Westchester County Round-Up:
Recent Significant Decisions from the
Westchester Federal and State Courts
April 2018

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 first quarter of 2018.

Judge Briccetti Dismisses Plaintiff's Breach of Contract and Declaratory Judgment Claims but Allows Negligence Claim to Proceed in Insurance Dispute

In *Hudson Heritage Fed. Credit Union v. CUMIS Ins. Soc'y, Inc.*, No. 17-CV-2930 (VB), 2018 WL 557900 (S.D.N.Y. Jan. 22, 2018), **Judge Vincent L. Briccetti** granted Defendant's motion to dismiss Plaintiff's breach of contract and declaratory judgment causes of action but denied Defendant's motion as to the negligence claim. Plaintiff Hudson Heritage Federal Credit Union ("HHFCU") and defendant CUMIS Insurance Society, Inc. ("CUMIS") had a multi-faceted, 75-year business relationship. In May 2016, the parties entered into a contract, in which CUMIS agreed to insure HHFCU against losses resulting from the forgery or alteration of an "original" instrument. According to HHFCU, in April 2016, three of its members applied for automobile loans by submitting photocopies and electronic copies of falsified DMV titles, which caused HHFCU to suffer losses of $134,879 when the loans fell into default. After CUMIS denied the claims, HHFCU commenced this action. CUMIS moved to dismiss on the ground that it properly rejected HHFCU's claims because the bond contract only provided coverage based on forged original instruments and HHFCU admitted in its complaint that it possessed only photocopies of the fraudulent titles. Judge Briccetti agreed HHFCU had failed to plead reliance on an original instrument and so granted CUMIS' motion to dismiss the breach of contract and declaratory judgment claims. The Court denied CUMIS' motion to dismiss the negligence claim, however, on the ground HHFCU plausibly alleged a

duty of care from CUMIS, as insurance broker, to HHFCU, as client. Applying the special relationship test enumerated in *Voss v. Netherlands Ins. Co.*, 22 N.Y.3d 728, 735 (2014), Judge Briccetti ruled that the parties' extensive history was sufficient to state a claim that CUMIS may have owed HHFCU a duty to offer a product that covered losses stemming from the type of fraud at issue in this case.

Judge Seibel Grants Summary Judgment to Employer in ADA Discrimination Case

In *Flynn v. McCabe & Mack LLP*, No. 15-CV-5776 (CS), 2018 WL 794631 (S.D.N.Y. Feb. 8, 2018), **Judge Cathy Seibel** granted Defendants' summary judgment motion and dismissed Plaintiff's claims for failure to accommodate, discrimination and retaliation under the Americans with Disability Act (the "ADA") and parallel New York state law. Plaintiff was employed as a legal secretary for McCabe & Mack from 1994 until she was terminated in 2014. In 2005, she underwent treatment for cancer, which caused her to develop peripheral neuropathy that substantially impaired her ability to walk and stand for long periods of time. Plaintiff alleged Defendants were aware of her neuropathy but denied her requests to change her schedule to leave early when it was snowing or to accommodate a specific yoga class she wished to take. Plaintiff further alleged Defendants terminated her because of her disability and in retaliation for seeking accommodation for her disability. Defendants, on the other hand, alleged McCabe & Mark terminated Plaintiff because she was a difficult personality who created a negative work environment. Following discovery, Defendants moved for summary judgment on all claims. In analyzing Plaintiff's failure to accommodate claim, the Court first held Plaintiff could not establish leaving work early to attend a specific yoga class was necessary to perform the essential functions of her job, and there was no evidence Defendant denied Plaintiff's request to leave early on days it was snowing. As such, it dismissed Plaintiff's failure to accommodate claim as a matter of law. Further, Judge Seibel found Plaintiff did not carry her burden of showing she was fired or retaliated against for a discriminatory purpose. Rather, Defendants offered ample evidence Plaintiff was terminated due to her poor interpersonal skills and insubordination. The Court held Defendants' stated reasons were legitimate and not pretextual. Finally, after dismissing all the federal claims, Judge Seibel declined to exercise supplemental jurisdiction over Plaintiff's state law claims and so dismissed her Complaint in its entirety.

