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Editor:
Robert S. Rosborough IV

Summarizing recent significant New York appellate cases

The First Department this week explained that New York City apartment owners may be held vicariously liable, under the New York City Human Rights Law, for the discriminatory acts of their real estate brokers. A holding otherwise, the Court explained, would let apartment owners off the hook for anything other than their own infrequent direct interactions with prospective tenants, contrary to the NYCHRL's purpose to eradicate the City of discrimination. 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

CRIMINAL LAW, REDUCTION OF SENTENCE

***People v Brisman*, 2025 NY Slip Op 00123 (Ct App Jan. 9, 2025)**

Issue: Does a criminal defendant need to demonstrate extraordinary circumstances or an abuse of discretion by the sentencing court to obtain a sentence reduction?

Facts: "While incarcerated for manslaughter, defendant engaged in a fight with another incarcerated person. Defendant cut his finger during the fight; his opponent sustained a face wound. After restraining the combatants, correction officers found a bloody, sharpened porcelain shard lying within an arm's length of defendant. Defendant was convicted of promoting prison contraband in the first degree and sentenced as a second felony offender to 3½ to 7 years in prison. The Appellate Division rejected defendant's challenge to the severity of his sentence on the ground that there were 'no extraordinary circumstances or abuse of discretion warranting a reduction of the sentence in the interest of justice.'"

Holding: The Court of Appeals, reviewing only the standard that the Appellate Division applied, explained that the Appellate Division has traditionally "had the 'inherent power' to reduce an unduly harsh or severe sentence" and now unquestionably has the power, under Criminal Procedure Law §§ 470.15 and 470.20, to "modify, as a matter of discretion in the interest of justice, a sentence that, though legal, was unduly harsh or severe and provide that, upon doing so, the court must itself impose some legally authorized lesser sentence." Although Appellate Division precedent has previously applied a heightened standard for a sentence reduction, requiring the defendant to "demonstrate extraordinary circumstances or abuse or discretion," the Court held that that heightened standard was inconsistent with the CPL. Indeed, the Court explained, "[a]ppellate courts apply an abuse of discretion standard in reviewing rulings that are inherently unsusceptible to broad generalization and therefore unamenable to clear rules for lower courts—where the law accordingly commits certain trial-level determinations to a court's discretion to begin with . . . Challenges to the severity of a sentence are addressed not to the appellate courts power to modify on the law but are instead addressed purely to the courts' interest of justice powers, which are distinct from determinations made on the law." Thus, the Court held that "[a] defendant need not demonstrate extraordinary circumstances or abuse of discretion by the sentencing court in order to obtain a sentence reduction."

FIRST DEPARTMENT

TORTS, JUSTICE FOR INJURED WORKERS ACT

***Garcia v Monadnock Constr., Inc.*, 2025 NY Slip Op 00154 (1st Dept Jan. 09, 2025)**

Issue: Does the Justice for Injured Workers Act (L. 2022, ch. 835) apply retroactively?

Facts: "Plaintiff alleges that he sustained neck and back injuries in a construction site accident that occurred on August 6, 2020. He commenced this action on September 28, 2020, and separately applied for workers' compensation benefits. In a decision filed October 19, 2021, a three-judge panel of the Workers' Compensation Board held that plaintiff's claimed injuries were not causally related to his accident. By notice dated October 22, 2022, defendants moved, in effect, for summary judgment dismissing plaintiff's neck and back claims, based on the Workers' Compensation Board's decision to which, they argued, the court should give collateral estoppel effect." Two months later, the Justice for Injured Workers Act took effect, and barred "courts from giving collateral estoppel effect to findings and decisions by workers' compensation law judges and the Workers' Compensation Board." Plaintiff thus opposed defendants' motion, "arguing that JIWA barred defendants' collateral estoppel defense. Plaintiff did not offer any argument concerning the retroactive application of statutes.

Defendants replied that JIWA does not apply retroactively. Supreme Court agreed with defendants, granted their motion, and dismissed plaintiff's claims of injury to his cervical and lumbar spine."

Holding: The First Department reversed, holding that JIWA does apply retroactively to pending claims about injuries that occurred prior to its adoption. The Court held, "[a]bsent an explicit statement or clear indication from the Legislature, four principal factors are used to determine whether a statute should be given retroactive effect: (1) whether the statute is remedial in nature; (2) whether the Legislature conveyed a sense of urgency in enacting the statute; (3) whether the statute was designed to rewrite an unintended judicial interpretation; and (4) whether the enactment reaffirms the Legislature's judgment about what the law should be. Each of these factors supports JIWA's retroactivity. JIWA's legislative sponsor explained that its purpose was to correct what the Legislature perceived to be an injustice to injured workers caused by Second Department precedent and left unresolved by the Court of Appeals' decision in *Auqui v Seven Thirty One Ltd. Partnership* (22 NY3d 246 [2013]). Thus, JIWA was intended to return to what the Legislature perceived to have been the rule for almost 80 years — namely that courts, in third-party actions, would reject attempts by defendants to apply collateral estoppel to decisions reached in the 'swift' and 'cursory' workers' compensation context — and that workers would not be prevented from exercising their constitutional right to a jury trial. Accordingly, the Legislature clearly intended JIWA to be remedial in nature, to correct an unintended judicial interpretation, and to reaffirm what the Legislature believed the law should be. The Legislature also conveyed a sense of urgency when it provided that JIWA would take effect immediately upon its enactment."

