

New York Law Journal

COURT DECISIONS

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DECISIONS OF INTEREST

NEW YORK | CRIMINAL LAW

Defendant Could Not Prepare for Trial; Case Dismissed

Defendant moved the court to find the Manhattan District Attorney's Office's statement of readiness invalid and to dismiss the case. It was uncontested that the People did not serve a certificate of compliance (COC), statement of readiness (SOR), or any discovery on the defendant or his attorney of record, Jeremy Saland, until one hundred days after the defendant's arraignment. The People argued in opposition that their COC and SOR, filed with the court eighty- seven days after the defendant's arraignment, were nevertheless valid because the People served them on a different attorney who had appeared at the defendant's arraignment. The motion was granted. The court held at the time the People filed their COC, no discovery had reached the defendant, and as a result he could not prepare for trial.



Judge Ilona B. Coleman Criminal Court

People v. Clavin Y., CR-008119-25NY (September 2)

QUEENS | LANDLORD TENANT LAW

Rent Notice Condition Precedent, Not Preclusive on Subsequent Lawsuits

A trial was conducted following the commencement of a proceeding for the non-payment of rent. The court dismissed the petition at the close of the trial on the grounds the rent demand served was defective. The landlord commenced another proceeding and the tenant sought to dismiss the action on the basis of res judicata. The court denied the motion holding that even though a trial had been conducted, the merits of the non-payment were never reached. The court explained that a rent demand is a mere condition precedent to the commencement of an action and any deficiencies in a rent demand does not create any preclusive effect foreclosing a subsequent lawsuit. Therefore, the lawsuit was proper.



Judge Mark Kagan Civil Court

Lemena Holdings LLC v. Wo Kee Noodle, Inc., LT-308685-25/QU (September 2)

SECOND CIRCUIT | CRIMINAL LAW

Conviction Affirmed But Sentence Vacated; Guidelines Enhancements Wrongly Applied

James owned a medical billing business that submitted insurance claims for doctors. Convicted of health care and wire fraud, and identity theft, for a scheme involving falsification of insurance claims and manipulating medical records, James was sentenced to 144 months' imprisonment, forfeiture of \$63,382,049.02, and payment of \$336,996,416.85 in restitution. Otherwise rejecting James's various challenges to his conviction, Second Circuit determined that District Court improperly enhanced his sentence under the U.S. Sentencing Guidelines and in violation of the U.S. Supreme Court's 2011 decision in *Tapia v. U.S.*, and failed to properly calculate the forfeiture and restitution amounts. Thus Second Circuit affirmed conviction but vacated sentence and remanded action for resentencing. Among other things, district court applied two enhancements under the Sentencing Guidelines without adequate factual findings. The court erred in relying on the potential availability of earned time credits under the First Step Act as a standalone factor to lengthen James's sentence. Its forfeiture calculation wrongly included James's legitimately earned revenue.



Circuit Judge Raymond J. Lohier, Jr. U.S. Court of Appeals

U.S. v. James, 24-849-cr (August 29)

U.S. - SDNY | CIVIL RIGHTS

Poll Worker Loses Retaliation Claims; Decision Not to Hire Made Weeks Before Email

Williams was a poll worker for New York City's Board of Elections (BOE) since 2008. She had a history of negative evaluations dating to October 2021. On May 31, 2022, Williams made an internal complaint, via email, accusing defendant Ellaby of being racist. That next day, June 1, Ellaby told Williams that the Board would not be assigning her to early voting. Williams took this to be retaliatory and sued for retaliation under 18 USC §1983, Title VII, and the New York State and City Human Rights Laws. District court granted the BOE, Ellaby, and their codefendants summary judgment. No reasonable juror could find a causal connection between Williams's complaint and Ellaby's decision not to assign her to early voting. Evidence showed that the decision not to hire Williams for early voting was made weeks before Williams complained about Ellaby. The record was replete with evidence that multiple people reported, before May 31, 2022, that Williams had behavioral problems. Record evidence also belied Williams's claim that she was never informed about any performance issues.



District Judge Arun Subramanian Southern District

Williams v. NYC Board of Elections, 23-CV-5460 (August 28)

BRONX | CIVIL PROCEDURE

Despite Testimony, Defendants Failed To Establish Attorney-Client Privilege

In an action for fraudulent misrepresentation, plaintiffs moved seeking to compel production of documents which defendants claimed were exempt from discovery because of the attorney-client privilege. The court partially granted plaintiffs' application holding that the foregoing defendants failed to establish all the elements necessary to invoke the privilege. Significantly, the deposition testimony upon which the foregoing defendants relied was essentially that they could not remember if they retained or consulted with the attorney whose consultation. The court held that the foregoing defendants failed to establish that the attorney-client privilege, which would have been applicable even if the foregoing defendants had consulted with the attorney but never retained him, applied to the discovery sought.



Justice Fidel E. Gomez Supreme Court

Fordham Dormitory Tower LLC v. Tress, 32311/20E (September 2)

RICHMOND | FAMILY LAW

Court Grants Money Judgment for Plaintiff; Custody of Child to Defendant

In a post-judgment matrimonial action, defendant sought to hold plaintiff in contempt for alleged violations of the Judgment of Divorce and related stipulations; and to compel plaintiff to pay certain child support add-on expenses; provide proof of a life insurance policy for the benefit of the child; and to turn over the child's passport, birth certificate, and Social Security card. Defendant further sought consolidation of a Family Court proceeding and interim counsel fees. Plaintiff cross-moved seeking denial of the contempt application, a money judgment in the amount of \$5,500.00 for child support arrears allegedly owed by defendant, and attorney's fees. Plaintiff's motion for money judgment and defendant's application for custodianship was granted, everything else was denied. The court held plaintiff provided documentation of add-on expenses from the period when she had residential custody of the child and alleged defendant dismissed these obligations outright. Likewise the parties' most recent custodial agreement awarded sole custody of the child to the defendant.



