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Editor:
Robert S. Rosborough IV

Summarizing recent significant New York appellate cases

The Fourth Amendment to the United States Constitution protects us from unreasonable searches and seizures. Warrantless searches presumptively violate that constitutional right, unless the police can show an exception to the warrant requirement applies. The plain view exception is one such exception, but as the Fourth Department explained recently, it only applies when the tangible evidence of criminality is immediately apparent. According to the Court, that prong of the exception is satisfied only when the criminal nature of the evidence can be observed without manipulating it. If the police have to touch or move the evidence before discovering its criminality, the plain view exception to warrant requirement doesn't apply. Let's take a look at those opinions and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

LANDLORD-TENANT LAW, RENT STABILIZATION CODE

***Matter of Stuyvesant Town-Peter Cooper Vil. Tenants Assn. v New York State Div. of Hous. & Community Renewal*, 2024 NY Slip Op 05655 (1st Dept Nov. 14, 2024)**

Issue: **Does the New York State Division of Housing and Community Renewal have authority to allow for waiver of the ceiling for what can be recovered through a temporary major capital improvement rent increase?**

Facts: A tenants' association and others challenged the New York State Division of Housing and Community Renewal's newly adopted regulations that set a reasonable cost schedule for major capital improvements, which set a ceiling for what can be recovered through a temporary major capital improvement rent increase, allowed waivers to the cost ceilings set in the schedule for items "necessarily and appropriately priced higher" and based on "undue hardship" to owners, and permitted the recovery of "related expenses" and "other additional items" that are not specified or listed in the reasonable cost schedule. Supreme Court denied the Article 78 petition and dismissed the proceeding.

Holding: The First Department modified, however, to annul so much of the regulations that allowed for the cost ceiling waivers under Rent Stabilization Code (9 NYCRR) § 2522.11(g)(1)(i)-(ii) and permitted under Rent Stabilization Code (9 NYCRR) § 2522.11(f)(1) the recovery of "related expenses" and "other additional items" that are not specified or listed in the reasonable cost schedule. The Court explained that in adopting Part K of the Housing Stability and Tenant Protection Act of 2019, the Legislature directed DHCR to adopt regulations that set a ceiling on the permissible rent increases for major capital improvements. The Legislature did not authorize DHCR to allow for waiver of that ceiling, and so the Court held that those specific provisions of the DHCR regulations were ultra vires and should have been annulled. The Court otherwise rejected the tenants' association's challenges to the new regulations.

SECOND DEPARTMENT

LABOR LAW, COLLATERAL ESTOPPEL

***Reyes v Seaqua Delicatessen, Inc.*, 2024 NY Slip Op 05562 (2d Dept Nov. 13, 2024)**

Issue: **If plaintiffs receive an award of back pay from the United States Department of Labor for violations of the Fair Labor Standards Act, and plaintiffs released their right to commence an action to recover back wages under the FLSA for the period of time indicated, do they also waive their right to recover under New York State Labor Law?**

Facts: Following a U.S. Department of Labor investigation, which found that the employer had underpaid the plaintiffs between February 2014 and February 2017, in violation of the FLSA, the "plaintiffs received back wages from the [employer] in September 2017, and received forms WH-58 as receipt of payment, which contained language stating that the plaintiffs released their right to commence an action to recover back wages under the FLSA 'for the period of time indicated above,' i.e., the workweek ending February 8, 2014, through the workweek ending February 4, 2017." The plaintiffs' employment was then terminated in March 2020. In December 2021, the plaintiffs filed a suit in federal court for violations of the FLSA and New York State Labor Law covering the April 2014 to March 2020 time period. That action was dismissed, after the plaintiffs' time records showed underpayments for that time period, and their Labor Law claims were dismissed without prejudice. The plaintiffs then commenced this action in state court, alleging five different causes of action for underpayment of wages and retaliation. The employer moved to dismissed, based on documentary evidence, arguing that the plaintiffs were

estopped by the U.S. Department of Labor award from receiving additional compensation. Supreme Court agreed and dismissed the Labor Law overtime claims.

Holding: The Second Department reversed, holding that "the documents submitted with respect to the prior proceedings in federal court and prior federal administrative proceedings do not utterly refute the plaintiffs' allegation that they may independently recover under the New York Labor Law for failure to pay the minimum wage and overtime, as alleged in the first and second causes of action. The 'Stipulation and Order of Dismissal' of the prior federal action explicitly states that 'their state law claims' are dismissed without prejudice, and the forms WH-58 from the USDOL summarizing their unpaid wages for the period from the workweek ending February 8, 2014, through the workweek ending February 4, 2017, make no reference to the plaintiffs' state law causes of action. Since the plaintiffs' state law causes of action were dismissed without prejudice, they were not sufficiently litigated on the merits to invoke the doctrine of collateral estoppel."

