

New York Law Journal

COURT DECISIONS

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DECISIONS OF INTEREST

NEW YORK | CONTRACTS

Action Dismissed, Plaintiff Failed to Give Reasonable Notice to Insured

Plaintiff filed a lawsuit seeking a declaratory judgment stating that defendant was obligated to defend and indemnify them in another personal injury suit and pleading breach of contract for defendant’s alleged failure to do so. Defendant moved to dismiss. The motion was granted. The court held plaintiff was an additional insured and therefore their duty to provide timely notice was independent of any explicit duty to provide notice owed by the named insurer in the policy. Because plaintiff’s entire action was predicated on an incident that they failed to give reasonable notice, it failed to state a viable claim.



Justice
Lyle E. Frank
Supreme Court

Ratan Realty LLC v. Underwriters at Lloyd’s London, 655019/2024 (February 4)

BRONX | CRIMINAL LAW

Motion to Dismiss Denied, But Sanctions Imposed on Prosecution

Defendant was charged with assault in the third degree and harassment in the second degree. The defendant moved to dismiss on speedy trial grounds. The motion was denied. The court ruled that the Bronx District Attorney’s Office showed sufficient good faith, due diligence and reasonable inquiry for Certificate of Compliance (COC) validity. However, CPL § 245.80 sanctioned for the non-disclosure of defendant’s statement were warranted, despite the People’s actual ignorance of its existence as of the COC filing date. Additionally, CPL § 245.80 sanctions were warranted for the People’s defiance of court orders to ascertain the existence of DAO reports in the case.



Judge
Daniel M. Lewis
Criminal Court

People v. Roman, CR-003886-24BX (February 5)

SECOND CIRCUIT | INTERNATIONAL LAW

Russian Bank Not Immune From Claims Over Jetliner Attacked by Missile Over Ukraine

Malaysia Airlines Flight 17 (MH17) was shot down over the Ukraine by a missile fired from the Russia-backed Donetsk Peoples Republic (DPR). Plaintiffs, surviving relatives of a deceased MH17 passenger, sued Russia’s Sberbank for materially supporting the DPR by facilitating money donations from the United States. After suit was brought, Russia and its Ministry of Finance acquired a majority share in Sberbank. Second Circuit affirmed district court’s denial of dismissal under the Foreign Sovereign Immunities Act. It held, among other things, that the FSIA’s commercial activity exception applied to Sberbank’s conduct of facilitating money transfers, thus abrogating its sovereign immunity under the FSIA. As matters of first impression the Circuit also held that the Anti-Terrorism Act’s immunity provision applies to “instrumentalities” of foreign states, and that the commercial activity exception of the FSIA applies equally to an action brought under the ATA and thus abrogates Sberbank’s sovereign immunity under the ATA.



Circuit Judge
Joseph F. Bianco
U.S. Court of Appeals

Schansman v. Sberbank, 22-3097-cv (February 4)

U.S. - EDNY | IMMIGRATION LAW

Fiduciary Duty, Contract Breach Pleaded In Alien’s Suit Over EB-5 Investor Visa Failure

Defendants Parrizzi and Ahmed are managing members of company defendants NYC Green Transportation Group and NuRide Transportation Group. They allegedly recruited South Korean citizen Kim to invest \$500,000 in their companies to obtain permanent residence through the EB-5 investor visa program. After USCIS denied Kim’s visa, defendants declined to return her \$500,000 investment and \$20,000 in administrative fees. The court denied dismissal of Kim’s action for lack of jurisdiction, failure to state a claim, and failure to join a party, but did grant Parrizzi’s motion as to claims 4 through 7: unjust enrichment, interference with prospective economic advantage, conversion, and civil conspiracy to commit financial fraud. The court found that plaintiff Kim sufficiently pleaded a breach of fiduciary duty. As the Company Defendants’ managing member, Parrizzi owed a fiduciary duty to Kim who was a member of NYC Green until the denial of her I-526 immigration petition with USCIS. Parrizzi also breached the parties’ agreement by refusing to refund plaintiff despite denial of her EB-5 visa application.



