

Recent Commercial Cases of Interest in the New York Court of Appeals

By Connie Boland and Seth M. Rokosky

The New York Court of Appeals is the state's highest court and regularly resolves questions of import for commercial litigation. The Court has recently considered a number of interesting issues, including the legality of New York City's property tax system¹ and the interpretation of business-interruption insurance in the context of COVID-19 contamination.² The Court also will impact the law on several other significant issues that could have broad implications for those conducting business in New York.

For example, on February 14, 2024, the Court heard oral argument in *Syeed v. Bloomberg, L.P.*, in which the Court considered whether a nonresident plaintiff states a claim under the New York City or New York State Human Rights Laws if she can demonstrate that she was deprived of a New York City or State-based job opportunity on discriminatory grounds.³

The case involved a South Asian-American woman who worked for Bloomberg's Washington, D.C. news bureau. The plaintiff filed a class action against Bloomberg, L.P., which operates in New York City, alleging discrimination due to failure to promote her to positions in New York.⁴ The district court dismissed her claims, concluding that she could not demonstrate a discriminatory impact *in* New York City or State because she did not live or work in New York.⁵ The Second Circuit certified the question for review in the New York Court of Appeals, explaining that the denial of *prospective* employment may be sufficient to state a claim under the City and State Human Rights laws.⁶ The Second Circuit noted that the appeal implicates important policy questions for New York, commenting that it could expand the potential liability of employers in the state, or it could insulate them from liability for alleged discriminatory conduct.⁷ On March 14, 2024, the New York Court of Appeals ruled in the plaintiff's favor, citing the required "liberal construction" of the statutes and reasoning that a nonresident who has been discriminatorily denied a job in New York City or State that requires the employee to be physically present there loses the chance to work, and perhaps live, within those geographic areas.⁸

On March 12, 2024, Court heard oral argument in *Lechook v. Société Générale de Banque au Liban SAL*, on the issue of whether an entity that acquires all of another entity's liabilities and assets also inherits that entity's status for purposes of personal jurisdiction.⁹ The case relates to rocket

attacks in Israel in 2006, after which U.S. citizens alleged that the Lebanese Canadian Bank violated the federal Anti-Terrorism Act by providing extensive financial assistance to Hezbollah.¹⁰ In 2011, Societe Generale de Banque au Liban SAL (SGBL) acquired the bank's assets and liabilities through a purchase agreement under the laws of Lebanon, and the plaintiffs sued SGBL in New York.¹¹

The district court dismissed the case for lack of personal jurisdiction, reasoning that New York law recognizes an inherited-jurisdiction theory only upon a "merger" of the two entities in question.¹² The Second Circuit, however, certified the question to the Court of Appeals, explaining that the jurisdictional effect of acquisitions, absent a merger, remains unclear.¹³ The Court noted that the case raises important policy considerations: on the one hand, permitting a bank to acquire all assets and liabilities without inheriting the entity's status for purposes of jurisdiction could lead to abuse and could harm tort claimants; on the other hand, New York law seeks to facilitate business combinations and adopt clear, predictable rules of liability and jurisdiction.¹⁴

On February 15, 2024, the Court heard oral argument in a case involving the scope of New York State antitrust law and the distinctions between the "notice pleading" standard applicable in New York State courts and the plausibility pleading standard applicable in federal courts.¹⁵ In *Taxi Tours, Inc. v. Go New York Tours, Inc.*, the appellant asserted counterclaims against two competitors in the "hop-on, hop-off" sightseeing bus tour industry in New York City.¹⁶ Among other things, appellant alleged that its competitors engaged in anti-competitive conduct in violation of the Donnelly Act by entering into exclusive agreements with key New York City attractions requiring the attractions to do business only with them and threatening not to do business with attractions if they worked with appellant.¹⁷

On appeal, the appellant argued that the Supreme Court and the First Department erroneously dismissed its counterclaims because they ignored the plain language of the Donnelly Act, which is broader than the federal Sherman Act and prohibits a broader range of anti-competitive conduct.¹⁸ The appellant further contended that the lower courts erroneously applied the pleading standard articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), rather than the notice pleading standards of CPLR 3013.¹⁹ Appellant initially

filed a case in federal court, alleging, among other things, federal and state claims under the Sherman Act and the Donnelly Act.²⁰ The district court dismissed all claims, but the Second Circuit dismissed the claims under the Donnelly Act without prejudice, so those claims could be asserted in state court.²¹ This appeal raised potentially intriguing issues regarding the comparative scope of federal and state antitrust law and afforded the Court of Appeals an opportunity to comment on pleading standards in antitrust cases brought in New York courts. The Court ultimately ruled in the plaintiff's favor in a short opinion that cited the "liberal notice pleading standards."²²



Connie Boland is a Partner in the Business Litigation Group at Thompson Hine LLP. Connie has nearly thirty years of experience handling complex commercial litigation and arbitration matters involving financing disputes, securities and common law fraud claims, broker/dealer disputes, and claims relating to life insurance disputes.



Seth Rokosky is Of Counsel at Gibson, Dunn & Crutcher, LLP, where he focuses his practice in the Appellate and Constitutional Law group. He was formerly an Assistant Solicitor General for the State of New York.

Together, they are Co-Chairs of the Commercial and Federal Litigation Section's Appellate Practice Committee.

Endnotes

1. See *Tax Equity Now NY LLC v. City of New York*, APL-2022-00049.
2. See *Consolidated Restaurant Operations, Inc. v. Westport Ins. Corp.*, APL-2022-00160.
3. See CTQ-2023-00001.
4. See *Syeed v. Bloomberg, L.P.*, 58 F.4th 64, 66-67 (2d Cir. 2023).
5. See *id.* at 67.
6. See *id.* at 67-70.
7. See *id.* at 70-71.
8. See N.Y. Slip Op. 01330 (Ct. App. Mar. 14, 2024).
9. See CTQ-2023-00002.
10. See *Lelchook v. Société Générale de Banque au Liban SAL*, 67 F.4th 69, 71 (2d Cir. 2023).
11. See *id.*
12. *Id.*
13. See *id.* at 81.
14. See *id.* at 87-88.
15. See *Taxi Tours Inc., et al., v. Go New York Tours, Inc., et al.*, Index No. 653012/2019, NYSCEF Doc. Nos. 238, 243, and 241; NYSCEF Doc. No. 241, at 22-23; and 210 A.D.3d 451, 452-53 (1st Dep't 2022).
16. See *Taxi Tours*, Court of Appeals No. APL, 2023-00025, Brief for Defendant/Counterclaim Plaintiff-Appellant, at 3-4.
17. See *id.*, at 2-3; 6-8.
18. See *id.* at 2 - 3.
19. *Id.*
20. *Id.* at 9-10.
21. *Id.*
22. See N.Y. Slip Op. 01333 (Ct. App. Mar 14, 2024).

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