State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Wednesday, February 19, 2014

No. 63 Matter of Kapon v Koch

William I. Koch, a wealthy wine collector, brought suit in California Superior Court against Rudy Kurniawan in 2009, alleging that Kurniawan sold him 149 bottles of counterfeit wine through Acker, Merrall & Condit Company (AMC), a New York dealer in fine and rare wines. Kurniawan was later indicted on federal fraud charges for allegedly selling counterfeit wine. In 2012, Koch served subpoenas in New York, pursuant to CPLR 3119, on John Kapon, chief executive officer of AMC, and Justin Christoph, an AMC employee, to obtain discovery in the California action. They are not parties in the California case. Koch had sued AMC in New York in 2008, alleging it sold him five bottles of counterfeit wine consigned by Kurniawan, but he did not take depositions from Kapon or Christoph before a March 2010 discovery deadline expired. The New York action is still pending. Kapon and Christoph commenced this special proceeding to quash the subpoenas or, in the alternative, to obtain a protective order limiting the scope and use of their depositions to the California action, among other things. They contended Koch was using the third-party subpoenas to evade the cutoff of discovery in the New York case.

Supreme Court denied the petition to quash and dismissed the proceeding. Since a 1984 amendment to CPLR 3101(a)(4) removed language requiring a showing of "special circumstances" to obtain disclosure from nonparties, it said, conflicting interpretations within the Appellate Division have left unclear the proper standard for enforcing such subpoenas. However, it said the question was "academic" in this case because Koch "has demonstrated that the information he seeks from petitioners is not reasonably available either from Kurniawan, or from any other source." It ruled that any motion to limit the scope or use of the depositions should be decided by the California court.

The Appellate Division, First Department affirmed. "A heightened standard of review does not apply to applications brought pursuant to CPLR 3119(e) for a protective order or to quash an out-of-state subpoena," and they are instead governed by the "generally applicable" standards for depositions under CPLR article 31, it said. Here, the motion to quash was properly denied "since the petitioners failed to show that the requested deposition testimony is irrelevant to the prosecution of the California action.... Further, petitioners failed to articulate a sufficient, nonspeculative basis" for postponing or restricting the scope and use of their depositions.

Kapon and Christoph argue, "Section 3119 requires a New York court to review an out-of-state subpoena to a non-party witness with solicitude to ensure that a New York resident is not unduly burdened in responding to a discovery demand in a lawsuit in which he has no stake. The courts below failed to treat appellants' motion to quash with that solicitude. They put the burden on appellants to show that the proposed depositions were utterly irrelevant to the California action. And they failed to limit the use of the depositions, even though the potential for misuse was evident." Limitations on the scope or use of the depositions should be decided by courts in New York, not California, they say.

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For respondent Koch: Moez M. Kaba, Los Angeles, CA (310) 277-1010

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To be argued Wednesday, February 19, 2014

No. 51 Matter of Santer v BOE of the East Meadow Union Free School District
No. 52 Matter of Lucia v BOE of the East Meadow Union Free School District

These appeals stem from demonstrations conducted in 2007 by members of the teacher's union of the East Meadow Union Free School District in Nassau County, who had been picketing at the Woodland Middle School when students were dropped off in the morning in order to protest the pace of contract negotiations. On a rainy day in March 2007, rather than picket outside, some teachers parked their cars along both sides of a street that runs by the school and displayed their signs in their car windows. They were parked legally, but in locations where parents usually dropped off students. Traffic became congested and slow moving, so some students got out of cars in travel lanes rather than at the curb. No school officials asked teachers to move their cars.

The School District filed disciplinary charges against six teachers, alleging they "intentionally created a health and safety risk" by parking their vehicles along the curb "in order to preclude children from being dropped off at the curbside" and causing students to alight "in the middle of the street." The teachers in these proceedings, Richard Santer and Barbara Lucia, argued they had a constitutional right to picket peacefully in a public area before the beginning of the school day. The arbitrator rejected the argument, found them guilty of creating a health and safety hazard, and imposed fines of $500 on Santer and $1,000 on Lucia.

Santer and Lucia brought these proceedings to vacate the arbitration awards. Supreme Court denied their petitions, finding the arbitrator's decision was "not clearly violative of a strong public policy" nor "completely irrational."

