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COURT OF APPEALS.

CIVIL PROCEDURE, CONTRACT LAW.

NEW YORK HAS LONG-ARM JURISDICTION OVER THE MICHIGAN MANUFACTURER OF UNMANNED AERIAL VEHICLES (UAVs) PURCHASED BY SUNY STONY BROOK FOR USE IN MADAGASCAR IN THIS BREACH OF CONTRACT ACTION.

The Court of Appeals, in a full-fledged opinion by Judge Garcia, over a dissenting opinion, reversing the appellate division, determined New York had long-arm jurisdiction over a Michigan manufacturer of unmanned aerial vehicles (UAVs) purchased by SUNY Stony Brook for transporting medical supplies to remote areas of Madagascar. The two UAVs purchased by SUNY Stony Brook didn't meet Stony Brooks' needs and were returned to Michigan for replacement. The UAVs were not replaced and SUNY Stony Brook sued for breach of contract: "... '[T]he nature and purpose of a solitary business meeting conducted for a single day in New York may supply the minimum contacts necessary to subject a nonresident participant to the jurisdiction of our courts' ... . Here ... there was more than this bare minimum: the meeting was part of a far reaching and long-standing relationship ... . * * * ... Plaintiff's claims are based on the sale of the two UAVs, and [the UAV manufacturer's] contacts in New York were directly related to efforts to resolve the dispute over operability of the purchased UAVs ... . Thus, '[t]here is an articulable nexus or substantial relationship between defendant's New York activities and the parties' contract, defendant's alleged breach thereof, and potential damages' ... . Finally, the exercise of jurisdiction must also comport with due process, a constitutional inquiry focused on 'the relationship among the defendant, the forum, and the litigation' ... . * * * Those requirements are satisfied here." ***State of New York v. Vayu, Inc.*, 2023 N.Y. Slip Op. 00801, CtApp 2-14-23**

EMPLOYMENT LAW, ADMINISTRATIVE LAW.

THE IMPLEMENTATION OF FEES FOR CIVIL SERVICE EXAMS IS NOT A CONDITION OF EMPLOYMENT SUBJECT TO NEGOTIATION UNDER THE TAYLOR LAW.

The Court of Appeals, in a full-fledged opinion by Judge Singas, reversing the appellate division and the NYS Public Employees Relations Board (PERB), determined the implementation of application fees for promotional and transitional civil service exams.by the Department of Civil Service (DCS) was not a condition of employment subject to negotiation under the Taylor Law: "Civil Service Law § 50 (5) vests DCS with power to impose fees to recoup the administrative costs of conducting civil service exams, not with authority to alter the employer-employee relationship through the imposition of the fees. The fees for promotional and transitional exams at issue here are akin to fees imposed by an agency with plenary authority to set fees for licenses that an employer may demand as a job requirement, such as a driver's license or professional license. As with those fees, DCS's statutory authority to impose the at-issue application fees is unrelated to the employment itself. The fees have no connection to job qualifications, criteria for employment, or job-related duties and obligations. The imposition of the subject fees is therefore not encompassed within the definition of terms and conditions of employment under Civil Service Law § 201 (4). Nor did the waiver of the fees for State employees render them terms or conditions of employment. Because the imposition of the fees was not a term and condition of employment, the State had no obligation to negotiate with respect to their implementation. PERB's conclusion to the contrary was error." ***Matter of State of New York v. New York State Pub. Empl. Relations Bd.*, 2023 N.Y. Slip Op. 00805, CtApp 2-14-23**

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

THE INCLUSION OF ADDITIONAL INFORMATION IN THE ENVELOPE CONTAINING THE RPAPL 1304 90-DAY FORECLOSURE NOTICE DOES NOT VIOLATE RPAPL 1304 AND IS NOT A PROPER BASIS FOR AWARDING SUMMARY JUDGMENT TO DEFENDANT IN A FORECLOSURE ACTION.