Judge Román Grants Motion to Dismiss Based on Forum Selection Clause

In *ITEC, Inc. v. Centroid Sys., Inc.*, No. 16-CV-05996 (NSR), 2018 WL 705314(S.D.N.Y. Jan. 31, 2018), **Judge Nelson S. Román** granted Defendant's motion to dismiss Plaintiff's Complaint based on a forum selection clause in the

operative agreement between the parties. Plaintiff entered into a contract with Defendant for the provision of consulting services. Plaintiff alleged that it provided consulting services to Defendant, but Defendant failed to pay invoices totaling $275,992. Defendant moved to dismiss the Complaint on the grounds that the contract contained a forum selection clause requiring all disputes to be litigated in Michigan. Judge Román agreed and dismissed the Complaint. The Court held the forum selection clause was mandatory based on its language that all suits "shall be brought exclusively" in Michigan. Judge Román further held that the forum selection clause was presumptively enforceable under applicable Second Circuit precedent and Plaintiff failed to overcome that presumption. Specifically, Plaintiff did not contend the clause was procured by fraud or unfairness, or that its enforcement would violate public policy. Rather, Plaintiff contended Defendant's breach of the contract demonstrated there was no meeting of the minds and so the clause was unenforceable. The Court rejected this argument, finding that the intent of the parties must be construed from the unambiguous contract and not vague assertions of intent drawn from by extrinsic evidence.

Judge Karas Grants Summary Judgment in Favor of Insurance Company

In *Trustees of the Int'l Union of Operating Engineers v. Nyack Hospital*, No. 16-CV-6638 (KMK), 2018 WL 910597 (S.D.N.Y. Feb. 13, 2018), **Judge Kenneth M. Karas** denied Plaintiffs' motion for summary judgment and granted Defendant's cross-motion for summary judgment on Plaintiffs' action to compel an audit of Defendant's financial records. Plaintiffs were the fiduciaries of certain labor management trust funds established by the International Union of Operating Engineers, Local 30 (the "Union") and governed by ERISA. Defendant Nyack Hospital and the Union were parties to a series of collective bargaining agreements, to which Plaintiffs were not a party, and Plaintiffs and the Union were parties to a trust agreement, to which Defendant was not a party. Plaintiffs argued that pursuant to the bargaining agreements between the parties, Defendant was obligated to comply with the trust agreement -- and, therefore, obligated to afford Plaintiffs an annual audit of Defendant's books and records. In 2010, Plaintiffs arbitrated the same audit issue and received an arbitration award that ostensibly entitled Plaintiffs to the requested audit. However, in 2013 their action to enforce the award was dismissed by the federal court. Based on the foregoing, Defendant moved for summary judgment arguing the instant litigation was barred by res judicata. The Court agreed and dismissed the case. Specifically, Judge Karas held Plaintiffs' 2013 suit was (1) decided on the merits; (2) involved the same parties; and, (3) Plaintiffs could have brought an action to compel an audit as an alternative claim to the motion to confirm the arbitration award. Additionally, the Court held that, even if Plaintiffs' claims were not dismissed under the doctrine of res judicata, Plaintiffs' claims were time barred under the statute of limitations.

Westchester Supreme Court Justice Ruderman Partially Grants Preliminary Injunction

In *Hoffman v. Raftopol*, 58 Misc. 3d 1209(A) (N.Y. Sup. Ct. 2018), **Justice Terry J. Ruderman** denied Plaintiff's motion for a preliminary injunction to enjoin Defendant from working for Plaintiff's competitors pursuant to a non-competition agreement between the parties. Plaintiff is a dermatology practice with multiple New York offices. Defendant worked as a physician's assistant for Plaintiff from 2012 to 2017. In connection with her employment, Defendant signed an employment agreement containing a two-year, fifteen-mile radius non-competition provision. Defendant's employment with Plaintiff ended on May 31, 2017, and on September 7, 2017, Plaintiff discovered Defendant was working for a competing practice, which has offices only fifteen minutes from Plaintiff's office. Plaintiff then commenced this action for injunctive relief and money damages. In denying Plaintiff's request for an injunction, Justice Ruderman first found that while covenants restricting learned professionals from competing with a former employer are generally accepted, covenants restricting lower level employees like a physician's assistant are more problematic because Defendant's services were neither unique nor extraordinary. The Court further noted that Defendant had agreed not to solicit Plaintiff's clients and only sought to be released from the restriction on employment. As a result, the Court held the non-competition clause was unenforceable because it was greater than required to protect the legitimate interests of Plaintiff and would impose an undue hardship on Defendant.