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## Westchester Quarterly Roundup: Notable Decisions of the Westchester County Federal and State Courts

### **Judge Halpern Denies Plaintiff's Motion for Reconsideration After Plaintiff's Failure to Comply with Multiple Court Orders**

In *Clay v. Doe.*, No. 20-CV-07692 (PMH), 2021 WL 6051729 (S.D.N.Y. Dec. 20, 2021), the plaintiff, proceeding pro se, had filed suit against unnamed "John Doe Defendants," alleging that he was assaulted by them while in prison. The court ordered the plaintiff on five separate occasions to amend the complaint to name the defendants, but the plaintiff failed to do so. After his complaint was dismissed for failure to state a claim, the plaintiff asked the court to reopen the action and permit him to file an amended complaint, which Judge Philip Halpern liberally construed as a motion for reconsideration.

In deciding the plaintiff's application, Judge Halpern laid out the well-established standard for motions for reconsideration, which requires a litigant to demonstrate that the court "overlooked controlling decisions or factual matters," and considered whether the plaintiff had demonstrated good cause for failing to amend the complaint pursuant to the court's five orders.

Attempting to establish his good cause, the plaintiff argued he was not able to amend the complaint because he had been transported to a different prison, where he was involved in an altercation with another prisoner. This explanation, however, only applied to a time period relevant to one of the court's five orders directing him to amend his complaint; hence Judge Halpern determined the plaintiff failed to demonstrate cause for not complying with four of the court's orders and denied the motion for reconsideration.

### **Judge Briccetti Dismisses Plaintiff's Endangered Species Act and National Environmental Policy Act Complaint for Failure to State a Claim**

In *Eisenbach v. Village of Nelsonville*, No. 20-CV-8566 (VB), 2021 WL 5054119 (S.D.N.Y. Nov. 1, 2021), property owners filed suit against the Village of Nelsonville and associated municipal authorities ("Municipal Defendants"), as well as New Cingular Wireless and related entities ("Wireless Defendants"), for violating, among other statutes, the National Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA"). The plaintiffs alleged that the Wireless Defendants planned to build a wireless service-generating facility near the plaintiffs' properties in Nelsonville, New York violated federal and state law. They claimed it violated NEPA because the plan lacked appropriate environmental review and that it violated the ESA because the plan's impact on an endangered bat species in the area had not been considered.

The Wireless Defendants moved to dismiss the plaintiffs' complaint for failure to state a claim, and Judge Vincent Briccetti granted the motion. Judge Briccetti rejected the plaintiffs' argument that the Wireless Defendants violated NEPA by failing to conduct an environmental review of the plans, finding that the allegations did not state a claim under NEPA, as the requirement

for environmental review under that statute was inapplicable to applications for construction permits from and applications to local municipalities.

Judge Briccetti also disposed of the plaintiffs' ESA claim, holding that the plaintiffs' allegations failed to state a claim for violation of the ESA because the provision the plaintiffs cited in their motion imposes obligations only on federal agencies, which the defendants are not. The court disposed of the plaintiffs' remaining claims, primarily for lack of subject matter jurisdiction, and granted the Wireless Defendants' motion to dismiss in its entirety.

#### **Judge Seibel Grants Plaintiff's Motion to Remand Based on an Untimely Removal**

In *Sergreto v. UMN Properties, Inc.*, No. 21-CV-7621 (CS), 2021 WL 4755076 (S.D.N.Y. Oct. 12, 2021), the plaintiff sued the defendant housing community and related entities in New York State Supreme Court, Sullivan County, after he was allegedly injured in a fall due to a dangerous condition at the defendants' premises. The plaintiff's process server effectuated service on the defendants by personally delivering the summons and complaint to the defendant's receptionist, who represented that she was authorized to accept service.

More than 30 days after service was completed, defendants removed the case to the Southern District of New York. The plaintiff moved to remand, arguing the removal was untimely under 28 U.S.C. § 1446(b)(1), which requires a case be removed within 30 days after service of a summons. The defendants did not dispute the notice was filed more than 30 days after the summons was delivered to their receptionist, but rather they argued that the receptionist was not authorized to accept service and serving her did not trigger the beginning of the 30 days.

Relying on decisions from the highest courts in New York, Judge Cathy Seibel disagreed with the defendants and granted the plaintiff's motion to remand. The court found that because the receptionist represented that she was authorized to accept service, and the defendants received actual notice of the lawsuit – facts that were not disputed by the defendants – service was valid under New York law.

