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CasePrepPlus

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Summarizing recent significant New York appellate cases

When may unionized public employees sue their employers for breach of rights granted exclusively in a collective bargaining agreement? The Court of Appeals addressed that issue recently, reaffirming that to bring such a claim in court, the employee must bring a plenary action against not only the employer for breach of contract, but also against the union for breach of the duty of fair representation. A public employee's suit without the latter claim against the union is subject to pre-answer dismissal under the Court's prior precedent. 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

CIVIL PROCEDURE, COURT OF CLAIMS JURISDICTION, CHILD VICTIMS ACT

***Wright v State of New York,* 2025 NY Slip Op 01564 (Ct App Mar. 18, 2025)**

Issue: **In enacting the Child Victims Act of 2019, did the Legislature implicitly amend Court of Claims Act § 11(b) to expand the State's waiver of sovereign immunity for purposes of CVA claims? What degree of particularity is required to sufficiently plead the "time when" claims asserted pursuant to the CVA arose, and what degree of particularity is required to sufficiently plead the "nature of" claims asserting negligence causes of action?**

Facts: "In July 2021, claimant commenced this claim pursuant to the Child Victims Act seeking to recover damages from defendant for negligent hiring, retention and supervision. Claimant alleges that, between 1986 and 1990, when he was a minor, he was sexually abused on multiple occasions by employees of defendant (and others) at 'The Egg' . . . Defendant moved pursuant to CPLR 3211(a) to dismiss the claim on the ground that it failed to adequately state the 'nature' of the claim or the 'time when' it arose, as required by Court of Claims Act § 11(b), thereby depriving the Court of Claims of subject matter jurisdiction. The Court of Claims granted defendant's motion.

The Appellate Division, Third Department reversed. The Court held that although the CVA changed the Court of Claims Act's statute of limitations for CVA claims, it did not alter the Court of Claims Act's jurisdictional pleading requirements, "leaving the courts with the difficult task of determining, on a sui generis basis, whether claims filed decades after the fact are sufficiently specific to enable the State to investigate and promptly ascertain the existence and extent of its liability." In this case, the Court explained, "[w]here sexual abuse is alleged to have occurred several decades ago when the claimant was a child, it is not reasonable to expect the claimant to be able to provide exact dates when each instance of abuse occurred, nor is it required." The Court thus concluded that the claimant's four-year time frame for the abuse allegations was sufficient to plead the "time" required by the Court of Claims Act, and so too were claimant's allegations of the "nature" of his claims that defendant was negligent in retaining and failing to supervise his abuser.

Holding: The Court of Appeals reversed, holding that the CVA does not alter the substantive pleading requirements set forth in Court of Claims Act § 11 (b). The Court reasoned, "we do not have the leeway to exempt claims brought under the CVA from the limitations the Act imposes on the State's waiver of immunity. It has long been settled that a waiver of sovereign immunity must be clearly expressed, and that waiver of immunity by inference is disfavored. The CVA lacks any indication, let alone a clear expression, that the Legislature intended to exempt CVA claims from section 11 (b)'s conditions; indeed, it does not amend or even mention the Act's pleading requirements. That contrasts sharply with the Legislature's decision to amend section 10 by waiving the notice of claim requirement for claims revived by the CVA. We also note that the Legislature has adopted different pleading requirements for claims of unjust conviction and imprisonment, confirming that it knows how to adjust the conditions on the State's waiver of immunity for certain classes of claims when it seeks to do so."

Here, the Court held, that Wright's claim was not sufficiently specific to survive dismissal. Without addressing the reasonableness of the four-year timeframe, the Court focused instead on the lack of details provided about the alleged abuse: "The claim lacks critical information about the abusers. It alleges that the perpetrators included teachers, coaches, counselors, and perhaps other employees of the State, but it does not explain whether those employees were Wright's teachers, coaches, and counselors, or why, as a child, he was in their company multiple times between 1986 and 1990. The claim also alleges that members of the public were responsible for some of the abuse he suffered, but it does not explain why Wright came into contact with those persons as a child, the context in which adult supervision of any particular activity allegedly should have been provided, or the extent to which the State bore responsibility for Wright's contact with the abusers. Nor does the claim adequately allege what repeatedly brought Wright to The Egg over a four-year period in the late 1980s, or why, once on the premises, he frequently engaged with both members of the public and State employees." Thus, the Court held that the claim was insufficient to allow the State to investigate and was jurisdictionally defective.