The Appellate Division, Second Department reversed and granted the petitions to vacate on First Amendment grounds. Although "evidence that children were dropped off in the middle of the street due to the arrangement of the cars provided a rational basis for the arbitrator's determination," it said in Santer, the teachers' "'speech' regarding collective bargaining issues indisputably addressed matters of public concern" and the District "failed to meet its burden of demonstrating that Santer's exercise of his First Amendment rights so threatened the school's effective operation as to justify the imposition of discipline." Observing that the teachers broke no laws or school policies and complied with parking regulations, no school officials asked them to move and no students were injured, it said, "[T]he record establishes that the danger presented by the legally parking teachers could not have been substantial," while the discipline imposed "would likely have the effect of chilling speech on an important matter of public concern."

The School District argues that the teachers' "parking activity" did not qualify "as a form of speech under the First Amendment" and, even if it did, "it was nevertheless unprotected given that [their] actual intent was to create a health and safety risk and not to convey a particularized message." The District says it filed disciplinary charges based on the teachers' "intention to create a health and safety hazard for students, and not in retaliation for [their] speech." It says the balancing test in Pickering v Bd. of Educ. (391 US 563) "weighs heavily in favor of the District."

For appellant School District: George B. Pauta, Manhattan (212) 583-9600
For respondents Santer and Lucia: Sherry B. Bokser, Manhattan (212) 533-6300

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To be argued Wednesday, February 19, 2014

No. 54 Mashreqbank PSC v Ahmed Hamad Al Gosaibi & Brothers Company

Mashreqbank PSC, a United Arab Emirates (UAE) bank with a branch in New York, brought this breach of contract action against Ahmed Hamad Al Gosaibi & Brothers Company (AHAB), a Saudi Arabian general partnership, to recover $150 million it allegedly lost in a fraudulent currency transaction. Mashreqbank said it wired $150 million to AHAB's account at the Bank of America in New York, but AHAB failed to wire it the Saudi riyals agreed to in the currency exchange. The funds in the Bank of America account were instead transferred to an HSBC account in New York controlled by Maan Abdul Waheed Al Sanea, a Saudi national who headed AHAB's money exchange operations. Al Sanea allegedly transferred the $150 million through the HSBC account to institutions outside the United States. AHAB, claiming the fraudulent currency transaction with Mashreqbank was part of an international Ponzi scheme orchestrated by Al Sanea without its knowledge, filed a third-party action against him. Al Sanea moved to dismiss AHAB's third-party complaint on the ground of forum non conveniens.

Supreme Court dismissed the third-party complaint and the main action as well, although no motion was made to dismiss the main action on forum non conveniens grounds. "The UAE is the more appropriate forum for determination of the primary actions, and they will be decided in the case that Mashreqbank had already commenced there," it said. "AHAB can decide whether it prefers to bring its third-party action in the UAE as well, or seek redress in Saudi Arabia."

The Appellate Division, First Department reversed on a 3-2 vote and reinstated both complaints, ruling Supreme Court had no power to dismiss the main action because no such motion was made. It cited VSL Corp. v Dunes Hotels & Casinos (70 NY2d 948), which held, "Under CPLR 327(a) a court may stay or dismiss an action in whole or in part on forum non conveniens grounds only upon the motion of a party; a court does not have the authority to invoke the doctrine on its own motion." The majority also ruled the court improperly dismissed the third-party action on the merits, in part because "New York has a compelling interest in the protection of the native banking system from misfeasance or malfeasance," New York law would apply, and the court "failed to identify an alternative forum that would have jurisdiction..., let alone whether the dispute would be 'better adjudicated' in the alternative forum."

The dissenters argued the lower court properly dismissed both actions. They said it had authority to dismiss the main action under CPLR 327(a), which states, "When the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party, may stay or dismiss the action...." Al Sanea's motion to dismiss the third-party action on that ground satisfied the requirement for a "motion of any party," they said, and further, "the doctrine was raised before the court, and the parties contested the matter." On the merits, they said the dispute "is between a foreign bank and foreign businesses, the alleged wrongdoing took place in foreign countries even though New York banks were its instrumentalities, documentary evidence and witnesses are located outside of New York, and the resolution likely requires the application of foreign law."

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For third-party appellant Al Sanea: Robert F. Serio, Manhattan (212) 351-4000
For respondent AHAB: Bruce R. Grace, Washington, DC (202) 833-8900