

**State of New York
Supreme Court, Appellate Division
Third Judicial Department**

**Summaries of Cases
to be Argued on
March 24, 2008**

Albany Law School

J. Malone Jr., J. Carpinello, P.J. Cardona, J. Rose, J. Stein

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

100979 - People v Kevin Murphy

During an altercation with a group of three men - including the victim - in front of the duplex where he lived in the City of Albany, defendant was punched in the face. Defendant was helped back to his residence by his roommate, but a short time later he was back outside with a kitchen knife and, during the ensuing confrontation, the victim was killed with the knife. Following a jury trial, defendant was convicted of second degree murder and sentenced by County Court (Breslin, J.) to a prison term of 25 years to life. Defendant now appeals, contending, among other things, that his conviction should be reversed due to evidentiary and jury charge errors.

503548 - Matter of HD Services, LLC v New York State Comptroller

Petitioner is engaged in the business of locating individuals who are entitled to abandoned or unclaimed property that is in the possession of the State and assisting those individuals in the recovery of their assets. The present dispute concerns a requirement imposed by respondent's Office of Unclaimed Funds that finder agreements - agreements which authorize petitioner and other similar businesses to act on a property owner's behalf - be notarized. Petitioner commenced this CPLR article 78 proceeding seeking, among other things, to compel respondent to process finder agreements that are not notarized. Supreme Court (McNamara, J.) granted the petition and respondent appeals.

503533/503772 - Catskill Mountain Mechanical, LLC v Marshall & Sterling Upstate

In 1999, plaintiff allegedly contacted defendant, its insurance agent, in order to obtain insurance coverage for a new business activity and believed that such coverage had been obtained. When a related claim was made in 2000, it was denied for lack of coverage and plaintiff thereafter commenced this action against defendant for failure to provide sufficient liability coverage. In September 2004, Supreme Court (Benza, J.) denied defendant's motion for summary judgment and defendant's appeal from that order is presently before this Court. In March 2005, defendant made a motion to preclude plaintiff from offering certain evidence based upon a series of discovery disputes that transpired

before defendant's 2004 summary judgment motion. Supreme Court (McNamara, J.) sua sponte converted the preclusion motion into a motion for summary judgment, verbally granted the motion and dismissed the complaint. Further proceedings followed and, in March 2006, plaintiff moved to reinstate the action to the trial calendar and vacate a 2003 conditional order of preclusion. Supreme Court (McNamara, J.) denied the motion and plaintiff's appeal from that order is also presently before this Court.

503818 - One Beacon Insurance v Travelers Property Casualty Company of America

An underlying negligence action arises from an alleged injury sustained on the premises of Saratoga National Golf Club in Saratoga County in 2001. Following commencement of the negligence action, this declaratory judgment action was commenced by One Beacon Insurance, the insurer of defendant Saratoga National Golf Club, Inc., in order to determine the rights and legal relations regarding various contractors who had performed work at the club and had been brought into the underlying action, and their insurers. D&B Building, Inc., a subcontractor, and its insurer, Great American Insurance Company of New York, moved for summary judgment dismissing the complaint and One Beacon Insurance cross-moved for summary judgment dismissing an affirmative defense they had asserted. Supreme Court (Teresi, J.) denied the motion and granted the cross motion. D&B Building and Great American now appeal.

100908 - People v Tyler Prince

In July 2006, defendant went to the victim's home in the City of Albany, rang her doorbell and, when she answered, gave her a church flyer. Moments later, defendant rang the doorbell again and, when she opened the door again, he struck her on the head with his closed fist which contained an unidentified object. Defendant was convicted of burglary in the first degree and assault in the first degree and was sentenced by Supreme Court (McDonough, J.) as a juvenile offender to a prison term of 3½ to 10 years. Arguing, among other things, that certain trial errors require reversal of his convictions, and that the convictions were not supported by legally sufficient evidence and were against the weight of the evidence, defendant now appeals.

503756 - MacCormack v Hudson City School District Board of Education

Bryan MacMormack, a ninth-grade student, was struck in the face by James Cantelle, another ninth-grade student, on a stairway at Hudson High School in Columbia County. The impact allegedly dislodged two of MacCormack's teeth and caused other injuries. Plaintiff, who is MacCormack's mother, commenced this negligence action against Cantelle's parents and the Hudson City School District and the Hudson City School District Board of Education. The School District and Board of Education moved for summary judgment dismissing the complaint against them. Supreme Court (Hummel, J.) denied the motion and they now appeal.

