

List of Some Noteworthy Cases - by Subject

Right to Marriage (Marriage Equality)

Hernandez v Robles, 7 Misc 3d 459 (Sup Ct, NY County 2005), *revd* 26 AD3d 98 (1st Dept 2005), *aff'd* 7 NY3d 338 (2006). In 2005 - ten years prior to the U.S. Supreme Court - held that same-sex couples have a right to marry, pursuant to the Due Process and Equal Protection clauses of the state Constitution, in a 62 page decision.



Landlord-Tenant

191 St Assoc. LLC v Cruz, 50 Misc 3d 137(A) (App Term, 1st Dept 2016, Ling-Cohan, J., dissenting). Dissented from an opinion which evicted an elderly and infirmed, long-term rent stabilized tenant, who produced in court all of the money she owed to satisfy an outstanding judgment for rental arrears.

49 Bleecker, Inc v Gatien, 51 Misc 3d 152(A) (App Term, 1st Dept 2016, Ling-Cohan, J., dissenting). Dissented in a nonpayment proceeding and voted to reverse and grant summary judgment of dismissal in favor of tenant; landlord, an "owner", as defined by the plain language of MDL § 4 (44), was prohibited from collecting rent, as a matter of law, pursuant to the rent forfeiture provisions of the Multiple Dwelling Law (§§ 301 [1]; 302 [1]; 325 [2]), as it was undisputed that the building lacked a valid certificate of occupancy and a multiple dwelling registration.

1890 Adam Clayton Powell LLC v Penant, 52 Misc 3d 76 (App Term, 1st Dept 2016, Ling-Cohan, J., dissenting). Dissented in the granting of a judgment of possession in favor of landlord, because the unrefuted trial evidence showed that landlord waived its right to enforce the lease provision which limited occupancy to tenant and one unrelated roommate.

Ludor Properties LLC v DeBrito, 48 Misc 3d 142(A) (App Term, 1st Dept 2015, Ling-Cohan, J., concurring). Concurred in affirming the denial of tenant's motion for discovery for failure to establish "ample need", however, disagreed with the lower court's denial on the basis that the discovery sought would reveal landlord's litigation strategy, which is not part of the applicable criteria, as provided by case law.

31 Cornelia Props. Corp. v Lemma, 51 Misc 3d 147(A) (App Term, 1st Dept 2016, Ling-Cohan, J., concurring). Concurred in affirming a denial of summary judgment in a landlord-tenant proceeding where the issue was whether or not the subject apartment was subject to rent stabilization; however, disagreed with the majority's use of a creation by a "vacancy by operation of law", as a "statutory basis for high rent deregulation", because such proposition was not supported by case law.

New York City Hous. Auth. v Fountain, 172 Misc 2d 784 (Civ Ct, Bronx County 1997). The case was the first to address whether in landlord-tenant proceedings, due process was violated if eviction mailing was without a zip code. (On NYCHA's applications for several default judgments, held that: (1) tenants' due process rights were violated, when NYCHA failed to include the tenants' zip code, in mailing copies of pleadings in eviction proceeding; and (2) service did not comply with statutory requirements, where landlord failed to include zip code in mailing to tenants). As a result, the Housing Court Clerks' Manual was amended to require the use of zip codes, before warrants of evictions would be issued.

Hispanic AIDS Forum v Estate of Bruno, 16 Misc 3d 960 (Sup Ct, NY County 2007). Denied defendant/landlord's motion to dismiss claims asserted by plaintiff/tenant (a non-profit agency), which were based upon gender discrimination, in a case commenced due to the landlord's alleged refusal to renew a commercial lease because of the presence in the building of plaintiff's transgender clients.

Haberman v Gotbaum, 182 Misc 2d 267 (Civ Ct, NY County 1999). Denied a landlord's attempt to evict his tenant for creating artwork in tenant's residential apartment, finding that such use did not constitute commercial use, to warrant an eviction.

Immigrant Rights

Fernando v Vasquez, 2001 NY Slip Op 40068(U) (Civ Ct, NY County 2001). Granted judgment for back wages to immigrant day laborers against a subcontractor and referred matter to State Attorney General for investigation, as the case dealt with what appeared to be widespread nonpayment of laborers. Rev. Brian Jordan of the Franciscan Immigration Center assisted plaintiffs and used the decision as an organizing tool in the Mexican community. Case was widely covered by mainstream and ethnic press.