CRIMINAL LAW, PRESERVATION

People v Scott, 2025 NY Slip Op 01562 (Ct App Mar. 18, 2025)

Issue: **Was defendant's guilty plea knowing, voluntary, and intelligent, and his challenge to the voluntariness of his plea properly preserved?**

Facts: "Defendant was charged with three counts of burglary in the second degree, based on allegations that he unlawfully entered three dwellings, all on different dates. Around one year later, defendant appeared in court with counsel to discuss a negotiated plea in satisfaction of all charges. The prosecution put on the record that defendant, who was 23 years old, faced up to 15 years on each count, with a possible maximum consecutive sentence of 45 years. However, pursuant to off-record conversations with the court, if defendant pleaded guilty to all three charges that day, he would be sentenced to 6 to 8 years. Further, the court would consider an even lower sentence if the defense presented sufficient mitigation evidence before sentencing." The trial court reiterated in its colloquy with defendant that the maximum consecutive sentence defendant could receive on the three charges was 45 years. Following that admonition, defendant pled guilty.

"At sentencing, the court twice again told defendant that he faced 15 years on each count for a total of 45 years. Then, based on the court's conclusion that defendant denied his guilt during his pre-sentencing interview, it refused to honor the negotiated incarceration term and instead imposed an enhanced sentence of 5 years on each count, for a total of 15 years, followed by 5 years of post-release supervision." The problem, however, was that the trial court's calculation of the maximum consecutive sentence was wrong: "Although defendant could be sentenced consecutively on all three charges if found guilty, and each charge by itself carried a maximum sentence of 15 years, Penal Law 70.30 (1) (e) (i) capped defendant's aggregate sentence at 20 years. Thus, the court misinformed defendant that his outside exposure was more than double what the law allowed, adding two and a half decades to the maximum time he faced if he were convicted of all three counts after trial, for an inaccurate aggregate sentence of close to half a century."

On appeal to the Appellate Division, defendant for the first time challenged the voluntariness of his plea "due to the court's misstatement of his potential maximum sentence. The Appellate Division concluded that defendant's challenge to his plea was unpreserved, and it would not consider the claim in the interest of justice (224 AD3d 1238, 1240 [4th Dept 2024]). However, the Appellate Division reduced the enhanced sentence as harsh and severe to an aggregate term of imprisonment of 10 ½ years."

Holding: The Court of Appeals reversed, holding that "defendant's plea was not voluntary, knowing, and intelligent. Defendant was only 23 years old at the time of his plea, and his prior experience with the criminal legal system did not involve any offenses that would prepare him to contemplate felony terms of incarceration, let alone consecutive sentencing of multiple offenses . . . we cannot minimize the extreme nature of the court's egregious error and its impact on defendant's judgment. The court presented defendant two options: (1) accept the plea with the possibility of release in his late twenties, and the promise of a long life at liberty; or (2) go to trial and if found guilty spend close to half a century in prison, and walk out in his sixties, with more time left behind than ahead of him. That is no choice at all, for no matter how strongly one believed in their defense, it is difficult to imagine anyone in defendant's position willing to take such a risk. With the apparent stakes so high, defendant's plea was not voluntary, knowing, and intelligent as a matter of law."

To get there, the Court held that an exception existed to the requirement that defendant preserve his argument at the trial court. The majority reasoned, "where the deficiency in the plea allocution is so clear from the record that the court's attention should have been instantly drawn to the problem, the defendant does not have to preserve a claim that the plea was involuntary because the salutary purpose of the preservation rule is arguably not jeopardized." Thus, [w] here, as here, the court provides the defendant with erroneous information concerning their maximum sentencing exposure that is contrary to the undisputed text of the Penal Law, fails to correct its error on the record, and the defendant has no apparent reason to question the accuracy of that information, the defendant need not preserve a challenge to the voluntariness of the guilty plea on that ground."

