

NEW YORK COURT OF APPEALS ROUNDUP:

LLP PROVIDES NO SHIELD IN PARTNERSHIP DISPUTES, NO SUPPRESSION FOR VIOLATION OF PHYSICIAN-PATIENT PRIVILEGE, RELIGIOUS DISPUTES

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JANUARY 11, 2008

This month we discuss the Court of Appeals' decision holding that law partners in a limited liability partnership ("LLP") are not shielded from personal liability for claims by other partners against them or the partnership. We also discuss the Court's decision in a criminal case in which it declined to suppress evidence obtained in violation of the physician-patient privilege. Finally, we discuss two cases that arose out of disputes between rival factions of the Brooklyn Congregation of the Satmar religious community that may be of particular interest given the tensions within other religious groups, for example the Episcopal church. The Court resolved one of the cases, but concluded that the other case was non-justiciable.

LLP: No Shield Among Partners

In *Ederer v. Gursky*, the Court was called upon to determine whether the "shield" provided to partners in a registered limited liability partnership under Partnership Law Section 26(b) includes protection from personal liability for claims by partners against each other or against the partnership. The Court held, in a 5-2 decision, that Section 26(b) does not provide such protection. A strong dissent was filed by Judge Robert S. Smith, which was joined in by Chief Judge Judith S. Kaye.

Plaintiff Ederer's relationship with Gursky began in 1998 when he joined Gursky's law firm, which changed its name to Gursky & Ederer, P.C. Ederer was initially a salaried contract partner, but had an understanding with Gursky, the sole shareholder in the P.C., that if their practice developed he would become an equity partner. In 2000, Ederer became a 30% shareholder in the P.C. In 2001, the firm became a registered limited liability partnership under the name Gursky & Ederer, LLP. Later that year three new partners were

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admitted to the partnership and each acquired an equity interest in the firm.

In 2003, Ederer advised Gursky that he was withdrawing as a partner from the LLP and as a shareholder in the P.C. (which continued to wind up its affairs). He entered into a withdrawal agreement with the LLP and the P.C., signed by Gursky for both entities. The Agreement contained various provisions for the orderly separation by Ederer from the entities, and the P.C. was then dissolved; within days Ederer withdrew from the LLP, which continued in business under the name Gursky & Partners, LLP.

A few months later, Ederer sued the P.C., the LLP, and Gursky and the three partners who had joined in 2001 individually. Ederer's amended complaint alleged various causes of action and sought, *inter alia*, an accounting of his interest in the P.C. and LLP. The defendants filed what amounted to a general denial, asserted counterclaims, and promptly moved to dismiss and for summary judgment as to Gursky and the other three partners, asserting that the amended complaint set forth no cause of action upon which relief could be granted against the individuals because Section 26(b) provided them a "shield" against personal liability. The motion court denied their motion for summary judgment, and defendants appealed.

The Appellate Division, First Department, affirmed, holding that Section 26(b) did not exempt the partners either from their obligation to account to a withdrawing partner or from liability to Ederer for alleged breaches of firm-related agreements. It granted leave to appeal, and defendants limited their challenge in the Court of Appeals to whether there was a "shield" afforded them under Section 26(b).

Judge Susan Phillips Read, writing for the majority, provided a detailed recitation of the history of New York law dealing with the joint and several liability of individual partners for partnership obligations, and the changes brought about by the 1994 amendments to the Partnership Law, in particular to Section 26(b) to create an exemption from such vicarious liability.

The majority pointed out that, prior to 1994, general partners in a partnership were jointly and severally liable to non-partner creditors for wrongful acts and breaches of trust committed by the partners in doing the business of the partnership, and jointly liable for debts to third parties. Partners also had as among each other a right of contribution and indemnification in order to share partnership losses and contribution upon the dissolution or winding up of the partnership.

