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School Districts Not Bound By Prior Decision

The California Supreme Court upheld the appellate court's conclusion that the school district suit was not barred by the judgment in Salazar's previous case. The court determined that when the issue involves only a question of law, not a question of fact, a prior judgment is not determinative if the result is unjust or if the public interest dictates relitigation of the issue.

Because the prior decision was not officially published, no source of legal authority existed. The result was uncertainty among the school districts concerning the constitutionality of §39807.5. The court found that the public interest of the students, taxpayers, and school districts mandated that the issue be resolved to provide uniformity in the school districts. As support for this conclusion, the court reasoned that an erroneous decision in Salazar's case could deny the school districts revenue they were statutorily entitled to raise. Consequently, school districts could be forced to eliminate transportation if they were unable to afford it without the revenue authorized by the statute.

Moreover, in the original action, evidence of the unconstitutionality of the statute was presented. However, the school districts, which were not parties to the action, did not have an opportunity to defend the constitutionality of the section.

No Violation of Free School Guarantee

The California Supreme Court determined that §39807.5 did not violate the free school guarantee of the California Constitution, which provides for a free school in each district for at least six months every year after the first year in which a school has been established.

The court began its analysis by attempting to examine the intent of the framers of the California Constitution but found little guidance as to whether it was permissible for school districts to charge a fee for transportation. The court noted that the framers did not consider transportation to be a part of the school system, support-

ing the view that transportation was not part of the free school guarantee.

Next, the court examined its own decisions and those of other states interpreting similar provisions. In doing so, the court adopted the standard from a previous California case that the free school guarantee only extends to "necessary elements of any school's activity."

In applying this standard, the court refused to adopt Salazar's argument that bus transportation is a necessary element of any school's activity. The court's analysis focused on the fact that, without bus transportation, students were not denied an opportunity to receive an education. Bus transportation was not an integral part of the education system; while transportation may provide convenience for students, the court noted that all students were not required to use the same mode of transportation.

The court also reasoned that transportation was not an expense unique to education, such as textbooks and teachers' salaries. Further, school districts are not required by law to provide bus transportation for students. Therefore, the court declined to find that bus transportation was within the scope of the free school guarantee of the California Constitution.

Section 39807.5 Survives Equal Protection Analysis

The supreme court further held that §39807.5 did not facially violate the equal protection clause of the California Constitution. The court rejected the argument that the section discriminated against poor students by creating a classification based on wealth that affected the fundamental right to education. The court pointed out that students who are unable to pay the transportation fees are exempt from payment under the section.

The supreme court also rejected the argument that the section promoted inequality in the treatment of students in different school districts, depending on whether the district charged for transportation and how the district determined the level of indigency that exempt-

ed a child from paying the transportation fee. The court found that these differences did not necessarily result in a violation of the equal protection clause.

When a school district provided transportation without charge, it was available to all students. In districts that charged for the transportation, those students who could not afford it would still have access to transportation. Therefore, in either case, poor students would have access to transportation if their school district chose to provide it.

The Dissenting Opinion

As the lone dissenter, Justice Mosk concluded that §39807.5 violated the free school guarantee of the California Constitution. The reasoning behind his conclusion was that such fees would threaten the opportunity for children who could not afford transportation to receive an education. He also believed that those who did not meet the definition of indigent imposed by the school district still might not be able to afford transportation, which could effectively deny students access to an education. In finding §39807.5 violative of the free school guarantee clause, he did not reach the issue of whether it conflicted with the equal protection clause of the California Constitution.

Barbara L. Gallagher

Baltimore City Kosher Laws Require Intent To Defraud Consumers And Do Not Violate Maryland's Constitution

In *Barghout v. Mayor*, 600 A.2d 841 (Md. 1992), the Maryland Court of Appeals held that Baltimore City kosher laws, which prohibit fraud in the sale of kosher products, do not violate the Maryland Constitution. Furthermore, no individual who sincerely believes his conduct conforms to kosher requirements can be convicted of violating kosher laws,

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Kosher Laws

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even if his actions constitute a technical violation.

Background

Kosher food products are prepared in accordance with Orthodox Hebrew rules and dietary laws. Orthodox Jews buy kosher foods in order to comply with religious requirements. Other consumers purchase kosher products because they feel these foods are healthier or of a higher quality than non-kosher foods.

