denominated United Methodist Church." "The complaint alleged that United Methodist Church, 'as principal,' was in an agency relationship with United Methodist Church of Woodbury New York and a 'special relationship of employer-employee' with the alleged abuser" of the plaintiff. United Methodist Church moved to dismissing, arguing that it was not a jural entity that could be sued. In particular, the Church argued, its founding and governing documents provide that the United Methodist Church is a religious denomination, not a legal entity. "It is not incorporated or otherwise organized under the laws of any State or any other jurisdiction, including New York. The denomination operates only through its units, which include conferences, national and world-wide councils, boards, agencies, and local churches. Those units are, for the most part, legal entities that are capable of suing and being sued and possessed of legal capacities." Following an evidentiary hearing, Supreme Court determined that the United Methodist Church was an unincorporated association capable of being sued in New York.

Holding: The Second Department reversed, holding that on the evidentiary record before it, "the defendants established that United Methodist Church is not a jural entity with the capacity to be sued." Although unincorporated associations may be sued in New York, the Second Department held that the evidence showed that the Church is "a religious denomination with a single purpose—'to make disciples for Jesus Christ for the transformation of the world'—and not a jural entity amenable to suit as an unincorporated association. It is undisputed that United Methodist Church does not have a principal place of business, does not have its own offices or employees, and does not and cannot hold title to property, and there is no proof in the record that United Methodist Church has incorporated or held itself out as a jural entity in any other jurisdiction. Moreover, the defendants demonstrated at the hearing that United Methodist Church, as such, does not have any involvement in the staffing or the removal of clergy or staff at the local church level." Thus, the Court concluded, "United Methodist Church does not operate as an entity separate and apart from those incorporated and unincorporated entities that comprise the United Methodist system. Instead, United Methodist Church governs itself through the efforts of United Methodists from all over the world who, at various levels, propose and adopt policies and procedures in the Discipline to be followed by, among others, local churches, annual conferences, and the various corporate entities at the general church level, such as GCFA. Given this unique structure, the hierarchical nature of United Methodist Church's 'connectional' structure does not, in and of itself, suggest that United Methodist Church is an unincorporated association or anything other than a religious denomination."

THIRD DEPARTMENT

FREEDOM OF INFORMATION LAW

Matter of DeWolf v Wirenius, 2024 NY Slip Op 03790 (3d Dept July 11, 2024)

Issue: **Does the Public Employment Relations Board regulation that requires parties to an administrative hearing to purchase a copy of any transcript of the proceedings from the stenographer, who "has exclusive right to reproduce and sell copies of minutes at hearings," violate the State Administrative Procedure Act?**

Facts: In 2022 through 2023, petitioner and Wayne County were involved in administrative hearings held before the Public Employment Relations Board. In July 2022, petitioner submitted a Freedom of Information Law request to the County for copies of hearing transcripts. The County initially denied the request, but eventually reversed course after petitioner obtained a favorable advisory opinion from the Committee on Open Government. The County denied subsequent FOIL requests for additional transcripts after their outside counsel did not order copies from the hearing stenographer.

Petitioner also filed FOIL requests with PERB for the hearing transcripts. Although PERB advised that Petitioner could review the hearing transcripts, to have a copy, he would have to contact the stenographer and order a copy, because "the transcripts are the private work product owned by the stenographer, who has the exclusive right to reproduce and sell copies of the minutes." PERB then formally denied the FOIL request, citing 4 NYCRR 208.3 (c), which provides that "[s]tenographic services at hearings held by [PERB] are provided pursuant to arrangements under which the stenographer has exclusive right to reproduce and sell copies of minutes at hearings. While the minutes of hearings may be inspected at the offices of [PERB], any person desiring a copy of minutes must make arrangements directly with the stenographer." Supreme Court dismissed Petitioner's Article 78 proceeding challenging the FOIL denials.

Holding: The Third Department held that "[n]otwithstanding the County's representations that outside counsel elected not to order the transcripts, petitioner submitted copies of invoices showing that counsel had ordered and been billed for transcripts of the requested hearings. Additionally, at oral argument, counsel relayed that she spoke to outside counsel, who stated that she ordered the transcripts but did not obtain them because she did not want to turn the transcripts over to petitioner." Accordingly, the Court remitted the matter to Supreme Court for a hearing on whether the County records officer properly certified that the requested documents were not within

the County's control. As to PERB's denial, the Court struck down PERB's regulation requiring parties to order their own transcripts of administrative hearings, as inconsistent with the State Administrative Procedure Act. In particular, the Court held, "4 NYCRR 208.3 (c) is inconsistent with State Administrative Procedure Act § 302 (2), which imposes a duty on the agency to furnish a copy of the transcript to a party upon request. Moreover, it is inconsistent with the statutory scheme of FOIL, which 'imposes a broad standard of open disclosure in order to achieve maximum public access to government documents.'"

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