As the Court explained, the 1994 amendments were part of a nationwide initiative to create a new form of partnership entity that would free partners' individual assets from the reach of non-partner creditors on the basis of vicarious liability. Section 26(b) when enacted did precisely that and provided:

[e]xcept as provided by subdivisions (c) and (d) of this section, no partner of a partnership which is a registered limited liability partnership is liable

or accountable, directly or indirectly (including by way of indemnification, contribution or otherwise), for any debts, obligations or liabilities of, or chargeable to, the registered limited liability partnership or each other, whether arising in tort, contract or otherwise, which are incurred, created or assumed by such partnership while such partnership is a registered limited liability partnership, solely by reason of being such a partner.

Notably, Section 26(c) excluded from the “shield” for personal liability under Section 26(b) individual partner or partners who commit any negligent or wrongful acts or misconduct, or supervise or control the work of others providing the services resulting in such bad acts.

The four partners here urged that the Section 26(b) shield from “any debts” should be read to include not only debts to third parties, but also obligations to the partnership or to each other, such as Ederer’s claims here.

The majority rejected that argument, as well as all others pressed by the partners, principally on the basis that Section 26 had from its origin, as part of Article 3 of the Partnership Law, governed only partner liability to third parties, whereas relations among partners had been dealt with under a separate Article of the Law (Article 4). Absent “very clear legislative direction” to the contrary, this distinction should continue to be recognized, the Court held. In addition, the majority observed that the position of the four partners had no support in any commentary concerning Section 26(b) or any comparable statute enacted anywhere protecting partners from vicarious liability.

The dissent stated that Section 26(b) was clear, that Sections 26(c) and (d) provided two specific exceptions, and that the Court should not create another exception not included by the Legislature. The dissent also pointed to the unfairness of the preference given to partners over third-party creditors, and the impact the ruling may have on innocent partners when those culpable may be unable to respond to partners’ claims against the partnership or its partners.

The decision will keep claims as between a partner and a limited liability partnership and its partners viable, and render all partners vulnerable to personal liability where the suing partner has valid claims, although, as between the partners, rights to contribution and indemnity will continue to be available.

No Suppression

In *People v. Temel Green*, a police officer entered to a hospital and asked hospital personnel whether, on a certain date, anyone had come in for treatment for a slashing of his face. A hospital employee provided the officer with the name and address of such a person, information that ultimately led to the arrest and conviction of the defendant. The defendant sought suppression of all evidence obtained as a result of the hospital’s disclosure, arguing a breach of the physician-patient privilege set forth in CPLR 4504. The Supreme Court, Bronx

County, denied the motion. In affirming the conviction, the Appellate Division, First Department, found first, that there had been no violation of the privilege because the hospital record's indication that the defendant had been slashed did not reflect a "medical determination," and, second, that even if disclosure of that information had constituted a breach of the privilege, suppression of the evidence and its fruits was not required.

The Court of Appeals, in a decision by Judge Robert S. Smith, did not reach the issue of whether there had been a breach of the physician-patient privilege because it held unanimously that suppression of evidence obtained as a result of a violation of that privilege is not required.

The Court distinguished prior precedent on the basis that, in cases in which evidence was suppressed because it had been obtained in violation of a statute, the statute "existed to safeguard rights protected by the Fourth Amendment." The right to physician-patient privacy, however, is not derived from the constitution; instead, it is purely a creature of the Legislature, and serves primarily to regulate a private relationship. The Court reasoned that to suppress evidence obtained as a result of breach of this privilege "would be to punish the State for a doctor's or hospital's misconduct." In reaching this conclusion, the Court apparently gave no weight to the fact that, in this case, the hospital had disclosed the allegedly privileged information at the behest of a representative of the State. The Court of Appeals concurred with the lower courts that suppression was not required, and therefore upheld the conviction.

Intra-Congregation Disputes

Congregation Yetev Lev D'Satmar is a Satmar Hassidic community located in Brooklyn, founded in 1948 by Grand Rabbi Joel Teitelbaum, incorporated under the laws of New York, and governed pursuant to by-laws promulgated in 1952 that, among other things, provide for a board of directors and officers. In 1974, the Grand Rabbi established another Satmar Congregation in Monroe, New York. Joel Teitelbaum was succeeded as Grand Rabbi by his son, Moses. Moses Teitelbaum is deceased, but before his death the Brooklyn Congregation split into two factions at odds over which of his sons should succeed him as Grand Rabbi.