In order to ensure that products marketed as kosher actually comply with the dietary standards set forth by the Hebrew religion, many states and municipalities have adopted kosher laws and ordinances. In Baltimore City, the Bureau of Kosher Meat and Food Control ("the Bureau") is responsible for ensuring that food offered for sale as kosher is, in fact, kosher. Persons who fraudulently market non-kosher food as kosher can be fined and/or imprisoned.

George Barghout ("Barghout") owned and operated an establishment called Yogurt Plus in Baltimore City. On September 1, 1989, the Bureau received a complaint that Yogurt Plus was violating kosher laws. In response to the complaint, the Bureau sent inspector Rabbi Kurefeld to Yogurt Plus to investigate.

Rabbi Kurefeld noticed advertisements for kosher hot dogs both outside the store and inside on a menu board. The kosher hot dogs were not, however, what they purported to be. Although the hot dogs were kosher when they arrived at the Yogurt Plus, they were placed on a rotisserie next to non-kosher Polish sausage and non-kosher hot dogs. Grease from the non-kosher Polish sausages and hot dogs contacted the kosher hot dogs and stripped them of their kosher status.

Rabbi Kurefeld explained to Barghout that calling a food product kosher when it did not meet kosher standards constituted false advertising. Both Rabbi Kurefeld and the City Solicitor issued warning letters to Barghout.

On three subsequent occasions between October 11 and November 15, 1989, Rabbi Kurefeld returned to Yogurt Plus only to discover that the offending conditions remained unaltered. A second warning letter was sent, and finally, Barghout was charged with violating the kosher ordinance.

On November 15, 1990, a judge in the District Court of Maryland for Baltimore City found Barghout guilty of violating the Baltimore City ordinance and ordered him to pay a fine and court costs. Two months later, Barghout sought a declaratory judgment from the United States District Court for the District of Maryland that the Baltimore City Code violated the First and Fourteenth Amendments of the United States Constitution.

Before addressing the federal constitutional claim, the district court judge certified two questions to the state's highest court, the Maryland Court of Appeals.

Kosher Laws Punish Only Sellers Who Knowingly Deceive Consumers

The first question before the Maryland Court of Appeals was whether a person who honestly, albeit incorrectly, believed his conduct conformed to kosher standards could be convicted of violating the Baltimore kosher laws. The appellate court found that the Baltimore City Council had intended to punish only those sellers who knowingly deceived customers into buying products falsely labeled as kosher. The ordinance specifically stated that it applied to acts done "with intent to defraud." Thus, the court concluded that the law was not designed to punish sellers who honestly but erroneously believed their products were kosher.

Next, the court focused on the state of mind required to sustain a conviction. The court concluded that there were three potential states of mind that could constitute violations of the ordinance. The seller, with intent to defraud, could be convicted by representing non-kosher food products as kosher when: 1) he knew that they were not kosher; 2) he believed that they were probably not kosher; or 3) he did not really know whether or not

they were kosher.

Thus, only sellers who wilfully engaged in commercial deceit by making untrue representations may be found to violate the ordinance; sellers who sincerely believed that their food products met the kosher requirements would not be liable.

Kosher Laws Do Not Violate Maryland's Constitution

The second question before the Maryland Court of Appeals was whether the Baltimore City kosher ordinance violated Maryland's Constitution.

Barghout argued that the word kosher was too vague to be enforced. He insisted that sellers, like himself, were at the mercy of individual inspectors licensed to apply their own personal standards on what constitutes kosher or non-kosher food. The court disagreed with Barghout's interpretation of the ordinance. Inspectors were given little discretion and were not responsible for determining guilt. Although the inspectors' personal interpretations of kosher rules played a role in the determination of whether a particular product was kosher, the seller's state of mind was the critical factor under the ordinance.

The appellate court also found that the word kosher was not overly vague. The kosher ordinance provided that in order to comply with the law, individuals "must adhere to and abide by the Orthodox Hebrew religious rules and regulations and the dietary laws." The fact that particular foods were labeled kosher did not mean that they received a special blessing. In fact, the food product, in and of itself, has no religious significance. A kosher product is simply food that is fit for consumption according to Jewish dietary laws. It is the observance of these dietary laws that involves Jewish religious beliefs.

Although factors that make particular foods fit for consumption under these dietary laws can be complex at times, the overwhelming majority of kosher standards are well-settled. The court emphasized that complexity is not to be confused with vagueness. A statute

is not vague if the meaning of the disputed words can be fairly ascertained by reference to judicial determinations, dictionaries, or treatises. In this case, many reliable references were available to instruct individuals about proper compliance with kosher standards. Furthermore, the United States Supreme Court has acknowledged that the word kosher is not vague, but instead, has a fairly definite meaning.