The Court of Appeals, in a full-fledged opinion by Judge Wilson, reversing the appellate division, determined the inclusion of additional information in the envelope with the 90-day foreclosure notice required by RPAPL 1304 does not violate the statute and therefore is not a basis for summary judgment in favor of a defendant in a foreclosure action: "The operative statutory language here contains two requirements: (1) the notice 'shall include' the specified language and information; and (2) the notice must be sent 'in a separate envelope from any other mailing or notice' ... . As to the first requirement, subdivision (1) does not say that the notice must state only the cautionary language set forth in the statute, but rather that the notice 'shall include' that language. Where the 'natural signification of the words employed' 'ha[s] a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add or take away from that meaning' Here, the notice indisputably contains all of the mandatory language set forth in the version of section 1304 (1) in effect at the time Bank of America commenced this action. The statute says that the notice 'shall include' certain information; the notice here does so. The

question then is the constraint imposed by the requirement that the envelope not contain 'any other mailing or notice.' The bright line rule adopted by the lower courts effectively defines 'any other mailing or notice' as 'any additional material or information whatsoever.' Although it might be possible to read 'other notice' as the lower courts did—such that any deviation from the statutory language, however minor, would void the notice—that interpretation would stand in great tension with 'shall include,' a phrase that contemplates the addition of something else. The statute must be given 'a sensible and practical over-all construction, which . . . harmonizes all its interlocking provisions' ... . Application of a bright line rule here would require the use of a highly constrained definition of 'other,' where it is more appropriately read to mean mailings or notices 'of a different kind.' Here, 'other mailing or notice' more aptly refers other kinds of notices, such as pre-acceleration default notices, notices disclosing interest rate changes to borrowers with adjustable-rate mortgages ...". ***Bank of Am., N.A. v. Kessler*, 2023 N.Y. Slip Op. 00804, CtApp 2-14-23**

REAL PROPERTY TAX LAW, FORECLOSURE.

THE COUNTY HAD IN REM JURISDICTION IN THIS TAX FORECLOSURE PROCEEDING AND MADE ADEQUATE ATTEMPTS TO NOTIFY THE NECESSARY PARTIES.

The Court of Appeals, in a full-fledged opinion by Judge Rivera, affirming the appellate division, determined the county had in rem jurisdiction in this tax foreclosure proceeding and the county's attempts to notify all parties of the tax foreclosure proceedings were sufficient: "Two fundamental legal principles govern our decision in this appeal. First, a tax foreclosure proceeding is in rem against the 'res'—the taxable real property—and not an action in personam commenced against an individual to establish personal liability. Second, New York statutory law and state and federal constitutional guarantees of due process require that the petitioner in a foreclosure proceeding must attempt notice that is reasonably calculated to alert all parties with an interest in the property. Here, defendants commenced an in rem tax foreclosure proceeding and mailed the statutorily-required notice to the publicly-listed owners of the property, posted and filed the notice, and publicized the notice in the press. Upon learning that a person listed as an owner died before the notices were issued, defendant County Treasurer also personally contacted the sole business located on the property in an effort to identify and personally inform a manager, owner, or any person in charge of the pending foreclosure proceeding. Under these circumstances, defendants provided legally adequate notice of a validly commenced tax foreclosure action." ***Hetelekides v. County of Ontario*, 2023 N.Y. Slip Op. 00803, CtApp 2-14-23**

FIRST DEPARTMENT

CIVIL PROCEDURE.

WHEN A COURT DECIDES AN ACTION BROUGHT AS A SPECIAL PROCEEDING SHOULD HAVE BEEN BROUGHT AS A PLENARY ACTION, THE ACTION SHOULD NOT BE DISMISSED BECAUSE IT WAS BROUGHT IN THE WRONG FORM; THE PETITION SHOULD BE DEEMED A COMPLAINT, NOT A MOTION FOR SUMMARY JUDGMENT.

The First Department, reversing Supreme Court, determined the special proceeding should have been converted to a plenary action, not dismissed. Once converted the petition is deemed a complaint, not a motion for summary judgment: "Supreme Court should have converted the special proceeding into a plenary action rather than dismissing the petition, as CPLR 103(c) 'prohibits dismissal of [a] proceeding solely on the ground that it was not brought in the proper form' ... . [W]e decline petitioner's request to construe the petition and answer as summary judgment papers and to summarily adjudicate his remaining claims at this stage. When a special proceeding is converted into a plenary action in accordance with CPLR 103(c), the petition is deemed a complaint, not a motion for summary judgment ...". ***Zanani v. Scott Seidler Family Trust*, 2023 N.Y. Slip Op. 00836, First Dept 2-14-23**

CIVIL PROCEDURE, EVIDENCE, NEGLIGENCE.

THE ALLEGATIONS IN THE VERIFIED COMPLAINT IN THIS SLIP AND FALL CASE WERE SUFFICIENT TO SUPPORT PLAINTIFF'S MOTION FOR A DEFAULT JUDGMENT; THE DEFENDANT'S FAILURE TO ANSWER IS DEEMED TO BE AN ADMISSION TO THE ALLEGATIONS.

