

The Appellate Advocate:

A Recap of Recent Decisions by NJ's Appellate Courts



Dalal v. Global Tel*Link Corporation A-0659-23

Last week I popped a tire while driving to work. Yes, I changed the tire myself. And yes, I still made it to the office. I have never had to use the “car trouble” excuse to miss work or a court appearance. For plenty of judges, I am not sure whether that excuse would hold up. This appeal, by contrast, concerns something more significant than missing a trial date because of “car trouble.” In this appeal, the Appellate Division reversed an order that dismissed a complaint due to the plaintiff’s failure to appear at trial—because the trial court failed to account for the plaintiff’s incarceration.

Aakash Dalal, acting pro se, filed two lawsuits against Global Tel*Link via which he challenged the high cost and poor quality of prison telecommunications services at Bergen County Jail. His claims, brought under the New Jersey Consumer Fraud Act and common law, alleged that the company exploited its exclusive contract to impose abusive pricing and fees, costing him close to \$19,000.

But it was not the merits of Dalal’s case that first concerned the appellate court—it was the missteps of the judiciary itself. In a striking rebuke of the trial court’s handling of Dalal’s complaints, the Appellate Division focused on the erosion of procedural fairness over time: the delay in ruling on Dalal’s motion to amend his complaint, the lack of clarity in court notices, and the abrupt dismissal of his original case with prejudice after a failure to appear—despite no evidence that Dalal had ever received proper notice or access.

The appellate panel was particularly troubled by the court’s “wholly unexplained” failure to rule on Dalal’s amendment motion for over a year, even after it had been tentatively approved by a judge who was later rotated off the case. This delay, the panel observed, was “entirely attributable to the court,” not the plaintiff. By failing to address the motion—or to explain why it was ignored—the court effectively stripped Dalal of the chance to have his amended claims heard, a fundamental procedural error.

Then came the second blow: when Dalal filed a new lawsuit with updated claims, a different judge dismissed it under the doctrine of res judicata by asserting that Dalal's original complaint had already been adjudicated. But as the appellate panel noted, the first complaint had never been decided on its merits. It had been dismissed solely because Dalal failed to appear for a trial call—yet the record showed that notices lacked his State Bureau Identification (“SBI”) number and likely never reached him. Nor did the court provide any alternative means, like Zoom, which Dalal had explicitly requested.

Under these circumstances, the Appellate Division found that the trial court had “mistakenly exercised its discretion” by dismissing the original complaint with prejudice, and then compounding that error by dismissing the second case on faulty legal grounds. The ruling was clear: “Dismissal with prejudice is a drastic remedy and should be used sparingly.” This is especially true when the plaintiff had demonstrated diligence and the procedural errors lay with the court itself. In restoring both complaints, the appellate court emphasized not only Dalal's right to pursue his claims but also a broader judicial principle: that even the most complex or unconventional litigants are owed access to a fair and functioning legal process.

Here is my own takeaway from the decision: It is often tempting to sit back and pocket a favorable decision when there are obvious, unaddressed discrepancies in service or notice to the detriment of your adversary. After all, your job is to be a zealous advocate for your client and not a disinterested auditor of court process. This appeal shows that, if you have an opportunity to correct a procedural snafu, then you might be well-served to do so. It could possibly prevent a long and unnecessary appellate detour like in the case here. And it just might earn you some credibility with the Court, which you can use as fuel for that zealous advocacy you are ethically bound to provide.

About Thomas Cotton

Thomas Cotton is a litigation partner at Schenck Price, representing clients in trial and appellate courts throughout the United States. In addition to his practice, he authors *The Appellate Advocate*, a semi-weekly blog offering thoughtful yet accessible commentary on recent appellate rulings.



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