Constitutional Challenges

A. Cigarette Tax Challenge

New York State Assn. of Tobacco & Candy Distribs. v City of New York, 3 Misc 3d 876 (Sup Ct, NY County 2003). Upheld the constitutionality of a law which raised New York City's (NYC) cigarette excise tax, ruling that the law's stated objective of raising revenue constituted a legitimate governmental objective.

B. Due Process

Matter of Baines v Berlin, 36 Misc 3d 203 (Sup Ct, NY County 2012). Based upon due process principles, annulled decision to discontinue shelter assistance to petitioner who was notified that a hearing would be held as to the discontinuance of her assistance based solely on one allegation, but, following the hearing, was found to have committed multiple acts of misconduct.

Matter of Lizotte v Johnson, 4 Misc 3d 334 (Sup Ct, NY County 2004). Held that failure to provide petitioner with adequate translation services at hearing deprived petitioner of fundamental due process.

Lenox Hill Hospital v Gleizer, NYLJ, August 11, 1997, at 28, col 20 (Civ Ct, NY County 1997). Determined that service of process without apartment number is defective and warrants dismissal for failure to establish jurisdiction over defendant.

C. Discrimination

Reverend Ruben Diaz, Sr. et al. v Michael R. Bloomberg, et al., Sup Ct, NY County 2003, Index No. 114533/2003. Plaintiffs contended, *inter alia*, that the Harvey Milk High School was illegal because city funds were being used based upon the sexual orientation of the students and that a separate educational facility for gay students violates Equal Protection guarantees in the Constitution and the Department of Education's own anti-discrimination policies. The case settled, through intense intervention by me, prior to the issuance of a decision on defendant's motion to dismiss.

Matter of Castillo v Schriro, 49 Misc 3d 774 (Sup Ct, NY County 2015); Cover Story, NYLJ, August 7, 2015, at 1, col 3 and online at nylj.com. Decision is one of only two which interprets the reasonable accommodation section of Administrative Code of the City of NY (Human Rights Law) § 8-107.1 (2) (domestic violence discrimination). Dealt with a probationary correction officer who was found to be unlawfully terminated, on the basis of her status as a domestic violence victim and due to her temporary disability, which violated both Human Rights Law § 8-107.1 (2) (domestic violence discrimination) and § 8-107 (1) (disability discrimination).

Consumers

Capital One Bank (USA) v Koralik, 51 Misc 3d 74 (App Term, 1st Dept 2016, Ling-Cohan, J., dissenting). Dissented in a consumer debt case in which the majority lowered the standard that a bank must meet in a consumer credit case by granting summary judgment to the bank based solely upon an affidavit from a third-party "legal specialist", lacking personal knowledge and without notice to defendant.

Northern Leasing Systems v Walton, 46 Misc 3d 141(A) (App Term, 1st Dept 2015). Affirmed the dismissal of a Civil Court consumer debt action due to the untimely nature of plaintiff's motion for renewal and appeal.

Remis v Fried, 31 Misc 3d 1203(A) (Sup Ct, NY County 2011). Decision and case, known in the papers as the "Groomzilla" case, received substantial amount of publicity, both on-line and in the New York Times (Joseph Berger, Years Later, Lawsuit Seeks to Recreate a Wedding, NY Times, Nov. 2, 2011, § B, at 1), as it involved the unusual circumstance of a former groom suing his wedding photographer, over the quality of his wedding photos, several years after his marriage ended in divorce. Through intensive intervention by me, the case was settled, shortly thereafter.

Land Use

W. 72nd St. & West Side Hwy Ramp Case - Matter of Coalition Against Lincoln W. Inc. v Weinshall, 8 Misc 3d 1016(A) (Sup Ct, NY County 2004), *revd* 21 AD3d 215 (1st Dept 2005), *lv denied* 5 NY3d 715 (2005). Granted the petition challenging NYC Department of Transportation's approval that permitted the closure of the 72nd street exit ramp of the West Side Highway so that Trump's development company could build on land in the area; Required further environmental review of such closure and granted an injunction prohibiting any further construction that would result in the closure of such ramp.