503848 - Jackson v State of New York

Claimant, an inmate at Woodbourne Correctional Facility in Sullivan County, allegedly slipped and fell in the shower area at the facility. He subsequently commenced this negligence action against the State of New York. A bifurcated trial followed and, at the close of the trial on the issue of liability, defendant moved for dismissal of the complaint, which the Court of Claims (Schaewe, J.) granted. Claimant now appeals.

502687 - Pozament Corporation v AES Westover, LLC

A jury found for plaintiff in this breach of contract action and awarded it \$184,456.94 in damages. Plaintiff then made a motion in Supreme Court to set the date from which to calculate interest on the award and defendant cross-moved to, among other things, set a later date. Plaintiff now appeals the order of Supreme Court (Lebous, J.) determining the period during which damages were incurred and the date from which interest would be calculated.

503747 - Matter of Village of Lacona v New York State Department of Agriculture and Markets

In 2000, petitioner (who is the Village of Lacona in Oswego County) enacted a law which prohibited the use of pesticides,

herbicides and liquified animal waste on property within its borders. Respondent State Department of Agriculture and Markets found that the law unreasonably restricted farm operations and the law was eventually repealed by petitioner. In 2002, petitioner again enacted a similar law and, although the Department again found it to be unreasonably restrictive, petitioner took steps to begin enforcing the new law. The Department then conducted a review of the law and ordered petitioner to abstain from applying it to any farms located within a state-certified agricultural district. Petitioner commenced this combined CPLR article 78 proceeding and declaratory judgment action and Supreme Court (Sackett, J.), among other things, upheld the Department's order. Petitioner now appeals.

101104 - People v Scott Weaver

Defendant and his codefendant were indicted for burglary in the third degree and petit larceny stemming from the burglary of the Latham Meat Market in the Town of Colonie, Albany County, and for burglary in the third degree and grand larceny in the second degree stemming from the burglary of a K-Mart store, also in the Town of Colonie. After a trial before Supreme Court (Lamont, J.), a jury acquitted defendant of the Meat Market burglary but convicted him of both counts with respect to the K-Mart burglary. Defendant appeals, contending, among other things, that evidence obtained from a GPS device placed on his vehicle without a warrant should have been suppressed, that witness tampering evidence should not have been admitted at trial and that his convictions were not supported by legally sufficient evidence.

503854 - Nolan v Union College Trust of Schenectady

While walking on the campus of Union College in Schenectady County, plaintiff's right leg fell into an uncovered manhole. She commenced this personal injury action seeking to recover for, among other things, the allegedly related development of blood clots in her legs. Prior to trial, defendant conceded that it was negligent and, at the conclusion of trial, the jury found for plaintiff on the issue of causation and awarded \$300,000 for past pain and suffering, \$8 million for future medical expenses and \$7.5 million for future pain and suffering. Upon defendant's motion following trial, Supreme Court conditionally vacated the jury's award unless

plaintiff stipulated to a reduced award of \$1.5 million for future pain and suffering and \$3.36 million for future medical expenses. Thereafter, Supreme Court (Lynch, J.) entered a final judgment. Certain prior orders have been appealed and defendant appeals from the final judgment.

503847 - Kaufman Properties & Associates, LLC v 2 Court Street, LLC

A commercial real estate property owned by defendants in the City of Binghamton, Broome County, went into foreclosure and Larry Sall was appointed as receiver of the property. In October 2006, Supreme Court (Lebous, J.) terminated the receivership upon plaintiff's motion and in November 2006 Sall submitted a final accounting. Plaintiff opposed the final accounting, which Supreme Court approved, and plaintiff now appeals.

503868 - Adirondack Medicine, Inc. v Compre-Care, Inc.

The parties are each 50% owners of a corporation that owns an interest in a property in the City of Glens Falls, Warren County. The present dispute concerns plaintiff's claim that it paid defendant's share of certain expenses and debt relating to the property as well as claims concerning other monies defendant owes to plaintiff. Plaintiff commenced the present action in July 2000 and, in 2006, defendant brought a motion to dismiss plaintiff's complaint and a motion for summary judgment dismissing the complaint. Supreme Court (Krogmann, J.) denied defendant's motion to dismiss and partially granted defendant's motion for summary judgment, dismissing two of four causes of action against defendant and partially dismissing a third. Defendant now appeals and plaintiff cross-appeals.