State of New York
Court of Appeals

To be argued Thursday, January 6, 2022 (arguments begin at noon)

No. 5 Matter of Aurora Associates LLC v Locatelli

Aurora Associates LLC, the owner of a residential building in Manhattan, brought this summary eviction proceeding against a tenant, Raffaello Locatelli, seeking to take possession of his apartment (Loft 3B) on the ground that his month-to-month tenancy had been terminated. Locatelli responded that he was not a month-to-month tenant, but instead was protected by rent stabilization, and he filed counterclaims for rent overcharges and attorney's fees.

The building had been an Interim Multiple Dwelling regulated under the Loft Law (Multiple Dwelling Law article 7-C). Aurora argued that, in 1998, the prior owner of the building purchased the improvements and the rights of the loft tenants pursuant to Multiple Dwelling Law § 286(12), which it said would exempt the building from rent regulation. It also argued that the vacancy lease entered into by the next tenant of Loft 3B had a monthly rent of $4,250, well above the threshold for high-rent deregulation. Locatelli argued that the alleged purchase agreement for improvements and rights in 1998 was inadmissible or invalid and, even if it were legitimate, it did not deregulate the building.

Civil Court agreed with Locatelli and dismissed the eviction proceeding. "Where, as here, the building contains six or more residential units, it is subject to rent stabilization by virtue of Emergency Tenant Protection Act (EPTA) notwithstanding the sale of Loft Law rights by a prior tenant, in part because [Multiple Dwelling Law] § 286(12) only applies to the actual occupant who sold her or his rights, not subsequent tenants," it said, citing Acevedo v Piano Bldg. LLC (70 AD3d 124 [1st Dept 2009]. It dismissed Locatelli's overcharge counterclaim and, finding "the outcome of this proceeding is mixed to the point that neither party is the prevailing party," it also dismissed his claim for attorney's fees.

The Appellate Term, First Department modified by granting Locatelli's motion for attorney's fees and otherwise affirmed, citing Acevedo on the rent regulation and eviction issues. It said Locatelli "is entitled to recover his reasonable attorneys' fees as the 'prevailing party'" because he won dismissal of the eviction proceeding on the merits.

The Appellate Division, First Department affirmed. "Notwithstanding the predecessor owner's purchase of a prior tenant's rights under Multiple Dwelling Law § 286(12), the loft unit at issue remained subject to rent regulation as the apartment is located in a pre-1974 building containing six or more residential units," it said, citing Acevedo.

Aurora argues, in part, that "after the exemption from rent regulation pursuant to the Loft Law," the apartment did not become subject to rent regulation under the ETPA "either because the first rent charged exceeded the high rent threshold at the time it was paid or because the purchase of the rights and fixtures from the former Loft Law tenant resulted in the rent deregulation of the unit which did not then become subject to the ETPA." It says the contrary decision in this case "creates an unresolvable conflict between the First and Second Departments, as well as between the Loft Law and the ETPA."

For appellant Aurora Associates: Joseph Goldsmith, Manhattan (212) 267-6364
For respondent Locatelli: Eduardo A. Fajardo, Rhinebeck (212) 404-7069

State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, January 6, 2022 (arguments begin at noon)

No. 7 Matter of Endara-Caicedo v New York State Department of Motor Vehicles

New York City police officers arrested Pedro Endara-Caicedo on suspicion of driving while intoxicated in 2016 and took him to a precinct for a chemical breath test to determine his blood alcohol concentration. Because no officer trained to administer the test was available at that time, the police did not ask Endara-Caicedo to take the chemical test until nearly four hours after his arrest. When they did ask, he refused, which resulted in the suspension of his driver's license at his arraignment pursuant to Vehicle and Traffic Law (VTL) § 1194(2). The statute states, "Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test ... provided that such test is administered ... within two hours after such person has been placed under arrest" (VTL § 1194[2][a][1]). Under VTL §§ 1194(2) (b) and (c), the license of a driver who refuses the chemical test "shall be revoked" after an administrative hearing if the hearing officer finds the police had reasonable grounds to believe the driver was impaired; the arrest was lawful; the driver was "given sufficient warning, in clear or unequivocal language," that refusing the test "would result in the immediate suspension and subsequent revocation" of the driver's license; and the driver still refused the test.