District Judge
Frederic Block
Eastern District

Kim v. NYC Green Transp. Grp. LLC, 23-CV-5445 (February 3)

NEW YORK | DISPUTE RESOLUTION

Arbitration Award Confirmed; Arbitrator Did Not Disregard The Law

AKF, Inc., doing business as Fundkite (AKF), petitioned pursuant to CPLR 7510 to confirm an arbitration award dated Oct. 10, 2023, made by an arbitrator acting under the auspices of the Mediation and Civil Arbitration, Inc. (MCA). The respondents did not oppose the petition. The petition was granted and the award was confirmed. The court held the record did not support a finding that the existence of a loan can be gleaned from the face of the agreement between the parties as a matter of law. The court thus concludes that the arbitrator did not render his determination in manifest disregard of the law



Justice
John J. Kelley
Supreme Court

Matter of AKF, Inc. v. Windows & Beyond Interiors, LLC, 655532/2023 (February 4)

KINGS | LANDLORD TENANT LAW

Court Excuses Neglect to Serve Complaint On Basis of Law Office Failure

Plaintiffs, claiming to be the last few remaining tenants in a multi-family residential building in Brooklyn undergoing a gut renovation, commenced an action alleging harassment and violations of the New York City Administrative Code by defendants. In August 2023, defendants served a demand for a complaint. Not having received a complaint by the 20-day deadline prescribed in CPLR 3012(b), defendants moved for dismissal of plaintiffs’ claims in September 2024. Plaintiffs cross-moved to extend the time for them to serve and file the complaint. Counsel for plaintiffs offered law office failure as a defense – that he was consumed with his service as president of the New York State Bar Association and, prior thereto, as president-elect. There being no case law on the impact of a bar association president’s duties on his legal practice in terms of meeting deadlines, the court analogized the situation to where an attorney’s illness was accepted as an excuse for a delay. Hence there was no prejudice to defendants. The court denied defendants’ motion to dismiss the complaint and granted plaintiffs’ motion to extend the time to serve it.



Justice
Aaron D. Maslow
Supreme Court

Shapiro v. 151 Baltic Street, LLC, 519152/2023 (February 6)

U.S. - SDNY | DAMAGES

Increased Damages Recovery Denied; Diagnoses, Medication Side Effect Foreseeable

Plaintiff Negersmith was hurt when his motorcycle was struck by a U.S. Postal Service vehicle. His administrative claim with the USPS sought \$502,500. In his instant lawsuit 16 months thereafter Negersmith sought recovery of \$5 million. District court denied him leave under 28 USC §2675(b) to seek damages exceeding the amount of the claim presented to the USPS. The court disagreed with Negersmith that he should be able to recover damages in excess of his administrative claim with the USPS because his new diagnoses and permanent disability were unforeseeable when he filed his claim on July 2, 2021. using the government’s prescribed Standard Form 95 (SF-95). Among other things, plaintiff did not cite any evidence that his seizure disorder—and diagnoses of adjustment disorder and major depressive disorder—could not have been discovered before he filed his administrative claim. Because plaintiff’s seizure disorder was foreseeable his stutter—a side effect of medication therefor—was also reasonably foreseeable.