Each faction conducted its own election for directors and officers of the Brooklyn Congregation and challenged its rival's election, leading to a dispute over who was entitled to govern the Congregation and its significant assets. Berl Friedman and Jacob Kahan both claimed to be the duly elected President. The "Kahan faction" asserted, among other things, that Friedman had been expelled from the Congregation by Moses Teitelbaum. The "Friedman faction" denied that Moses Teitelbaum had sought to expel Friedman, and contended that the by-laws granting the Grand Rabbi "spiritual authority" over the Congregation did not grant him the authority to remove officers, in any event.

Friedman, while purporting to act as President and with the approval of "his" board, executed a deed that conveyed to the Monroe Congregation a one-half interest in a cemetery in Monroe for members of the Satmar community. Filed in the Orange Country Clerk's Office were both the deed signed by Friedman purporting to convey this interest, and a

“declaration” of Kahan and some of his supporters stating that only the signing officers could convey an interest in or encumber the property. The Monroe Congregation filed a declaratory judgment action seeking to establish the legitimacy of its interest in the cemetery, and the Kahan faction counterclaimed, seeking to have the deed declared invalid.

The Court reached the merits of this action, *Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc. v. Congregation Yetev Lev D'Satmar, Inc.*, in an opinion by Judge Eugene F. Pigott, Jr. for a unanimous Court (Judge Theodore T. Jones taking no part). Section 12 of the Religious Corporations Law requires a religious corporation to obtain leave of court before selling real property, but also provides for retroactive judicial approval to validate a completed transfer, which the Monroe Congregation was seeking. When one religious corporation seeks court approval of a transfer of property to another for only nominal consideration, however, as was the case here, it must show that “religious and charitable objects generally” would be served. The Appellate Division, Second Department, found that such showing had not been made, and therefore voided the transfer.

In affirming, the Court of Appeals held that the Appellate Division’s finding was “justifiabl[e]” because the property transfer at issue “was at least in part plainly designed to advance one side of the factional dispute” Thus, the matter could be and was resolved without determining whether Friedman had the authority to act on behalf of the Brooklyn Congregation. But that was the easy case.

In a second decision handed down the same day, *Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, the Court held that, because the controversy could not be resolved without deciding matters ecclesiastic, it would not resolve it. Judge Pigott again wrote the opinion for the Court and Judge Jones again took no part, but this time Judge Robert S. Smith dissented.

Petitioners sought to have the election in which the Kahan faction was victorious declared null and void, and to have the Congregation’s property transferred to Friedman. Respondents both challenged the Supreme Court’s jurisdiction to become involved in internal matters of the Congregation and asserted that the Kahan faction’s election was proper but Friedman’s election had been a sham for several reasons, including Friedman’s alleged expulsion.

The majority opinion declared that membership issues involving matters of an ecclesiastical nature were at the center of the dispute, and thus it “must be resolved by the members of the Congregation, and cannot be determined by this Court.” The judiciary may entertain civil disputes involving religious parties as long as they can be adjudicated by applying “neutral principles of law.” In doing so, courts may even rely upon a religious organization’s internal documents, such as its by-laws, *if* they can be applied without interpreting ecclesiastical doctrine. However, this case would necessarily involve “judicial intrusion into matters of religious doctrine,” the Court concluded, in part because the Congregation’s by-laws condition membership on religious criteria, such as whether the individual “follows the ‘ways of the Torah’.” Thus, precedent and First Amendment principles

prohibited the Court from resolving the dispute.

The dissent interpreted the precedent upon which the majority relied more narrowly, reading it as calling for courts to defer to authoritative decision-making bodies of hierarchical churches, but not addressing disputes within congregational bodies that lack a church hierarchy. It also argued forcefully that courts should be loathe to take the “drastic measure” of refusing to adjudicate a matter. In Judge Smith’s view, that drastic step was unnecessary here because neutral principles of law were applicable. Judge Smith concluded that the question of the Grand Rabbi’s authority was non-justiciable, but believed that there were many issues (such as whether he had even tried to remove Friedman) that could be determined without resort to religious principles and that could well resolve the entire dispute.