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Summarizing recent significant New York appellate cases

Five Justices of the Appellate Division, First Department could not agree on whether Supreme Court properly found the Trump Organization liable for inflating its assets in deals with banks and insurance companies. Rather than sticking the parties without a final decision that they could try to bring to the Court of Appeals, however, four of the Justices agreed to sign on to a decretal that vacated the trial court's $464 million disgorgement remedy against the Trump Organization and otherwise left in place the extensive injunctive relief that had been ordered. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

EXECUTIVE LAW, ANTI-FRAUD LIABILITY, DECEPTIVE BUSINESS PRACTICES

***People v Trump*, 2025 NY Slip Op 04756 (1st Dept August 21, 2025)**

Issue: **Did Supreme Court properly hold the Trump Organization liable for violations of Executive Law § 63(12) and order disgorgement remedies in excess of $360 million, plus interest?**

Facts: In the wake of Michael Cohen's testimony to Congress, in which he "claimed, among other things, that President Trump inflated his total assets when it served his purposes, such as trying to be listed amongst the wealthiest people in Forbes, and deflated them on other occasions when it was to his business advantage," the New York Attorney General's Office began an investigation into the Trump Organization's business practices. "After reviewing millions of pages of documents and interviewing more than 65 witnesses, the Attorney General commenced this action in 2022, claiming that defendants engaged in a decade-long pattern of financial fraud . . . According to the complaint, defendants' fraudulent actions entailed submitting President Trump's inflated [statements of financial condition] to lenders and others for the purpose of obtaining favorable business deals in New York. The complaint alleges that the SFCs inflated President Trump's net worth by as much as $2.2 billion per year, employing various deceptive strategies that inflated the estimated current value of President Trump's assets."

In numerous pretrial motions, defendants argued that the Attorney General lacked standing and capacity to bring Executive Law § 63(12) claims. Each time they raised the argument, Supreme Court rejected it, holding that "the Legislature had specifically empowered [the Attorney General] to bring the suit by enacting section 63(12) and that disgorgement was an available remedy even in the absence of individual losses incurred by counterparties to the relevant deals." Supreme Court also granted the Attorney General partial summary judgment "as to liability on the first cause of action for violation of Executive Law § 63(12)" based on the Attorney General's proof that the Trump Organization submitted false and misleading SFCs and certification of their accuracy to defraud banks and insurers. "As a result of these violations, the court ordered the cancellation of corporate certificates filed under General Business Law § 130 for Trump entities and directed the parties to recommend potential receivers to manage the dissolution." On an emergency appeal, the Appellate Division, First Department stayed cancellation of the corporate certificates, but declined to stay the impending trial.

"From October 2, 2023, to December 13, 2023, Supreme Court presided over an 11 week bench trial which included testimony from 40 witnesses, hundreds of exhibits, and almost 7,000 pages of trial transcript. On February 16, 2024, the court issued a posttrial order (2024 NY Slip Op 30493[U] [Sup Ct, NY County 2024]). The court found that defendants violated five of the six remaining Executive Law § 63(12) claims, which all concerned Penal Law violations discussed below (falsifying business records, issuing false financial statements, conspiracy to falsify business records, conspiracy to issue false financial statements, and conspiracy to commit insurance fraud) . . . Supreme Court awarded disgorgement in a combined amount of $464,576,230.62 ($363,894,816.00 of what the court called 'ill-gotten gains' and $100,681,414.62 in prejudgment interest). Because the court found that defendants were likely to commit future misconduct, it issued broad injunctive relief." Defendants appealed.

Holding: The Appellate Division, First Department, in a fractured opinion, only reached a majority on the issue of whether the Attorney General had authority to commence this action under Executive Law § 63(12). Four of the five Appellate Division Justices agreed that section 63(12) empowered the Attorney General to bring this action and that she acted in the public interest in doing so. But that was the end of the Justices' agreement. The Court issued a concurring opinion, and two opinions concurring in part and dissenting in part, none of which obtained the necessary three Justice majority. Accordingly, to ensure finality and to clear "a path for appeal to the Court of Appeals," four Justices agreed to join the First Department's decretal paragraph that modified the Supreme Court's post-trial relief by vacating the disgorgement order and otherwise affirmed the findings of liability against the Trump Organization.

In light of the three fractured opinions, we should address each briefly in turn. First, Presiding Justice Renwick and Associate Justice Moulton found that Supreme Court properly held the Trump Organization liable for inflating the value of its assets, and properly issued the extensive injunctive relief, but vacated the disgorgement order as violative of the Eighth Amendment's prohibition on excessive fines. Justice Moulton, writing the concurrence, explained, after the United States Supreme Court held that "criminal forfeitures constitute fines within the meaning of the Excessive Fines Clause," the courts were left to define what is considered excessive. "A fine is excessive when it is grossly disproportional to the gravity of the defendant's offense. Defendants' attempt to deny the gravity of their actions with blithe claims that none of the counterparties were harmed ignores a core reality: a bank making a loan seeks not only repayment, but also compensation for the possibility of default . . . However, while harm certainly occurred, it was not the cataclysmic harm that can justify a nearly half billion-dollar award to the State. It is a virtue of the statute that the Attorney General may act, as she did in this case, before a potential catastrophe occurs, to deter further fraudulent business behavior by defendants specifically, and to police market behavior generally. However, having achieved these goals the State is not entitled to compound its victory with a massive punitive fine.