The First Department, reversing Supreme Court, determined plaintiff's motion for a default judgment based upon the allegations in the verified complaint should have been granted: "A party seeking a default judgment must submit proof of service of the summons and the complaint and 'proof of the facts constituting the claim, the default and the amount due' (CPLR 3215[f] ...). To demonstrate 'facts constituting the claim,' the movant need only proffer proof sufficient 'to enable a court to determine that a viable cause of action exists' ... . The movant may do so either by submission of an affidavit of merit or by verified complaint, if one has been properly served ... . Here, contrary to the court's conclusion, plaintiffs established the facts constituting their claim. Their verified complaint alleges that plaintiff Maria Bigio was walking in front of defendant's property when she tripped and fell on a defective sidewalk condition, sustaining injuries, and plaintiff stated in her verification that these allegations were true to her own personal knowledge. Because defendant, by defaulting, is deemed to have admitted 'all traversable allegations in the complaint, including the basic allegation[] of liability,' the allegations were sufficient to enable the court to determine that a viable negligence cause of action existed ...". ***Bigio v. Gooding*, 2023 N.Y. Slip Op. 00806, First Dept 2-14-23**

FAMILY LAW, JUDGES.

FAMILY COURT SHOULD NOT HAVE RELINQUISHED TEMPORARY EMERGENCY JURISDICTION OVER THE NEGLECT PROCEEDING UPON LEARNING FATHER HAD COMMENCED A CUSTODY PROCEEDING IN TEXAS; THERE WAS NO ASSURANCE FROM THE TEXAS COURT RE: SAFEGUARDING THE CHILD.

The First Department, reversing Family Court in this neglect proceeding, determined the judge should not have relinquished temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) when father commenced custody proceedings in Texas: "Family Court improperly relinquished emergency jurisdiction for three reasons. First, there is no evidence in this record, and Family Court's order fails to state any basis for finding, that the Texas court had 'home state' jurisdiction, since the child had not resided there for six months immediately preceding commencement of the father's Texas custody proceeding (Domestic Relations Law §§ 75-a[7]; 76[1][a]). Second, the record and Family Court's order are also devoid of any factual basis for finding that any of the alternative jurisdictional bases applied to Texas. There is no evidence that the child at that time had a 'significant connection' with Texas or that 'substantial evidence . . . concerning the child's care, protection, training and personal relationships' was available in Texas (Domestic Relations Law § 76[1][b]). Finally, given the allegations in the neglect petition and the fact that Family Court had been informed ... that the Texas Department of Family and Protective Services would not investigate whether the father was a danger to the child because the mother and child resided in New York, Family Court should not have relinquished emergency jurisdiction 'in the absence of any orders from the Texas court safeguarding the child[]' ... . Moreover, it is not clear whether New York might have had jurisdiction to make an initial custody determination under Domestic Relations Law § 76(1)(b), given that the child had not lived in Texas for the preceding six months, had lived in New York with his mother when the father filed his Texas custody petition, and was receiving medical care, attending daycare, and receiving services through ACS here. Accordingly, Family Court should not have denied the mother's motion without first holding a hearing." ***Matter of Nathaniel H. (Nathaniel H.--Dayalyn G.)*, 2023 N.Y. Slip Op. 00927, First Dept 2-16-23**

SECOND DEPARTMENT

CIVIL PROCEDURE, CONTRACT LAW, ARBITRATION, JUDGES.

THE JUDGE CANNOT, SUA SPONTE, DIRECT ARBITRATION WITHOUT A REQUEST FROM A PARTY; NON-SIGNATORIES TO AN AGREEMENT CONTAINING A FORUM SELECTION PROVISION MAY BE BOUND BY THE PROVISION IF THEY ARE SIGNATORIES TO A RELATED AGREEMENT.

