NYSBA CasePrepPlus

A New York State Bar Association member benefit

October 18, 2024

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Summarizing recent significant New York appellate cases

Can a commercial lender be immune from New York's 6-year statute of limitations to bring a mortgage foreclosure action? The Second Department took the opportunity recently to clarify that although the United States and federal agencies may be immune from New York's statute of limitations, that immunity does not pass to commercial lenders unless the lender is the direct assignee of the federal agency that had a right to foreclose the loan. The Second Department explained, however, "where a loan was insured by a federal agency, but no federal agency ever had a right to foreclose the mortgage, the federal government's immunity does not apply to a lender seeking to foreclose upon the mortgage." 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

TORTS, FORESEEABILITY

Crandall v Equinox Holdings, Inc., 2024 NY Slip Op 04902 (1st Dept Oct. 08, 2024)

Issue: **What prior notice is required before a gym may be held liable for the torts of its members?**

Facts: Plaintiff alleged that he was sexually assaulted by another gym member in the men's steam room at defendant's facility when the other member exposed himself, "began masturbating, and continued to do so while physically restraining plaintiff from leaving the steam room." Plaintiff reported the incident to a locker room attendant, who notified the facility's general manager. After Plaintiff pointed out his assailant, the general manager promised that the assailant's membership would be revoked. When Plaintiff returned to the gym the next day, however, the "general manager told him that 'this happens all the time' and 'there is nothing we can do about it.' Plaintiff also spoke to two other employees, both of whom allegedly stated that the gym had received multiple complaints of inappropriate behavior occurring in the steam room." Plaintiff sued, alleging negligence, and following discovery, defendant moved for summary judgment, arguing that the assault wasn't foreseeable. Supreme Court granted defendant's motion and dismissed Plaintiff's negligence claim, holding that "plaintiff's alleged assault was not foreseeable because there is no evidence that defendants had reason to suspect that the purported assailant would commit the acts alleged here, [and] defendants did not have the ability and opportunity to control the conduct at issue through the exercise of reasonable measures."

Holding: The First Department reversed, holding that the negligence claim should be tried before a jury. The Court explained that "[t]he Court of Appeals has repeatedly emphasized that only in rare cases can questions concerning foreseeability be decided as a matter of law. As questions concerning what is foreseeable may be the subject of varying inferences, whether an intervening act is foreseeable or extraordinary under the circumstances generally is for the fact finder to resolve." Here, the Court held, although the Plaintiff's allegations that the gym had prior notice were based on 13 other similar complaints by different gym members, "New York courts . . . have never required prior incidents to have been committed by the same assailant or even be of the same type of conduct to which the plaintiff was subjected" and, here, "at least three of the other gym members reported that they had been sexually harassed, including the member who complained mere weeks before the assault on plaintiff." Further, the gym's evidence of policies designed to combat this type of assault were insufficient to grant it summary judgment because no evidence existed "that the training and practices cited in the affidavit of [the gym's] senior director for club operations were actually implemented." Thus, the Court held, "whether plaintiff's alleged assault was foreseeable to [the gym] and whether [the gym] implemented adequate security measures to decrease the likelihood of such incidents are questions of fact and plaintiff's negligence claim should advance to a jury trial."

SECOND DEPARTMENT

MORTGAGE FORECLOSURE, CIVIL PROCEDURE, STATUTE OF LIMITATIONS

Bank of Am., N.A. v Reid, 2024 NY Slip Op 04942 (2d Dept Oct. 9, 2024)

Issue: **If a federal agency insures a mortgage loan, but does not have a right to foreclose the loan, may the commercial lender exercise the federal agency immunity from New York's statute of limitations?**

Facts: In March 2010, BAC Home Loans Servicing, L.P. commenced a foreclosure action against the defendant to foreclose a mortgage on property in Queens and elected to accelerate the entire debt. In 2015, after failing to comply with a number of court orders, the trial court

dismissed the foreclosure action. BAC's successor, Bank of America, N.A., then in 2018 commenced this foreclosure action. Defendant answered, asserting that the action was time barred because the debt had previously been accelerated and this action was commenced more than 6 years following that date. "The plaintiff moved . . . for summary judgment striking the defendant's affirmative defense alleging that the action was time-barred, contending that the plaintiff was an assignee of federal agencies and that, therefore, it was immune from the statute of limitations. In an order entered March 14, 2022, the Supreme Court . . . denied that branch of the plaintiff's motion."