Right to Terminate Life Support/Parental Rights

Matter of AB, 196 Misc 2d 940 (Sup Ct, NY County 2003). Clarified law for ending life support provided to a minor child in persistent vegetative state, holding that "[a]bsent extraordinary circumstances such as incapacity, conflict of

interest, or disagreement between parents, a parent of a minor child, with an established diagnosis of persistent vegetative state, should have the right to decide whether to terminate life support, in the best interest of the child, without...judicial intervention." Case was widely covered including in the New York Times, sparking legislative reform.

Freedom of Information Law (FOIL)

Matter of Law Offs. of Adam D. Perlmutter, P.C. v New York City Police Dept., 2013 NY Slip Op 32532(U) (Sup Ct, NY County 2013), *affd* 123 AD3d 500 (1st Dept 2014). Article 78 Proceeding in which the court compelled the NYC Police Department (NYPD) to produce documents pertaining to breathalyzer maintenance and repair records going back five years, in accordance with New York's Freedom of Information Law (FOIL), so that they could prepare for the trials of their clients accused of driving under the influence/driving while impaired.

The New York Environmental Law & Justice Project v City of New York, NYLJ May 8, 2006, at 18, col 1 (Sup Ct, NY County 2006). In this proceeding, documents relating to numerous reports of environmental contamination and illnesses at Pier 57, where over 1,500 protesters were taken after their arrests during the Republican National Convention, denied NYPD's motion to dismiss Article 78 proceeding, commenced based upon NYPD's denial of petitioner's request, pursuant to FOIL.

Matter of Markowitz v Serio, 11 Misc 3d 439 (Sup Ct, NY County 2006), *revd* 39 AD3d 247 (1st Dept 2007), *revd* 11 NY3d 43 (2008). Proceeding commenced by Brooklyn's Borough President against the New York State Insurance Department (which had denied his request for access to certain reports filed with the Department by the insurance companies, to ascertain if the companies were "redlining" in Brooklyn). The Court of Appeals, in essence, affirmed this court's determination that all records of a public agency are presumptively available for public inspection under the FOIL, unless they fall within an exception to disclosure under Public Officers Law § 87 (2), which the subject records did not.

Labor Issues

Mayor of the City of New York v Council of the City of New York, 6 Misc 3d 1022(A) (Sup Ct, NY County 2005), *affd* 38 AD3d 89 (1st Dept 2006), *affd* 9 NY3d 23 (2007). Rejected NYC's Mayor's challenge of City Counsel's enactment of Local Laws 18 and 19, which altered the method by which two groups of fire department employees bargained with the City, finding the laws valid and enforceable and consistent with the stated legislative policy of the Taylor Law, which explicitly granted to the City Council the authority to enact such legislation.

Melish v City of New York, 7 Misc 3d 1009(A) (Sup Ct, NY County 2005). The court denied the NYC's motion to dismiss, finding that the complaint sufficiently stated a cause of action, in this case commenced by plaintiff civil service painters union to challenge the termination of six members employed by the Department of Sanitation.

Municipal

Kruger v Bloomberg, 1 Misc 3d 192 (Sup Ct, NY County 2003). Settled lawsuit in which plaintiffs (numerous legislators, parents and parent leaders, past and present officials of the city school system, and a union leader) sued the Mayor, the Chancellor and the Department of Education, to set aside a proposed reorganization of NYC's school system, as a de facto elimination of community school districts, in violation of various provisions of the Education Law. Case was settled through intensive court intervention and parties were permitted to continue to seek court assistance to resolve issues for a number of years. Prior to settlement, issued two decisions: (1) denying a temporary restraining order, finding that the petitioners had not established irreparable injury, but, *inter alia*, requiring that the school district offices remain operational through June 30, 2003; and (2) granting *amicus curiae* status to two public organizations (Public Education Needs Civic Involvement in Learning [PENCIL] and the Association of the Bar of the City of NY, setting forth the standard of review employed for *amicus curiae* status in trial courts.

Civil Rights Law/Privacy Rights

Dominguez v Vibe Mag., 21 Misc 3d 1122(A) (Sup Ct, NY County 2008). Dismissed \$3 million lawsuit commenced by a woman who was photographed topless (allegedly without her consent), at Sean "P. Diddy" Combs' annual "white party", holding that plaintiff's privacy claims failed, due to the public interest of the event.

Negligence

Matter of LFL Gallery Inc. v City of New York Dept. of Env'tl. Protection, 11 Misc 3d 519 (Sup Ct, NY County 2006). Ruled that plaintiff's phone calls to 311 regarding defective sewer drains which resulted in the flooding of an art gallery, provided actual knowledge of the essential facts of plaintiff's property damage claim, sufficient to grant an application to file a late notice of claim.