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice Connolly, interpreted jurisdiction, forum selection and arbitration provisions in the subject agreements. The decision is fact-specific and cannot be fairly summarized here. The court summarized its rulings as follows: "This appeal presents novel questions related to jurisdiction, as well as arbitration and forum selection provisions in agreements. The first question is whether, upon reviewing an agreement and determining that an arbitration provision governs, a court should, sua sponte, direct the parties to arbitrate. We hold that a court should not direct parties to arbitrate absent a request from one of the parties. The second question requires us to examine the circumstances under which non-signatories to an agreement containing a forum selection provision may be bound by that provision consistent with due process. We hold that non-signatories to an agreement may be bound by that agreement's forum selection provision when they are signatories to a related agreement, which forms part of the same transaction, and are closely related to both the transaction and one of the signatories to the agreement containing the forum selection provision." ***P.S. Fin., LLC v. Eureka Woodworks, Inc.*, 2023 N.Y. Slip Op. 00877, Second Dept 2-15-23**

CIVIL PROCEDURE, JUDGES, MEDICAL MALPRACTICE, NEGLIGENCE.

PLAINTIFF'S DAUGHTER SHOULD NOT HAVE BEEN APPOINTED TO SERVE AS THE INTERPRETER FOR HER MOTHER'S DEPOSITION IN THIS MEDICAL MALPRACTICE CASE; THE CRITERIA FOR ALLOWING A RELATIVE TO SERVE AS AN INTERPRETER ARE EXPLAINED.

The Second Department, in a full-fledged opinion by Justice Wooten, determined the plaintiff's daughter should not have been appointed an interpreter for plaintiff's deposition in this medical malpractice action. The opinion lays out the criteria for when a relative could be allowed to act as an interpreter: "[W]e hold that the appointment of an individual to serve as interpreter for a relative or to serve as interpreter in an action or proceeding in which the interpreter has personal knowledge of the relevant facts is only permissible under exceptional circumstances. In evaluating whether such circumstances are present, courts must consider the following: (1) whether sufficient information has been disclosed by the party in need of an interpreter to the court and to opposing parties so as to allow for a thorough search for a disinterested interpreter; (2) whether an exhaustive and meaningful search has been conducted for a disinterested interpreter; (3) whether the potential interpreter is the least interested individual available to serve as interpreter; and (4) whether the potential interpreter is capable of objectively translating the testimony verbatim, which may only be assessed after the court has conducted an inquiry of the potential interpreter. Unless the court is satisfied that each of these four elements has been satisfied, then the potential interpreter must not be permitted to serve as interpreter in view of the 'danger that [the] witness' [testimony] will be distorted through interpretation,' 'either consciously or subconsciously' ...". ***Zhiwen Yang v. Harmon*, 2023 N.Y. Slip Op. 00893, Second Dept 2-15-23**

CIVIL PROCEDURE, NEGLIGENCE.

IN THIS SLIP AND FALL ACTION AGAINST THE PORT AUTHORITY, THE APPLICABLE STATUTE PROVIDES THAT THE NOTICE OF CLAIM MUST BE SERVED AT LEAST 60 DAYS BEFORE THE COMMENCEMENT OF THE ACTION (NOT 60 DAYS AFTER THE ACCRUAL OF THE ACTION); THEREFORE THE NOTICE OF CLAIM WAS TIMELY SERVED.

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice Maltese, determined the notice of claim in this slip and fall action against the Port Authority was timely because it was served at least 60 days before the commencement of the action. The statute of limitations for the commencement of the action had been tolled by executive order due to the COVID pandemic: "This appeal involves the intersection of McKinney's Unconsolidated Laws of NY § 7107, which sets forth conditions precedent for commencing an action against the Port Authority of New York and New Jersey (hereinafter the Port Authority), and the executive orders issued by former Governor Andrew Cuomo which tolled time limitations due to the COVID-19 pandemic. McKinney's Unconsolidated Laws of NY § 7107 requires that an action against the Port Authority must be commenced within one year after the cause of action accrues and that a notice of claim must be served upon the Port Authority at least 60 days before the commencement of the action. We hold that where, as here, the deadline to commence an action pursuant to section 7107 was tolled, service of the notice of claim at least 60 days prior to the timely commencement of the action satisfies section 7107. * * * ... [T]the commencement of this action on November 4, 2020, satisfied section 7107 ... . [T]he plain language of section 7107 makes the deadline to serve a notice of claim dependent upon the date of commencement, unlike other statutes where the time to serve the notice of claim is measured from the date that the cause of action accrues ... . Therefore, the plaintiff's service of the notice of claim on August 14, 2020, more than 60 days prior to the commencement of the action on November 4, 2020, satisfied the condition precedent set forth in section 7107." ***Espinal v. Port Auth. of N.Y. & N.J.*, 2023 N.Y. Slip Op. 00844, Second Dept 2-15-23**

CONTRACT LAW, CIVIL PROCEDURE, PUBLIC HEALTH LAW, ADMINISTRATIVE LAW.

