

NEW YORK COURT OF APPEALS

In the Matter of Luz Solla v. Elizabeth Berlin

24 N.Y.3d 1192 (2015) · No. No. 24 · Decided February 19, 2015

SUMMARY

The New York Court of Appeals reversed an Appellate Division decision awarding attorneys' fees under New York's Equal Access to Justice Act. The court held that, even assuming the catalyst theory applied to the statutory definition of a prevailing party, the petitioner could not recover fees from the State because the State had not changed its position in response to the litigation. The court expressly declined to decide whether the catalyst theory is available under New York law.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Read; Judge Pigott; Judge Rivera; Judge Abdus-Salaam; Judge Stein; Judge Fahey
JURISDICTION	New York
DECIDED	February 19, 2015
DOCKET	No. 24
DISPOSITION	reversed
PROCEDURAL POSTURE	Petitioner commenced an Article 78 proceeding seeking to compel city agencies to comply with and the state agency to enforce a fair-hearing decision. After the city agency restored the benefits and paid retroactive benefits, the proceeding became moot. Petitioner sought attorneys' fees under New York's Equal Access to Justice Act. Supreme Court denied fees, the Appellate Division reversed and awarded fees, and the Court of Appeals reviewed the certified question.
STANDARD OF REVIEW	Review of the certified question and application of the statutory prevailing-party requirement under CPLR article 86.
PRECEDENTIAL VALUE	Published memorandum opinion of the New York Court of Appeals; precedential.
PARTIES	Elizabeth Berlin v. Luz Solla

TOPICS

attorney fees

administrative law

statutory interpretation

mootness

appellate procedure

PRACTICE AREAS

administrative law

civil procedure

attorney fees

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether Solla was entitled to attorneys' fees from the State under New York's Equal Access to Justice Act based on the catalyst theory.
2. Whether, assuming the catalyst theory applied under CPLR article 86, the State had been prompted by Solla's lawsuit to change its position so that Solla could recover fees from the State.

HOLDINGS

1. Even assuming without deciding that the catalyst theory applies to the definition of a prevailing party under CPLR 8601, petitioner could not recover attorneys' fees from the State because the State had not changed its position in response to the lawsuit.

KEY QUOTATIONS

“The party from which plaintiffs seek their fees and costs must be prompted into action in order for fees to be recoverable” (- 5 -)

“It is unnecessary for us to decide whether the catalyst theory is New York law, and we take no position on that question at this time.” (- 5 -)

FACTUAL BACKGROUND

The New York City Human Resources Administration reduced Luz Solla's shelter allowance. At a fair hearing before the New York State Office of Temporary and Disability Assistance, HRA agreed to reverse the reduction and restore lost benefits retroactively, and OTDA issued a decision consistent with that agreement. After Solla commenced an Article 78 proceeding, HRA restored the allowance and paid the retroactive benefits, while the State had consistently supported Solla's position.

PROCEDURAL HISTORY

The New York City Human Resources Administration agreed at a fair hearing to restore petitioner's shelter allowance and retroactive benefits, and the New York State Office of Temporary and Disability Assistance issued a decision reflecting that agreement. After HRA ultimately complied, Supreme Court dismissed the Article 78 proceeding as moot and denied petitioner's fee application. The Appellate Division reversed, recognized the catalyst theory, awarded attorneys' fees, and remanded for a hearing on the amount. The Court of Appeals reversed and denied fees.

DISPOSITION

reversed

CASES CITED

- Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources, 532 U.S. 598 (2001)
- Auguste v. Hammons, 285 A.D.2d 417 (1st Dep't 2001)
- Citizens Coalition for Block Grant Compliance, Inc. v. Euclid, 717 F.2d 964 (6th Cir. 1983)
- Omaha Tribe of Nebraska v. Swanson, 736 F.2d 1218 (8th Cir. 1984)
- Idaho Conservation League, Inc. v. Russell, 946 F.2d 717 (9th Cir. 1991)

OPINION

PER CURIAM.

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This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 24

In the Matter of Luz Solla,

Respondent,

v.

Elizabeth Berlin &c.,

Appellant,

et al.,

Respondents.

Cecelia C. Chang, for appellant.

Peter A. Kempner, for respondent Solla.

Peter Vollmer; Robin Schimminger; The Association of the Bar of the City of New York; The Legal Aid Society et al., amici curiae.

MEMORANDUM:

The order of the Appellate Division should be reversed, without costs, petitioner's application for attorneys' fees denied, and the certified question answered in the negative.

After the New York City Human Resources Administration (HRA) reduced petitioner's shelter allowance, she requested a

"fair hearing" before the New York State Office of Temporary and Disability Assistance (OTDA). At the hearing, HRA, a City agency, agreed to reverse its decision and restore petitioner's lost benefits retroactively. OTDA, a State agency, issued a "Decision after Fair Hearing" consistent with HRA's representation. HRA did not act immediately, and petitioner's attorney contacted OTDA, seeking enforcement of its decision. OTDA responded by letter stating that, to its knowledge, HRA had complied.