District Judge
Vincent L. Briccetti
Southern District

Negersmith v. U.S., 22-CV-10241 (February 3)

U.S. - EDNY | CRIMINAL LAW

Completed Hobbs Act Robbery Is Categorically a Crime of Violence; §2255 Relief Denied

A 13-count 2020 indictment charged Brown with five offenses related to his engagement in five armed robberies, and one attempted robbery, of bodegas in Brooklyn. In July 2021 he pleaded guilty, under agreement, to completed Hobbs Act Robbery, and to possessing and brandishing a firearm during a crime of violence, for which he was given an aggregate sentence of 96 months in prison. Judgment became final on Sept. 20, 2022. Brown’s instant July 25, 2024, motion for sentence relief under 28 USC §2255 claimed trial counsel’s ineffective assistance by failing to argue that substantive Hobbs Act Robbery is not a crime of violence, and that he was actually innocent of the firearm charge. Rejecting both claims, the court denied Brown §2255 habeas relief. Brown was not actually innocent of the 18 USC §924(c) firearm charge because the predicate offense, completed Hobbs Act Robbery, is categorically a crime of violence. Thus, trial counsel was also not ineffective for failing to raise a meritless argument.



District Judge
Nicholas G. Garaufis
Eastern District

U.S. v. Brown, 20-CR-460 (February 4)

NEW YORK | LANDLORD TENANT LAW

Eviction Dismissed; Respondent Succeeded The Tenant-of-Record

Petitioner commenced a licensee holdover proceeding to evict respondent Freda Henderson from her rent-controlled apartment, alleging that her right to occupancy ended with the 2009 death of tenant-of-record Earle Williams. Ms. Henderson raised a succession defense, asserting that she was Mr. Williams’ long-term romantic partner and had lived with him for 17 years at the apartment prior to his death. The court dismissed the proceeding. The court found that the absence of material evidence did not outweigh credible testimony, which consistently portrayed a long-term, committed partnership with the deceased tenant-of-record. The court credited four disinterested witnesses who provided corroborating details of the couple’s relationship and co-residency. The court rejected the petitioner’s argument that Ms. Henderson’s continued payment of rent in Mr. Williams’ name precluded her succession defense, affirming that rent control regulations do not require successors to take immediate formal action to assert their rights.



Judge
Jack Stoller
Civil Court

Westside Ventura II LLC v. Henderson, 72423/2017 (February 4)

QUEENS | PERSONAL INJURY

Summary Judgment Granted and Denied In Part in Personal Injury Action

Plaintiff alleged that he was involved in a rear-end collision which caused him injuries. The defendants cab company and driver filed a motion for summary judgment seeking dismissal on grounds that plaintiff failed to meet the serious injury threshold required by Insurance Law §5102(d). The court granted Defendants’ motion as to the 90/180 category, but otherwise found that defendants failed to establish that the plaintiff did not suffer a significant limitation of the use of his cervical spine and denied the remaining branches of Defendants’ motion. The court found that there were remaining issues of fact as to whether plaintiff suffered serious injury in the permanent consequential category as to the lumbar spine and left shoulder, and in the significant limitation of use category as the lumbar spine and left shoulder.



Justice
Cheree A. Buggs
Supreme Court

Martinez v. Tehno Cab Inc., 728554/2021 (February 4)

U.S. - SDNY | CIVIL PROCEDURE

Denial of §2255 Habeas Relief for Medicaid Fraud Crimes Is Denied Reconsideration

After pleading guilty to federal crimes related to Medicaid fraud Ndukwe was sentenced, on June 30, 2023, to 60 months imprisonment. He did not appeal. On June 30, 2024, he sought habeas corpus relief under 28 USC §2255. Ndukwe did not make further submissions supporting his §2255 petition after his July 24 request for appointed counsel was denied on July 31. On Nov. 7, 2024, the court denied Ndukwe’s petition for §2255 relief and declined to issue a certificate of appealability. Instantly, district court denied Ndukwe’s December 2024 motion to reconsider its prior November decision denying him habeas relief. Ndukwe’s filing of an appeal from the court’s July 31, 2024, order did not divest the court of jurisdiction to deny his petition. Only vaguely stating that he did not fully receive discovery materials from counsel, Ndukwe also did not explain what discovery materials he lacked that would have assisted him in preparing his petition.



District Judge
Denise L. Cote
Southern District

Ndukwe v. U.S., 24-CV-5073 (February 4)

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