



Is a decedent's administrator bound by the decedent's arbitration agreement in a subsequent wrongful death suit? The Second Department addressed that question of first impression and held that it is not. Let's take a look at that opinion and what else has been happening in New York's appellate courts recently.

## APPELLATE DIVISION, FIRST DEPARTMENT

### CIVIL PROCEDURE, FORUM NON CONVENIENS

*Zhakiyanov v Ogai, 2025 NY Slip Op 03294 (1st Dept June 03, 2025)*

**Issue:** Did Supreme Court properly dismiss the action on forum non conveniens grounds?

**Facts:** "This dispute concerns a Kazakhstani company, SK, that operated a Kazakhstani mine located in Kazakhstan and was controlled by plaintiffs. Plaintiffs allege that defendant Eduard Ogai and other individuals used their political connections to the former Kazakhstani president to fraudulently strip plaintiffs of their property – specifically, their interest in receiving profits and dividends from SK, which defendants allegedly looted – and then used shell companies, including the defendant entities, to launder SK's stolen assets through the purchase of real estate in New York and California." Plaintiffs sued in New York, and defendants moved to dismiss on forum non conveniens grounds. Supreme Court granted the motion and dismissed the action.

**Holding:** The First Department affirmed, holding that the forum non conveniens dismissal was proper. The Court reasoned, "Plaintiffs are both Kazakhstani citizens living in Kazakhstan, and although plaintiff's residence is not dispositive, it is the 'most significant factor' in the forum non conveniens analysis. Both individual defendants are also Kazakhstani citizens with deep connections in Kazakhstan who live in Kazakhstan at least part-time. In addition, Kazakhstani law may need to be applied, and all of the documents and witnesses with respect to the alleged looting of SK are likely to be in Kazakhstan and would require translation." Although the Court noted that the "remaining defendants are all United States entities," that was not dispositive because their relevance to the action was limited. Only two of the defendants were New York companies, and "[t]he only evidence likely to be located in New York concerns defendants' alleged efforts to launder illegally obtained proceeds through the purchase of New York and California properties, and at least some of the evidence related to those properties is likely to be located in California. In any event, the real estate purchases are not at the heart of plaintiffs' claims and will not be relevant if it is ultimately determined that there was no looting or that the proceeds of the alleged looting were not in fact funneled into these properties – a fact that plaintiffs do not even unequivocally allege, stating only that '[d]iscovery in this action is reasonably likely to reveal' that the properties were financed with looted assets." The court held that the "inability of Kazakhstani courts to reach foreign property or compel foreign documents or witnesses and the unavailability of the constructive trust remedy over the subject real property," did not change the analysis even if the Kazakhstani were not available, because that factor is not dispositive.

## APPELLATE DIVISION, SECOND DEPARTMENT

### CIVIL PROCEDURE, ARBITRATION

*Marinos v Brahaj, 2025 NY Slip Op 03561 (2d Dept June 11, 2025)*

**Issue:** Is a wrongful death cause of action asserted by a decedent's administrator individually, and which arises from the same facts as a negligence cause of action, subject to an arbitration clause the decedent entered into?

**Facts:** Decedent was a member of Revel, which rents electric mopeds to customers in Manhattan. While using a Revel moped, decedent was thrown from the moped into the street and hit by a vehicle, killing him. Plaintiffs – decedent's parents – then brought this negligence wrongful death action against the vehicle owner and Revel. Notably, "[w]hen a user downloads Revel's app for the purpose of renting a moped, they are presented with a series of pages that they must acknowledge through 'clicks.' One page that users must acknowledge is an agreement that contains an arbitration clause. For the purpose of this appeal, it is conceded that the negligence causes of action asserted on behalf of the decedent's estate insofar as asserted against the Revel defendants are subject to the arbitration clause and must proceed to arbitration."

Following commencement, "[t]he Revel defendants served an answer and a demand for arbitration on April 4, 2022. The plaintiffs then moved to stay arbitration of the causes of action insofar as asserted against the Revel defendants. In support of their motion, the plaintiffs argued . . . that they were not bound by the arbitration clause because they did not sign the agreement and were not the decedent's

successors or assigns, but were court-appointed administrators of the decedent's estate. The Revel defendants opposed the motion and cross-moved to compel arbitration of the causes of action insofar as asserted against them. In support of their cross-motion, the Revel defendants argued, among other things, that the 'successors and assigns' language in the arbitration clause binds the plaintiffs because they stand in the shoes of the decedent, who entered into the agreement containing the arbitration clause, and therefore, the causes of action insofar as asserted against them must be determined by arbitration. In an order dated April 20, 2023, the Supreme Court . . . denied the plaintiffs' motion and granted the Revel defendants' cross-motion, finding that the plaintiffs, as the court-appointed administrators of the decedent's estate, were bound by the decedent's agreement to arbitrate."

