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Reporting on Significant Court of Appeals Opinions and Developments in New York Practice

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CASE LAW DEVELOPMENTS

Court of Appeals Applies Civil Rights Law § 50-a Repeal Retroactively

Finds Legislative Intent and Remedial Nature of Repeal Legislation Supporting Such a Conclusion

Prior to a 2020 amendment, former Civil Rights Law § 50-a provided, with limited exceptions, that "[a]ll personnel records [of law enforcement officers] used to evaluate performance toward continued employment or promotion . . . shall be considered confidential and not subject to inspection or review." In June 2020, the statute was repealed and related amendments were made to the Freedom of Information Law (FOIL). Significantly, the relevant legislation stated that it "shall take effect immediately." The issue arose as to whether the repeal of Civil Rights Law § 50-a applied (retroactively) to records created before June 12, 2020. We previously reported on the First Department ruling in *Matter of NYP Holdings, Inc. v New York City Police Dept.*, 220 A.D.3d 487, 489 (1st Dep't 2023), that the repeal applied retroactively as it "'went into effect immediately and, by its plain reading and intent, applies to records then existing and not simply to records created at a time subsequent to the enactment of the legislation' (citation omitted)."

We subsequently discussed the Second Department decision in *Matter of Newsday, LLC v. Nassau County Police Dep't*, 222 A.D.3d 85 (2d Dep't 2023). There, the court did not apply a retroactivity analysis. Instead, it ruled that "FOIL requests seek records that were generated prior to the request date. In amending the Public Officers Law to provide for the disclosure of records relating to law enforcement disciplinary proceedings, the Legislature did not limit disclosure under FOIL to records generated after June 12, 2020, and we will not impose such a limitation ourselves (citations omitted)." *Id.* at 93. The Fourth Department then followed the Second Department, again insisting that mandating the production of the pre-repeal records was proper. It did not require a retroactive application, but "is merely a recognition that police departments faced with FOIL requests cannot rely on an exception that no longer exists to evade their prospective duty of disclosure (citations omitted)." *Matter of Abbatoy v. Baxter*, 227 A.D.3d 1376, 1377 (4th Dep't 2024).

On appeal from the First Department decision, the Court of Appeals has confirmed that the pre-repeal records must be produced. *Matter of NYP Holdings, Inc. v. New York City Police Dept,* 2025 N.Y. Slip Op. 01009 (Feb. 20, 2025). The Court acknowledged the Second and Fourth Departments' conclusion that a retroactivity analysis was unnecessary since those courts "determined that requests submitted after the repeal seek a straightforward application of FOIL as it existed at the time of the requests, not a retroactive application of the statutory repeal, and that the Legislature did not otherwise intend to exempt law enforcement disciplinary records from disclosure." *Id.* at *5.

Nevertheless, the Court insisted that if the FOIL requests involved a retroactive application "the legislation contains the requisite 'clear expression of the legislative purpose to justify a retroactive application.'" *Id.* The Court then set out the standard to apply:

> "In determining whether a statute should be given retroactive effect, we have recognized two axioms of statutory interpretation." First, "retroactive operation is not favored by courts and statutes will not be given such construction unless the language expressly or by necessary implication requires it." Second, "remedial legislation should be given retroactive effect in order to effectuate its beneficial purpose." In addition to these principles of statutory construction, we have identified "[o]ther factors" relevant to "the retroactivity analysis," including "whether the Legislature has made a specific pronouncement about retroactive effect or conveyed a sense of urgency; whether the statute was designed to rewrite an unintended judicial interpretation; and whether the legislative enactment

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itself reaffirms a legislative judgment about what the law in question should be" (citations omitted).

Id. at *5–6.

Applying these principles, the Court concluded that the Legislature intended that the repeal have a retroactive effect. First, there is nothing to suggest that the repeal meant to impact the usual way in which FOIL works. The "records" that agencies are to produce are defined as those possessed by the agency "without reference to the date the information was created." Moreover, while the amendments set forth redaction requirements and personal privacy protections, they do not address when the records were created. Certainly, if the Legislature intended to make a distinction, it would have done so.

In addition, "[t]he drafting history and purpose of the repeal legislation confirm this understanding." The amendments were enacted after the demonstrations and demands for reform following the killing of George Floyd at the hands of a police officer with a substantial prior disciplinary record:

> Against this backdrop, the Senate sponsor's memorandum accompanying the bill emphasized its objective: to "help the public regain trust that law enforcement officers and agencies may be held accountable for misconduct." The sponsor memorandum further explained that, contrary to FOIL's goals, section 50-a, as "interpreted by" the courts, "prevent[ed] access to both the records of the disciplinary proceedings themselves and the recommendations or outcomes of those proceedings." That legislative purpose cannot be squared with the PBA's assertion that the Legislature intended to leave all pre-repeal police disciplinary records categorically exempt from FOIL disclosure. These indicia of legislative intent, along with the remedial nature of the repeal legislation, satisfy us that it was intended to have retroactive application (citations omitted).

