WESTERN NEW YORK
THE DAILY RECORD
Part of the BRIDGETOWER MEDIA network
April 6, 2022

Western District Case Notes

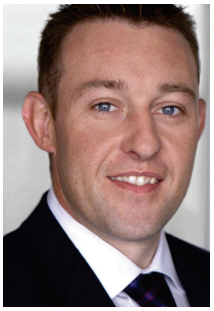
This article originally appeared in The Bulletin, the official publication of the Bar Association of Erie County. It is reprinted here with permission.

SPECIAL TO THE DAILY RECORD | **KEVIN M. HOGAN AND SEAN C. MCPHEE**

Personal Jurisdiction and Venue

In *Bartosiewicz v. Nelsen*, No. 20-cv-06513-EAW (Sept. 29, 2021) — an action for breach of contract concerning the purchase and sale of antique muscle cars — defendant moved to dismiss based on lack of personal jurisdiction and improper venue. Observing that there are two ways that New York courts exercises personal jurisdiction over non-residents (i.e., general jurisdiction under CPLR 301, and specific jurisdiction under CPLR 302), the court first found that defendant was not subject to general jurisdiction in New York because he is a resident of Minnesota. The court then determined that defendant was not subject to specific jurisdiction in New York because he never travelled here; the automobiles and relevant paperwork were exchanged in Minnesota; no in-person negotiations took place anywhere, and instead were undertaken by telephone; there was no choice-of-law clause in the sales agreement; and the sales agreement did not require the parties to send notices or payment into New York. In reaching its conclusion, the court rejected plaintiff's argument that personal jurisdiction existed because, by negotiating the contract by telephone while plaintiff was in New York, defendant "projected himself into New York," finding that such contact with New York was minimal and would not comport with due process because defendant did not purposefully avail himself of New York's laws. Finally, the court noted that it is authorized to transfer the action to another venue even though it lacks personal jurisdiction over defendant, and then transferred the action to the District of Minnesota in the interest of justice.


Kevin Hogan


Sean McPhee

Standing

In *Lackawanna Chiropractic P.C. v. Tivity Health Support, LLC*, 18-cv-649-LJV-JJM (Aug. 27, 2021) — a putative class action alleging violations of the Telephone Consumer Protection Act — plaintiff moved for preliminary approval of a modified class action settlement, to which the magistrate judge recommended the settlement not be approved on grounds that the parties had not shown that each member of the settlement class was harmed by defendant's actions. The parties objected to the recommendation, and the court respectfully agreed, finding instead that plaintiff had adequately alleged Article III standing. The court noted that the "threshold question" of whether a plaintiff has Article III standing must remain "distinct" from the "question of whether the plaintiff a valid claim on the merits." Accepting plaintiff's allegations as true, the court held that at this early stage of litigation, before the completion of discovery and without a pending motion for summary judgment, plaintiff had sufficiently established that the proposed class had standing. Merely because the definition of the class might include plaintiffs who ultimately could not establish their entitlement to relief on the merits did not deprive the court of jurisdiction over the proposed settlement class's claims. To insist that class members submit evidence of personal standing, rather than simply rely on plausible standing allegations, would cause the "standing inquiry [to] essentially collapse … into the merits."

Bankruptcy Appeals

In *Capozzolo v. Grow America Fund, Inc.*, 21-cv-00757-WMS (Oct. 26, 2021), the Bankruptcy Court entered an Order in an adversary proceeding granting summary judgment in favor of a creditor and determining that the debtor's debt was not dischargeable because it was incurred with intentionally false and fraudulent representations. The debtor appealed to the District Court and the creditor moved to dismiss the appeal, arguing that the Bankruptcy Court's Order was not an appealable final order because the amount of the debt had not been determined by the Bankruptcy Court and a judgment had not yet been entered against the debtor. Noting that "there is a strong federal policy against piecemeal appeals," and that "a dispute is not completely resolved until the bankruptcy court determines the amount of damages to be awarded," the court found that the Order was not appealable because it did not resolve all of the issues in the adversary proceeding, including the amount of damages to be awarded. As a result, the court lacked jurisdiction to address the appeal and granted the creditor's motion to dismiss.

