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Summarizing recent significant New York appellate cases

Are treble damages punitive in nature? The Court of Appeals recently held that they are under RPAPL 861, which authorizes the imposition of treble damages for the illegal destruction of trees. And so, if it is a municipality that destroys the trees on your property, you're stuck with recovering only the trees' stumpage value because punitive damages are not available against a municipality. 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

REAL PROPERTY LAW, DAMAGES

***Matter of Rosbaugh v Town of Lodi*, 2025 NY Slip Op 01406 (Ct App Mar. 13, 2025)**

Issue: **Are treble damages under RPAPL 861 for the nonconsensual destruction of trees punitive in nature, making them unavailable in a suit against a municipality?**

Facts: "In 2010, the Town of Lodi determined that low-hanging branches and dead or dying trees on plaintiffs' side of the road posed a hazard to travelers and needed to be cut or removed. Plaintiffs disagreed. Nevertheless, after apparently concluding that the trees were within the right of way, a tree service company hired by the Town cut down or trimmed fifty-five trees on plaintiffs' land. Plaintiffs commenced an action against the Town and the tree service company seeking, among other remedies, treble damages pursuant to RPAPL 861 (1). The parties agreed to binding arbitration and the arbitrator awarded plaintiffs damages, including treble the 'stumpage value' of the damaged or destroyed trees. Supreme Court confirmed the arbitrator's award and a divided Appellate Division affirmed."

Holding: The Court of Appeals held that the treble damages authorized under RPAPL 861 are indeed punitive in nature and thus cannot be levied against a municipality. The Court explained, "RPAPL 861 provides that 'if any person, without the consent of the owner thereof, cuts, removes, injures or destroys . . . trees or timber on the land of another . . . an action may be maintained against such person for treble the stumpage value of the tree or timber or two hundred fifty dollars per tree, or both and for any permanent and substantial damage caused to the land or the improvements thereon.'" A "good faith" exception exists under the statute, however, that insulates a defendant from having to pay the treble damages authorized: "if the defendant establishes by clear and convincing evidence, that when the defendant committed the violation, he or she had cause to believe the land was his or her own, or that he or she had an easement or right of way across such land which permitted such action, or he or she had a legal right to harvest such land."

The Court held, "[t]he 'good faith' provision in RPAPL 861 demonstrates the punitive nature of the treble damages available under the statute. In contrast to compensatory damages, which are intended to redress the concrete loss that a plaintiff has suffered by reason of the defendant's wrongful conduct, punitive damages are essentially private fines levied by civil juries to punish reprehensible conduct, and deter its future occurrence. As the dissent below asserted, it is unreasonable to read the statute in a way that allows the defendant's state of mind — a showing the defendant acted in good faith — to reduce a recovery merely intended to make the plaintiff whole. Rather, the plain reading of the text is that treble damages, punitive in nature, are mitigated by the good faith of the defendant." Indeed, the Court noted, the legislative history underlying RPAPL 861 showed that that intent of the treble damages provision was to penalize the illegal taking of timber and "provide for greater deterrence for the knowing offender while at the same time promote more diligence and care on the part of legitimate timber harvesters to prevent inadvertent trespass and timber theft." Because municipalities cannot be held liable for punitive damages under long settled law, the Court held that municipalities are similarly exempt from imposition of treble damages under RPAPL 861.

SECOND DEPARTMENT

INSURANCE LAW, CIVIL PROCEDURE, SUBJECT MATTER JURISDICTION

***American Tr. Ins. Co. v Comfort Choice Chiropractic, P.C.*, 2025 NY Slip Op 01337 (2d Dept Mar. 12, 2025)**

Issue: **May separate and distinct arbitral awards be treated by a court as, in effect, a single arbitral award under Insurance Law § 5106(c) and pursuant to 11 NYCRR 65-4.10(h)(1)(ii) for the purposes of determining whether the requisite $5,000 threshold establishing subject matter jurisdiction has been met to allow for a de novo review of claims for no-fault insurance benefits?**

Facts: "American Transit Insurance Company commenced this action pursuant to Insurance Law § 5106(c) and 11 NYCRR 65-4.10(h)(1)(ii) to seek de novo review of four separate arbitral awards issued by a master arbitrator. The four arbitral awards were issued by the same

master arbitrator, following separate arbitration proceedings upon the plaintiff's denial of payment for medical services performed by the defendant for Nancy Bayona, an individual who alleged that she was injured as a result of a motor vehicle accident in February 2019 when she was riding as a passenger in a taxi insured by the plaintiff." ATIC denied each of the four claims "for a repeated course of chiropractic treatment of Bayona performed by the defendant between March 8 and September 4, 2019." After the four arbitration proceedings, the master arbitrator granted four separate awards in the defendant's favor, each under $5,000.

