October 25, 2024

CasePrepPlus

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Editor:
Robert S. Rosborough IV

Summarizing recent significant New York appellate cases

The Court of Appeals is back this week with its first opinions of the 2024-25 term, providing useful guidance for when tenured teachers are entitled to statutory hearings under Education Law § 3020-a and when municipal highway workers are immune from liability for ordinary negligence claims under the Vehicle and Traffic Law. Let's take a look at those opinions and what else has been happening in New York's appellate courts over the past week.

Special thanks this week go out to my outstanding colleagues Justine Case-Fitzgerald and Viktoria Yudchits, who were instrumental in preparing the case summaries.

COURT OF APPEALS

EDUCATION LAW, HEARING PROCEDURES

Matter of O'Reilly v Board of Educ. of the City Sch. Dist. of the City of N.Y., 2024 NY Slip Op 05130 (Ct App Oct. 17, 2024)

Issue: **Is a tenured teacher entitled to the hearing procedures outlined in Education Law §§ 3020 and 3020-a when the teacher violates a condition of employment, rather than faces discipline?**

Facts: "Petitioners, tenured public school teachers employed by the Board of Education of the City School District of the City of New York (BOE), brought CPLR article 75 and 78 petitions challenging their placement on leave without pay status after they failed to submit proof of vaccination in accordance with the vaccination requirement imposed on BOE employees by the Commissioner of the New York City Department of Health and Mental Hygiene (the Health Commissioner)." Specifically, Petitioners sought to vacate the Impact Award, which provided, among other things, that any unvaccinated employees who failed to either request a vaccine exemption or whose vaccine exemption request was denied could be placed on leave without pay by the Board of Education. Petitioners further alleged that the Board of Education violated Education Law §§ 3020 and 3020-a because it failed to provide hearings pursuant to the provisions when it placed Petitioners on leave without pay.

The First Department denied the petitions, holding, among other things, that Petitioners were not entitled to the hearings set forth in §§ 3020 and 3020-a of the Education Law, because "petitioners' placement on leave for failure to prove vaccination, a condition of employment" was "unrelated to job performance, misconduct or competency" and did "not constitute teacher discipline subject to the procedures mandated by" the Education Law.

Holding: The Court of Appeals affirmed, holding that "Petitioners were not entitled to the hearing procedures outlined in Education Law §§ 3020 and 3020-a before being placed on leave without pay." The Court explained, it has "long distinguished" the applicability of the Education Law's provisions regarding a teacher's right to statutory hearings, emphasizing that "[w]hile tenured teachers have a right to these statutory hearings when faced with disciplinary proceedings, these provisions are not applicable to [P]etitioners, who were placed on leave without pay for failure to comply with the vaccine mandate, a condition of employment." Stated otherwise, the Court reiterated its long-standing principle that a teacher who is terminated for failing to comply with an "employment eligibility condition[]" that is "unrelated to job performance, misconduct or competency," such as the vaccine mandate here, is not entitled to a statutory hearing. In so holding, the Court noted that the "United Federation of Teachers (UFT), the union representing a majority of teachers in NYC public schools," negotiated "every aspect of the imposition of the mandate" and "subsequently agreed to be bound by the Impact Award," and that "teachers received ample notice of the Impact Award's provisions."

TORTS, MUNICIPAL IMMUNITY

Orellana v Town of Carmel, 2024 NY Slip Op 05131 (Oct. 17, 2024)

Issue: **What is the scope of municipal immunity for a town employee involved in an accident while driving on a highway but not engaged in work pursuant to Vehicle & Traffic Law § 1103(b)?**

Facts: Due to snow, the Town of Carmel Highway Superintendent traveled to the highest elevation in town to assess the road conditions. After seeing a small accumulation of snow, he radioed his team of 35 employees, directing them to salt the town's roads. While traveling back to his office, he was involved in a traffic accident. His failure to look right at an intersection caused him to collide with the plaintiff's vehicle. Plaintiff brought a claim for negligence for failing to look both ways before entering an intersection, causing the collision. Following discovery, defendants moved for summary judgment and plaintiff cross-moved for summary judgment. The Supreme Court granted

defendant's motion holding that the defendants' conduct was protected by Vehicle & Traffic Law § 1103(b). On appeal, the Second Department affirmed.