LANDLORD-TENANT LAW, DISCRIMINATION UNDER THE NEW YORK CITY HUMAN RIGHTS LAW

***Newson v Vivaldi Real Estate LTD.*, 2025 NY Slip Op 00052 (1st Dept Jan. 07, 2025)**

Issue: May owners of housing accommodations be held vicariously liable for the discriminatory conduct of their real estate brokers under the New York City Human Rights Law?

Facts: Plaintiff, an indigent person living with HIV, is "a client of the New York City HIV/AIDS Services Administration (HASA) and is entitled to a full HASA housing subsidy of $1,600 per month for an apartment in New York City, along with a security voucher, assistance with the broker's fee, if necessary, and the first month's rent." Plaintiff alleged that he saw an apartment, owned by the owner defendants, listed for $1,495 per month on Zillow, and requested an application through Zillow, asking if the "listing accepts . . . HASA vouchers that cover brokers fees and rent coverage up to $1600." The real estate broker defendant responded to plaintiff by email that "to the best of her knowledge the building was not approved to receive any housing assistance vouchers." No such approval was required, however, and the broker defendant did not thereafter contact plaintiff to tell him that he could apply to rent the apartment. Because of the broker's response, the plaintiff concluded he could not apply. Plaintiff then commenced this action, asserting separate causes of action against the broker defendant and the owner defendants. Plaintiff alleged that the broker defendant's refusal to conduct business with individuals who possessed HASA housing subsidies constituted source of income discrimination in violation of the City HRL, and that the owner defendants were vicariously liable for the discriminatory conduct of their agent. The owner defendants moved to dismiss, arguing that vicarious liability under the City HRL extended only to employers and not to owners of housing accommodations. Supreme Court disagreed, and denied the motion.

Holding: The First Department affirmed, holding that the City HRL allows vicarious liability to be imposed upon owners of housing accommodations based upon the actions of their real estate brokers. Noting that "the City HRL shall be construed liberally" to accomplish its goals of eradicating discrimination, the Court reasoned that "the City HRL in its entirety and § 8-107(5)(a) specifically, demonstrate a strong commitment to providing robust protections against housing discrimination that was implemented to impose liability upon landlords for discriminatory conduct, including through the conduct of their real estate agents." The Court explained that apartment listings in New York City almost always are managed through real estate brokers, with owners having little, if any, direct contact with prospective tenants. Thus, "absent vicarious liability, landlords would evade liability under the City HRL except when they directly interact with a prospective tenant. This is neither the mandate of the statute, nor supported by the legislative intent behind § 8-107 of the City HRL." "Moreover, the New York City Commission on Human Rights disseminated guidance concerning its interpretation of the City HRL, stating that landlords 'are responsible for the actions of anyone who plays a role in processing applications for rental units, even if that person is not landlord's employee,'" which the Court deemed entitled to significant deference.

THIRD DEPARTMENT

PERSONAL INJURY, VIOLATION OF PUBLIC HEALTH LAW § 2801-D

***DeRusso v Church Aid of the Prot. Episcopal Church in the Town of Saratoga Springs, Inc.*, 2025 NY Slip Op 00008 (3d Dept Jan. 2, 2025)**

Issue: Does Public Health Law § 2801-d create a private right of action for residents of an assisted living facility?

Facts: The plaintiff was a resident at an assisted living facility, and brought a claim against the facility under Public Health Law § 2801-d, alleging that his care was deficient in certain respects. Defendant moved to dismiss the section 2801-d claim, arguing that such a private right of action was created only against residential health care facilities, and not against assisted living facilities. "Plaintiffs opposed the

motion and filed an amended complaint which asserted that, although the residence is an assisted living facility, it is nevertheless a residential health care facility providing health-related service to its patients within the meaning of Public Health Law article 28." Supreme Court granted the motion to dismiss, and dismissed Plaintiffs' section 2801-d claim.

Holding: The Third Department affirmed, holding that as a matter of statutory interpretation, the Legislature did not intend to subject assisted living facilities to liability under Public Health Law § 2801-d. The Court explained, "Public Health Law § 2801-d creates a private right of action distinct from traditional claims for medical malpractice and negligence, and it provides, in relevant part, that 'any residential health care facility that deprives any patient of said facility of any right or benefit, as hereinafter defined in Public Health Law article 28, shall be liable to the patient for injuries suffered as a result of said deprivation.' A residential health care facility is defined, in turn, as 'a nursing home or a facility providing health-related service.' An assisted living facility, in contrast, is governed by Public Health Law article 46-B instead of Public Health Law article 28, being defined as a facility that 'provides or arranges for housing, on-site monitoring, and personal care services and/or home care services (either directly or indirectly), in a home-like setting to five or more adult residents unrelated to the assisted living provider.' The Legislature has left no doubt that assisted living facilities are distinct from the ones governed by Public Health Law article 28, directly stating in Public Health Law § 4651 (1) that 'assisted living and enhanced assisted living shall not include . . . residential health care facilities or general hospitals licensed under Public Health Law article 28.' In short, notwithstanding the efforts of plaintiffs to argue otherwise, the plain and unambiguous language of Public Health Law § 4651 (1) compels the conclusion that assisted living facilities and residential health care facilities are mutually exclusive categories even if an assisted living facility provides services consistent with that of a residential health care facility as defined in Public Health Law article 28." Had the Legislature intended to subject assisted living facilities to liability under section 2801-d, it could have amended the statute to do so, but did not. Therefore, the Court "agree[d] with the Second Department that the private cause of action created by Public Health Law § 2801-d is unavailable to residents of assisted living facilities, and disagree[d] with a line of cases from the Fourth Department allowing the possibility that it might be."

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