Holding: The Second Department clarified that "where a loan was insured by a federal agency, but no federal agency ever had a right to foreclose the mortgage, the federal government's immunity does not apply to a lender seeking to foreclose upon the mortgage." The Court explained, unlike the 6-year statute of limitations that applies to foreclosure actions brought by private lenders, "[t]here is no federal statute of limitations applicable to mortgage foreclosure actions brought by the United States or its federal agencies. That rule applies equally to an assignee of a federal agency, including a commercial lender, and includes the benefit of immunity from a state limitations period."

Here, however, the Court held that Bank of America failed to show that "it was an assignee of a federal agency and, therefore, entitled to immunity from New York's statute of limitations." "The relevant distinction in this case is that between a loan that was merely *insured* by a federal agency and a loan that was *held* by a federal agency, such that the federal agency had a right to foreclose the mortgage, and then assigned to the plaintiff. A plaintiff seeking to foreclose a mortgage that was merely insured by a federal agency is not entitled to immunity. Allowing immunity in such instances would inappropriately expand its application and would be inconsistent with the purpose of allowing the government to maintain belated actions to enforce public rights, where the government never had the ability to maintain such an action."

THIRD DEPARTMENT

WORKERS' COMPENSATION, DOCTRINE OF LACHES

***Matter of Northrop v Amphenol Corp.*, 2024 NY Slip Op 05013 (3d Dept Oct. 10, 2024)**

Issue: **When an insurer has accepted and paid benefits under a workers' compensation claim outside of its policy period, may it be barred by laches from later disclaiming coverage?**

Facts: "In May 2007, claimant first sought medical attention for tingling in her hands and she filed a claim for workers' compensation benefits. In February 2008, claimant was diagnosed with mild carpal tunnel syndrome of the right wrist. Claimant continued working until September 2020, when she again sought medical attention for carpal tunnel syndrome and arthritis. In October 2020, Travelers Indemnity Company of America filed a first report of injury agreeing to liability for claimant's condition, listing a date of injury of November 2007. Travelers thereafter approved a request for right carpal tunnel release surgery on November 3, 2020 and began paying benefits." At a subsequent workers' compensation hearing, Travelers argued that the date of disablement should be May 2007 or February 2008. The Workers' Compensation Law Judge, however, set the date of disablement as September 1, 2020, and ordered Travelers to pay benefits. Travelers appealed only the date of disablement, but the Workers' Compensation Board affirmed. After the appeal had concluded, Travelers sought to reopen the matter, "arguing, for the first time, that it was not the proper carrier for the claim, and shortly thereafter requested that Sentry Casualty Company be placed on notice as the proper carrier." Sentry opposed, arguing that Travelers should be barred by laches from denying coverage. The Workers' Compensation Law Judge agreed, and the Workers' Compensation Board affirmed.

Holding: The Third Department held that "[t]he doctrine of laches can apply in workers' compensation cases when there has been an inexcusable delay in raising the defense of noncoverage together with actual injury or prejudice." That was the case here, the Court held. "The record reflects that Travelers' coverage for claimant ended in 2009 and that Sentry provided coverage for claimant going forward from May 2011. However, despite its coverage ending in 2009, Travelers accepted the claim in October 2020, approved claimant's surgery a month later and began paying benefits. . . . Travelers did not raise the issue of noncoverage either during the hearing — despite the WCLJ rejecting its request for a 2007 or 2008 date of disablement and finding that a September 1, 2020 date of disablement is appropriate — or in its administrative appeal of the WCLJ's decision. Travelers has also failed to adequately explain its delay in raising noncoverage and requesting Sentry to be put on notice. Accordingly, Travelers has not demonstrated an excusable delay in contesting coverage." The Board therefore properly applied laches to preclude Travelers from denying coverage.

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