A BREACH OF CONTRACT ACTION IS NOT PROPERLY CONVERTED TO AN ARTICLE 78 PROCEEDING; HERE THE PHYSICIAN SUED THE HOSPITAL FOR FAILING TO HONOR A CONTRACTUAL COMMITMENT TO ADMIT PLAINTIFF TO A RESIDENCY PROGRAM; THE PHYSICIAN'S ACTION WAS PRECLUDED FOR FAILURE TO EXHAUST THE ADMINISTRATIVE REMEDIES UNDER THE PUBLIC HEALTH LAW.

The Second Department, reversing Supreme Court, determined the breach of contract action should not have been converted to an Article 78 and the action was precluded by plaintiff-physician's failure to exhaust the administrative remedies under the Public Health Law. Plaintiff was matched to a residency program at defendant hospital and the hospital was contractually bound to offer the residency to the plaintiff. The hospital sought a waiver which was denied, and the hospital still refused to offer the residency to plaintiff. Plaintiff sued for breach of contract and requested a preliminary injunction. Supreme Court improperly converted the action to an Article 78 (mandamus) proceeding and granted the preliminary injunction. The appellate division held a breach of contract action cannot be converted to an Article 78: "Invoking CPLR 103(c), the Supreme Court erroneously converted the subject branch of the plaintiff's motion and this action into a proceeding pursuant to CPLR article 78. Under CPLR 103(c), courts are empowered to convert a civil judicial proceeding that was brought in the improper form to the proper form and convert a motion into a special proceeding. Here, the court erred in concluding that a proceeding pursuant to CPLR article 78 was the proper form. '[A] CPLR article 78 proceeding is not the proper vehicle to resolve contractual rights' ... . 'Indeed, it is well settled that mandamus relief lies only to compel the performance of purely ministerial acts, and may not be used when there are other available remedies at law, such as a breach of contract action' ... . * * * Supreme Court should not have rejected the hospital's argument that the branch of the plaintiff's motion which was for preliminary injunctive relief against it should be denied because the plaintiff failed to exhaust his administrative remedies under Public Health Law article 28. Public Health Law § 2801-b(1) makes it an 'improper practice' for a hospital to deny, withhold, or terminate professional privileges for a reason unrelated to 'patient care, patient welfare, the objectives of the institution or the character or competency of the applicant.' 'To enforce the statutory prohibition against improper practices, the Legislature created a two-step grievance process by which a physician may obtain injunctive relief requiring the hospital to restore wrongfully terminated staff privileges' ... . 'First, the physician must submit a complaint to the [public health and health planning council (hereinafter PHHPC)]' ... . 'It is the duty of the [PHHPC] to undertake a prompt investigation of the action complained of and to allow the parties to the dispute to submit, in a strictly confidential setting, any relevant information in support of their respective positions' ... . 'After investigating the physician's complaint, the [PHHPC] will either direct the hospital to reconsider its decision or inform the parties of its determination that the complaint lacks merit' ...". ***Khass v. New York Presbyt. Brooklyn Methodist Hosp.*, 2023 N.Y. Slip Op. 00851, Second Dept 2-15-23**

CRIMINAL LAW.

A RESTITUTION HEARING IS REQUIRED WHEN (1) THE DEFENDANT REQUESTS IT, AND (2) WHEN THE EVIDENCE OF THE AMOUNT IS INSUFFICIENT.

The Second Department, in a full-fledged opinion by Justice Wooten, clarified when a restitution hearing is required: "Pursuant to Penal Law § 60.27, in sentencing a criminal defendant, the court may require the defendant to pay restitution of the fruits of an offense for which he or she was convicted. Under certain circumstances set forth in the statute, the court must first conduct a hearing to determine the appropriate amount of restitution. However, this Court's case law has not consistently articulated the circumstances which trigger the need for a restitution hearing in accordance with the statute. Thus, we take this opportunity to clarify that a restitution hearing is required when either (1) the defendant requests such a hearing, or (2) the record does not contain sufficient evidence to establish the appropriate amount of restitution." ***People v. Chung*, 2023 N.Y. Slip Op. 00880, Second Dept 2-15-23**

FAMILY LAW, JUDGES, EVIDENCE.

THE JUDGE IN THIS CUSTODY PROCEEDING SHOULD NOT HAVE SUSPENDED FATHER'S PARENTAL ACCESS WITHOUT HOLDING A "BEST INTERESTS" HEARING.