**Holding:** The Second Department, addressing this issue of first impression, held that "[t]he law of this State is clear that a wrongful death cause of action is a separate and distinct cause of action to redress the injuries suffered by a decedent's distributees as a result of the decedent's death. A cause of action to recover damages for wrongful death is a property right belonging solely to the distributees of the decedent and vests in them at the decedent's death. This is true even where no cause of action alleging negligence exists." Because the two claims are independent and redress different harms to different classes of plaintiffs, the Court held that plaintiffs were not bound by decedent's arbitration agreement to arbitrate the wrongful death claim against Revel, even though they were the court-appointed administrators of decedents' estate and the claim arose out of the same operative facts as the negligence claim that was being arbitrated.

## APPELLATE DIVISION, THIRD DEPARTMENT

### EDUCATION LAW, CHARTER SCHOOL FUNDING, DEFERENCE TO AGENCY STATUTORY INTERPRETATION

*Matter of Coney Is. Preparatory Pub. Charter Sch. v New York State Educ. Dept., 2025 NY Slip Op 03374 (3d Dept June 5, 2025)*

**Issue:** Did the State Education Department rationally calculate the funding for charter schools for the 2023-24 school year?

**Facts:** "When a student attends a charter school, that student's school district of residence pays basic tuition to the school on behalf of the student in an amount that is determined using certain statutory formulas. Petitioners collectively operate 73 of the 274 charter schools in New York City, while respondent New York State Education Department computes the charter school basic tuition and respondent New York City Department of Education then pays that tuition for each student attending petitioners' schools." The tuition formulas are found in the Education Law and require SED to use the lower of the two. For the 2023-24 school year, "formula A obliged SED to multiply the basic tuition for 2022-2023 by the average growth of the school district's 'approved operating expense' over three prior years. The term 'approved operating expense' is defined elsewhere in the Education Law and is comprised of a school district's total expenditures from multiple funding sources, with several enumerated exclusions. Second, formula B required SED to divide the school district's general fund expenditures, as captured in 'an electronic data file . . . published annually on May fifteenth' (hereinafter referred to as the May 15 snapshot), by the number of students in the district."

"In May 2023, SED established the charter school basic tuition for the 2023-2024 school year. When performing the formula A calculation and determining the figure to be used for the district's 'approved operating expense,' SED utilized the May 15 snapshot, in accordance with its longstanding practice. SED also performed the formula B computation. As between the two, formula A resulted in the lower figure, which was \$18,340 per pupil, such that this was the amount that DOE was required to pay in basic tuition for the 2023-2024 school year. DOE subsequently revised some of its operating expenses due to a reduction in its transportation costs, and petitioners consequently requested that SED recalculate the basic tuition accordingly, as this revision would have resulted in an extra \$23 per pupil. SED effectively denied petitioners' request and the basic tuition remained the same for that school year." Petitioners then commenced this Article 78 proceeding to challenge the rationality of that decision, and Supreme Court dismissed the proceeding.

**Holding:** The Third Department affirmed, holding that deference to SED's decision not to recalculate the 2023-24 basic tuition payments was appropriate "because, while the statute containing this formula directs the use of certain operating expense data, it does not specify the point in time when this data is to be captured, nor does it indicate how often the calculations must be performed. In answering these questions, SED's institutional knowledge of underlying operational practices became important in several respects." Because SED's special expertise in these areas were involved, the Court held that it needed to defer to SED's interpretation. In particular, the Court explained, "[g]iven that SED was already required by the Legislature to produce snapshots of operating expenses on November 15, February 15 and May 15 of each school year (see Education Law § 305 [21] [b]), together with the fact that the state budget – which, historically, has often included revisions to the formulas – is not enacted until after the first two of those three dates, SED concluded that the May 15 snapshot would furnish the most appropriate data" to decide the basic tuition amounts by July 15th of each year. And it was rational for SED to only calculate the tuition amount annually, the Court held, because "doing so once per year in May would provide necessary stability and predictability for both school district and charter school budgets." Petitioners' argument that it should be done on a rolling basis, as the schools' expenses are revised, was not practical, and thus SED rationally rejected it.

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