Justice Ronald Castorina Jr. Supreme Court

PAT v. DAT, (redacted) (July 14)

SECOND CIRCUIT | DISPUTE RESOLUTION

Fee Nonpayment Not 'Refusal to Arbitrate' That Court Can Address Under 9 USC§4

Twitter Inc. is now X Corp. and owned by X Holdings Corp. (collectively Twitter). When hired as Twitter employees, plaintiffs signed "Dispute Resolution Agreements" committing them to binding individual arbitration. When fired by Twitter they brought claims to JAMS, the arbitral body identified in the DRAs. Twitter raised a disagreement with JAMS about allocation of arbitral fees between the parties. Twitter refused to pay arbitration fees and JAMS stayed proceedings. Petitioners sued to compel arbitration under 9 USC §4, arguing that by refusing to pay fees allocated to it by JAMS Twitter was "refusing to arbitrate" in accordance with the DRAs. Reversing and remanding district court's contrary decision, Second Circuit concluded that whether a party has failed to pay the arbitration fees necessary in an ongoing arbitral proceeding is a procedural issue entrusted to the arbitrator or arbitral body, not the court, for resolution within that proceeding. Failure to pay fees is not a "failure, neglect, or refusal to arbitrate" that a district court is empowered to address under 9 USC §4.



Circuit Judge Gerard E. Lynch U.S. Court of Appeals

Frazier v. X Corp., 24-1948 (September 2)

U.S. - EDNY | CIVIL RIGHTS

Former Employer Granted Judgment On NYCHRL Claims Raised in Diversity

For 15 of the 19 months that she worked for defendant Motorola Solutions, plaintiff McCarthy worked in Motorola's New York office. During that time codefendant Thompson, her direct supervisor, discriminated against her because of her age and Motorola retaliated against her after she reported Thompson's actions. McCarthy sued Motorola and Thompson for age discrimination and retaliation under the ADEA and NYCHRL. On Aug. 28, 2024, district court granted Motorola summary judgment on McCarthy's ADEA claims. At the parties' later request the court reconsidered its decision to decline to exercise supplemental jurisdiction over McCarthy's NYCHRL claims. McCarthy had become a resident of Alabama, establishing diversity jurisdiction. Instantly, district court granted defendants summary judgment on McCarthy's NYCHRL claims. Among other things, McCarthy did not connect Thompson's conduct to discriminatory intent, and MSI acted to stop Thompson's conduct after an investigation spurred by McCarthy's complaints.



District Judge Ramon E. Reyes, Jr. Eastern District

McCarthy v. Motorola Solutions Inc., 21-CV-4020 (August 28)

BRONX | CRIMINAL LAW

Lack of Effort to Gather Discovery Allows Court to Dismiss Action

Defendant was arraigned on a top charge of aggravated unlicensed operation of a motor vehicle in the second degree. Defendant moved to strike the certificate of compliance (COC) and for dismissal of the accusatory instrument. Defendant argued that automatically discoverable items, including multiple police reports and radio run materials from the NYPD's 911 system, were belatedly disclosed following the COC's filing. The prosecution opposed, noting that the majority of the disputed items had been disclosed and contending that the belatedly disclosed items had little substantive value. The motion was granted. The court found that the Bronx District Attorney's Office made insufficient efforts to comply with their discovery obligations prior to the COC's filing. The People's efforts to gather discovery included one e-mail to the 46th Precinct, and one request to the NYPD's 911 system.



Judge Deidra R. Moore Criminal Court

People v. Fraser, CR-001228-25BX (August 28)

WESTCHESTER | PERSONAL INJURY

Motion to Dismiss Negligence Action Granted By Court

The negligence action arose from plaintiff's fall on a raised sidewalk pavement that enclosed a manhole cover located across the street from the premises known as 660 King Street in the Village of Port Chester. Defendant moved for summary judgment to dismiss. Defendant argued that it could not be held liable for plaintiff's injuries as a matter of law because it did not receive prior written notice of the alleged defect as required by Title VII, § 16 of its Charter, and, further, that no legally sanctioned exception to its prior written notice law was applicable. The motion was granted. The court it was undisputed that plaintiff failed to comply with the municipality's prior written notice law and neither legally recognized exception to the prior written notice law was applicable. The court found that the municipality did not create the alleged dangerous condition, nor did it derive a special benefit from its use of the manhole to access and clean a catch basin.



Justice Walter Rivera Supreme Court

Dubriske v. Village of Port Chester, 72532/2023 (September 2)

U.S. - SDNY | EMPLOYMENT LITIGATION

Parks Department Granted Judgment On Religious Discrimination Claims Over Beard

As part of his religious observance "life-long devoted Orthodox Christian" Urban Park Ranger Stancu wears a beard and "must" attend services and prayers every Sunday. He alleged religion-based discrimination and harassment from the New York City Parks Department due to his beard and desire to regularly attend religious services. Stancu resigned from the Parks Department in May 2020 citing an ongoing history of harassment. On Sept. 17, 2020, the EEOC issued a right-to-sue notice to Stancu. District court granted the Parks Department summary judgment on Stancu's claims of discrimination, harassment, and a hostile work environment under Title VII of the Civil Rights Act. Among other things, Stancu did not adequately allege a causal connection between any protected activity on his part and any of the myriad purportedly adverse employment actions taken against him. Also, his failure-to-accommodate claim was dismissed as time-barred. Furthermore, the court concluded that many of defendant's actions were not adverse employment actions.



District Judge Margaret M. Garnett Southern District

Stancu v. New York City/Parks Dept., 20-CV-10371 (August 25)

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