#### **Judge Román Denies as Moot Third-Party Defendant's Motion to Intervene as a Necessary Party**

In *Dynamic Systems, Inc. v. Skanska USA Building Inc.*, No. 19-CV-10237 (NSR), 2021 WL 6063609 (S.D.N.Y. Sept. 10, 2021), a subcontractor for a public works project sued the project's general contractor, Skanska USA Building Inc., alleging contract and quasi-contract claims. Another subcontractor on the project, West-Fair, filed a motion to intervene as a necessary and proper defendant and to assert a counterclaim against the plaintiff, Dynamic Systems, to foreclose a mechanic's lien. Months later, the plaintiff amended its complaint to add additional defendants, including West-Fair, to the suit against the general contractor.

The court analyzed West-Fair's motion under FRCP Rule 24, which provides for intervention as of right and permissive intervention. The defendant general contractor (Skanska) opposed West-Fair's motion, arguing the proposed pleading was futile because it failed to name all lienholders and the property owner, as required under N.Y. Lien Law § 44.

Judge Nelson Román disagreed with the defendant general contractor's contention and questioned whether the requirement that all lienholders be joined was applicable to the counterclaim that West-Fair sought to assert. While Judge Román explained that West-Fair met the standard for intervention as of right and permissive intervention and could be added as a necessary party by the court pursuant to Rule 19, the court denied West-Fair's motion as moot since the plaintiff had amended its complaint to add West-Fair as a defendant in the interim.

### **Judge Karas Denies the Petitioner's Application to Vacate an Arbitration Award**

In *Golden Krust Franchising, Inc. v. Actus Restaurant Group, Inc.* et al., No. 20-CV-7321 (KMK) (S.D.N.Y. October 26, 2021), Judge Kenneth M. Karas denied the petitioner's motion to vacate an arbitration award, in which it was found to have breached a franchise agreement with respondents and to have violated the Florida Deceptive and Unfair Trade Practices Act with unfair pricing practices. The arbitrator had awarded the respondents damages, attorneys' fees, and arbitration costs.

The petitioner moved to vacate the award on the grounds that the arbitrator's findings were "internally inconsistent and contradictory" and "in manifest disregard of the applicable law." Not persuaded by either argument, Judge Karas analyzed the motions pursuant to Section 10(a) of the Federal Arbitration Act, under which arbitration decisions are entitled to great deference and can only be overturned in limited circumstances. He found that neither of the petitioner's arguments warranted vacatur of the arbitration award.

Judge Karas disagreed that the arbitrator's findings were ambiguous and contradictory, and he disagreed with the petitioner's contention that the arbitration award was in "manifest disregard to the law," explaining that under New York law, an award must not be vacated "if there is a barely colorable justification for the outcome reached," which he found to be the case here. The court, thus, denied the petition to vacate and granted the respondents' cross-motion to confirm the arbitration award.

### **Justice Jamieson of the Westchester County Supreme Court Grants Plaintiff's Motion for Summary Judgment in a Personal Injury Action**

In *Brianna Piscopo v. Anjali Patel & Umesh Patel*, No. 54114/2021 (N.Y. Sup. Ct. West. Cty. 2021), the plaintiff, Brianna Piscopo, was a rear-seat passenger in a car that was driven by the defendant, Anjali Patel, and involved in a single-car accident. The defendant was found to be intoxicated at the time of the accident. The plaintiff moved for summary judgment on the issues of liability and her satisfaction of the "serious injury" threshold. The defendant cross-moved to stay all proceedings until final adjudication of the criminal action associated with the accident, which was pending against the defendant at the time.

In support of her motion, the plaintiff submitted an affidavit describing her injuries, as well as medical evidence to support and corroborate her statements. In opposition, the defendant submitted only an affirmation by counsel.

Justice Linda Jamieson granted the plaintiff's motion in its entirety, finding that the defendants failed to rebut the plaintiff's prima facie showing of liability and severe injury. Further, the court denied the defendant's motion to stay the proceedings. With damages being the only remaining issue, Justice Jamieson disagreed that allowing this action to proceed while the criminal case was ongoing would "result in inconsistent jurisdictions, duplication of proof or a potential waste of judicial resources."