Holding: The Court of Appeals reversed, denying defendants' motion for summary judgment and granting plaintiff's cross-motion for summary judgment. The Court explained, "title VII of the Vehicle and Traffic Law sets out a uniform set of traffic regulations, or rules of the road, which generally apply to drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state. Vehicle and Traffic Law § 1103 (b), however, provides that those rules 'shall not apply to persons, teams, motor vehicles, and other equipment *while actually engaged in work on a highway*' (Vehicle and Traffic Law § 1103 [b] [emphasis added])." This exemption from liability only applies to ordinary negligence, and does not excuse a municipal worker's reckless disregard of risks. Indeed, the Court noted, "[i]n drafting Vehicle and Traffic Law § 1103 (b), the legislature aimed to support the work of keeping the roadways clean and safe for everyone, while accounting for the fact that vehicles performing those functions may themselves cause risks to ordinary motorists with whom they share the road."

Applying these principles, the Court held that although the exemption is broad and does not require the highway work to be performed within a designated work area, the Appellate Division has regularly "held that drivers are not 'actually engaged in work on a highway' when they are merely traveling between work sites and not actively performing any protected task on the road itself." Here, the Court held, "the uncontested evidence demonstrates that the [Highway Superintendent] was not actually engaged in work on a highway at the time the accident occurred, thus the defendants were not entitled to the protection of section 1103(b)."

FIRST DEPARTMENT

CONTRACT LAW

O'Connor v Society Pass Inc., 2024 NY Slip Op 05141 (1st Dept Oct. 17, 2024)

Issue: **If a stock warrant is issued to an employee after entering into an employment contract that provides for the issuance of stock to the employee, does the warrant become a separate contract or is it considered an integrated agreement with the employment contract?**

Facts: In November 2018, Defendant Society Pass Incorporated ("SPI") hired Plaintiff to be its chief marketing officer. The parties executed an Employment Agreement that included a section entitling Plaintiff to stock in consideration for his employment. The Employment Agreement specified that Plaintiff would "receive a stock grant equal to 10% of the Company's shares of common stock . . . which shall vest and be issued quarterly in equal amounts during the term of four (4) years" and that Plaintiff must remain an employee to be eligible. The section also included the requirement for the Company and Executive to draft a list of Key Performance Indicators ("KPIs") which would govern the issuance of the Shares. The parties never agreed to a list of KPIs.

On January 31, 2019, two months after executing the Employment Agreement, SPI presented Plaintiff with a stock warrant (the "Warrant") certifying that Plaintiff had one year to purchase 1,721 shares of SPI Common Stock at an exercise price of $0.0001 per share with the right to an immediate redemption of 861 shares and the remaining 860 shares being subject to a 12-month vesting schedule unless plaintiff voluntarily resigned from his employment with SPI. The Warrant and the Employment Agreement contained entirely different manners for Plaintiff to be granted equity in the company.

Plaintiff executed a "Notice of Exercise" for 861 shares January 31, 2019, the day the Warrant was issued. On August 20, 2019, plaintiff again provided SPI with the January 31, 2019 notice of exercise and a new notice of exercise for 430 shares dated August 1, 2019. Plaintiff executed two additional notices of exercise, dated November 1, 2019 and January 31, 2020. By January 31, 2020 plaintiff executed notices of exercise and provided funds for all 1,721 shares provided in the Warrant. Before Plaintiff executed the final two notices to exercise, he was terminated from employment with SPI.

Plaintiff then filed suit, alleging breach of contract based on SPI's failure to deliver the 1,721 shares of SPI's common stock pursuant to the Warrant. SPI counterclaimed, alleging plaintiff breached the Employment Agreement by failing to develop and agree to a list of KPIs and by committing malcontent insubordination. SPI contended that the "Warrant is no longer valid and [plaintiff] is no longer entitled to exercise any rights thereunder." SPI rejected and returned the November 1, 2019 and January 31, 2020 notices and the accompanying checks.

After Plaintiff moved for summary judgment on the breach of contract claim seeking $9 million for the 1,721 shares of SPI common stock, Supreme Court partially granted the motion, holding that "the Warrant superseded the Employment Agreement on the issue of plaintiff's entitlement to SPI shares" and that Plaintiff had validly exercised his rights to purchase 1,148 shares. The Court calculated that Plaintiff was entitled to 861 shares immediately and the remaining shares vested at another 71.6 shares from February through May but because of allegations of insubordination he was not entitled to shares from June through his termination. The Court held that issues of fact existed as to the valuation of the shares requiring further analysis to determine the appropriate measure of damages.

