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THE SARATOGA COUNTY BAR ASSOCIATION

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LAW NOTES

Editor
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The views expressed in the enclosed articles are those of the authors and do not necessarily represent the views of, and should not be attributed to, the Saratoga County Bar Association.

TORTS AND CIVIL PRACTICE:

Selected Cases from the Appellate Division, 3rd Department

TIM J. HIGGINS, ESQ., *LEMIRE & HIGGINS, LLC*

Vacationing property owners still owe duty of reasonable care.

Vance v. Burkhart (Pritzker, J., 7/3/24)

Plaintiff and his wife agreed to care for the defendants' dogs (at defendants' home) while the property owners vacationed in Florida. A two-day storm dropped over 2-feet of snow on the area. Plaintiff, after clearing a spot on the back deck for the dogs to go to the bathroom, fell on the deck and injured his foot, which ultimately had to be surgically amputated. Supreme Court (Burns, J., Otsego Co.) denied the defendants' motion for summary judgment and the Third Department affirmed, finding that traveling to Florida did not relieve the defendants of their duty to "make reasonable arrangements for snow and ice removal" at their home, particularly since they directed the plaintiffs to only let the dogs go outside by way of the back deck which led to a fenced-in backyard. Furthermore, defendants had actual notice of the snowstorm by way of text messages from the plaintiffs and a photo of their car which was covered in snow.

Municipal liability claims.

Pfirman v. Village of New Paltz (Aarons, J., 6/13/24)

Injured when his bicycle tire hit a pothole (in which was located a water valve box cover) in a bike lane running along a Village road, plaintiff sued the defendant Village and the Town of New Paltz (based upon the belief that the Town maintained the roadway). Both municipalities won summary judgment from Supreme Court (Gandin, J., Ulster Co.) which the Third Department found proper. The Town did not control the area of the road where the pothole was located and the Village established that it had not received prior written notice (Village Law § 6-628) of the alleged hazard. The

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Appellate Division rejected the plaintiff's argument that prior written notice was not required because the Village affirmatively created the hazard by an act of negligence, finding that the alleged failure to fill the pothole to be flush with the roadway or the failure to raise the valve box cover "amounts to nonfeasance, rather than affirmative negligence."

Pellett v. Town of Milton (Egan, J., 6/20/24)

The lack of prior written notice of a hazardous condition required under Town Law § 65-a was fatal to the claims of this Plaintiff, who broke her leg in a fall on ice as she walked through the parking lot of the Milton Community Center. Supreme Court (Freestone, J., Saratoga Co.) granted summary judgment to the defendant and the Appellate Division affirmed. Plaintiff contended the Town's design of the community center created a hazard in the parking lot when snow melted off the building's roof and re-froze in the parking lot. But the Third Department found such conduct did not fit the affirmatively-created hazard exception to the prior written notice requirement which requires proof that the municipality's actions "immediately results in the existence of a dangerous condition."

Grasse v. State of New York (Lynch, J., 6/6/24)

Claimant, working as a delivery driver, was injured when he stepped into a pothole adjacent to a curb on a street in the Village of New Paltz. Two months later, he served the Village with a notice of claim seeking damages for his injuries, after which the Village's insurer advised that the property was not owned or maintained by the Village. Thereafter, Claimant's motion (Court of Claims Act § 10(6)) for permission to file a late claim against the State of New York was denied (Leahy-Scott, J.), with the Court concluding the claimant's excuse for delay was unreasonable and that the defendant would be prejudiced if the application was granted. Finding the lower court abused its discretion, the Third Department reversed and permitted the late claim to be filed, finding the delay to the State was minimal (approximately 3 weeks after lapse of the 90-day deadline). The Appellate Division also found it "significant," as established by the claimant's proof on the motion, that photos showed the pothole had been patched with blacktop within 7 days after the claimant's injury and that the defendant did not refute the claimant's suggestion that such repair work was performed by the State Department of Transportation, and that records of such work likely exist.

Defendant not entitled to emergency doctrine relief.

Lee v. Helsley (Egan, J.P., 6/13/24)

Plaintiff and a passenger in her car sued the defendant motorcyclist after a two-vehicle crash that occurred during a heavy rain, after the plaintiff's car hydroplaned and crossed into the motorcycle's lane of travel. Supreme Court (Gilpatric, J., Ulster Co.) granted defendant's motion for summary judgment which argued that he was not negligent because he was confronted by an emergency situation. Reversing and reinstating the complaints, the Appellate Division found summary judgment was improper due to "materially conflicting accounts as to how the collision occurred" – including the plaintiff's testimony that her car was at a standstill for up to 20 seconds before the crash, which may have given defendant ample time to take evasive action.

Amendment of complaint should have been permitted.

Fleming v. Jenna's Forest Homeowners' Assoc. (Powers, J., 6/13/24)

New York General Obligations Law § 9-103 grants immunity for ordinary negligence to landowners who permit use of their property for recreational uses. One such use is bicycle riding, which the plaintiff was doing when he was injured in a fall from a bridge on property owned by two defendants in the Luther Forest Tech Park in Malta. Supreme Court (Kupferman, J., Saratoga Co.) granted defendants' dismissal motions and denied plaintiff's cross-motions to amend the complaint, which sought to add an allegation that the defendants' failure to maintain the bridge was "willful and malicious" (a claim not barred by GOL § 9-103). The Third Department, noting that

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leave to amend "shall be freely granted in the absence of prejudice or surprise," modified the trial court order by permitting plaintiff's proposed amendment while dismissing the first cause of action alleging negligence.

Summary judgment in rear-end collision accident.

