



**Westchester County Round-Up:  
Recent Significant Decisions from the  
Westchester Federal and State Courts  
October 2017**

*This article continues Yankwitt LLP's quarterly review of decisions from the Federal District Court and State Supreme Court in White Plains, New York. This article reviews decisions from the third quarter of 2017.*

---

***Judge Román Vacates Million Dollar Default Judgment***

In *Byrne v. Yeats Constr. Mgmt., Inc.*, No. 12 CV 05355 (NSR), 2017 WL 4045484 (S.D.N.Y. Sept. 11, 2017), **Judge Nelson S. Román** granted defendant Monomoy Farm, LLC's motion to vacate a million dollar plus default judgment in a personal injury action brought in the Southern District of New York. Monomoy is a family-owned, recreational horse farm in Westchester, and Plaintiff was allegedly injured while performing construction work on the farmhouse located on the premises. Yankwitt LLP, who was retained by Monomoy after it unwittingly defaulted, argued vacatur was appropriate because: (i) Monomoy never received notice of the lawsuit until after the default judgment was entered; (ii) Monomoy had a meritorious defense to the underlying personal injury lawsuit; and (iii) vacatur would not unduly prejudice Plaintiff because his ultimate right to recovery remained unaffected. The Court agreed and granted the motion, finding the balance of factors required vacatur of the default judgment. Judge Román ruled that although Monomoy's default was technically willful as a matter of law (despite its inadvertence), vacatur was appropriate due to the clear lack of prejudice to Plaintiff and the presence of a plausible complete defense to liability.

---

***Judge Briccetti Partially Grants Motion to Dismiss Employment-Related Claims***

In *Hosain-Bhuiyan v. Barr Labs., Inc.*, No. 17 CV 114 (VB), 2017 WL 4122621 (S.D.N.Y. Sept. 14, 2017), **Judge Vincent L. Briccetti** granted in part and denied in part Defendants' motion to dismiss. Plaintiff was employed as a pharmaceuticals manufacturer by the defendant pharmaceutical company. Plaintiff also owned a stake

in a company acquired by Defendants, and was terminated for allegedly failing to disclose such ownership interest. Upon termination, Plaintiff sued his employer, its two parent companies and company's compliance investigator alleging the defendant companies failed to pay him earned compensation and the defendant investigator defamed him by circulating a report containing knowingly false allegations. On Defendants' motion to dismiss, the Court dismissed the parent-company defendant for lack of personal jurisdiction because it is an Israeli corporation with no relevant contacts with New York. The Court next dismissed Plaintiff's defamation claims for failure to state a claim because New York's common interest privilege protects communications between employees and agents of an organization, and Plaintiff did not plead malice as required to defeat the privilege. Judge Briccetti however, ruled Plaintiff had sufficiently pled a cause of action for failure to pay earned compensation and thus denied Defendants' motion with respect to the Labor Law claims.

---

### ***Judge Karas Dismisses State-Law Claims on Preemption Grounds***

In *Kennedy v. LaCasse*, No. 17-CV-2970 (KMK), 2017 WL 3098107 (S.D.N.Y. July 20, 2017), **Judge Kenneth M. Karas** partially dismissed Plaintiff's complaint after Defendants removed the case to federal court. Plaintiff filed two actions against Defendants arising from an alleged agreement between the parties to convert purchased land into a bed and breakfast. The first action was filed in state court and asserted claims for breach of contract, quantum meruit, unjust enrichment and tortious interference. The second was filed in federal court and alleged copyright infringement for the unauthorized use of certain photographs. After Defendants answered both complaints in federal court, the court issued an Order to Show Cause directing the parties to address whether venue was proper in the Southern District of New York and whether the court had subject matter jurisdiction over the action such that removal of the state court action was proper. On the jurisdictional question, Judge Karas determined that the quantum meruit and unjust enrichment claims were preempted by the Copyright Act to the extent Plaintiff sought damages for the use or display of his photographs but were not preempted insofar as Plaintiff sought damages for the value of the photographs. The Court then directed the parties to submit further briefing as to whether the two actions should be consolidated or the remaining state law claims remanded back to the state court. Finally, Judge Karas noted that while venue technically was improper in the Southern District, Plaintiff had waived any objection based on improper venue and so the Court would not transfer the case to the Eastern District if ultimately it decided to retain supplemental jurisdiction and consolidate the actions.

---

### ***Judge Seibel Grants Summary Judgment in Slip-and-Fall Case***

In *Rodriguez v. Wal-Mart Stores E., LP*, No. 16-CV-2603 (CS), 2017 WL 4045745 (S.D.N.Y. Sept. 11, 2017), **Judge Cathy Seibel** granted summary judgment in favor of the defendant Wal-Mart in a personal injury action arising out of Plaintiff's alleged

slip and fall on water near the store's produce section. In its motion, Defendant argued that it could not have had constructive knowledge of any defect in the premises because there was no evidence of any visible and apparent substance on the floor. The Court agreed, noting that, on a premises liability motion for summary judgment in federal court, a defendant does not have to affirmatively prove lack of notice but rather need only point to a lack of evidence of negligence. Applying that standard, Judge Seibel held summary judgment was appropriate because there was no evidence of a substance on the floor and even if a substance was present, there was no evidence of constructive knowledge because of uncertainty as to the length of time any alleged substance was present.

---

### ***Justice Lefkowitz Denies Plaintiff's Motion for Summary Judgment While Granting Defendant's Cross-Motion for the Same Relief***

In *DP 21 LLC v. 269 N. Bedford Rd. Mt. Kisco Corp.*, No. 59222/2015, 2017 WL 4019304 (West. Cty. Sup. Ct. Sept. 12, 2017), **Justice Joan B. Lefkowitz** denied Plaintiff's motion for summary judgment seeking to permanently enjoin Defendants from using an express easement for loading/unloading and parking vehicles, and simultaneously granted Defendants' motion for summary judgment declaring the easement valid. The Parties owned contiguous properties in Mount Kisco, New York with a longstanding 50 foot easement between them. After Plaintiff decided to redevelop its property, it sought a declaration that the easement could no longer be used to load, unload and park vehicles. Defendants cross-moved for a declaration that the easement was valid and enforceable. In granting Defendants' motion, the Court found it was undisputed that the past and present owners of the respective properties had used the easement to load, unload and park vehicles for more than fifty years. Justice Lefkowitz further held that no owners had objected to those uses for the easement and Plaintiff itself had not objected for eight years until it wanted to further develop the property. Finally the Court noted that Defendants' use of the easement did not affect Plaintiff's access to its own property. Based on those findings, the Court concluded that the existing uses of the easement were reasonable and so upheld those uses as necessary and convenient for the purpose for which the easement was created.

***Yankwitt LLP*** is an elite trial and litigation firm located in White Plains, New York. Our New York lawyers are prominent members of the Westchester and New York City bars, who utilize their broad experience and expertise to produce exceptional outcomes for our clients. All of our New York partners and senior lawyers are former federal law clerks or prosecutors, or both.

Contact us at (914) 686-1500

[www.yankwitt.com](http://www.yankwitt.com)