Id. at *8.

Agencies Cannot Categorically Withhold *All* Disciplinary Records Relating to Unsubstantiated Complaints Against Law Enforcement

2020 Amendments Did Not Impact That Analysis

Matter of New York Civ. Liberties Union v. City of Rochester, 2025 N.Y. Slip Op. 01010 (Feb. 20, 2025), similarly deals with a FOIL issue and Civil Rights Law § 50-a. As discussed above, Civil Rights Law § 50-a was repealed in 2020 and FOIL was amended to address specifically the disclosure of law enforcement records. Prior to 2020, disciplinary records of law enforcement officers were categorically exempted from FOIL's public disclosure requirements. The issue in this case was whether FOIL's personal privacy exemption under Public Officers Law § 87(2)(b), which was *not* amended in 2020, constituted a basis for agencies categorically to withhold *all* disciplinary records relating to complaints against law enforcement officers that were not deemed substantiated.

After the 2020 amendments, the petitioner New York Civil Liberties Union made several FOIL requests to respondents, the City of Rochester and the Rochester Police Department. They included all civilian complaints against Rochester police officers from January 2000 onward, regardless of whether the complaints were eventually deemed substantiated or resulted in disciplinary action against the officers. After respondents did not promptly respond, petitioner brought this article 78 proceeding to compel disclosure. The trial court ordered production of many of the records but permitted the respondents to withhold all records relating to complaints that were not deemed substantiated under Public Officers Law § 87(2)(b)'s personal privacy exemption. The Appellate Division modified, holding that the respondents could not categorically withhold *all* documents, but were required to "review the requested records and determine whether there is a particularized and specific justification to redact or withhold each record on personal privacy grounds."

In affirming, the Court of Appeals pointed out the "broad duty" imposed by FOIL on government agencies to the public to produce their records; "[t]he statute is based on the principle that 'the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government'"; and "'[a]ll records are presumptively available for public inspection and copying, unless the agency satisfies its burden of demonstrating that "the material requested falls squarely within the ambit of one of [the] statutory exemptions,"' which must be 'narrowly interpreted' (citations omitted)." *Id.* at *3.

The personal privacy exemption allows an agency to withhold any record that "if disclosed would constitute an unwarranted invasion of personal privacy." The Court acknowledged that FOIL, as amended in 2020, did not impact the personal privacy exemption. Nevertheless, the Court agreed with the Appellate Division "consistent with uniform appellate precedent—that there is no categorical or blanket personal privacy exemption for records relating to complaints against law enforcement officers that are not deemed substantiated (citations omitted)." *Id.* at *3–4.

The Court stressed that "'blanket exemptions for particular types of documents are inimical to FOIL's policy of open government' (citation omitted)." *Id.* at *4. In addition, the text and history of the 2020 amendments reflect that "their purpose was to bring greater transparency to the law enforcement disciplinary process, including how complaints of officer misconduct are handled." In fact, there is nothing to suggest that the Legislature intended "to broadly exempt from disclosure all records relating to complaints that are not deemed substantiated."

For example, (i) the amendments added to FOIL a definition of "[l]aw enforcement disciplinary records" expressly encompassing "complaints" levied against officers "in furtherance of a law enforcement disciplinary proceeding" (see Public Officers Law § 86(6)(a))–this definition does not limit production based on the proceeding's outcome or disposition; (ii) another amendment provides for the redaction of sensitive personal information about officers and their families, including medical histories, home addresses, and cell phone numbers, without reference to allegations or complaints that are not deemed substantiated; (iii) those complaints were not added to the non-exclusive list of examples in Public Officers Law § 89(2)(b) of disclosures that can constitute "[a]n unwarranted invasion of personal privacy"; and (iv) Public Officers Law § 87(2) still provides, as it did before 2020, that "[a] denial of access shall not be based solely on the category or type of such record."

Thus, Public Officers Law § 87(2) simply does not permit the wholesale withholding of all records. Instead, an agency must assess each record individually and decide whether there is "a particularized and specific justification" for not producing the document on "the ground that disclosing all or part of the record would constitute an unwarranted invasion of privacy." Where appropriate, redactions can be made. Thus, "[t]he Appellate Division properly directed respondents to undertake this process, subject to further judicial review."