THIRD DEPARTMENT

WORKERS' COMPENSATION LAW, ATTORNEYS' FEES AWARD

***Matter of Gonzalez v Northeast Parent & Child Socy.*, 2024 NY Slip Op 05612 (3d Dept Nov. 14, 2024)**

Issue: **When may claimants obtain an award of attorneys' fees in connection with a workers' compensation claim?**

Facts: After claimant obtained an award for a sustained workers' compensation claim, the Board approved his attorney's request for a $2,189.93 counsel fee out of the award. When the carrier failed to timely pay the award to claimant, however, the attorney requested a hearing with the Workers' Compensation Law Judge to assess a late payment penalty. At the hearing, the carrier conceded that it didn't pay, and that a late payment penalty was owed. The WCLJ awarded the late payment penalty, but denied the claimant's attorney's request for an additional $480 counsel fee award, citing to Workers' Compensation Law § 24. The Workers' Compensation Board affirmed.

Holding: The Third Department affirmed as well, reasoning that under a recent amendment to Workers' Compensation Law § 24, attorneys' fees awards are only payable out of compensation awards, not penalty awards. The Court explained, "Workers' Compensation Law § 24 was recently amended, effective January 1, 2023, to provide, in relevant part, that 'claims of attorneys and counselors-at-law for legal services . . . shall not be enforceable unless approved by the board' (Workers' Compensation Law § 24 [2]). Further, 'the board shall approve such written and submitted fee applications in an amount commensurate with the services rendered and the amount of compensation awarded, having due regard for the financial state of the claimant in accordance with each applicable provision of the . . . schedule' set forth therein (Workers' Compensation Law § 24 [2]). Of significance here, nothing in that statutory provision provides for the award of counsel fees payable from a penalty imposed, whether made pursuant to Workers' Compensation Law § 25 or otherwise. Had the Legislature desired to provide for the award of counsel fees payable from penalties imposed, it could have done so by including same among the counsel fees schedule expressly set forth under Workers' Compensation Law § 24 when it amended the statute."

FOURTH DEPARTMENT

CRIMINAL LAW, WARRANTLESS SEARCH, PLAIN VIEW DOCTRINE

***People v Howard*, 2024 NY Slip Op 05733 (4th Dept Nov. 15, 2024)**

Issue: **May the police justify a warrantless search of a criminal defendants home under the plain view exception to the warrant requirement where they only observed tangible evidence of criminality after manipulating the evidence?**

Facts: In responding to an emergency at defendant's home, the police observed checks, a printer, and a computer in defendant's living room, which they rifled through without first obtaining a warrant to discover the checks were fraudulent. Based on some of information gleaned from that search, the police then obtained a warrant to search defendant's home and discovered additional fraudulent checks and a weapon. Defendant was separately indicted for (1) "nine counts of criminal possession of a forged instrument in the second degree and one count of criminal possession of a weapon in the fourth degree, stemming from his alleged possession of additional forged checks and a rifle," and (2) "20 counts of criminal possession of a forged instrument in the second degree, stemming from his alleged possession of forged checks." He moved to suppress the physical evidence, as obtained in violation of his Fourth Amendment rights, but the trial court denied the motion, and defendant was convicted by the jury.

Holding: The Fourth Department reversed the defendant's conviction on the second indictment, holding that because the police did not have a warrant before they observed and manipulated the fraudulent checks, that evidence was obtained in violation of defendant's constitutional rights. The Court explained, under the plain view doctrine, which is an exception to the warrant requirement, "if the sight of an object gives the police probable cause to believe that it is the instrumentality of a crime, the object may be seized without a warrant if three conditions are met: (1) the police are lawfully in the position from which the object is viewed; (2) the police have lawful access to the object; and (3) the object's incriminating nature is immediately apparent." The Court held that although the police satisfied the first two prongs of the plain view exception—because they were lawfully in the defendant's home responding to the emergency call and their continued presence there was reasonable—they could not show that the criminality of checks was immediately apparent. In looking at "whether the facts available to the police officer would warrant a person of reasonable caution in the belief . . . that the items may be

contraband or stolen property or useful as evidence of a crime," the Court held that the police admitted that they could not immediately ascertain that the checks were fraudulent until they picked them up and manipulated them. Thus, it could not be shown that the criminality was immediately apparent, and the plain view exception to the warrant requirement did not justify the warrantless search. Nor could the warrantless search be justified by consent, because the defendant or his romantic partner only consented *after* the police had already manipulated the fraudulent checks.

The Court rejected the defendant's arguments with respect to the first indictment, however. The Court explained that even without the evidence illegally obtained, the police had obtained enough from their plain view to get a warrant to search the defendant's home. And, thus, when additional fraudulent checks and the rifle were discovered in that search, that evidence was sufficient to support the first conviction. Thus, the Court held that even though the second conviction had to be overturned due to the violation of the defendant's Fourth Amendment rights, that constitutional violation did not also taint the first conviction, even though the two indictments were tried together.

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