

COURT OF APPEALS OF NEW YORK

City of New York v. Smokes-Spirits.Com, Inc.

12 N.Y.3d 616 (2009) · Decided June 9, 2009

SUMMARY

The New York Court of Appeals answered two certified questions from the Second Circuit in the negative. It held that New York City lacked standing under General Business Law § 349(h) to recover lost cigarette-tax revenue because its alleged injury was derivative of consumer injuries. The court also held that Public Health Law § 1399-ll did not authorize the City's common-law public nuisance claims based primarily on alleged cigarette-tax evasion.

CASE DETAILS

COURT	Court of Appeals of New York
WRITING FOR THE COURT	Ciparick, J.; Chief Judge Lippman; Judge Graffeo; Judge Read; Judge Smith; Judge Pigott; Judge Jones
JURISDICTION	New York
DECIDED	June 9, 2009
DISPOSITION	other
PROCEDURAL POSTURE	The United States Court of Appeals for the Second Circuit certified two questions concerning New York law to the New York Court of Appeals.
STANDARD OF REVIEW	De novo review of certified questions of New York law and statutory interpretation.
PRECEDENTIAL VALUE	precedential
PARTIES	City of New York v. Smokes-Spirits.Com, Inc., Hemi Group, LLC

TOPICS

consumer protection

deceptive trade practices

tax collection

statutory interpretation

appellate procedure

PRACTICE AREAS

consumer protection

tax litigation

municipal law

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the City has standing to assert a claim under General Business Law § 349(h) for lost cigarette-tax revenue allegedly resulting from deceptive Internet cigarette sales.
2. Whether the City may assert a common-law public nuisance claim predicated on Public Health Law § 1399-ll where the alleged injury primarily involves cigarette-tax evasion.

HOLDINGS

1. The City lacks standing to bring its General Business Law § 349(h) claim because its alleged lost tax revenue is an indirect or derivative injury arising from injuries allegedly suffered by consumers.
2. The City may not assert a common-law public nuisance claim predicated on Public Health Law § 1399-ll for conduct primarily involving alleged cigarette-tax evasion.

KEY QUOTATIONS

“derivative actions are barred” (622)

“Being purely contingent on harm to third parties, these injuries are indirect” (623)

“We reject the City's assertion that it may state a cognizable section 349 (h) claim "simply" by alleging "consumer injury or harm to the public interest."” (624)

“permitting the present public nuisance actions to proceed would not be consistent with the legislative scheme.” (629)

FACTUAL BACKGROUND

Out-of-state entities and persons sold and shipped cigarettes over the Internet to New York City residents from jurisdictions with comparatively low cigarette taxes. The City alleged that defendants deceptively represented that the sales were tax-free and failed to file Jenkins Act reports, causing the City to lose cigarette-tax revenue that could otherwise have been collected from purchasers. The City also alleged that the shipments constituted a public nuisance under a theory based on Public Health Law § 1399-ll, but did not allege that defendants made unauthorized shipments to minors.

PROCEDURAL HISTORY

The City brought consolidated actions against out-of-state Internet cigarette sellers, alleging deceptive marketing, failure to file Jenkins Act reports, lost cigarette-tax revenue, and public nuisance. The federal district court dismissed the City's General Business Law § 349 and public nuisance claims. On appeal, the Second Circuit certified whether the City had standing under section 349 and whether it could assert a common-law public nuisance claim predicated on Public Health Law § 1399-ll. The Court of Appeals answered both questions in the negative.

DISPOSITION

other

CASES CITED

- Karlin v. IVF America, Inc., 93 N.Y.2d 282, 291 (1999)
- Stutman v. Chemical Bank, 95 N.Y.2d 24, 29-30 (2000)
- Blue Cross & Blue Shield of N.J., Inc. v. Philip Morris USA Inc., 3 N.Y.3d 200, 205-209 (2004)
- Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, 85 N.Y.2d 20, 24-26 (1995)
- Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc., 191 F.3d 229, 239 (2d Cir. 1999)
- Ganim v. Smith & Wesson Corp., 258 Conn. 313, 373, 780 A.2d 98, 134 (2001)
- Securitron Magnalock Corp. v. Schnabolk, 65 F.3d 256, 264 (2d Cir. 1995)
- Gaidon v. Guardian Life Ins. Co. of Am., 94 N.Y.2d 330, 344 (1999)
- Copart Industries, Inc. v. Consolidated Edison Co. of N.Y., 41 N.Y.2d 564, 568 (1977)
- New York Trap Rock Corp. v. Town of Clarkstown, 299 N.Y. 77, 83-85 (1949)
- Lawton v. Steele, 152 U.S. 133, 140 (1894)
- Fumarelli v. Marsam Development, Inc., 92 N.Y.2d 298, 303, 307 (1998)
- Uhr v. East Greenbush Central School District, 94 N.Y.2d 32, 38, 40 (1999)
- Hammer v. American Kennel Club, 1 N.Y.3d 294, 299-300 (2003)
- McLean v. City of New York, 12 N.Y.3d 194, 200-201 (2009)
- Saratoga County Chamber of Commerce v. Pataki, 100 N.Y.2d 801, 812 (2003)
- City of New York v. Milhelm Attea & Bros., Inc., 550 F. Supp. 2d 332, 349 (E.D.N.Y. 2008)