Waiting Period to Commence Actions Under the CVA Is Not a Statute of Limitations or Condition Precedent

Court of Appeals Answers Certified Question From Second Circuit

In 2019, CPLR 214-g was added as part of a comprehensive omnibus bill signed into law as the Child Victims Act (CVA), reviving for one year previously time-barred actions arising out of a child sexual abuse claim. The revival period was subsequently extended to two years. Significantly, the CVA provided that a claim "is hereby revived, and action thereon may be commenced not earlier than six months after, and not later than two years and six months after" the effective date of the statute, which was February 14, 2019. Thus, actions on these claims could be commenced no *earlier* than August 14, 2019, and no *later* than August 14, 2021. The primary reason for the delay in permitting actions to be filed was to give the court system the time to prepare for what was anticipated to be the deluge of actions that would be filed.

In *Jones v. Cattaraugus-Little Val. Cent. Sch. Dist.*, 2025 N.Y. Slip Op. 01007 (Feb. 20, 2025), the Court of Appeals was asked to answer a certified question from the Second Circuit Court of Appeals as to whether the six-month waiting period to bring actions under the CVA was a statute of limitations or a condition precedent. The Court gave two thumbs down.

In *Jones,* the plaintiff had commenced an action under the CVA on April 26, 2019, within the waiting period to commence actions. Because the plaintiff resided out of state, the defendant removed the action to federal court and filed an answer containing a statute of limitations defense, among others. For almost two-and-a-half years, the defendant participated in the action by filing numerous motions and conducting discovery, including demanding medical authorizations and taking part in the depositions of at least five witnesses.

In September 2021, approximately three weeks *after* the CVA cut off for filing actions, defendant moved for summary judgment on statute of limitations grounds. It argued for the first time that the plaintiff improperly commenced her action prematurely during the CVA waiting period. The federal District Court granted the motion. On appeal, the Second Circuit stated that it was unclear as to whether the "start date" for the CVA was a statute of limitations, resulting in its certified question: "Whether the six-month waiting period for claims filed pursuant to the claim-revival provision of New York's Child Victims Act, [CPLR 214-g], establishes a statute of limitations, a condition precedent to bringing suit, or some other affirmative defense."

The Court of Appeals noted that the Second Circuit had initially decided an "open question" under New York law, by concluding that claims under the CVA were revived "immediately" on its effective date. The Court here did not "endorse" but "accepted" that conclusion, for purposes of ruling that the six-month waiting period was *not* a statute of limitations or a condition precedent.

First, the Court noted that statutes of limitations generally bar claims asserted too late, not too early, and the defendant did not cite to any precedent where a statute of limitations barred a premature claim. In addition, the waiting period did not "further the policies underlying a statute of limitations." Statutes of limitations are intended to protect defendants from the assertion of stale claims. In contrast, the purpose of the waiting period was not designed to protect defendants. Instead, it was intended to give the courts time to prepare for the huge number of anticipated actions by, for example, training judges and promulgating rules.

The Court similarly rejected the argument that if the waiting period was not a statute of limitations period, it must be a condition precedent:

> Where "a statute creates a cause of action and attaches a time limit to its commencement," timely commencement generally is a substantive part of the cause of action and a condition precedent to suit. In contrast, the CVA, like other claim revival statutes, "temporarily revived certain previously time[-]barred claims—it did not act to create any new causes of action." We thus cannot interpret the CVA such that timely commencement of the action "is so incorporated with the remedy given as to make it an integral part of it" (citations omitted).

Id. at *6.

Majority of Court of Appeals Holds That Earlier Oral Agreement Was Extinguished by Amended Written LLC Agreement

Dissent Maintains That the Defendant Did Not Satisfy the Standards Under Either CPLR 3211(a)(1) or 3211(a)(7)

In *Behler v. Kai-Shing Tao*, 2025 N.Y. Slip Op. 00803 (Feb. 13, 2025), the issue was whether an oral agreement between the parties survived a subsequent (amended) written limited liability company (LLC) agreement governed by Delaware law and containing a merger clause. A narrow majority of the Court of Appeals held that the merger clause's "plain language" extinguished the oral agreement.

The complaint alleged that the plaintiff and defendant were longtime close friends who "often conducted business with each other through oral agreements and representations." The defendant is the Chief Executive Officer and Chairman of the Board of Remark, a publicly traded company. He also controls a Delaware-incorporated LLC, Digipac, which he used to route the investments of family and friends to Remark. In 2012, the defendant asked the plaintiff to invest in Digipac. The plaintiff was concerned, however, with "the inherent difficulty in liquidating shares of a limited liability company" and wanted to invest directly in Remark. The parties then entered into an oral agreement (the exit opportunity agreement) pursuant to which the plaintiff agreed to invest $3 million in Digipac, contingent on the defendant providing the plaintiff with the opportunity to cash out of his investment: (i) if Remark's shares

reached a certain share price, or (ii) on the five-year anniversary of plaintiff's initial investment, if the share price was never reached. Plaintiff wired $1.5 million to Digipac in November 2012 and the remaining $1.5 million in October 2013.