Sikora v Earth Leasing Prop. LLC, 46 Misc 3d 279 (Sup Ct, NY County 2014), *affd* 132 AD3d 600 (1st Dept 2015). Case is one of few which analyzes whether the submission of climatological records, without more, may establish a

prima facie case that ice could not have existed in a slip and fall case.

McLean v City of New York, 14 Misc 3d 922 (Sup Ct, NY County 2007), *affd* 49 AD3d 393 (1st Dept 2008), *revd* 12 NY3d 194 (2009). Denied NYC's motion to dismiss case commenced by mother of infant who suffered severe brain injuries, while at a city-certified family day care center.

Davis v City of New York, 10 Misc 3d 234 (Sup Ct, NY County 2005), *affd* 35 AD3d 240 (1st Dept 2006). Dismissed wrongful death suit commenced against NYC and the Mayor of NYC, by mother of Councilman James Davis (who was fatally shot inside City Hall), since case was barred by Workers' Compensation law, as Mr. Davis was killed in the course of his employment; affirmed by the Appellate Division.

Weinreb v Korman, NYLJ, Jan. 31, 2000, at 30, col 5 (Civ Ct, NY County 2000). Found defendant liable in a "dog bite case", based upon a theory of common law negligence, rather than strict liability, since plaintiff was unable to prove that defendant had prior knowledge of his pit bull's vicious propensity. Case was covered by various newspapers.

Insurance

Matter of Rehabilitation of Financial Guar. Ins. Co., 39 Misc 3d 208 (Sup Ct, NY County 2013). In a rehabilitation suit commenced pursuant to Insurance Law Article 74, found that an evidentiary hearing as to a proposed plan is unnecessary where material issues of fact were not raised.

Perez-Wilson v McPhee, 23 Misc 3d 1053 (Sup Ct, NY County 2009) Issued a conditional order of dismissal based upon defendant's insurance claims adjuster's failure to appear at court-ordered mediation, despite two (2) directives requiring the adjuster's appearance.

Breach of Contract/Quantum Meruit

WebMD, LLC v RDA Intl., Inc., 22 Misc 3d 1114(A) (Sup Ct, NY County 2009). Determined in case involving an alleged breach of an internet advertising contract, that term "visitor", as used in the contract, was not ambiguous, despite lack of definition in the contract. Indicated that if defendant wished to be guaranteed "unique visitors", it should have specified such in the agreement. Case was widely covered by internet blogs, and issue was one of first impression.

Personal Property

Diamond Quasar Jewelry Inc. v Cobain, 2011 NY Slip Op 32670(U) (Sup Ct, NY County 2011). Case was commenced by a jewelry merchant against celebrity, musician and actress Courtney Love Cobain, for the return of jewelry loaned to Ms. Cobain to wear for a charity event, which were allegedly not returned.

Other Significant Appellate Term Decisions

Matter of Salas, 46 Misc 3d 8 (App Term, 1st Dept 2014). Reversed lower court judge who denied name change to undocumented transgendered person, without requiring service on Homeland Security.

People v Thompson, 49 Misc 3d 141(A) (App Term, 1st Dept 2015, Ling-Cohan, J., concurring). Concurred in affirming judgment of conviction of driving while impaired, agreeing that a traffic infraction does not trigger statutory speedy trial rights under CPL § 30.30, however, called upon the legislature to consider an amendment to extend protection when a misdemeanor is initially charged alongside a traffic infraction, but later dismissed, so that the speedy trial limits governing mere petty offenses, such as traffic infractions, would never be greater than that applicable to a misdemeanor.

Chrysler Financial Services Americas LLC v Morante, 50 Misc 3d 126(A) (App Term, 1st Dept 2015, Ling-Cohan, J., concurring). Concurred in affirming the denial of defendant's motion for a protective order conditioning plaintiff/judgment-creditor's use of an income execution, since defendant's assertions were conclusory and not substantiated by relevant proof, however, disagreed to the extent that the denial was based upon lack of jurisdiction, noting that courts, including Civil Courts, have the inherent power to modify their own judgments and CPLR 5240 applies to Civil Court *via* the Civil Court Act. Concurrence clarified that in the proper case, Civil Court does have the power to issue a protective order to protect consumers.