

Stim & Warmuth, P.C.

Television dramas focus mainly on the big trial where smoking gun evidence is revealed. However, real cases are often resolved before trial through pre-trial motions. The decisions on these pre-trial motions are frequently appealed. Appeals may save you money in the long run because they can end a case before it gets to trial. In this issue we will focus on some recent appeals we have handled.

Paula J. Warmuth
Glenn P. Warmuth



Court Finds Law Unconstitutional

Just prior to his death, Joseph D. Stim was working on an appeal in a case in which he sought to prove that a Village of Great Neck law was unconstitutional. Local Law No. 6 allowed the Village to sell a resident's home at a tax lien sale without giving the resident actual notice of the sale (the law allowed notice by publication). Joe argued that selling a resident's home without giving actual notice to the resident was an unconstitutional violation of the resident's due process rights. Joe passed away just before the

appeal was argued. The Appellate Division, Second Department agreed with Joe's argument and held that the law was unconstitutional¹. Nice job Joe!

Court Vacates Default Judgment

A man drove into an open manhole in a shopping center parking lot and claimed he was injured. He sued the shopping center for damages. Notice of the lawsuit was given to the New York State Secretary of State who then mailed notice to the shopping center at the address on file. However, because the address on file was an old address, the driver won the lawsuit before the shopping center even knew it was being sued. When the driver sought to collect the judgment, the shopping center hired our firm to vacate the default judgment. The Judge in the lower Court refused to vacate the judgment and we appealed. On appeal, the Appellate Division reversed and vacated the default judgment². The Court found that the shopping center had a reasonable excuse for defaulting and a meritorious defense to the action.

You can check what address your business has on file so you can avoid this kind of problem by visiting <http://www.dos.state.ny.us> and clicking the "search for corporations or business entities" link or you can call us and we will check it for you.

Case Dismissed

Often we can end a case early in the litigation process by making a motion to dismiss. On a motion to dismiss the Court may dismiss a complaint on various grounds such as failure to state a cause of action or defense based on

documentary evidence. In a recent case we made a motion to dismiss and provided the Court with evidence that the statute of limitations had run. The motion was denied and we appealed. The Appellate Division reversed the lower Court decision and dismissed the case³. This ended the case and saved our client from having to engage in lengthy litigation.

Court Orders Insurer To Honor Policy

Insurance policies typically contain language requiring a policy holder to give notice of claims under the policy "as soon as practicable." If notice is not given "as soon as practicable" the insurance company may disclaim and refuse to cover the loss. How long is "as soon as practicable?" It depends on the facts and circumstances of the particular case. In a recent case our client gave notice of an accident within days by sending a letter to its insurance broker. The insurance company claimed it never got the notice. When the insurance company finally learned of the claim four years later, it disclaimed on the ground that the notice was not given "as soon as practicable." We brought an action against the insurance company demanding that it honor the policy. The insurance company made a motion for summary judgment claiming that notice to the broker was insufficient. The insurance company cited the general rule that notice to a broker is not notice to the insurance company. We argued that there was evidence that the broker was acting as the agent for the insurance company. The Judge agreed with us and denied the

motion. The insurance company appealed. On appeal we once again cited evidence that the broker was an agent for the insurance company. The Appellate Division agreed with us and sent the case back to the lower Court⁴. We then made a motion for summary judgment and won the case. The Judge held that in this case, contrary to the general rule, notice to the broker was considered notice to the insurance company.

An Award Of Costs

We represented two defendants in an action in Westchester. After litigating for several years, the plaintiff sought to add additional parties and a new claim to the lawsuit. We opposed the motion. We claimed that the application was too late and that our clients would be prejudiced by the delay. We won in the lower Court and the plaintiff appealed. The Appellate Division agreed with our position and affirmed the lower Court decision with costs⁵. An award of costs allows the prevailing party to recover some of the appeal expenses, such as the printing cost, from the other party.

Professor Warmuth

Glenn has been hired as an Assistant Adjunct Professor at Dowling College. Last semester Glenn taught Entertainment and Media Law. When the school learned that Glenn also has a degree in theatre he was asked to return this semester to teach Introduction to Theatre. Glenn has also been working with High School students and recently judged a Constitutional Law competition conducted by the Center for Civic Education. The winning students went to Albany for the State level competition.

Committee Work

Both Paula and Glenn are active in Suffolk County Bar Association Committees. Paula is a member of the Appellate Practice Committee and recently put together a written presentation for the Committee outlining the new rules of the New York State Court of Appeals. Glenn is a member of the Surrogate's Court Committee and the Entertainment Law Committee.



Our New Office

We have been in our new office for over three years now.

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¹*Kahen-Kashi v. Risman*, 8 AD3d 342, 777 NYS2d 755 (2nd Dept. 2004).

²*Grosso v. MTO Associates*, 12 AD3d 402, 784 NYS2d 576 (2nd Dept. 2004).

³*Wider v. Omni Title Agency*, 18 AD3d 868, 795 NYS2d 470 (2nd Dept. 2005).

⁴*MTO Associates v. Republic-Franklin Ins. Co.*, 21 AD3d 1008, 801 NYS2d 412 (2nd Dept. 2005).

⁵*Evans v. Ellis*, 13 AD3d 577, 786 NYS 334 (2nd Dept. 2004).