At that time, an LLC agreement (subsequently amended, see below) governed Digipac. It designated the defendant as Digipac's "Sole Member," giving him the exclusive discretion to make distributions. It also provided that the agreement "may be amended only in a writing signed by the Sole Member." In 2014, the defendant unilaterally amended the LLC agreement in a signed writing (the amended LLC agreement) containing a Delaware choice-of-law clause. Significantly, the amended agreement also contained a merger clause stating:

> This Agreement, together with the Certificate of Formation, each Subscription Agreement and all related Exhibits and Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter, including the Original Agreement.

Id. at *3–4.

Remark's shares did not reach the agreed-upon price point under the exit opportunity agreement, and the defendant did not provide the plaintiff with an opportunity to exit on the fifth anniversary of plaintiff's initial investment, which then had a value of $11.6 million. The plaintiff brought this action asserting breach of contract and promissory estoppel causes of action and seeking an order directing the defendant to purchase plaintiff's Digipac membership for $11.6 million. The defendant moved to dismiss, arguing that the oral agreement containing the exit opportunity provision was unenforceable because it was superseded by the amended LLC Agreement and its merger clause. The trial court granted the motion, and the Appellate Division affirmed with two dissents.

A narrowly divided Court of Appeals affirmed. The majority found that when the plaintiff first invested, he was bound by the original LLC agreement and, by its terms, by the amended LLC agreement, including the merger clause:

> Pursuant to the amended LLC agreement's choice-of-law provision, Delaware law governs its interpretation and reach. Under Delaware's Limited Liability Company Act, which aims to "give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements" (Del Code Ann title 6, § 18-1101 [b]), a member of an LLC "is bound by the limited liability company agreement whether or not the member . . . executes the limited liability company agreement." Plaintiff, as a member of Digipac, is therefore bound by its operating LLC agreement—the amended LLC agreement—regardless of whether he signed it (citations omitted).

Id. at *7.

The Court noted that Delaware courts construe LLC agreements like other contracts, and thus unambiguous provisions are to be given their "plain meaning." The majority found that the merger clause in the amended LLC agreement

> unambiguously and explicitly nullifies prior "written and oral" agreements between the parties on the same subject matter, regardless of whether the two agreements are inconsistent (citations omitted). Because the oral agreement and amended LLC agreement involve the same subject matter, the amended LLC agreement superseded the oral agreement through the merger clause.

Id. at *8.

The majority rejected the plaintiff's argument that the defendant entered into the oral agreement in his personal, rather than his corporate, capacity and thus the merger clause did not apply. In fact, the plaintiff's own characterizations of the oral agreement in the complaint belied that argument. The Court similarly rejected the assertion that the plaintiff was a party to the oral agreement in his personal capacity but in a membership capacity to the amended LLC agreement.

The Court acknowledged that permitting a party to a contract unilaterally to extinguish a contractual obligation after the other party has performed would appear to be "harsh." However, it also stressed that the plaintiff failed to safeguard his own interests by not taking "the appropriate measures to protect the terms of the oral agreement from defendant's explicit unilateral authority to amend the LLC agreement." *Id.* at *12.

The dissent initially noted that the decision here related to a CPLR 3211(a)(1) and (7) motion to dismiss. Thus, dismissal was only warranted where either the "documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" or the movant establishes that the plaintiff failed "to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Id*. at *14. The dissent maintained that the defendant did not satisfy either standard, concluding that the amended LLC agreement did not supersede the exit opportunity agreement.

The dissent disagreed that the agreements concerned the same subject matter:

> One agreement was reached between two friends—plaintiff and defendant—to induce plaintiff to invest in defendant's company by protecting his investment and affording him a way out following the occurrence of certain events. The other is Digipac's governing instrument, adopted years after plaintiff's investment, which was intended to manage Digipac's internal affairs and direct the conduct of its business (citation omitted).

Id.

Moreover, "the agreements involve different parties, exercising different roles. The exit opportunity agreement involves just plaintiff and defendant, acting as friends and business associates." Nowhere did the complaint allege that the defendant "'held himself out in his corporate capacity' as manager in entering into the exit opportunity agreement." *Id.* at *16. The dissent contended that the exit opportunity agreement implicated the plaintiff and defendant as individuals, while they were member and manager of Digipac respectively with respect to the amended operating agreement. Moreover, the latter agreement also involved "Digipac itself and its entire body of members."

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