The Second Department, reversing Supreme Court, determined the judge in this custody proceeding should not have suspended father's parental access without holding a "best interests of the child" hearing: " 'Custody determinations . . . require a careful and comprehensive evaluation of the material facts and circumstances in order to permit the court to ascertain the optimal result for the child' ... . Accordingly, 'custody determinations should '[g]enerally' be made 'only after a full and plenary hearing and inquiry' ... . 'This general rule furthers the substantial interest, shared by the State, the children, and the parents, in ensuring that custody proceedings generate a just and enduring result that, above all else, serves the best interest of a child' ... . '[W]here . . . facts material to the best interest analysis, and the circumstances surrounding such facts, remain in dispute, a custody hearing is required'... . Here, the Supreme Court erred in making a final custody determination without a hearing and without inquiring into the best interests of the parties' children ... . Moreover, the court's mere reliance upon 'adequate relevant information,' as opposed to admissible evidence, was improper ...". ***Matter of Dysko v. Dysko*, 2023 N.Y. Slip Op. 00863, Second Dept 2-15-23**

FORECLOSURE, EVIDENCE.

THE BUSINESS RECORDS REFERRED TO IN THE PLAINTIFF'S AFFIDAVIT DEMONSTRATING DEFENDANT'S DEFAULT IN THIS FORECLOSURE ACTION WERE NOT ATTACHED, RENDERING THE AFFIDAVIT HEARSAY.

The Second Department, reversing Supreme Court in this foreclosure action, determined the failure to submit the business records referred to in plaintiff's affidavit rendered the affidavit hearsay. Therefore plaintiff bank did not present prima facie proof of defendant's default: "[T]he plaintiff submitted an affidavit of an employee of its loan servicer, who averred that he reviewed certain business records maintained by the loan servicer and the defendant defaulted in making payments on the mortgage debt. However, the affiant failed to submit any business record substantiating the alleged default ... . 'Conclusory affidavits lacking a factual basis are without evidentiary value' ... . Even assuming that the subject affidavit established a sufficient foundation for the records relied upon, 'it is the business record itself, not the foundational affidavit, that serves as proof of the matter asserted' ... . Accordingly, the affiant's assertions regarding the defendant's alleged default, without the business records upon which he relied in making those assertions, constituted inadmissible hearsay ...". ***MTGLQ Invs., L.P. v. Rashid*, 2023 N.Y. Slip Op. 00859, Second Dept 2-15-23**

THIRD DEPARTMENT

WORKERS' COMPENSATION.

A WORKER WHO WAS INJURED IN NEW YORK BUT LIVES IN NEW JERSEY CAN SEEK TREATMENT FROM A NEW JERSEY DOCTOR WHO IS NOT AUTHORIZED BY THE WORKERS' COMPENSATION BOARD, EVEN IF THE NEW JERSEY PHYSICIAN IS ALSO LICENSED IN NEW YORK.

The Third Department, reversing the Workers' Compensation Board, determined claimant, who was injured in New York but resided in New Jersey, was not required to seek treatment from a New Jersey doctor who was authorized to provide treatment by the Board, even where, as here, the New Jersey doctor is also licensed in New York: " 'Generally, a workers' compensation claimant who is injured in New York is entitled to treatment by a physician of his or her choice so long as the physician is licensed to practice in New York and has been authorized by the Board to provide care and treatment to claimants' ... . Nevertheless, under our established precedent, 'claimants who were injured in New York but [reside in] other states are entitled to receive treatment from qualified physicians in their [home] state' ... , as the statutory authorization requirements 'could not have been intended to prohibit the retention of a physician in another State in appropriate circumstances' ... . We find no basis to deviate from our precedent here, where claimant received medical treatment in his home state of New Jersey from a New Jersey licensed physician. ... 12 NYCRR 323.1 provides ... that a New York licensed physician is permitted to seek authorization from the Board to provide medical services under the Workers' Compensation Law and, being so permitted, 'must obtain such authorization prior to treating injured workers under the Workers' Compensation Law' ... . We do not, however, read this provision to require a physician who provides medical services in another state and under a license obtained in that state to nevertheless seek authorization from the Board prior to treating a claimant merely because he or she also happens to be licensed in New York." ***Matter of Gomez v. Board of Mgrs. of Cipriani*, 2023 N.Y. Slip Op. 00900, Third Dept 2-26-23**

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