



# PACE LAW SCHOOL

P A C E U N I V E R S I T Y

## The Supreme Court of the State of New York Appellate Division Second Judicial Department

sits at Pace Law School

Thursday, October 9, 2014

A four-member panel of Ninth Judicial District Justices Dillon, Dickerson, Cohen, and Duffy will hear oral arguments beginning at 10:00am in the Moot Court Room.

- 8:45am-9:45am: Breakfast in the Tudor Room, Sponsored by the WCBA and WWBA for Faculty, Deans, Director and Judges
- 9:30am: Doors to Moot Court Room Open\*
- 10:00am: Welcome remarks by Dean David Yassky, Pace Law School
- 10:05am-12:00pm: Court in Session
- 12:00pm: Question and Answer Session with students

Students, faculty and staff will be allowed to enter and exit the Moot Court Room in between cases.

\*All Pace students and employees MUST present a valid Pace ID. No overcoats, briefcases, or backpacks will be allowed in the Moot Court Room (suit jackets are allowed.) All cell phones must be turned off at the time of entry.

**SUPREME COURT  
OF THE  
STATE OF NEW YORK**

**APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT**

**Summaries of Cases  
to be Argued on  
October 9, 2014**

**Pace Law School**

**These summaries are provided only as a courtesy to the public attending this Court session. They are not intended to identify and address all legal issues raised in a particular case and are distributed for background purposes only.**

Case No.1: People v Sassi, Richard, Jr.

The defendant, a police officer, was alleged to have falsely reported a "burglary in progress," and as a result was charged with falsely reporting an incident in the third degree in violation of Penal Law § 240.50(2). In the Dutchess County Court, the defendant argued that the jury charge should include the legal definition of burglary. The People disagreed, taking the position that burglary was not an element of the crime charged. The County Court's charge did not include the definition of burglary. The defendant was convicted by a jury of the crime charged, and sentenced to six months in jail plus a \$1,000 fine. The defendant now appeals. Execution of the judgment was stayed pending determination of the appeal.

Case No. 5: Tagliaferri v Petti

This is a personal injury action arising out of a motor vehicle accident that occurred near an exit/entrance to the Sprain Brook Parkway in Westchester County, New York. The injured plaintiff was driving a motor cycle, and "rear-ended" the defendant. Following discovery, the defendant moved for summary judgment dismissing the complaint. The plaintiffs (the injured plaintiff along with his wife, who asserted a derivative cause of action for loss of services) opposed the motion. The Supreme Court, Westchester County, granted the motion and the plaintiff now appeals.

Case No. 9: Matter of Lowther v County of Rockland

General Municipal Law § 207-c allows officers such as Deputy Sheriffs who are injured in the course of their duties to collect their salary, as well as other benefits, until the disability arising from the injury ceases. In this case, a Deputy Sheriff injured his hand when he fell off a chair during roll call prior to the commencement of his tour of duty. He missed eight days of work. The Sheriff denied the Deputy's application for benefits under General Municipal Law § 207-c, and the Deputy took, and lost, an administrative appeal. The Deputy then sought judicial review in the Supreme Court, Rockland County, pursuant to article 78 of the Civil Practice Law and Rules. The Supreme Court found that the administrative hearing examiner applied the proper standard, and that substantial evidence supported the administrative determination to deny benefits, and issued a judgment denying the article 78 petition. The Deputy now appeals.

Case No. 10: Piscionere & Nemarow, P.C. v Jacobsen

This is a legal fee dispute. The plaintiff law firm provided legal services to the defendant client, and ultimately claimed that the client owed it unpaid fees. The dispute went to arbitration and the arbitrator awarded the plaintiff less than it claimed was due. The plaintiff rejected that award and commenced this action, alleging, among other things, breach of contract and account stated. The defendant moved in the Supreme Court, Westchester County, for summary judgment in his favor, which was denied with

leave to renew on the ground that the defendant failed to attach to his motion a copy of the pleadings in the action. The defendant then addressed that issue and renewed his motion arguing that the prior arbitration settled the issue between the parties. The Supreme Court denied the motion on the merits, and the defendant now appeals.