"Thereafter, pursuant to Insurance Law § 5106(c) and 11 NYCRR 65-4.10(h)(1)(ii), the plaintiff commenced this action seeking de novo review of the four arbitral awards." Defendant moved to dismiss, arguing that the four separate awards could not be combined for purposes establishing the required $5,000 minimum threshold for de novo review under Insurance Law § 5106(c) and 11 NYCRR 65-4.10(h)(1)(ii). Plaintiff countered that "the four arbitral awards were, in effect, a single arbitral award which, collectively, exceeded the requisite $5,000 threshold. The plaintiff contended that, since the arbitral awards involved the same parties, were decided by the same arbitrator on the same day, and essentially involved the same services, they, therefore, in effect, constituted a single arbitral award." Supreme Court held that the four arbitral awards were, in effect, a single award and could be combined to satisfy the $5,000 minimum threshold to invoke the court's subject matter jurisdiction.

Holding: The Second Department, deciding the issue of first impression, reversed, holding that "the plain language of Insurance Law § 5106(c) and 11 NYCRR 65-4.10(h)(1) does not contemplate allowing separate and distinct arbitral awards to be treated as, in effect, a single arbitral award or to be combined by a court for the purposes of meeting the required monetary jurisdictional threshold." The Court explained, "the plain language of Insurance Law § 5106(c) expressly provides that an *arbitrator's award* must meet the $5,000 threshold in order to permit a party to seek a de novo determination by commencing an action in a court as to the award. Likewise, 11 NYCRR 65-4.10(h)(1)(ii) sets forth that 'if the *award* of the master arbitrator is $5,000 or greater, exclusive of interest and attorney's fees, either party may, in lieu of an article 75 proceeding, institute a court action to adjudicate the dispute de novo.' The use of the singular in the statute and the regulation—'arbitrator's award' in Insurance Law § 5106(c) and 'the award' in 11 NYCRR 65-4.10(h)(1)(ii)—means one, single award, not a combination or collective group. The Legislature did not opt to use the plural, and there is no other language in either the statute or the regulation that would allow for the singular to be interpreted as encompassing the plural. To the extent that the statute or the regulation do not expressly address the issue of treating multiple arbitral awards as, in effect, a singular arbitral award, courts cannot amend a statute by inserting words that are not there, nor will a court read into a statute a provision which the legislature did not see fit to enact." "Given the plain language of Insurance Law § 5106(c) and 11 NYCRR 65-4.10(h)(1)(ii), it was not proper for the Supreme Court to expand the scope of the legislation by construing it to allow for multiple arbitral awards to be treated as, in effect, one, or as a single, combined arbitral award in order to meet the requisite threshold."

FOURTH DEPARTMENT

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

***Kingston v Tennyson Ct.*, 2025 NY Slip Op 01522 (4th Dept Mar. 14, 2025)**

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

Facts: "Plaintiff, as executor of the estate of Marcella Kingston, commenced this action alleging, inter alia, that defendants were negligent while decedent was a resident of a facility (Tennyson Court), and that such negligence caused decedent to suffer physical injuries, including a displaced elbow fracture, nasal bone fractures, and 'other fall/incident injuries,' and ultimately resulted in her death. Plaintiff alleged in the first cause of action that decedent's injuries and death were caused by defendants' negligence, gross negligence, carelessness, and recklessness, and plaintiff further alleged in the second and third causes of action that defendants recklessly deprived decedent of her rights and benefits in violation of Public Health Law §§ 2801-d and 2803-c." Defendant moved to dismiss, arguing, among other things, that it could not be liable under Public Health Law §§ 2801-d and 2803-c because it was an assisted living facility, not a residential health care facility. Supreme Court, however, denied the motion.

Holding: The Fourth Department reversed and dismissed the second and third causes of action under Public Health Law §§ 2801-d and 2803-c, holding that "the complaint here failed to sufficiently allege facts to overcome defendants' argument that the facility is an assisted living facility and not subject to sections 2801-d and 2803-c of the Public Health Law." The Fourth Department majority, however, stopped short of overruling its prior precedent in ***Cunningham v Mary Agnes Manor Mgt., L.L.C.* (188 AD3d 1560, 1562 [4th Dept 2020])**, in which the Court held "an assisted living facility licensed pursuant to Public Health Law article 46-B, such as Tennyson Court, could operate as a de facto residential health care facility subject to liability under Public Health Law article 28 if it provides health-related services." The majority explained, "[o]verturning precedent is unnecessary to resolve the appeal before us because, even under *Cunningham*, the second and third causes of action cannot survive defendants' motion to dismiss. The doctrine of stare decisis should not be departed from except under compelling circumstances, and none are present here. Whether *Cunningham* should be overruled in favor of our concurring colleagues' statutory analysis should await an appropriate case in which it is necessary to resolve the viability of that precedent."

The Fourth Department concurrence, in contrast, would have gone further and overruled *Cunningham* to bring the Court in line with recent decisions of the Second and Third Department that have held that "once it is determined that an entity like Tennyson Court is an 'assisted living' facility licensed under Public Health Law article 46-B, that completely precludes any potential absolute liability against it

as a residential health care facility licensed under Public Health Law article 28—even if it provides health-related services" (*see* ***DeRusso v Church Aid of the Prot. Episcopal Church in the Town of Saratoga Springs, Inc., — AD3d —, 2025 NY Slip Op 00008, *1-2 [3d Dept 2025]***; ***Broderick v Amber Ct. Assisted Living*, 200 AD3d 840, 841 [2d Dept 2021]**).

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