Therefore, the ordinance, which was designed to prevent fraud in the sale of food products, did not in any way infringe on either Barghout or his customers' freedom to practice whatever religion they chose. The court concluded that nothing in Baltimore's kosher food ordinance violated the free exercise of religion guaranteed by the Maryland Constitution.

Although Barghout also challenged the Baltimore City ordinance under the United States Constitution, this claim had to be determined by the federal courts. Therefore the Maryland Court of Appeals did not address this issue.

Kalina Tulley

When Customer Gives Oral Authorization For Repairs, Mechanic Is Entitled To Payment Regardless Of Written Estimate Requirement

In *Clark v. Luepke*, 826 P.2d 147 (Wash. 1992), the Supreme Court of Washington held that a mechanic may collect fees for work performed despite the absence of a written estimate if such repairs were authorized by the customer. The court also found that in the absence of proof of injury, customers may not assert an action against mechanics who violated provisions of the Automotive Repair Act.

Background

Kerry Clark ("Clark") owned a 1978 Jeep with a remanufactured high performance engine. While the engine was still under warranty, it seized up, requiring extensive

repairs. Clark took the Jeep to a garage owned by Rick Luepke ("Luepke") for repairs. Due to the nature of the engine and the damage, the engine had to be completely taken apart before an estimate of the repair costs could be made. Clark gave oral authorization to make the repairs and did not request a written estimate.

Luepke repaired the engine in a timely manner and presented a bill for \$2,764 to the insurance company that held the engine warranty. The insurer refused to pay the bill, and Luepke then sought payment from Clark. When Clark failed to pay, Luepke asserted a mechanic's lien on the vehicle for six weeks until Clark paid the entire amount.

Clark subsequently sued in the Superior Court for Clark County to recover the money paid Luepke. After an arbitrator heard the case, Luepke sought a trial before the superior court.

The trial court found that Luepke had violated several provisions of the Automotive Repair Act ("ARA"), Wash. Rev. Code §46.71 (1991). First, Luepke failed to post a sign in his shop informing customers of their statutory rights. Moreover, Luepke did not give Clark the choice of the type of notice he could request regarding the price of repairs. The ARA dictates that customers be given three options: 1) the right to a written estimate before any repair work took place, with a requirement that the customer be contacted if the price exceeded the estimate by more than 10 percent; 2) the right to allow repairs to begin but be contacted if the price exceeded a certain amount; or 3) the right to a complete waiver of a written estimate. Additionally, Luepke could not legally assert a mechanic's lien since he failed to make a written estimate of the repairs.

Despite finding the violations of the ARA, the trial court denied Clark's recovery. Under current law, mechanics who violate the ARA lose their right to a mechanic's lien but not their claim for the work performed. As a result, the court determined that Clark was not entitled to recovery.

The Washington Court of Ap-

peals affirmed the trial court's decision. It employed a restitution analysis and placed the burden on Luepke to prove that although he had violated the ARA, he was entitled to receive payment. Since the trial court determined that the work was reasonable, necessary, and justified, the appellate court held that Luepke had met this burden.

Failure To Provide Written Estimate Does Not Bar Collection

The Supreme Court of Washington unanimously affirmed the decision of the lower courts. It held that while Luepke violated the ARA, the statute no longer precluded a mechanic who failed to comply with its provisions from receiving payment. As a result, Luepke was entitled to payment since Clark authorized the repairs.

The court noted the significant effect of the 1982 amendment to the ARA. In its original form, the statute required a mechanic to provide the customer with a written estimate for all repair work over \$50. Failure to furnish a written estimate prevented the mechanic from collecting payment, even if the mechanic had given an oral estimate or if the customer had orally authorized the work. However, the 1982 amendment mitigated this potentially harsh result to the mechanic who failed to give a written estimate. Under the revised law, mechanics are able to collect payment for work performed even if they violated the ARA, presuming that no other legal principle denies recovery.

The supreme court stated that the current version of the ARA allowed the mechanic to collect for services performed without providing a written estimate, as long as the customer authorized the work. The statute only requires a written estimate or choice of statutory alternatives when either the bill is estimated to surpass \$75 and the mechanic intends to assert a mechanic's lien, or the customer requested a written estimate. The court explained that the ARA as amended eliminated the need for a written estimate in many circumstances unless the mechanic want-

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