

SUPREME COURT OF NEW JERSEY

Bernice Pisack v. B & C Towing, Inc., consolidated with Eptisam Pellegrino v. Nick's Towing Service, Inc. and Christopher Walker v. All Points Automotive & Towing, Inc.

Pisack · No. 081492; A-17/18-18 · Decided January 16, 2020

SUMMARY

The Supreme Court of New Jersey considered consolidated putative class actions challenging fees charged for police-directed, non-consensual vehicle towing. The Court held that 2018 amendments to the Predatory Towing Prevention Act did not apply retroactively and affirmed the Appellate Division’s rulings concerning exhaustion, derivative immunity, and the Towing Act and Consumer Fraud Act claims. The Court reversed the reinstatement of claims under the Truth-in-Consumer Contract, Warranty and Notice Act because the plaintiffs could not establish the required contractual or written-notice elements.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Justice LaVecchia; Chief Justice Rabner; Justice Albin; Justice Patterson; Justice Fernandez-Vina; Justice Solomon; Justice Timpone
JURISDICTION	New Jersey
DECIDED	January 16, 2020
DOCKET	081492; A-17/18-18
DISPOSITION	other
PROCEDURAL POSTURE	Defendant towing companies appealed by motions for leave to appeal from a consolidated Appellate Division decision reversing trial-court rulings in three putative class actions. The Supreme Court granted leave to appeal, affirmed the Appellate Division's rulings concerning the Towing Act, Consumer Fraud Act, exhaustion, immunity, and remand, but reversed its ruling that plaintiffs could pursue claims under the TCCWNA.
STANDARD OF REVIEW	The Court reviewed statutory interpretation and retroactivity issues de novo and reviewed the TCCWNA pleading issue based on whether plaintiffs could state a cause of action under the statute.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	B & C Towing, Inc., Nick's Towing Service, Inc. v. Bernice Pisack, Eptisam Pellegrino

TOPICS

consumer protection statutory interpretation legislative intent appellate procedure plain meaning rule

PRACTICE AREAS

consumer protection statutory interpretation appellate procedure municipal law

QUESTIONS PRESENTED

1. Whether the 2018 amendments to the Predatory Towing Prevention Act applied retroactively to towing charges arising before the amendments took effect.
2. Whether the pre-2018 Towing Act limited permissible non-consensual towing and storage charges to services and fees included on the Director's schedule and regulations.
3. Whether plaintiffs were required to exhaust administrative remedies before filing suit under the Towing Act.
4. Whether private towing companies acting at the direction of local police had derivative immunity under the Tort Claims Act.
5. Whether the Towing Act and Consumer Fraud Act claims could proceed, including on a class-action basis subject to further factual development.
6. Whether vehicle owners subjected to non-consensual towing could state claims under the Truth-in-Consumer Contract, Warranty and Notice Act.

HOLDINGS

1. The 2018 amendments to the Towing Act do not apply retroactively and have no application to the events underlying these appeals.
2. Under the pre-2018 Towing Act, a towing company could not charge for a private-property or other non-consensual towing or related storage service unless the service and fee were included on the Director's schedule or otherwise permitted by the Director's regulations.
3. The Towing Act does not require preliminary exhaustion of administrative remedies before filing in Superior Court; the private towing companies did not obtain derivative Tort Claims Act immunity merely because local police directed the tow; and the Towing Act and CFA claims were properly remanded for further proceedings, including potential class treatment depending on the facts developed.
4. Vehicle owners subjected to non-consensual police-directed towing cannot state a TCCWNA claim on these facts because they did not establish that the towing companies were qualifying sellers, lessors, creditors, lenders, or bailees in a contractual consumer transaction, or that the post-payment invoices were written consumer contracts or notices.

KEY QUOTATIONS

“The difference between the two iterations of the law is stark.” (p. 14)

“Given that statutory and regulatory language, the Appellate Division reached the indisputable conclusion that “if a service is not listed on the Director’s schedule, a towing company cannot charge for that service.”” (p. 20)

“The vehicle owners had no choice but to pay the fee in order to retrieve their cars.” (p. 29)

“Notwithstanding their ability to establish the final two elements of a TCCWNA claim, plaintiffs failed to establish elements one and two.” (p. 30)

FACTUAL BACKGROUND

Plaintiffs' vehicles were towed without their consent at the direction of local police by privately owned towing companies operating under municipal contracts. The towing companies charged fees, including administrative and other charges, that plaintiffs alleged were not included on the Director of the Division of Consumer Affairs' schedule of permitted non-consensual towing and storage services. Plaintiffs paid the charges to recover their vehicles and brought putative class actions under the Towing Act, Consumer Fraud Act, and TCCWNA.

PROCEDURAL HISTORY

In the three consolidated actions, vehicle owners challenged fees charged for non-consensual police-directed towing under the Predatory Towing Prevention Act, Consumer Fraud Act, and TCCWNA. One action was dismissed on summary judgment, another was allowed to proceed only individually, and the Appellate Division reversed and remanded all three matters. The Supreme Court granted defendants' motions for leave to appeal and affirmed in part and reversed in part.

DISPOSITION

other

REMAND INSTRUCTIONS

The Towing Act and Consumer Fraud Act claims remain remanded for further proceedings consistent with the Appellate Division's opinion, including factual development relevant to potential class treatment. The TCCWNA claims are dismissed or otherwise rejected because plaintiffs cannot state a cause of action under that statute.

CASES CITED

- James v. N.J. Mfrs. Ins. Co., 216 N.J. 552, 563-64, 572 (2014)
- In re D.C., 146 N.J. 31, 50-51 (1992)
- Cruz v. Cent. Jersey Landscaping, Inc., 195 N.J. 33, 48 (2008)
- Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 389 (2016)
- Ardan v. Bd. of Review, 231 N.J. 589, 611-13 (2018)
- 2nd Roc-Jersey Assocs. v. Town of Morristown, 158 N.J. 581, 605 (1999)

- Schiavo v. John F. Kennedy Hosp., 258 N.J. Super. 380, 386 (App. Div. 1992)
- Pisack v. B&C Towing, Inc., 455 N.J. Super. 225, 231-50 (App. Div. 2018)
- Dugan v. TGI Fridays, Inc., 231 N.J. 24, 68 (2017)
- Kent Motor Cars, Inc. v. Reynolds & Reynolds Co., 207 N.J. 428, 457 (2011)
- Spade v. Select Comfort Co., 232 N.J. 504, 515-16, 520, 524 (2018)
- Shelton v. Restaurant.com, Inc., 214 N.J. 419, 441-43 (2013)
- Mattson v. Aetna Life Ins. Co., 124 F. Supp. 3d 381, 393 (D.N.J. 2015)
- Sgro v. Getty Petroleum Corp., 854 F. Supp. 1164, 1174-75 (D.N.J. 1994)
- McGlynn v. Parking Auth. of Newark, 86 N.J. 551, 557 (1981)
- Marsh v. Am. Locker Co., 7 N.J. Super. 81, 84 (App. Div.), aff'd o.b., 6 N.J. 81 (1950)
- State v. Carr, 118 N.J.L. 233, 234 (Sup. Ct. 1937)