Endara-Caicedo did not contest at his hearing the lawfulness of his arrest or the adequacy of the warnings he received, but argued that his license could not be revoked because he was not asked to take the test until more than two hours after his arrest. His license was revoked and he was fined $500. The Appeals Board of the Department of Motor Vehicles affirmed, saying the two-hour limit "is an evidentiary rule applicable to criminal prosecutions" that does not apply to chemical test refusal hearings.

Endara-Caicedo filed this suit to annul the license revocation, arguing that because he refused the test nearly four hours after his arrest, it was not a "refusal" within the meaning of the statute. He and DMV both cited a criminal case, People v Odum (31 NY3d 344 [2018]), as supporting their view.

Supreme Court upheld the license revocation, saying, "[A]lthough Odum did not precisely address or resolve the issue ... before this court, four Judges on the Court of Appeals have indicated that a motorist arrested for driving under the influence of alcohol may have his or her license suspended or revoked upon the refusal to take a chemical breath test ... even if that refusal occurs more than two hours after the motorist's arrest."

The Appellate Division, First Department affirmed, saying VTL § 1194(2) "permits the refusal of a motorist ... to submit to a chemical test to be used against the motorist in administrative license revocation hearings even if the chemical test is offered, and the refusal occurs, more than two hours after the motorist's arrest. This interpretation of the statute is supported by its legislative history, which indicates that the two-hour time limitation ... was confined to the admissibility of the chemical test results (or the chemical test refusal) in a criminal action...; the recent opinions of four Judges of the Court of Appeals" in Odum; and "the longstanding public policy of this State, and this Nation, to discourage drunk driving in the strongest possible terms...."

Endara-Caicedo says Odum "interpreted this statute to mean that a motorist's declining to take a chemical test is only a 'refusal' under the statute when the test is offered within that two-hour period." The provisions for administrative revocation of a license "are part of the same statutory scheme" as those addressed in Odum, governing when a driver's refusal to take the test is admissible in a criminal proceeding, and they should be interpreted in the same way, meaning a license can be revoked only if the driver refused the test within two hours of arrest, he argues. "After the two-hour period of deemed consent expires, a motorist has a choice whether to submit to a chemical test," and "the decision not to voluntarily consent to a test is not a 'refusal.'"

For appellant Endara-Caicedo: V. Marika Meis, Manhattan (212) 577-2523 ext 551
For respondent DMV: Assistant Solicitor General Philip J. Levitz (212) 416-6325

State of New York
Court of Appeals

To be argued Thursday, January 6, 2022 (arguments begin at noon)

No. 8 Konkur v Utica Academy of Science Charter School

Ersin Konkur was employed as a math teacher by the Utica Academy of Science Charter School during the 2013-14 and 2014-15 school years. In 2018, he filed this suit against the school and High Way Education Inc., a not-for-profit corporation doing business as the Turkish Cultural Center, which supports educational programs in the Rochester area. Konkur alleged that High Way and Utica Academy acted in concert to pressure him to make donations to High Way in the form of "illegal kickbacks" of his salary under threat of demotion or termination. He sought, among other things, civil damages for alleged violations of Labor Law § 198-b, the "kickback statute." Labor Law § 198-b provides:

"2. Whenever any employee who is engaged to perform labor shall be promised an agreed rate of wages..., it shall be unlawful for any person ... to request, demand, or receive ... a return, donation or contribution of any part or all of said employee's wages, salary, supplements, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such employee from procuring or retaining employment....

"5. A violation of the provisions of this section shall constitute a misdemeanor."