Petitioner next commenced this article 78 proceeding seeking to compel HRA and another City agency to comply with, and OTDA to enforce, OTDA's decision. There is no dispute that HRA subsequently restored petitioner's shelter allowance and paid retroactive benefits. OTDA sought dismissal of the proceeding, since HRA had by then fully complied with OTDA's ruling.

Petitioner then sought attorneys' fees from the State under New York State's Equal Access to Justice Act (EAJA) (CPLR article 86), which "create[d] a mechanism authorizing the recovery of counsel fees and other reasonable expenses in certain actions against the state of New York, similar to the provisions of federal law contained in 28 USC § 2412 (d) and the significant body of case law that has evolved thereunder" (CPLR 8600).

Petitioner contended that she should be deemed a "prevailing party" within the meaning of CPLR 8601 and 8602 (f) and therefore entitled to attorneys' fees, because her initiation of the

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lawsuit was a catalyst for the relief she sought, namely HRA's compliance.

Supreme Court dismissed the proceeding as moot, and denied her application for attorneys' fees on the ground that no relief had been granted to her by the court, citing the United States Supreme Court's decision in *Buckhannon Board & Care Home, Inc. v West Virginia Dept. of Health and Human Resources* (532 US 598 [2001]) and the First Department's decision in *Auguste v Hammons* (285 AD2d 417 [1st Dept 2001]). *Buckhannon* held, with respect to the fee-shifting provisions of the Fair Housing

Amendments Act of 1988 and the Americans with Disabilities Act of 1990, that a fee claimant is a "prevailing party" only if he or she has obtained "some relief by the court" (Buckhannon, 532 US at 603). That decision, rejecting the catalyst theory, was applied to the "prevailing party" requirement of CPLR article 86 in Auguste.

On appeal, petitioner challenged only Supreme Court's denial of her application for attorneys' fees. The Appellate Division reversed Supreme Court's order and judgment, insofar as appealed from, granted petitioner's application for attorneys' fees, and remanded for a hearing on their amount (106 AD3d 80 [1st Dept 2013]).

In doing so, the Appellate Division overruled its own decision in Auguste and, for the first time, recognized the catalyst theory (id. at 81-93). Observing that the New York

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State EAJA was modeled on the federal EAJA, the court reasoned that New York courts must interpret the state statute according to the federal judiciary's understanding of the federal EAJA as of 1989, when the New York statute was enacted. At that time, the catalyst theory was a standard generally accepted by United States Courts of Appeals in evaluating whether to award counsel fees under the federal EAJA (id. at 87-88; see Buckhannon, 532 US at 602 n 3 [citing decisions from federal Courts of Appeals recognizing the theory]). The Appellate Division reasoned, *inter alia*, that if the New York State Legislature had intended "to restrict the statute further by eliminating application of the theory, it would have incorporated that into the text" (106 AD3d at 87-88 [citations omitted]). One Justice dissented, agreeing with the majority that "we are not required to accept Buckhannon's rejection of the catalyst theory," but "fail[ing] to see any reason not to adopt Buckhannon's sound logic" (id. at 96 [Sweeney, J., dissenting] [emphasis in original]).

Subsequently, the Appellate Division granted respondent leave to appeal to this Court, certifying the question whether its order had been properly made. We answer the certified

question in the negative.

Assuming, without deciding, that the catalyst theory applies to the definition of a "prevailing party" for the purpose of CPLR 8601, petitioner cannot recover attorneys' fees on that theory in any event. Under the pre-Buckhannon federal precedent

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that petitioner would have us apply, a fee claimant recovers attorneys' fees only if his or her lawsuit prompted a change in position by the party from which claimant seeks reimbursement (see *Citizens Coalition for Block Grant Compliance, Inc. v Euclid*, 717 F2d 964, 966-967 [6th Cir 1983]; accord *Omaha Tribe of Nebraska v Swanson*, 736 F2d 1218, 1221 [8th Cir 1984]). "The party from which plaintiffs seek their fees and costs" must be "prompted into action" in order for fees to be recoverable (*Idaho Conservation League, Inc. v Russell*, 946 F2d 717, 721 [9th Cir 1991]).

Here, petitioner seeks payment of attorneys' fees from the State of New York. But the State has consistently sided with petitioner regarding HRA's reduction of her shelter allowance. The City altered its position following petitioner's commencement of this proceeding, but the State did not. Consequently, petitioner could not recover attorneys' fees under CPLR article 86 even if the catalyst theory were New York law. Therefore, the Appellate Division erred in granting petitioner's application. It is unnecessary for us to decide whether the catalyst theory is New York law, and we take no position on that question at this time.

* * * * *

Order reversed, without costs, petitioner's application for attorneys' fees denied and certified question answered in the negative, in a memorandum. Chief Judge Lippman and Judges Read, Pigott, Rivera and Abdus-Salaam concur. Judges Stein and Fahey took no part.

Decided February 19, 2015

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