Case No. 11: Ryan v Taconic Realty Associates

In this case, the injured plaintiff, and her husband suing derivatively, are seeking to recover damages for injuries that she allegedly sustained when she slipped and fell on snow in the parking lot of the office where she worked. The plaintiffs sued the owners of the property on which the injured plaintiff fell. The owners, in turn, brought a third-party action seeking indemnification from, among others, the company the owners had hired to perform snow removal services on the owners' property. The snow-removal contractor moved for summary judgment dismissing the third-party complaint. The property owners' moved for summary judgment seeking dismissal of the plaintiffs' complaint against them. The plaintiffs opposed both motions. The Supreme Court, Dutchess County, granted the motions, and dismissed the plaintiffs' complaint, and the third-party complaint. The plaintiffs now appeal.

Case No. 13: Behar v Glickenhau Westchester Development, Inc.

This is a fraud action brought by the purchasers of residential real property in Scarsdale, New York. The defendant is the seller. The property is near the second hole of the Quaker Ridge Golf Club. Several months after the purchase, a large oak tree on the boundary of the properties fell in a storm, and took several trees down with it. As a result, a gap was created in the tree line that previously formed a barrier protecting the plaintiffs' property from errant golf balls hit from the second tee. In their action against the seller, the plaintiffs sought to recover damages for fraudulent concealment, alleging that the seller didn't disclose information about the property's vulnerability to golf ball incursions from the Club. The seller moved to dismiss the action on a number of grounds, including failure to state a cause of action (Civil Practice Law and Rules 3211[a][7]), and based on documentary evidence (Civil Practice Law and Rules 3211[a][1]). The plaintiffs opposed the motion. The Supreme Court, Westchester County, granted the motion. The plaintiffs now appeal.

Case No. 14: Tuthill Financial v Abundant Life Church

In 2009, the plaintiff, the assignee of a note and mortgage, commenced this mortgage foreclosure action against the borrower. Plaintiff alleged that the borrower defaulted on the underlying loan in September 2007. The borrower did not appear in the action, and the Supreme Court, Westchester County, subsequently granted the plaintiff's application to hold the borrower in default. A referee was appointed to compute the amount due. Thereafter, following the report of the referee, a judgment of foreclosure and sale was entered in March 2010. In August 2012, the borrower made a motion to vacate its default. The plaintiff opposed the motion. The Supreme Court denied the motion to vacate, finding that the borrower failed to show either a reasonable excuse for its default or a meritorious defense to the foreclosure action. The borrower now appeals.

Case No. 15: Bibeau v Sudick

The parties in this case were married in 2000. They signed a prenuptial agreement that provided, among other things, that in the event of divorce, the defendant wife would receive \$25,000 for each year the parties were married in lieu of maintenance, support and equitable distribution. The plaintiff husband was 70 years old at the time and, according to his financial statement, he had over \$10 million in assets. The defendant wife was 38 and had assets of about \$170,000. The husband commenced this divorce action and submitted the prenuptial agreement to demonstrate that all economic issues had been resolved. The husband moved for summary judgment determining that the agreement was valid and enforceable. The wife opposed the motion. The Supreme Court, Orange County, ruled in favor of the husband, and the wife now appeals.

Case No. 17: Ryles v Weiner

This is, among other things, a legal malpractice action brought by a homeowner against a law firm that performed legal services for the homeowner in connection with his attempts to secure permits to allow his contractor to demolish an existing house and construct a new one on property in Newburgh, New York. The law firm made a motion for summary judgment dismissing the complaint insofar as asserted against it, and the plaintiff opposed the motion. The Supreme Court, Orange County, granted the motion, and the plaintiff now appeals.

Case No. 18: Palladino v McCormick

This is an action in which the transfer of real property was challenged as the product of undue influence. In 2010, the homeowner transferred title to realty in West Harrison, New York, to his daughter, reserving a life estate. Subsequently, he brought this action against his daughter, seeking, among other things, to set aside the deed on the ground of undue influence. At a Bench trial, the plaintiff, then 88 years old (now deceased - his estate has been substituted in this Court), as well as a companion of his of many years, testified. At the close of his case, the defendant made a motion for judgment as a matter of law pursuant to Civil Practice Law and Rules 4401, which the plaintiff opposed. The Supreme Court, Westchester County, granted the motion, and the plaintiff now appeals.