Supreme Court denied High Way's motion to dismiss the claim, rejecting its argument that section 198-b does not provide a private right of action. The court said, "The current status of the law is not settled, and ... we have case law that provides a private right of action does exist on kickbacks."

The Appellate Division, Fourth Department reversed and dismissed Konkur's kickback claim. "[W]e agree with High Way that the legislature did not intend to create a private right of action for violations of Labor Law § 198-b..., inasmuch as '"[t]he [l]egislature specifically considered and expressly provided for enforcement mechanisms" in the statute itself'...," the court said. "Indeed, by its express terms, a violation of section 198-b constitutes a misdemeanor offense.... We therefore conclude that plaintiff may not assert a cause of action based upon an alleged violation of Labor Law § 198-b."

Konkur argues the statute allows a private right of action, although its text is silent on the issue. "[T]he context of § 198-b is crucial. The statute is promulgated not in the Penal Law, but in the Labor Law," and specifically in article 6, "entitled 'Payment of Wages,' which is primarily a civil statutory scheme," he says. By placing it in article 6, "the Legislature expressed a clear intent to provide an additional protection to the rights of workers to collect their wages in a civil remedy as well as to create a criminal deterrent." He says allowing a private right of action is "entirely consistent with the legislative scheme" and "would promote the legislative purpose."

For appellant Konkur: David G. Goldbas, Utica (315) 724-2248
For respondent High Way Education: Matthew M. Piston, Rochester (585) 787-7000

State of New York
Court of Appeals

To be argued Thursday, January 6, 2022 (arguments begin at noon)

No. 9 People v Vladimir Duarte

Vladimir Duarte was arrested after a 13-year-old girl accused him of forcibly grabbing her vaginal area as she walked past him on a Manhattan sidewalk in April 2017. At the beginning of his suppression hearing, Duarte told the Criminal Court judge that he did not want his assigned counsel to represent him because the attorney had not spoken with him in detail about the case and "because he's ineffective and he doesn't believe that I did not do this." The judge denied his request without inquiry and instructed him to speak only to his attorney. Duarte said, "I object to your denying me ineffective counseling here.... I would love to go pro se." The judge did not respond to his remarks and told the prosecutor to call the first witness. Duarte was convicted after a bench trial of second-degree sexual abuse and forcible touching, both misdemeanors, and was sentenced to a year in jail.

The Appellate Term, First Department affirmed, rejecting Duarte's claim that his right to represent himself was violated. "Viewing the record as a whole, we conclude that defendant did not make a clear and unequivocal request to proceed pro se, sufficient to express the 'definitive commitment to self-representation' that would trigger the need for a full inquiry by the court.... Rather than being unequivocal, defendant's expression of a desire to represent himself came within the context of his complaints about his counsel.... In any event, defendant abandoned his request by proceeding with the scheduled suppression hearing and subsequent trial without expressing any further desire to represent himself...."

Duarte argues that he made an "unequivocal and timely request to represent himself by stating to the trial court that he 'would love to go pro se,'" and the court committed reversible error under People v McIntyre (36 NY2d 10 [1974]) when it rejected his request "without any inquiry whatsoever" into whether it was knowing and intelligent. He says "the Appellate Term devised two unfounded and unconstitutional rules of law to affirm" his conviction when it "held that (1) Mr. Duarte's request was not unequivocal because he made it after expressing dissatisfaction with his attorney..., one of the most common reasons a defendant chooses to proceed pro se; and, in the alternative, (2) Mr. Duarte had abandoned his pro se request solely because he did not repeat it..., thereby waiving his constitutional right to self-representation through his silence rather than any affirmative action. Neither of these new rules comports with this Court's precedent or the constitutional principles that animate it."

For appellant Duarte: Molly Schindler, Manhattan (212) 577-2523
For respondent: Manhattan Assistant District Attorney Jeannie Campbell-Urban (212) 335-9000