Holding: The First Department affirmed, holding that Plaintiff validly exercised his rights to purchase at least 1,148 shares of PSI common stock. The Court explained that stock warrants are enforceable contracts and, when they contain all material provisions, they will be enforced according to their terms and may be properly resolved on summary judgment. The Court further held that although the Employment Contract and the Warrant could have been an integrated contract, the primary standard for this determination is the intent of

the parties manifested in view of the surrounding circumstances. Because the Warrant lacked "any contractual language indicating a clear and unequivocal intent to incorporate and integrate the Employment Agreement," "the Warrant [wa]s a separate contract, enforceable in its own right." The Court held, issues of fact existed as to Plaintiff's alleged insubordination and the share price.

THIRD DEPARTMENT

EDUCATION LAW

***Matter of North Shore Hematology-Oncology Assoc., P.C. v New York State Dept. of Health*, 2024 NY Slip Op 05165 (3d Dept Oct. 17, 2024)**

Issue: Was New York State Department of Health's adoption of a definition of oncological protocol that prohibited a licensed provider from dispensing certain drugs rational?

Facts: Under the Education Law, "licensed healthcare providers who are legally authorized to prescribe drugs are generally prohibited from also dispensing more than a 72-hour supply of those drugs to their patients." However, one exception to this rule is "when the drugs are being dispensed pursuant to an oncological . . . protocol." Petitioner is an oncology practice that engages in physician dispensing, including for its patients enrolled in Medicaid. The Department of Health "is the agency charged with administering Medicaid in this state."

Upon reviewing "certain Medicaid pharmacy claims handled by managed care organizations . . . DOH concluded that physicians were submitting claims for drugs falling outside of the oncological protocol exception, including drugs to treat nausea and pain, vitamins, antibiotics and antipsychotics. DOH then took a number of steps to clarify its position — to both physician dispensers and MCOs — regarding the exception," which included communications with the State Education Department, "for the purpose of obtaining SED's interpretation of the exception," which "DOH ultimately adopted." In June 2021, DOH "published its definition of oncological protocol — 'a written set of instructions to guide the administration of chemotherapy, immunotherapy, hormone therapy, [or] targeted therapy to patients for the treatment of cancer or tumors' that does not extend to 'protocols that cover drugs prescribed to relieve side effects of these therapies or to relieve distressing symptoms (such as nausea or pain).'"

Petitioner commenced the underlying Article 78 proceeding, claiming that "it began receiving claims denials from MCOs for 'supportive care' medications that had previously been reimbursed" and arguing that "DOH's new, allegedly more restrictive definition of oncological protocol constituted an unpromulgated rule and that said rule lacked a rational basis and was unconstitutionally vague." Supreme Court dismissed the Petitioner's action, holding that DOH's definition of oncological protocol was a rational interpretive statement of preexisting statutory language.

Holding: The Third Department reversed. Noting that it agreed with Supreme Court that DOH's definition of oncological protocol "[wa]s an interpretive statement not subject to rulemaking procedures," the Court nonetheless held that DOH's definition "[wa]s irrational." At the outset, the Court noted that "courts will generally defer to the agency's interpretative expertise unless that interpretation is unreasonable, irrational or contrary to the clear wording of the statute." The Court held that, here, "although the relevant statutory language touches upon technical healthcare matters, there [wa]s no evidence that any such expertise was genuinely exercised by either agency in arriving at the subject definition." Specifically, the Court noted that while the Executive Secretary "consulted with SED staff, . . . conducted legal research and researched standards relevant to dispensing and oncologic protocols" in developing the guidance, "[n]o further explanation [wa]s provided regarding those consultations or medical standards." As such, the Court held that the Respondents were not entitled to deference in interpreting the language. The Court further emphasized that the record was "replete with evidence of industry guidelines and authoritative medical literature strongly suggesting that respondents' definition may inhibit the provision of adequate healthcare to oncology patients," including "evidence of the need for ancillary or concomitant administration of medications presumably excluded from the definition in order to enhance the effects of cancer treatments and/or prevent fatal complications arising therefrom."

The Court concluded that "[g]iven the complete absence of any medical basis for the line drawn here, and guided by the Legislature's intent to ensure that its general prohibition against prescriber-dispensing did not unreasonably impede the provision of adequate healthcare services in the context of oncology, we cannot find that the definition of oncological protocol before us is rational."

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