Additionally, a fine cannot be proportionate to the offense unless it is reasonably calculated to encompass only the actual proceeds that defendants realized from their fraud. To obtain disgorgement, the Attorney General bears the initial burden of establishing a reasonable approximation of profits causally connected to defendants' violations. Where both legal and illegal conduct is implicated, the Attorney General must distinguish between the legally and illegally derived profits. Only once the Attorney General has satisfied her initial burden are defendants obliged clearly to demonstrate that the disgorgement figure was not a reasonable approximation. The Attorney General did not carry her initial burden" here.

Second, Justice Higgitt, writing for himself and Justice Rosado, explained that they would have found that Supreme Court erroneously granted the Attorney General summary judgment, and that error permeated the trial. Accordingly, they reasoned, the trial court orders had to be vacated and a new trial held.

Finally, Justice Friedman found that the Attorney General improperly stretched the reach of section 63(12) to attempt to reach these "bilateral, negotiated, arm's-length transactions between highly sophisticated parties, which had no effect on any public market, and which were, so far as the parties to the transactions were concerned, complete successes. Given the absence of any public interest in unwinding these deals, I would not stretch the scope of section 63(12) to reach them." "Moreover, even if bringing this action were within the scope of the Attorney General's power under section 63(12), Supreme Court erred both in granting her summary judgment as to liability on her first cause of action and in rendering a decision in her favor on all causes of action after trial. As explained below, the Attorney General simply failed to prove her case. Accordingly, [Justice Friedman] would reverse the judgment and dismiss the complaint."

All in all, what all five Justices of the Appellate Division agreed upon was that this case deserved further judicial review at the Court of Appeals. And I would expect that we will have that review forthcoming in 2026.

SECOND DEPARTMENT

ALCOHOLIC BEVERAGE CONTROL LAW

Oak Beverages, Inc. v D.G. Yuengling & Son, Inc., 2025 NY Slip Op 04730 (2d Dept August 20, 2025)

Issue: **Does Alcoholic Beverage Control Act § 55-c(4), which prohibits the termination of agreements between brewers and beer wholesalers without good cause and an opportunity to cure, apply to non-written agreements?**

Facts: "The plaintiffs, Oak Beverages, Inc., and Boening Bros., Inc., are multibrand wholesalers of alcoholic and nonalcoholic beverage products within certain counties in New York. In 2001, Oak and Boening entered into separate oral distribution agreements with the defendant D.G. Yuengling & Son, Inc., a brewer of beer products distributed and sold within New York State. Pursuant to the distribution agreements, Oak and Boening each received distribution rights for Yuengling products in exclusive territories within New York."

After an unsuccessful attempt to coerce the plaintiffs into transferring their distribution rights to a different wholesaler years before, in February 2021, "Yuengling provided the plaintiffs with written notice of their alleged failure to comply with material terms of the distribution agreements by, among other things, underperforming compared to Yuengling's other wholesalers and failing to effectively market and sell Yuengling products. The February 2021 letter alleged that Yuengling was not required to comply with Alcoholic Beverage Control Law § 55-c, since the parties had not entered into a written agreement. In a letter dated April 8, 2021, Yuengling purported to provide the plaintiffs with 60-days notice of Yuengling's termination of their respective distribution agreements. The April 2021 letter stated that, to the extent an agreement existed between the parties under Alcoholic Beverage Control Law § 55-c, Yuengling had 'good cause' to terminate the plaintiffs' respective distribution agreements for the reasons stated in the February 2021 letter."

Plaintiffs then commenced this action, alleging, among other things, that the termination violated Alcoholic Beverage Control Act § 55-c(4) because Yuengling did not have good cause to terminate and instead conspired with another distributor to try to force the transfer of plaintiffs' exclusive distribution rights. Defendants moved to dismiss, arguing that section 55-c did not apply because the parties did not have a written distribution agreement. Supreme Court granted the motion to dismiss, holding that "the plaintiffs failed to show the existence of a written agreement setting forth the essential and material terms, requirements, standards of performance, and conditions of the business relationship between the parties."

Holding: The Appellate Division, Second Department reversed, holding that "the legislature did not intend to limit the protections of Alcoholic Beverage Control Law § 55-c(4) to written agreements but, instead intended to extend these protections to non-written agreements, including arrangements, courses of dealing, and commercial relationships between brewers and beer wholesalers." The Court explained, although section 55-c generally requires a distribution agreement to be made in writing, "the plain language of the statute . . . defines an 'agreement' as 'any contract, agreement, arrangement, course of dealing or commercial relationship between a brewer and a beer wholesaler.'" The broad definition, recognizing that not all distribution agreements will be written, the Court reasoned, illuminate the Legislature's intent to broadly extend section 55-c's protections.

Further, the Court held, "[b]ased on the legislative history of Alcoholic Beverage Control Law § 55-c, the statute's 'written agreement' requirement was included to protect beer wholesalers from being forced into oral agreements that were effectively terminable at will. In this regard, Alcoholic Beverage Control Law § 55-c is meant to shield beer wholesalers from unfair business dealings. However, Yuengling seeks to use the statute as a sword against beer wholesalers, such as the plaintiffs, by limiting the statute's protections only to situations where beer wholesalers have written agreements. Such an interpretation contravenes the legislative purpose of the statute. Accordingly, based upon the plain language of Alcoholic Beverage Control Law § 55-c and its legislative history, we conclude that beer wholesalers who enter into a non-written agreement with a brewer are nevertheless entitled to the protections of Alcoholic Beverage Control Law § 55-c(4), provided that the other requirements of the statute have been satisfied."

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