



**Westchester County Round-Up:
Recent Significant Decisions from the
Westchester Federal and State Courts
January 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 fourth quarter of 2017.

Judge Briccetti Grants Motion to Remand to State Court

In *Robison v. Tom Cawley's Aviation Serv., Ltd.*, 2017 WL 4480773 (S.D.N.Y. Oct. 6, 2017), **Judge Vincent L. Briccetti** granted Plaintiffs' motion to remand a breach of contract and negligence action to state court. Plaintiffs, who were domiciled in Mississippi, sued Defendants, who were domiciled in New York, North Carolina, and Oklahoma, in Dutchess County Supreme Court, alleging faulty maintenance on an airplane that led to its crash. A group of Defendants removed the case to federal court based, in part, on diversity. Judge Briccetti granted Plaintiffs' motion to remand, rejecting Defendants' argument that the unanimity rule, which requires consent to removal by all defendants who have been "properly joined and served," did not require consent to removal by the defendants whose proof of service had not yet been filed by Plaintiffs. Rather, Judge Briccetti held that New York law governs what "properly joined and served" means for the purposes of removal. Noting that the CPLR provides that service is proper at the time of service for individuals served in person, and for corporations when an authorized agent has received service, the Court found that at least five of six defendants were served at the time of removal. He therefore determined that removal was improper because consent of all of Defendants "joined and served" had not been obtained.

Judge Román Grants Summary Judgment for Breach of Employment Agreement

In *Int'l Bus. Machines Corp. v. Nagaseelan Naganayagam*, 2017 WL 5633165 (S.D.N.Y. Nov. 21, 2017), **Judge Nelson S. Román** granted Plaintiff's motion for summary judgment and denied Defendant's cross-motion for spoliation sanctions. Plaintiff, IBM, sued its former employee for the value of rescinded stock options and equity awards, to which IBM claimed it became entitled when Defendant voluntarily resigned and went to work for a competitor. Defendant cross-moved for sanctions, claiming Plaintiff failed to preserve documents, including emails concerning Defendant's departure from IBM. Judge Román noted that the recent amendments to Rule 37(e) impacts when a court may impose sanctions for the loss of electronically stored information. The Court stressed that amendment overruled prior Second Circuit precedent and only permits courts to impose an adverse inference when a party's conduct is intentional. Finding that there was no allegation that IBM intentionally failed to preserve evidence, Judge Román concluded that an adverse inference was unwarranted. The Court also refused to impose less severe spoliation sanctions, which can be levied in the absence of intentional conduct, because Defendant failed to demonstrate how or why the alleged spoliation of the emails prejudiced him. Judge Román then granted IBM's motion for summary judgment enforcing the rescission of Defendant's equity awards pursuant to the terms of Defendant's employment agreement. Although noting that New York law generally disfavors restrictive covenants for former employees, the Court held Defendant's restrictive covenant was enforceable under the "employee choice doctrine." Judge Roman stressed that New York courts enforce restrictive covenants without regard to reasonableness where the employee has left his employment voluntarily and his former employer demonstrated a continued willingness to employ the party who covenanted not to compete. Concluding that it was undisputed that Defendant had voluntarily resigned from IBM notwithstanding that IBM offered to match its competitor's employment offer, Judge Roman held that the rescission of Defendant's equity awards was permitted without regard to reasonableness.

Judge Karas Finds Village of Pomona Violated RLUIPA

In *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 2017 WL 6206193 (S.D.N.Y. Dec. 7, 2017), **Judge Kenneth M. Karas** held that certain zoning and environmental laws enacted by the Village of Pomona violated Plaintiffs' constitutional rights, the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), and the Fair Housing Act. In a lengthy decision issued after a ten-day bench trial, the Court concluded that Defendants enacted the challenged laws to prevent the spread of the Orthodox/Hasidic community into the Village, and, in certain respects, to target Plaintiff specifically and the property on which it seeks to build a rabbinical college. Judge Karas found that the evidence at trial proved that the Village's Wetlands Law was conceived of and passed with a discriminatory purpose. In reaching that conclusion, the Court relied in part on the facts that (1) the law exempted from its coverage single family residences, (2) the decision to adopt the law was made in 2007 after learning of Plaintiff's proposed use, despite the fact that the Village had considered passing a similar law in the 1990s; (3) campaign materials distributed by some of the Village trustees in the 2007 election referenced the proposed rabbinical college, and (4) statements about the proposed rabbinical college by Village officials in *The Journal News* and the *New York Times*.

Judge Seibel Partially Grants Summary Judgment in Connection with Underfunded Pension

In *Trustees of Laundry, Dry Cleaning Workers & Allied Indus. Health Fund, Workers United v. Oceanside Institutional Indus., Inc.*, 2017 WL 4570793 (S.D.N.Y. Oct. 12, 2017), **Judge Cathy Seibel** granted summary judgment finding that Defendant had failed to fund its pension accounts properly. Plaintiffs, various fiduciaries in charge of managing workers' and retirees' pension and welfare benefits, sued an employer for its deficient contributions to various benefit funds after discovering Defendant failed to deposit agreed upon interest and liquidated damages during an audit. Judge Seibel rejected Defendant's contention that Plaintiffs should be estopped from pursuing interest and liquidated damages because they accepted payment of the principal without objection. The Court stressed that equitable reliance requires, among other things, a promise or misrepresentation by Plaintiffs and reasonable reliance on that promise or misrepresentation by Defendant. The Court found that Defendant had established neither because it produced no evidence of any promise by Plaintiffs to forego collection of interest and liquidated damages, and it could easily have confirmed any such intent with Plaintiffs but failed to do so here.

Justice Giacomo Denies Summary Judgment for Personal Injury Suit

In *Dalton v. Macdonald*, 2017 WL 6061411 (West. Sup. Ct. Dec. 5, 2017), **Justice William J. Giacomo** denied Defendant's motion for summary judgment dismissing Plaintiff's complaint for injuries sustained while the two were golfing. Plaintiff and Defendant were longtime golf buddies who played together regularly for a number of years. In October 2012, Plaintiff was injured when Defendant, knowing she would not be able to find her ball because the rough was completely covered in leaves, dropped another ball, and hit a "mulligan" shot, which accidentally struck Plaintiff on the right side of her head. Defendant moved for summary judgment dismissing the complaint on the ground that golfers assume the risk of being struck with errant shots while participating in the sport. Justice Giacomo denied summary judgment, holding that, while being struck with an errant shot may be an inherent risk, such risk is not necessarily assumed in the context of an unannounced mulligan shot. Thus, the Court ruled, a question of fact remained as to whether Defendant's failure to warn her group of her intention to take a mulligan shot amounted to intentional or reckless conduct that unreasonably increased the inherent risks of golf.

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.

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