Motion to Seal

In *Spring, et al. v. Allegany-Limestone Central School District, et al.*, 14-cv-476-WMS (Sept. 14, 2021) — an action for damages under the Americans with Dis-

abilities Act ("ADA") and the Rehabilitation Act ("RA") — defendants moved for summary judgment arguing, among other things, that decedent did not have a qualifying disability as defined under the ADA and the RA. After submitting an affirmation attesting to decedent's medical and psychological problems, plaintiff then moved to seal decedent's medical records, individual education plans, and psychosocial assessments that had been attached as exhibits to the opposing affirmation. After noting strong competing interests that supported the compelling arguments advanced by both parties, the court ruled that all of the subject records would be sealed. The court acknowledged that there were strong First Amendment and common law presumptions — of public access to judicial documents and proceedings — that weighed against the seal request. Yet the court also noted that, in this circuit, courts regularly allow medical records to be filed under seal when the parties have a strong privacy interest in that medical information. Here, notwithstanding that the decedent's privacy interest in his medical records was diminished because he was deceased, the court nevertheless found that the public interest to access was outweighed by the still-significant privacy interest held by decedent. The court also found that the public's interest in access could be protected by the court's decisions not being filed under seal and by any references to the relevant records being unredacted.

Rule 60-b Motion to Vacate

In *Mandala, et al. v. NTT Data, Inc.*, 18-cv-6591- CJS (Dec. 6, 2021) — a class action under Title VII of the Civil Rights Act of 1964 and related state laws alleging disparate impact claims against defendant for its alleged policy not to hire individuals with criminal convictions — plaintiffs moved pursuant to Rule 60(b)(6) to vacate the court's judgment and permit plaintiffs to file a first amended complaint. The Rule 60(b) motion was filed after the court had granted defendant's motion to dismiss, the judgment was affirmed on appeal, and plaintiffs' petition for re-hearing en banc was denied. Plaintiffs' motion to vacate the judgment relied heavily on a reference, made by the majority in its decision denying the en banc hearing, to statistics introduced in an amicus brief, and encouragement by the dissent that plaintiffs should move under Rule 60 for leave to file an amended complaint that included those statistics. The court denied the motion, and first clarified that the liberal standard favoring leave to amend under Rule 15 applied to pretrial applications, and not to post-judgment applications under Rules 59 and 60. In the post-judgment context, plaintiffs must present adequate grounds for relief under Rule 60, and the court must give "due regard," but not "sole regard," to Rule 15, "lest the liberal amendment policy of Rule 15(a) 'swallow the philosophy favoring finality of judgments whole.'" Turning to the specifics of the application before it, the court disagreed that plaintiffs were unwitting victims of an ambiguous standard that was unpredictably applied to their detriment and then clarified by the appellate court. The court instead found that the appellate court merely summarized existing law, and therefore plaintiffs' motion to vacate was untimely because such an application under Rule 60(b)(1) was required to be made no more than one year after entry of judgment. The court also held that plaintiffs had failed to establish the "extraordinary circumstances" required for such relief under Rule 60(b)(6) because that provision was not intended to relieve plaintiffs from the consequences of their conscious and informed litigation strategy and their "free, calculated, and deliberate choices," especially when plaintiffs had multiple opportunities to add the decade-old statistics to their complaint, including after the motion to dismiss was briefed, oral argument occurred, and the court's initial decision was issued.

Judicial Immunity

In *Arce v. Vilardo*, 21-cv-00588-EAW (Nov. 28, 2021), a pro se plaintiff filed suit against the district judge who presided over plaintiff's prior lawsuit against several New York State court judges. The prior lawsuit was dismissed on grounds of judicial immunity and plaintiff claimed that the district judge abused his position as a judicial officer by protecting other judicial officers from wrongdoing, while denying him the appointment of counsel in order to hide judicial abuses. Because plaintiff was proceeding in forma pauperis, the court found that it was statutorily required to screen plaintiff's complaint, and would be obligated by statute to dismiss it if it failed to state a claim upon which relief may be granted, or if it sought monetary relief against a defendant who is immune from such an award. Then, noting that judges are absolutely immune from suit for action taken within the scope of their judicial responsibilities, and that even allegations of bad faith or malice cannot overcome judicial immunity, the court found that the allegations in plaintiff's complaint concerned actions performed by the district judge in his judicial capacity. Finally, because the defects in plaintiff's complaint were substantive and could not be cured by "better pleading," the complaint was dismissed, with prejudice, and leave to appeal to the Court of Appeals as a poor person was denied.

Kevin M. Hogan is the Managing Partner at Phillips Lytle LLP. He concentrates his practice in litigation, intellectual property and environmental law. He can be reached at khogan@phillipslytle.com or (716) 847-8331.

Sean C. McPhee is a partner with Phillips Lytle LLP where he focuses his practice on civil litigation, primarily in the area of commercial litigation. He can be reached at smcphee@phillipslytle.com or (716) 504-5749.