Campney v. Hatch (Powers, J., 7/3/24)

Plaintiff was a backseat passenger in a car that was stopped behind another vehicle at a traffic light which the driver of plaintiff's vehicle said was red when the auto was rear-ended by defendant's vehicle. But Supreme Court (McNally, J., Rensselaer Co.) denied plaintiff's motion for summary judgment on liability, finding there were questions of fact whether defendant could establish a non-negligent explanation for the collision. Reversing, the Third Department found that even when viewing the proof in the light most favorable to the defendant, despite conflicting testimony whether the traffic light was red or green at the time of the crash, there was insufficient proof showing the vehicle in which plaintiff was a passenger came to a sudden and abrupt stop.

Product liability claim for infant saved on appeal.

DeCaro v. Somerset Industries, Inc. (Pritzker, J., 6/13/24)

The infant (2 years old) plaintiff suffered a gruesome injury to her right hand when it was crushed by rollers in the defendant's dough-sheeter machine which was operated in the infant's mother's bakery. The defendant manufacturer, after making a cross-claim against the defendant bakery and a third-party action against the infant's mother, moved for summary judgment. Supreme Court (O'Connor, J., Albany Co.) dismissed the complaint upon a determination that the machine was reasonably safe for its intended use with adequate warnings and that the infant's use was not reasonably foreseeable. Citing plaintiff's proof opposing the summary judgment motion, including expert affidavits from two engineers, the Third Department found "the proximate cause issue is one for a jury" and reinstated the plaintiff's defective design and failure to warn causes of action.

Supreme Court Overrules "Chevron" Doctrine

DAVID W. MEYERS, ESQ., *MEYERS & MEYERS, LLP*

Every once in a while, I decide to get off my high horse and talk a little more (immigration) ***law*** than usual. This is one of those times.

Many people don't pay much attention to rulings by the U.S. Supreme Court (SCOTUS) unless they see a decision as directly affecting them. Most are obvious. In June, though, SCOTUS issued its decision in Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce, et al.,[1] in which it overruled a fundamental 1984 precedent of administrative law found in Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.[2]

Chevron had required the courts to defer to agencies when interpreting ambiguous statutes as long as the agency's interpretation was "reasonable." This was commonly referred to as the "Chevron" Doctrine. Loper Bright held that the Administrative Procedures Act (APA) requires courts to exercise

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[1] 603 U. S. ____ (2024), Case No. 22-451.

[2] 467 U.S. 837 (1984).

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Supreme Court Overrules “Chevron” Doctrine

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their independent judgment in deciding whether an agency has acted within its statutory authority, and consequently, courts may not defer to an agency interpretation of the law simply because a statute is ambiguous.

In his concurrence, Justice Gorsuch put it as follows:

“…[T]he Constitution, the APA, and our longstanding precedents set those ground rules [for judging agency action] some time ago. And under them, agencies cannot invoke a judge-made fiction to unsettle our Nation’s promise to individuals that they are entitled to make their arguments about the law’s demands on them in a fair hearing, one in which they stand on equal footing with the government before an independent judge.”

The “Chevron” Doctrine had wide relevance across the legal and regulatory landscape. Laws related to the environment, public health, workplace hazards, and drug pricing, to name just a few, were, and now could be differently, impacted. The list could go on and on.

In terms of U.S. immigration law, Loper Bright will no doubt also have a profound impact, both good and bad. Because the decision creates a power shift away from federal agencies and to the federal courts, the result will likely lead to less national uniformity in the application of U.S. immigration law since each federal circuit court of appeals (and even the district courts) will now have its own interpretation of the law. Likely too, the Board of Immigration Appeals’ (BIA) decisions will also be reviewed and probably overruled more frequently.

But the Loper Bright decision is not all bad. That is, this dramatic change in U.S. administrative law could lead to many U.S. district courts overturning bad decisions denying petitions and other applications for benefits coming out of U.S. Citizenship and Immigration Services (“USCIS”) and other federal agencies.

Kelli Stump, President of the American Immigration Lawyers Association (AILA) said, “The Loper Bright … case[] had nothing to do with immigration law and policy, but SCOTUS overturning the longstanding Chevron doctrine will have a significant impact on many immigration adjudications.”[3]

Ms. Stump went on to say:

“This now means that an agency’s interpretation of the INA (Immigration and Nationality Act) doesn’t automatically prevail, which could level the playing field for immigrants and their families and employers. In removal cases, those seeking review of immigration judges’ or Board of Immigration Appeals decisions should now have more opportunity to do so. Employers seeking to obtain a favorable interpretation of a statute granting H-1B or L visa classification to a noncitizen worker may also benefit.”[4]

Candidly, this decision means that more immigration matters are likely to end up in court. And in today’s litigious environment, that means more “good” immigration agency policies are more likely to be challenged, perhaps successfully, and those policies that restrict immigrants’ access to benefits may be harder to challenge in federal court. Time will tell.

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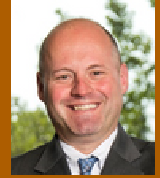
[3] AILA President: SCOTUS Overturning “Chevron” Doctrine Will Impact Immigration Cases, June 28, 2024, AILA Doc. No. 24062804.

[4] Id.

Press Release

Bond Announces Saratoga Attorney Michael D. Billok Named in 2024 *New York Super Lawyers Upstate Edition*



(Saratoga, NY): Bond, Schoeneck & King is pleased to announce that Michael D. Billok of the firm's Saratoga Springs office has been recognized in the 2024 *New York Super Lawyers Upstate Edition* in Employment and Labor.

Mike regularly represents employers in state and federal court, defending against actions alleging violations of employment laws such as the Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act, including class actions, as well as collective and class actions under the Fair Labor Standards Act (FLSA) and New York Labor Law (NYLL).

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