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Court of Appeals Finds Workplace Discrimination Claim Against School District Barred by One-Year Statute of Limitations

Amorosi v. South Colonie Independent School District, 9 NY.3d 367 (2007)

In *Amorosi v. South Colonie Independent School District*, a teacher who had received a poor rating from a school district subsequently claimed she was discriminated against because her two pregnancy leaves required leaves of absence. Petitioner argued that §296 of New York Human Rights Law and its three year statute of limitation on a discrimination claim should control. The Court found some merit to that argument, but refused to disregard the plain language of Education Law § 3813 (2-b), which provides for a one-year statute of limitations for all non-tort claims against a school district, including, the Court held, actions to redress discriminatory practices.

Annexation of Another Municipality's Property Requires Referendum; Informal Poll Insufficient.

City of Utica v. Town of Frankfort, 10 N.Y.3d 128, 855 N.Y.S.2d 1 (NY 2008)

The City of Utica sough to annex a parcel containing 225 acres of property owned by a Masonic Care Community in Herkimer County. It brought a proceeding under Article 17 of the General Municipal Law, known as the Municipal Annexation Law. An appointed referee found that the annexation satisfied the requirement that the annexation be in "the overall, public interest", basing his decision on an informal poll where 53 of the 65 residents agreed with the proposed plan. The Fourth Department concurred with the referees finding, seeing no need to hold a formal referendum.

In the case of *City of Utica v. Town of Frankfort* the Court of Appeals reversed. The Court found that under both the annexation statute and the New York State Constitution, a formal election is always necessary before any annexation can take place. A poll, taken without the additional protection of a secret ballot, is always procedurally insufficient. The Court appears to have overruled a line of appellate division cases dispensing with the election requirement in certain situations.

Court of Appeals Rules That Landowners Have No Duty to Maintain Adjoining Treewell

Vucetovic v. Epsom Downs
2008 WL 2242308

Administrative Code section 7-210 imposes tort liability on property owners that fail to maintain City-owned sidewalks

in a reasonably safe condition. The regulation acts as a cost- saving measure, transferring tort liability from the city to adjoining property owners.

On the evening of January 31st, 2004, Plaintiff Dzafer Vucetovic tripped on one of a group of cobblestones surrounding a tree well on East 58th Street between Second and Third Avenues. The City of New York had four months previously removed a tree from the site of the accident. Plaintiff and the City argued that the tree well, which predated the owner's dominion over the adjacent property, should be considered an integral part of the sidewalk for purposes of tort liability.

The Court of Appeals held that the since the sidewalk statute abrogated the common law standard, it should be construed narrowly. Because the regulation's language does not specifically address tree wells, the Court declined to impose a duty to maintain them on the adjoining landowner.

Second Department Dismisses Suit of Track Participant Hit by Shot Put

Gerry v. Commack Union Free School District, 2008 WL 2298023, 2008 N.Y. Slip Op. 05041 (2d Dept. 2008)

Wile standing in the designated shot put area at a high school track meet, plaintiff Russell Gerry was struck by a steel ball thrown by a fellow competitor. At the time of the incident, Gerry was a student and a member of the track team at Centereach High School, a school in the defendant Middle Country Central School District, and the student who threw the shot put was a member of the track team at Commack High School.

The Appellate Division found that the defendant School District established its entitlement to judgment as a matter of law by presenting undisputed evidence that Gerry assumed the risks associated with voluntary participation in shot put. The court relied on the fact that Plaintiff was a veteran participant who had thrown a shot put between 100 and 150 times and understood the rules of the sport, as well as its risks. "There is no evidence in the record that any conduct on the part of the defendants created a unique condition over and above the usual dangers associated with the sport of shot put."

Public Employees & The First Amendment

Woodlock v. Orange-Ulster BOCES, 2008 WL 2415726 (2nd Circuit 2008)[1]

In May 2006, the U.S. Supreme Court further defined how to determine whether a public employee's speech is constitutionally protected under the First Amendment. See Garcetti v. Ceballos, 547 U.S. 410, 126 S.Ct. 1951 (2006). Specifically, the Supreme Court held that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for

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[1]This case was argued by Anna Ervolina, an Attorney at Morris Duffy Alonso and Faley.

First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

Now, two years later, the Garcetti decision is impacting lower court decisions. One such example is a decision from the U.S. Court of Appeals for the Second Circuit entitled Woodlock v. Orange-Ulster BOCES, et al.. Nancy Woodlock was employed as a probationary special education guidance counselor at Orange-Ulster BOCES. In her third and last year of probation, Woodlock was advised that she would not be recommended for tenure. Rather than be denied tenure, Woodlock resigned. She then commenced a lawsuit against BOCES, its Superintendent, High School Principal and Administrative Intern claiming that she was denied tenure in retaliation for speech she made on matters of public concern.

Specifically, Woodlock claimed that she spoke out about (1) the inappropriate placement of a student who suffered from a traumatic brain injury; (2) a lack of presence of the Principal and Administrative Intern at BOCES' satellite program at Cornwall High School; and (3) a lack of certified gym and art instructors and classes at the BOCES satellite program.

Following discovery, but before the Garcetti decision was rendered, the BOCES defendants brought a motion for summary judgment dismissing the Complaint. At the time Oral Argument was heard on defendants' motion, Garcetti had been decided.

At Oral Argument, the Southern District Court Judge commented that the Garcetti decision had nothing to do with Woodlock's claims and subsequently concluded in his written decision that Plaintiff's speech concerned matters of public concern and thus constitutionally protected by the First Amendment.

The Second Circuit disagreed and held that Plaintiff's allegations do not establish a constitutional violation since her statements were made pursuant to her official duties as a special education counselor. The Court explained that since Woodlock was responsible for monitoring her students' behavior, needs and progress, she was performing the tasks she was paid to perform when she reported her concerns. Specifically relying on the Garcetti decision, the Second Circuit concluded that Woodlock was not speaking as a private citizen and that her speech was not protected under the First Amendment. As such, Plaintiff could not prove as a matter of law that any employer action taken against her violated her constitutionally protected rights.