The dissent, on the other hand, would never have reached the merits of defendant's unpreserved argument because with only two exceptions, neither of which the dissent believed applied here, "we have unequivocally required a defendant to preserve a challenge to the voluntariness of their plea by making a motion to withdraw the plea under CPL 220.60 (3) or a motion to vacate the judgment of conviction under CPL 440.10." Defendant did neither before raising his argument for the first time on direct appeal at the Appellate Division. Thus, the dissent cautioned, "[p]reservation—or, more precisely, the lack of preservation—frequently accounts for the disposition of criminal cases in this Court, and we enforce the preservation doctrine with equal regularity in the trial and plea contexts, remaining mindful that the necessity of preservation is the rule rather than the exception. It is no mere formality: ordinarily, this Court best serves the litigants and the law by limiting its review to issues that have first been presented to and carefully considered by the trial and intermediate appellate courts. As relates to plea-voluntariness claims, the majority blasts a gaping hole in this doctrine by creating an exception so large as to swallow the rule, countermanding our repeated warnings against that very result" and overruling the Court's past preservation precedent.

Practitioners be aware: preservation at the Court of Appeals is often a difficult doctrine to predict.

LABOR LAW, PUBLIC EMPLOYMENT, CONTRACT LAW

Matter of Dourdounas v City of New York, 2025 NY Slip Op 01671 (Ct App Mar. 20, 2025)

Issue: **When may unionized public employees sue their employer in court for breach of their rights granted in a collective bargaining agreement?**

Facts: "In September 2012, Mr. Dourdounas, a high school math teacher, was assigned to the Absent Teacher Reserve. The ATR, which was agreed to in collective bargaining between the DOE and the UFT, is a pool of New York City teachers whose teaching positions were eliminated for reasons that do not provide cause for termination. ATR teachers are temporarily assigned to fill gaps in New York City schools and are removed from the ATR pool if they are permanently assigned to a school. The CBA authorizes the DOE to offer ATR members 'a voluntary severance program in an amount to be negotiated by the parties.'" In 2017, Mr. Doudounas elected to participate in the voluntary severance program and sought the $50,000 payment that was offered. DOE, however, advised him that he was ineligible for the voluntary severance payment, because he had been permanently hired at one of the schools, and was therefore no longer on the ATR list. Mr. Doudounas disputed that he was ever permanently hired and filed a grievance against DOE under the CBA's mandatory grievance process. At steps one and two of the grievance procedure, the Chancellor of DOE denied the grievance and UFT refused to bring the grievance to arbitration at step three.

Mr. Doudounas then commenced this CPLR Article 78 proceeding against DOE, challenging its breach of the CBA. DOE moved to dismiss, arguing, among other things, that the proceeding was untimely and failed to state a claim. Supreme Court dismissed the proceeding as untimely, having been commenced more than four months after DOE's denial of the retirement incentive, and the Appellate Division, First Department affirmed.

Holding: The Court of Appeals affirmed the dismissal of the Article 78 proceeding, albeit for a very different reason. The Court explained that because Mr. Doudounas' claim arose out of his rights under the CBA, the procedure he was required to follow to bring his claim to court was governed by the Court's prior precedent in *Matter of Board of Educ., Commack Union Free School Dist. v Ambach* (70 NY2d 501, 508 [1987]). "There, we held that when a claim arises under a collective bargaining agreement that creates a mandatory grievance process, the employee may not sue the employer directly for breach of that agreement but must proceed, through the union, in accordance with the contract. Unless the contract provides otherwise, only when the union fails in its duty of fair representation can the employee go beyond the agreed procedure and litigate a contract issue directly against the employer. Allegations that an employer has breached the collective bargaining agreement are contract claims that may not be resolved in an article 78 proceeding. Thus, when an employee alleges that an employer has breached a term in a collective bargaining agreement, the proper mechanism is a plenary action alleging both breach of contract by the employer and breach of the duty of fair representation by the union." The only other time when a unionized public employee may directly pursue claims against their employer is when the CBA itself authorizes the employee to enforce it independent of the union, which is rarely, if ever, seen.

Here, the Court explained, "[a]lthough Mr. Dourdounas did exhaust the mandatory grievance procedure set out in the CBA, he did not allege a breach of the duty of fair representation by the UFT. Nor does the CBA give teachers the right to pursue a contractual claim independent of the UFT. Mr. Dourdounas's claim was therefore properly dismissed."

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